

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

L. G. Bandusena,
Land No 1392, Weligama Wadiya,
Padalangala.

C.A. No. 1342/2000 F

Plaintiff

D.C. Embilipitiya No. 5158 / L

Vs.

1. L. G. Podisingho,
2. L. G. Ostin,
Both of Land No 1392,
Weligama Kade, Padalangala.

Defendant

And Now Between

L. G. Bandusena,
Land No 1392, Weligama Wadiya,
Padalangala.

Plaintiff Appellant

Vs

1. L. G. Podisingho,
2. L. G. Ostin,
Both of Land No 1392,
Weligama Kade, Padalangala.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : W. Dayaratne PC with D. Dayaratne for the
Plaintiff Appellant
Shyamal A. Collure for the Defendant
Respondent
ARGUED ON : 12.12.2012
DECIDED ON : 10.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondents (hereinafter referred to as the Respondents) inter alia for a declaration that she is the permit-holder of the land described in the schedule to the plaint. The Respondents filed answer denying the averments in the plaint and prayed for a dismissal of the Appellant's action and inter alia claimed a sum of Rs. 500,000/- as compensation for the improvements done by him. The case proceeded to trial upon 16 issues. After trial the learned Additional District Judge has dismissed the Appellant's action. Being aggrieved by the said judgement dated 21.09.2000 the Appellant has preferred the present appeal to this court.

At the trial the Appellant has produced a land permit marked P 1. According to the said land permit the Appellant was the permit holder of the land in suit. The Appellant, in order to prove the authenticity of the said land permit, has led the evidence of Seelawathie Kumasaru, Land Officer, Mahaweli Authority. Witness Seelawathie Kumasaru in her evidence has stated that the land permit (P 1) has been issued to the Appellant by the Mahaweli Authority and the said land

permit was a valid land permit in respect of the land in suit and no land permit has been issued to anybody other than the Appellant.

The Respondents have raised issues No 06 to 14 with regard to the improvements on the land in suite. But the Respondents have not given evidence and have not called any witness to give evidence in order to prove the alleged improvements. Accordingly the learned Additional District Judge has refused the Respondent's claim in reconvention. The Respondents have not appealed to this Court against the said findings of the trial Judge.

It was common ground that the subject matter of the action was a state land. Hence the Respondents' claim of prescriptive title should necessarily be failed.

In the said circumstances I am of the view that the learned Additional District Judge has failed to evaluate the said evidence of the Appellant in correct perspective. Hence I set aside the said judgement dated 21.09.2000 and enter judgment as prayed for in the plaint. I allow the appeal of the Appellant with costs.

Appeal allowed.

Judge of the Court of Appeal