

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

R.M. Jayasekera (deceased)  
R.M. Gunasiri,  
'Saumyavila',  
Amunudowa, Bandarawela.

C.A. No. 122 / 2000 (F)

**Plaintiff**

**Vs.**

D.C. Bandarawela No. 5 / L

1. E.A. Gunasinghe,
2. E.A. Gunawathie,
3. E.A. Nandawathie,
4. E.A. Wijesinghe,
5. E.A. Janenona (deceased)
- 5A.E.A. Kumarasinghe,
6. E.A. Karunawathie,
7. E.A. Kamalawathie,  
All of Amunudowa,  
Bandarawela.

**Defendants**

**And Now Between**

1. E.A. Gunasinghe,
2. E.A. Gunawathie,
3. E.A. Nandawathie,
4. E.A. Wijesinghe,
5. E.A. Janenona (deceased)
- 5A.E.A. Kumarasinghe,
6. E.A. Karunawathie,
7. E.A. Kamalawathie,  
All of Amunudowa,  
Bandarawela.

**Defendant Appellants**

Vs

R.M. Jayasekera (deceased)  
 R.M. Gunasiri,  
 'Saumyavila',  
 Amunudowa, Bandarawela.

**Plaintiff -Respondent**

BEFORE : UPALY ABEYRATHNE, J.  
COUNSEL : Defendant Appellants absent and unrepresented  
 Sunil Jayakody with Mohan Ratwatta for the  
 Plaintiff Respondent  
ARGUED ON : 28.06.2013  
DECIDED ON : 06.09.2013

UPALY ABEYRATHNE, J.

The Defendant Appellants were absent and unrepresented on the date of argument. It appears from the Fiscal's Report that 1<sup>st</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendant Appellants have died. It also appears that even after the service of notice on the said Appellants the heirs of the deceased 1<sup>st</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendant Appellants have not shown due diligence in taking necessary steps for the purpose of prosecuting this appeal. In the circumstances I dismissed the Appeal of the 1<sup>st</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendant Appellants without costs.

I now consider the appeal of the 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Defendant Appellants. The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Defendant Appellants (hereinafter referred to as the Appellants) in the District Court of Bandarawela seeking for a

declaration of title to the land described in the schedule to the plaint and to eject the Appellants from said land. The Appellants have filed an amended answer denying the averments contained in the plaint and praying for a dismissal of the Respondent's action. The case proceeded to trial upon 09 issues. After trial, the learned District Judge has delivered a judgement in favour of the Respondent as prayed for in prayer a, c and d of the plaint. Being aggrieved by the said judgment dated 27.04.2000 the Appellants have preferred the present appeal to this court.

In paragraph 03 of the petition of appeal the Appellants have set out several grounds of appeal. It seems from the said grounds of appeal that the main grievance of the Appellants was that the learned District Judge has failed to consider the evidence adduced on behalf of the Appellants. I now consider the said grounds of appeal.

The Appellants have admitted the title of the Respondent. They have claimed that they were the tenant cultivators under the Respondent. But the Appellants have not produced documentary proof in order prove that they had been registered as Tenant Cultivators.

When I consider the said evidence I am of the view that the Appellants have failed to prove their position on a balance of probability. Hence I see no reason to interfere with the judgement of the learned District Judge dated 27.04.2000. Therefore I dismiss the appeal of the Appellants without costs.

*Appeal dismissed.*

Judge of the Court of Appeal