

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

**C.A.No.800/98 (F)**

D.C.Anuradhapura No.15127/L

Mohodeen Kaseem Beebi  
Aluth Golumaradankulama ,  
Nachchiduwa.

**Appellant**

**Vs.**

S.M. Rathnawathie Manike  
Athuruwella,  
Nachchiduwa,  
Anuradapuraya.

**Respondent**

**C.A.No.800/98(F)**

**D.C.Anuradhapura No.15127/L.**

Before : **K.T.Chitrasiri,J.**

Counsel : N.M. Shaheid for the plaintiff-appellant  
B.O.P. Jayawardene for the defendant-respondent

Argued and

Decided on : 02.07.2013.

**K.T.Chitrasiri,J.**

Heard both counsel in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 02/10/1988 of the learned District Judge of Anuradhapura. By that judgment learned District Judge dismissed the plaint relying upon the rights derived from the permit marked V1, issued in the name of the defendant-respondent (hereinafter referred to as the defendant) having declined to accept the title referred to in the "Grant" dated 09/08/1982 (P2) issued in the name of the plaintiff-appellant (herein after referred to as the plaintiff). The said decision of the learned District Judge is evident by the answer to the issue No.3 which was raised to establish the title of the plaintiff. The reasons for the rejection of the aforesaid claim of the plaintiff which was made relying upon

the Grant marked P2, is found at page 123 of the appeal brief. It reads thus:-

ඉහතින් ඉදිරිපත් වූ කරුණු වලට අනුව පැ/2 ලේඛණය අත්සන් තබා ඇත්තේ 1982 වර්ෂයේ වුවත් එය පැමිණිලිකාරීය කියා සිටින පරිදි ඇයට ලැබී ඇත්තේ 1992 දීය. මේ අනුව 1992 වර්ෂය තෙක් ඇයට මෙම බලපත්‍රය නොලැබීමට හේතුව කුමක්ද යන්න සම්බන්ධයෙන් අධිකරණය ඉදිරියේ කරුණු හෙළිවී ඇත. මෙම තත්ත්වයට පත්වූ 1992 වර්ෂයේ පැමිණිලිකාරීයගේ මෙම පැ/2 ලේඛණය ලැබුණු විට විත්තියෙන් ඉදිරිපත් කර ඇති පැ/1 ලේඛණය අවලංගු කර 1988 වර්ෂයේ එම ඉඩම සම්බන්ධයෙන් මෙම විත්තිකාරියට බලපත්‍රයක් නිකුත් කර අවසන් බව පෙනේ. කෙසේ වෙතත් පැමිණිලිකාරියද පිළිගත් පරිදි දිරිසකාලයක් විත්තිකාරිය මෙම ඉඩමේ භුක්තිය සිට ඇති අතර කුමන හේතුවක් මත හෝ 1941 බලපත්‍රය මත පරීක්ෂණ තත්ත්වයක් කෙරෙහි අවධානය යොමු නොකර ප්‍රධාන පත්‍රයක් නිකුත් කිරීම සම්බන්ධයෙන් කටයුතු කර ඇති බව පෙනේ. තත්ත්වය එසේ වුවත් විශේෂයෙන්ම බලපත්‍ර වල සත්‍යතාවය පිළිබඳව අධිකරණය ඉදිරියේ සාක්ෂි දුන් ජනපද නිලධාරියාගේ සාක්ෂිය මත පැ/2 ලේඛණ වලංගුතාවය සම්බන්ධයෙන් ඉදිරිපත් කරනු වී/1 සිට වී/7 දක්වා ඉදිරිපත් ලේඛණ අනුව පැ/1 ඇති කර ඇති අවලංගුතාවය මත එක විටම පිළිගත නොහැකිය.

Accordingly, it is seen that the reason assigned by the learned District Judge to reject the claim of the plaintiff had been that the said Grant P2 issued in the name of the plaintiff was received by him in the year 1992, when there had been a permit issued by then, in the year 1988

in the name of the defendant. In the judgment, learned District Judge has also stated that the Permit dated 21.02.1941 marked P1 issued in favour of the plaintiff had been cancelled in the year 1988 and the permit issued thereafter is in the defendant's name.

