

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

CA 705/99F
D.C. Maravila 268/RE

Adriyan Jude Tissera
Martin the Poras Mawatha,
Wennappuva.

Plaintiff

Vs

Kaasirajange Udaya Kamar
No.26, Tissa Mawatha,
Pahala Mahawewa,
Mahawewa.

Defendant

AND NOW BETWEEN

Kaasirajange Udaya Kamar
No.26, Tissa Mawatha,
Pahala Mahawewa,
Mahawewa.

Defendant-Appellant

Vs.

Adriyan Jude Tissera
Martin the Poras Mawatha,
Wennappuva.

Plaintiff-Respondent

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

Counsel: Dr S.F.A Cooray for the defendant-appellant and Mahinda
Ralapanawa for the plaintiff-respondent.

Argued on: 03.04.2013

DECIDED ON: 05.04.2013

A W A Salam J

The plaintiff as a co-owner of the subject matter of the action relevant to this appeal sought to eject the defendant therefrom based on unlawful possession. The defendant took up the position that her mother entered the land with the leave and licence of a co-owner who had not been made a party to the case. If the defendant was interested in asserting a right to continue in occupation of the subject matter, in such a situation, she should have made the co-owner who is alleged to have granted permission to her mother to stay on the land. Instead, the defendant only sought to lead the evidence of the daughter of the co-owner to establish that the possession of the subject matter was not unlawful.

The learned district judge having analysed the evidence adduced by both sides, concluded that the failure on the part of the defendant to bring in the co-owner with whose permission she had entered the land as a party to the case is fatal to the defence pleaded in the answer and relied upon at the trial. The learned counsel for the defendant-appellant quite correctly conceded that the defendant had been negligent in the manner of persecuting her cause in the district court.

In the circumstances, I am of the opinion that the learned district judge was right in deciding the case in favour of the plaintiff. Hence, this appeal merits no reversal of the impugned judgment and is therefore dismissed.

There shall be no costs.

Judge of the Court of Appeal

Sunil Rajapaksha, J
I agree.

Judge of the Court of Appeal

NR/-