

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

CA 1188/98(F), CA 1189/98(F)
DC Galle case No. 11872/L

Indigahawela Opatha Hettige Wickramapala,
Kottawagama.

Plaintiff

Vs.

Bandusiri Jayasoma Nanayakkara
Kottawagama.

Vithanage Mala Priyadarshani
Kottawagama .

Defendants

Now between

Bandusiri Jayasoma Nanayakkara
Kottawagama

1st Defendant Appellant

Vs.

Indigahawela Otha Hettige Wicramapala,
Kottawagama.

1st Plaintiff Respondent

Vithanage Mala Priya darshani
Kottawagama .

2nd Defendant Appellant

C.A 1188/98 (F) &

D.C Galle Case No:

C.A 1189/98 (F)

11872/L

BEFORE : **K.T. CHITRASIRI, J**

COUNSEL : D.K. Dhanapala for the 1st Defendant-Appellant
in C.A 1188/98 (F).

L.P.A Chitranganie for the Plaintiff –Respondent in
both cases bearing Nos: 1188/98 (F) and 1189/98 (F)

2nd Defendant-Appellan in C.A 1189/98 (F) who is
the 2nd Defendant-Respondent in C.A 1188/98 (F) is
absent and unrepresented.

ARGUED &

DECIDED ON : **28.10.2013**

K.T.CHITRASIRI,J.

When this matter was mentioned on the 15.07.2013, the 2nd Defendant-Appellant in C.A 1189/98 (F) was absent and unrepresented even though notices had been issued under registered cover by the Registrar informing her that this appeal would be mentioned on that date to fix the matter for argument. Hence, it is clear that proper notice had been given to the 2nd Defendant –Appellant in C.A 1189/98 (F) of these two appeals. Therefore, the two appeals are taken up in her absence.

Both appeals have been filed to canvass the judgment dated 18.09.1998 of the learned District Judge of Galle. Therefore, both the appeals are taken up for hearing together.

At this stage, Mr. D.K. Dhanapala moves to withdraw the appeal filed by the 1st Defendant-Appellant provided damages awarded by the learned District Judge is restricted up to the date of judgment in the District Court. Learned counsel for the Plaintiff –Respondent agrees to have the damages prayed for in paragraph 4 to the prayer of the amended plaint restricted up to the date of judgment in the District Court and therefore not to claim damages for the period beyond the date of the said judgment. Accordingly the application to withdraw the appeal filed by the 1st Defendant-Appellant is allowed and therefore his appeal is dismissed without cost. In the light of the above the Plaintiff –Respondent is entitled for the reliefs prayed for in paragraphs 1, 2, and 3 in the prayer to the amended plaint dated 20.11.1990 and also for the relief in paragraph 4 thereto but limiting the damages mentioned therein calculated only till the date of the judgment in the District Court.

The appeal bearing no: 1189/98 (F) filed by the 2nd Defendant –Appellant is taken up for consideration now. In the amended plaint dated 20.11.1990, Plaintiff –Respondent has sought similar reliefs from both the Defendant-Appellants. Claim for damages against the 2nd Defendant –Appellant has been dismissed by the learned District Judge and it is evident by the last paragraph found in the judgment which appears at page 290 of the appeal brief. No appeal is filed to canvass the said decision as to the claim for damages sought from the 2nd defendant. Counsel for the Plaintiff –Respondent also concedes this position.

The evidence in this case clearly reveals that the 2nd Defendant is the owner of Lot 3 in the plan bearing No: 688 marked 1V1 whilst the Plaintiff – Respondent is the owner of the land referred to as Lot 1 thereto. The 1st Defendant is the owner of Lot 4 in that plan. The 2nd Defendant-Appellant has not claimed Lot 1(a) or Lot 1(b) in the plan bearing no: 672 marked P1. Therefore the 2nd Defendant-Appellant cannot claim rights over lot 1 referred to in the plan marked P1 that is being claimed by the Plaintiff –Respondent. Accordingly, I do not see any error on the part of the learned District Judge when he decided to grant reliefs 1, 2 and 3 against the 2nd Defendant. Therefore, there is no merit in the appeal filed by the 2nd Defendant-Appellant as well. Accordingly, the appeal of the 2nd Defendant-Appellant also is dismissed.

Subject to the matters referred to above, particularly the damages awarded against the 1st defendant, both the appeals are dismissed without costs.

appeals dismissed.

JUDGE OF THE COURT OF APPEAL

Vkg/-