

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRILANKA

Weliwita Kankanamage Upatissa
Jayathilake,
Mahawatta, Sinharamulla,
Kelaniya.

PLaintiff

C A 45 / 2000 (F)
D.C. Colombo No. 16545 / L

Vs.

Bolabotuwage Mahinda Piyadasa,
Mawatta, Sinharamulla,
Kelaniya.

Defendant

NOW BETWEEN

Weliwita Kankanamage Upatissa
Jayathilake,
Mahawatta, Sinharamulla,
Kelaniya.

Plaintiff Appellant

Vs.

Bolabotuwage Mahinda Piyadasa,
Mawatta, Sinharamulla,
Kelaniya.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Gamini Hettiarachchi for the Plaintiff Appellant
B.O.P. Jayawardane for the Defendant Respondent
ARGUED ON : 22.02.2013
DECIDED ON : 11.10.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking to demarcate the western boundary of the land depicted in plan bearing No 2241 dated 09.10.1992 and a declaration of title to the land described in the schedule to the plaint and also to eject the Defendant Respondent from the portion of land which was not handed over to the Appellant by the Respondent. The Respondent has filed an answer praying for a dismissal of the Appellant's action. The case proceeded to trial upon 10 issues. After trial, the learned Additional District Judge has dismissed the Appellant's action subject to recover a sum of Rs 110,000/- with interest from the Respondent. Being aggrieved by the said judgment dated 22.02.2000 the Appellant has preferred the present appeal to this court.

The Respondent has taken up the position that since the property in question had been gifted to his two children by deed of gift bearing No 749 dated 02.04.1992 it could not be transferred to the Appellant. The learned Counsel for the Respondent further contended that the Appellant's action was an action for

demarcation of boundaries and hence the Appellant could not seek a declaration of title in the same action.

I now advert to the said submission. It clearly appears from prayer (b) of the plaint that the Appellant has sought a judgment declaring him as the owner of the land described in the schedule to the plaint. The scope of a rei-vindicatio action is larger than that of a definition of boundaries. In a vindicatory action the claimant need nearly prove two facts; namely, that he is the owner of the thing and that the thing to which he is entitled to possession by virtue of his ownership is in the possession of the defendant. (See *Jinawathie and Others vs. Emalin Perera* [1986] 2 Sri L.R. 121 and *Theivandran vs. Ramanathan Chettiar* [1986] 2 Sri L.R.219)

On the other hand an action for definition of boundaries lies only where parties are admittedly owners of contiguous lands and the common boundary between the two lands has become uncertain. In an action to define boundaries the plaintiff must show that an ascertainable common boundary previously existed on the ground and such boundary had been obliterated subsequently. If there is no ascertainable common boundary the action should come to an end. Hence in the guise of an action for definition of boundaries a plaintiff cannot vindicate title to an encroachment.

Therefore the Appellant cannot have and maintained a rei-vindicatio action within an action for definition of boundaries. Hence the Appellant is not entitled to the reliefs claimed in prayer (b), (c) and (d) of the plaint.

As I have enunciated hereinbefore the Appellant in the present case must prove that an ascertainable common boundary previously existed on the ground and such boundary had been obliterated subsequently. It is apparent from the evidence of the Appellant that he has failed to show that there did exist a prior live or physical boundary fence along the western boundary of the land claimed by him.

For the forgoing reasons I am of the view that the learned Additional District Judge is correct in concluding that the Appellant is not entitled to a judgment as prayed for in the plaint. Hence I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal