

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

**C.A 960/98 (f)**

D.C. Horana No. 3629/P

Dissanayake Mudi yanselage Jinadasa,  
No 35,  
Anguruwatota Road,  
Horana.

**4th Defendant- Appellant**

**Vs.**

Welikadage Lakshman Perera,  
No 47,  
Kandekade Mahena,  
Horana.

**Plaintiff- Respondent**

1. Welikadage Nihal Ranjith Perera  
Kuruppumulla,  
Panadura.
2. Mannage Don Lilasena,  
No: 4/42,  
RathnauraRoad,  
Horana.
3. Manage Don Sumanadasa,  
No: 4/42,  
Rathnapura Road,  
Horana.

**Defendant –Respondents**

Before : K.T.Chitrasiri, J

Counsel : Arjuna Udawatte with Harendra K. Perera for the 4<sup>th</sup>  
Defendant-Appellant.

Philip Chandraratne for the Plaintiff- Respondent.

Sunil Jayakody with Ms.Dushanthi Senarathne for the 1<sup>st</sup>  
Defendant-Respondent.

Argued &

Decided on : 02.05.2013

K.T.Chitrasiri, J

This is an appeal seeking to set aside the judgment dated 14.08.1998 of the learned District Judge of Horana. In that judgment learned District Judge rejected the claim of the 4<sup>th</sup> Defendant-Appellant. His claim was on the basis of long standing possession to the land sought to be partitioned and it had been raised at the beginning of the trial in the issue bearing No.11. The 4<sup>th</sup> Defendant-Appellant in his evidence had claimed title to lot 'C' referred to in the preliminary plan No.3592. While claiming title to the said lot 'C' in the

preliminary plan, he had marked three Deeds(4V1, 4V2 and 4V3)in evidence and had said that his title derived from Ariyadasa. The plaintiff had not accepted Ariyadasa's title. His position was that Ariyadasa was only a licensee of the predecessor-in-title of the plaintiff as well as of the 1<sup>st</sup> defendant.

Learned District Judge had considered the above evidence and in paragraph 2 found in page 8 of the judgment, he has stated that the appellant had not established the title of his predecessor Ariyadasa. Furthermore, he has stated that the Deeds marked and produced by the 4<sup>th</sup> Defendant-Appellant was not tendered to Court though those Deeds had been marked in evidence. Without having the documents before Court, the contents of which cannot be considered by the trial Judge. It is the duty of the 4<sup>th</sup> Defendant-Appellant to have his documents tendered to Court after the conclusion of the trial.

When the case was taken up on 18.11.1993 the trial had been concluded and the Court had directed the 4<sup>th</sup> defendant-appellant to file submissions. Even though the submissions were filed, the 4<sup>th</sup> defendant had failed to tender the documents marked on his behalf. The learned District Judge having adverted to this aspect had stated that the 4<sup>th</sup> defendant-appellant had failed to establish his title.

In the circumstances, I do not see any wrong on the part of the learned District Judge when he decided that the 4<sup>th</sup> defendant-appellant was unable to establish the title claimed by him without the title deeds being tendered.

Therefore I am not inclined to interfere with the findings of the learned District Judge.

For the aforesaid reasons the appeal is dismissed with costs.

*Appeal dismissed with costs.*

JUDGE OF THE COURT OF APPEAL

KLP/-