In this connection, the witness namely Bandage Somaratne, a representative from the Divisional Secretariat, in his evidence has clearly stated that the Grant by His Excellency the President cannot be disregarded by a permit issued by an official of the Government ( vide Page 91 of the appeal brief). He has further said that it was a mistake on the part of the office to have issued a permit in the name of the defendant when there had been a grant issued by then under the hand of His Excellency the President. It is evident by the following evidence of the said officer Somaratne.

“වි/2 අවලංගු කරන ලද දිනය 1985 .11.01 කියා මා කිව්වා. පැ/2 දීමාන පත්‍රය රජය විසින් නිකුත් කර තිබෙන්නේ 1982.08.09 වන දින එය ශ්‍රී ලංකා රජයේ ජනාධිපතිතුමා විසින් අත්සන් කර තිබේ. ජනාධිපතිතුමා විසින් දීමනා පත්‍රයක් මගින්, 1982 දී දෙන ලද ඉඩම අවලංගු කිරීමට වි/2 ලේඛණය මගින් බැහැ. බලපත්‍ර ගොනුවේ හෝ දීමනා පත්‍රයක් නිකුත් කලා කියා සටහන් නොවීම නිසා 106 වගන්තිය යටතේ කටයුතු කිරීමට සිදුවී ඇති බවට මාගේ ලේඛණය අනුව කිව හැකිය. කාර්යාලයේ ඇති වූ වැරදීමක් මත වි/2 සිට වි/7 දක්වා ක්‍රියාමාර්ග සිදු කර තිබේ. වි/2 සිට වි/7 දක්වා කර ඇති අවලංගු කිරීමේ ක්‍රියාමාර්ගය වැරදියි කියා මා කියමි. වි/2 නිකුත් කර තිබෙන්නේ

පැ1 වලංගු කිරීමෙන් දීමනා පත්‍රයක් නිකුත් කරන අවස්ථාවේදී බලපත්‍රයක් අවලංගු කිරීම සිදු වන්නේ නැ;”.

The date of receiving the Grant by the Grantee should not have been a reason to reject its title even though there had been a Permit issued subsequent to the Grant. Accordingly, it is my view that the learned District Judge has misdirected himself when he rejected the title derived from the Grant marked P2 issued in the name of the plaintiff on the strength of the Permit marked V1 issued in the name of the defendant

At this stage, Mr. B.O.P.Jayawardena brings to the notice of Court that even though the Grant had been dated 09.08.1982, it was registered only after the permit was issued to the defendant-respondent. In this regard, the said witness Bandage Somaratne had stated that when a Grant is issued, it is being prepared in triplicate and of which one copy is sent to the Divisional Secretary or to the Government Agent and one copy to the Land Registry and the remaining copy to the transferee. (Vide page 90 of the appeal brief )

Accordingly, it is seen that it is the duty of the government officials particularly the officers in the Land Registry to register such a grant in the relevant registers and therefore the Grantee cannot be faulted with for the failure to do so. Therefore the delay in registering the Grant cannot be a

reason to disregard the title derived from the Grant marked P2 issued in the name of the plaintiff particularly when the process of registering the Grant involves only ministerial acts cast upon the officials of the government. Such a duty cast upon the officials is beyond the control of the person in whose favour the Grant was issued. Hence, I am not inclined to accept the aforesaid contention of the learned Counsel for the defendant.

For the aforesaid reasons, it is my view that the learned District Judge has misdirected himself when he disregarded the title referred to in the Grant marked P2 issued under the hand of His Excellency the President of the Republic of Sri Lanka. Accordingly, the claim of the plaintiff made on the basis of the Grant marked P2 shall prevail over the claim of the defendant made relying upon the permit marked V1. For the aforesaid reasons, the judgment dated 02/10/1998 of the learned District Judge of Anuradhapura is set aside.

Accordingly, this appeal is allowed with cost fixed at Rupees Seventy Five Thousand ( Rs .75,000/- )

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

WC/-