

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA.**

Court of Appeal Case  
No: CA1331/96 (F)  
D.C. Galle Case No.L/12371

Liyanagamage  
Kotunnawatte,  
Poddala.

Jayanoris,  
Medakeembiya,

Plaintiff

Vs.

1. Wickremanayake Arachchi  
Santi alias Suwaris  
2. Wickremanayake Arachchi  
Sarath

Both of Mahawatte,  
Medakeembiya, Poddala.

Defendants.

AND

Keembiye Liyana Gamage  
Gnanapala, Medakeembiya,  
Welapitaduwawatte.

Substituted-Plaintiff-Appellant.

Vs.

1. Wickremanayake Arachchi  
Santi alias Suwaris (deceased)
- 1A. Carolis Wickremanayake  
Arachchi, Meegahawatte,  
Pahala Keembiya, Poddala.
- 1B. Bennet Wickramenayake  
Arachchi, Magamulana,  
Medakeembiya.
- 1C. Amarasiri Wickramenayake  
Arachchi, Welapitaduwawatte,  
Medakeembiya.
- 1D. Nandasiri Wickramenayake  
Arachchi,  
Ulupattalegederawatte,  
Medakeembiya.

Substituted  
Defendants-Respondents.

2. Wickramenayake Arachchi  
Sarath Mahawatte,  
Medakeembiya, Poddala.

Defendant-Respondent.

BEFORE : A.W.A. Salam, J.  
COUNSEL : Shymal A. Collure for the Plaintiff-Appellant and Sriya  
Manamperi for the Substituted Defendant-Respondent.  
ARGUED ON : 26.04.2012.  
WRITTEN SUBMISSIONS TENDERED ON: 08.10.2012.  
DECIDED ON : 01.03.2013.

A.W.A.Salam, J

The plaintiff-respondent (hereinafter referred to as the "plaintiff" ) was the owner of the divided and defined allotments of land marked as lots 6, and 7 depicted in plan No 148X dated 10<sup>th</sup> October and 1st and 22<sup>nd</sup> November 1969 filed of record in the district court of Galle in case No P3071. The 1<sup>st</sup> defendant has been declared entitled to the adjoining lot No 4 in the same plan. The rights of the 1st defendant from and out of lot 4 have been transferred to the 2nd defendant.

The plaintiff filed action against both defendants complaining of their encroaching upon his lots 6 and 7. He sought a declaration of title to the said lots, ejectment of the defendants therefrom and damages. The portions of the area encroached upon by the defendants from and out of lots 6 and 7 are depicted as lots 6A and 7A in plan No 194 dated 28 April 1993 and made by L.S Dahanayaka, L.S. The extent of the two blocks of land 6A and 7A alleged to have been encroached upon by the defendants is described in the said plan as 0.144 perch and 0.401 perch respectively. The total extent of the two blocks of land said to have been encroached by the defendants aggregates to 0.545 perch.

The defendants having denied the allegation that they have unlawfully encroached upon the said allotment of land, claimed title to the same by right of prescriptive possession. At the commencement of the trial an admission was recorded to the effect that the amalgamated lots 6 and 7

depicted in plan No 148X dated 10th October, 1st and 22nd of December constituted the subject matter of the action.

There was no controversy that lots 6A and 7A depicted in plan No 194 are part and parcel of lots 6 and 7 depicted in plan 148X. Hence, the only dispute that came up for resolution was whether the 2nd defendant has acquired a valid prescriptive title to the said lots as averred in his answer.

At the trial Sepala Dahanayaka, L.S, the plaintiff, 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant gave evidence. The plaintiff produced documents marked P1 to P3 and closed his case. The learned district judge at the end dismissed the action filed by the plaintiff and declared the 2<sup>nd</sup> defendant as having acquired a prescriptive title to the said lots. This appeal has been preferred by the plaintiff against the said judgment.

The learned counsel for the substituted-plaintiff-appellants has submitted that the learned district judge has misdirected himself in the assessment and evaluation of the evidence especially with regard to the defendants prescriptive title, as it is manifest that the 2<sup>nd</sup> defendant-respondent has failed to establish his possession of the premises in suit.

On a perusal of the judgment, it is quite clear that the learned district judge has analyzed the evidence adduced by both parties and after comparison had chosen to act on the evidence of the defendant-respondents. He categorically states in his judgment that the

balance of probability demands that the version of the defendant-respondents should be given effect to for the reason that the possession of the defendants is more credible and above all the learned district judge observed that the plaintiff has not uttered a word in the police complaint complaining of any encroachment on the part of the defendants.

The findings of the learned trial judge is undoubtedly based on the credibility of the witnesses. In such a situation the trial judge's perception of the evidence led before him, is entitled to a great weight and utmost consideration. Such findings can be reversed only if they appear that the trial judge has failed to make the full use of his advantage of seeing and listening to the witnesses. In this case the evaluation of the evidence by the trial judge does not appear to be blameworthy. The trial judge has had the privilege of seeing the witnesses and observing their demeanour in the witness box. Regarding the crucial issue as to whether the defendants had possessed the property in question as averred, the learned district judge has correctly arrived at a finding which incidentally is adverse to the plaintiff. The learned district judge being in the position of the master on all matters of facts including the proper assessment of the credibility of the parties cannot be faulted for his conclusion.

Having given my anxious consideration to the approach made by the learned district judge in coming to the impugned decision, I am not

inclined to subscribe to the view that there has been total lack of proper evaluation of the evidence. Since the findings and the judgment of the learned district judge are consistent with the evidence led by both parties, I see no reason to interfere with the judgment of the learned district judge. Hence, this appeal stands dismissed. There shall be no costs.

Judge of the Court of Appeal

Nr/-