

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

C.A.No.192/98 (F)

D.C.Kuliyapitiya No.9655/L

Horathal Padi Durayalage Podi Manike
Godagamwela,
Nakkawaththa.

DEFENDANT –APPELLANT- PETITIONER

Vs.

1. R.M. Ruwina Thamarangani Rajapakse
88/6,Walpola,
Mulleriyawa New Town.
2. R.M. Pubudu Anandika Rajapakse
5714/A,Sapumal Mawatha,Wilgoda
Road,Kurunegala.
3. R.M.Yamuna Priyadharshani Rajapakse,
15-1-1, Railway Quarters,
Base line Mawatha,
Colombo 9.
4. R.M. Gihan Chandima Rajapaksha
333 B,
Mahawaththa road,
Himbutana,
Mulleriyawa New Town.

PLAINTIFF-RESPONDENTS-RESPONDENTS

C.A.No.192/98(F)

D.C.Kuliyapitiya No.9655/L

Before : K.T.Chitrasiri, J.

Counsel : Frank Prethi Perera with W.A.Ranaweera
for the Defendant- Appellant.

C.Wickremasinghe
D.M.G.Dissanayake with
for the Substituted-Plaintiff-Respondents

Argued and

Decided on : 28.06.2013.

K.T.Chitrasiri,J.

Counsel for the Appellant made submissions in support of his appeal.

At this stage, both Counsel submit that the land in dispute had not been shown in reference to a plan. Basically, the contention of the appellant is on the question of identity of the corpus. Both counsel concede that it is not appropriate to come to a conclusion as to the title of the land in dispute without it been

identified in reference to a plan. In these circumstances both counsel agree to have a survey of the land in dispute and thereafter to proceed with the case.

At this stage learned counsel for the plaintiff-respondent agrees to move for a commission to identify the land if the case is remitted back for re-trial. He also submits that the plaintiff-respondent may have problems when it comes to the stage of execution of writ even if this appeal is dismissed. In view of the above, both counsel agree to set aside the impugned judgment delivered in this case.

In the light of the above submissions, it is clear that the learned District Judge has merely relied on a deed executed in the years 1943 in order to identify the land. The evidence of the first defendant also shows that the defendants have challenged the boundaries and the extent given in the said deed. For the aforesaid reasons, the judgment dated 13/01/1998 is set aside.

Learned District Judge of Kuliypitiya is directed to allow the plaintiff to obtain a commission in order to identify the land

that he claims. If an application is made even by the defendant-appellant, the learned District Judge is directed to allow such an application too. Upon returning the respective commissions learned District Judge is directed to proceed with the case in accordance with the law.

Subject to the above variations this appeal is allowed without costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

WC/-