

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

C.A.No.473/98 (F)

D.C.Marawila No.131/RE

B. Manohari Fernando Aththachchi
No: 157,
Welihena,
Kochchikade.

And Others

Appellants

Vs.

Indra Manchanayake
"Shanthi",
Dankotuwa.

Respondent

C.A.No.473/98 (F)

D.C.Marawila No.131/RE

Before : K.T.Chitrasiri,J.

Counsel : Thisath Wijegunawardane with J.Bosuriya
for the Plaintiff- Appellants.

Wijedasa Rajapakse P.C. with W.Livera for
the Defendant – Respondent.

**Argued and
Decided on** : 09.05.2013.

K.T.Chitrasiri,J.

Both Counsel concluded making submissions in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 21.05.1998 of the learned District Judge of Marawila. In that judgment learned District Judge dismissed the plaint of the plaintiff-appellants with costs. Being aggrieved by the said decision, the plaintiff-appellants have appealed to this Court for relief.

Contention of the learned Counsel for the plaintiff-appellants (hereinafter referred to as the plaintiffs) is that the evidence led as to the title is sufficient to establish the title of the plaintiffs to the Lots 41 and 44 referred to in Plan No.479 prepared by R.I.Fernando, Licensed

Surveor though the learned District Judge has held otherwise. However, he admitted that the deed by which the two plaintiffs became entitled to the land had not been marked in evidence. Neither, have they produced any previous deeds to prove title. The non-availability of the title deeds is the basis for the dismissal of the action. It is evident by the wordings in paragraph 2 found at page 8 of the judgment. One of the plaintiffs has given evidence at the trial. She, namely Beatrice Manohari Fernando, in her evidence has stated that the land in dispute is only a part of the land that was given to the two plaintiffs by their father. However, no deed had been produced to establish the title of the father, even though the title deeds of the plaintiffs have been referred to in the plaint they have filed. They have not even taken steps to produce at least the extracts of those deeds obtained from the Land Registry. Therefore, it is clear that the plaintiffs have failed to produce their title deeds in evidence though they are in a position to do so.

In terms of Section 114(f) of the Evidence Ordinance, it is presumed that the evidence which could have been produced and if those evidence is not produced, it would be treated as unfavourable to the person who withhold it. Accordingly, in this instance, it could be presumed that the plaintiffs have not produced those deeds because it is unfavourable to them if those were produced. Therefore, it is correct to decide that the plaintiffs are not entitled for the relief they have sought in the absence of the title deeds. The only documentary evidence available to establish title is the plan bearing No.479 marked P1. Such a plan

which has no reference to any previous plan does not help proving title to the land claimed by the plaintiffs.

I will now consider the evidence of Beatrice Manohari Fernando, who is one of the plaintiffs. In answer to cross-examination, she has stated that the larger land owned by the plaintiffs is in extent of 07 acres. It is contrary to the averments in the plaint. According to the plaint the extent of the larger land consists more than 13 Acres 2 Roods and 17 Perches. (Vide evidence at pages 125,126 & 130). The plan No.479 marked as P1 show that it is a land of 5 Acres 2 Roods and 4 Perches. Therefore, the evidence led on behalf of the plaintiffs as to the extents of the lands referred to in evidence is contradictory and therefore those evidence too cannot be accepted as correct. This item of evidence is vital in this instance, this being an action for declaration of Title.

In the circumstances, I do not see any reason to interfere with the findings of the leaned District Judge.

For the aforesaid reasons, this appeal is dismissed with costs fixed at Rupees Seventy Five Thousand (Rs.75,000/-).

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

WC/-