

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

CA. 1117/98(F)

D.C. Walasmulla 193/L

K.L.D. Dawith
Punchi Pagiri Hena,
Ikthademaliya,
Walasmulla.

Appellant

Vs.

K.L. Babynona
Koratuwa,
Ikthademaliya,
Walasmulla.

Respondent

C.A. 1117/98(F)

:

D.C. Walasmulla 193/L

Before : K.T. CHITRASIRI, J.

Counsel : Shantha Jayawardena for the 2A Substituted Defendant-Appellant
Hemasiri Withanachchi for the Plaintiff-Respondent

Argued &

Decided on : 11.09.2013

K.T. CHITRASIRI, J.

Heard both counsel in support of their respective cases.

This is an appeal seeking to set aside the Judgment dated 26.11.1998. By that Judgment, the learned District Judge made order declaring that the plaintiff-respondent is entitled to the land referred to in the schedule to the plaint. Accordingly, he has decided to make order evicting the 2nd Defendant-Appellant therefrom. Being aggrieved by those decisions, the 2nd Defendant has appealed to this Court.

Plaintiff-Respondent in his evidence has stated the manner in which he became entitled to the land referred to in the schedule to the plaint. The land in dispute had been identified with reference to the title Plan 347782 marked 'X' in evidence. For the purpose of this action, it was resurveyed and shown in the plan bearing No. 350 dated 30.09.1989 prepared by Ruban Meegama, Licensed Surveyor. 2nd Defendant-Respondent has failed to contradict the evidence of the Plaintiff as to the identity as well as the pedigree of the plaintiff of the land which the plaintiff has claimed.

Indeed, the 2nd Defendant-Appellant in his answer has claimed a land different to the land claimed by the Plaintiff and the witness who gave evidence on behalf of the 2nd Defendant-Respondent namely, K.L. Edwin also has stated that the land claimed by the Plaintiff-Respondent is a land different to the land claimed by the 2nd Defendant-Appellant. This is evident by the following evidence.

“ප්‍ර: රජයේ දිසා ඔප්පුවේ නම් 2 ක් තිබුණා දෙහිගහහේන හෙවත් හොන්ඩුවලහේන කියලා. තමන් සාක්ෂියේදී ඉදිරිපත් කළානේ 2වි1 ඔප්පුව. ඒකේ තියන නම මොකක්ද

පි: දෙහිගහහේන.

ප්‍ර: දෙහිගහහේන ඉඩමේ නැගෙනහිර පැත්තේ තියනවා හොන්ඩුවලහේන.

පි: ඔව්.

ප්‍ර: හොන්ඩුවලහේන කියන්නේ රජයේ දිසා ඔප්පුවේ තියන ඉඩම බව පිළිගන්නවාද ?

පි: ඔව්.”

The same witness of the defendant-appellant also has stated that the land that was surveyed for the purpose of this action does not show any houses possessed by the 2nd Defendant-Appellant on that land. (Vide at page **b** in the proceedings dated 20.10.1997)

The totality of the evidence recorded in this case including the above, had been considered by the learned District Judge. Having considered those evidence he has concluded that the land claimed by the Plaintiff-Respondent is a land different to the land claimed by the 2nd Defendant-Appellant. At this stage it must be noted that though the 2nd Defendant-Appellant had claimed a land larger to the land claimed by the

Plaintiff-Respondent, she has not taken steps to show the land so claimed with reference to a survey plan.

Therefore, it is clear that the land claimed by the Plaintiff-Respondent is not the land claimed by the 2nd Defendant-Appellant. The Plaintiff's land is clearly shown in the plans marked 'X1' and 'X2'. Learned District Judge has carefully considered those matters and has correctly decided the case, in favour of the plaintiff. Accordingly, I do not wish to interfere with his findings.

For the aforesaid reasons, I am not inclined to interfere with the Judgment dated 26.11.1998 of the learned District Judge. Accordingly, this appeal is dismissed with costs.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL

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