

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

W.N. Chandrasekera Bandara
Wickremasinghe,
Pahala Nedurana,
Eheliyagoda.

C.A. No. 604 / 2000 (F)

Substituted Plaintiff

Vs.

D.C. Avissawella No. 13731 / L

1. A. L. Asanda,
2. A. L. Simon,
3. A. L. Suraweera,
All of Pahaladankumbura,
Kendagamuwa.
4. H. Karunaratne,
Minnana,
Getahetta.

Defendants

And Now Between

H. Karunaratne,
Minnana,
Getahetta

4th Defendant-Appellant

Vs

W.N. Chandrasekera Bandara
Wickremasinghe,
Pahala Nedurana,
Eheliyagoda.

Substituted Plaintiff Respondent

1. A. L. Asanda,
2. A. L. Simon,
3. A. L. Suraweera,
All of Pahaladankumbura,
Kendagamuwa.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : 4th Defendant Appellant – Absent and
Unrepresented
B.O.P. Jayawardane for the Plaintiff
Respondent

ARGUED ON : 01.02.2013

DECIDED ON : 03.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the 1st 2nd 3rd and 4th Defendants in the District Court of Avissawella seeking for a declaration of title to an undivided 5/8 share of the land described in the schedule to the plaint. The Defendants filed answer denying the averments in the plaint and prayed for a dismissal of the Respondent's action. The case proceeded to trial on 23 issues. After trial, the learned Additional District Judge has delivered judgement in favour of the Respondent as prayed for in the plaint. Being aggrieved by the said judgment dated 28.07.2000 the 4th Defendant

Appellant (hereinafter referred to as the Appellant) has preferred the present appeal to this court.

In paragraph 05 of the petition of appeal the Appellant has set out several grounds of appeal. It seems from the said grounds of appeal that the main grievance of the Appellant was that the learned Additional District Judge has failed to consider the fact that the Respondent has failed to prove the title. I now consider the said grounds of appeal.

According to the evidence of the Respondent his title to the land in dispute has emanated from title deeds. He has produced said title deeds marked P 5 and P 6. P 5 was a deed of transfer dated 02.10.1873. According to the evidence of the Respondent 1st to 3rd Defendant Respondents had cultivated the land in dispute as 'ande cultivators' under the plaintiff. In proof of the said fact the Respondent has produced the copies obtained from the Agricultural Land Register marked P 1, P 2 and P 3. The Respondent has further stated that after the 'Maha Season 1971/1972' the 1st to 3rd Defendant Respondents denying the rights of the Plaintiff Respondent has unlawfully given the owner's share of the crops to the Appellant.

The Appellant has not produced any documentation against P 1, P 2 and P 3. When I consider the said evidence I am of the view that the Appellant has failed to prove his case on a balance of probabilities. Hence I see no reason to interfere with the said judgement of the learned District Judge dated 28.07.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal