

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

C.A 744/98 (F)

K.M.S. Abuthahir,
3/3, Poornawatte,
Mahiyawa,
Kandy.

Appellant.

- Vs-

Kanthasamy Vyapuri
86, Srimavo Banaranaike Mawatha,
Kandy.

Respondent.

CA 744/98 (F)

Kalutara D. C. Case No: 4904/P

BEFORE : K.T. CHITRASIRI, J.

COUNSEL :Plaintiff-Appellant is absent and unrepresented.

B. Gamage for the 1st Defendant-Respondent.

2-5 Defendants-Respondents are absent and unrepresented.

ARGUED &

DECIDED ON : 24.01.2013.

K.T. CHITRASIRI, J.

This is an appeal seeking to dismiss the plaint filed in the District Court and to obtain a declaration, declaring that the 1st Defendant has prescribed to the land in dispute, without a relief being prayed for, to set aside the judgment delivered in the District Court. (para 11 of the petition of appeal.)

This action was originally filed in the District Court of Kalutara by the plaint dated 10.01.1983. In that plaint the Plaintiff sought to partition

the land referred to in the schedule thereto. Originally, it was filed only against the 1st Defendant-Respondent who is present before this Court today. Thereafter four other Defendants had intervened and they were added as parties to the action.

There was no dispute as to the land sought to be partitioned and it had been recorded as an admission at the commencement of the trial. Thereafter the issues of the parties were recorded and then they had called their respective witnesses. Accordingly, the judgment was delivered on the 24.09.1998. The Plaintiff, being aggrieved by the said decision of the trial judge has filed this appeal.

The learned District Judge having considered the evidence, had rejected the evidence of the Plaintiff. Simultaneously, the learned District Judge had decided that the land had been possessed by the 1st Defendant's father and thereafter by the 1st Defendant. Subsequently, the learned District Judge had come to the conclusion that the 1st Defendant had prescribed to the land. He came to this finding after having observed the demeanour of the witnesses as well.

The ground of appeal urged in the petition of appeal are basically on the manner in which the facts of the case was analysed. Trial judge being the best person to decide on the facts in issue, I am not inclined to interfere with the decision arrived by him upon considering the facts of the case. Furthermore I do not see any error on the part of the learned District Judge when he came to the said conclusion.

In the circumstance, I am not inclined to interfere with the decision of the learned Trial judge. Accordingly the appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL.

NR/-