

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

CA Appeal No: 1002/96(F)

D.C. Embilipitiya: 4981/L

Korale Arachchige Danie

Land No 1345,

Uruparaththa,

Padalangala

Plaintiff-Appellant

Vs

M V Ratnasiri,

42, Padalangala and 5 others

Defendant-rRespondents

Before: A.W.A. SALAM, J.

Parties absent and unrepresented

Decided on: 18.01.2011

A W Abdus Salam,J.

This appeal arises on the judgment dated 19 September 1995 of the learned district judge of Embilipitiya. The action in which the impugned judgment has been delivered commenced with the institution of the action by the plaintiff against the defendants for a declaration of title to the subject matter more fully described in the schedule to the plaint and to prevent the defendants and their servants and agents from entering into the said land. The plaintiff pleaded that by reason of the permit issued by Mahweli Development Authority he had the right to be in possession of the land in question without the interference of the defendants. He alleged that the defendants entered into his land and commenced the construction of a road thereby challenging his right to possess the same.

After the conclusion of the trial the learned district judge came to the conclusion that the plaintiff is entitled to the possession of the subject matter but he is not entitled to prevent the defendants from constructing the road. The reasons adduced by the learned district judge for his decision is that the road in question has been used for a long period of time by the villagers and the defendants have not in fact constructed a new road but they had merely repaired or took steps to ensure that the road in question can be effectively used by the villagers.

The reasons adopted by the learned district judge for his decision does not seem to be inconsistent with the evidence or tainted with illegalities.

As such I am of the view that this appeal should be dismissed.

No costs.

Judge of the Court of Appeal