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

J. H.M. Gunasekera,
Puruduwella,
Kudawewa.

(Deceased-Defendant-Appellant)

J.H.M.Sarath Hemamala Menike
No.159, Munnewshwaram,
Chilaw.

Substituted-Defendant-Appellant

Vs

C.A.642/98 (F)

D.C.MARAWILA CASE NO.80/RE

G.C.M.R.Peduru Perera
Puruduwella,
Kudawewa.

(Deceased-Plaintiff-Respondent)

G.C.M.Francis Herbert Perera
Ashokapura,
Mangalaeliya
And others

Substituted-Plaintiff-Respondents

COUNSEL : W.Dayaratne, P.C. with R.Jayawardene for the Substituted- Defendant-Appellant

Ruwan S.Bopage with L.Welgama for the Substitueted-Plaintiff-Respondents

ARGUED ON : 26.07.2013

DECIDED ON : **22.11.2013**

K.T.CHITRASIRI,J.

Deceased Plaintiff-Respondent (hereinafter referred to as the plaintiff) filed this action in the District Court of Marawila seeking for a declaration declaring that he is the owner of the land referred to in the schedule to the plaint and also to have the deceased defendant-appellant (hereinafter referred to as the defendant) evicted therefrom. The plaintiff also has claimed damages from the defendant. The defendant in his amended answer dated 5th December 1989, sought to dismiss the plaint basically on the basis that the identity of the land in suit has not been established. Learned District Judge having considered the evidence, entered judgment dated 22nd September 1988 in favour of the plaintiff as prayed for in the plaint dated 24.03.1986. Being aggrieved by the said decision of the learned District Judge, the defendant filed this appeal.

Submission of the learned President's Counsel for the plaintiff is on the question of identity of the land claimed by the plaintiff. He, referring to the decision in **Jamaldeen Abdul Latheef Vs.Abdul Majeed Mohamed Mansoorand another (2010) 2 S.L.R.at page 333,** submitted that it is fundamental to the success of a vindicatory action to have established the identity of the property put in suit. It is the defence taken up by the defendant throughout the proceedings in the District Court having filed the answer on the same line. Therefore, it is necessary to consider whether the

learned District Judge has properly looked at the issue of establishing the identity of the land claimed by the plaintiff.

Learned District Judge having considered this issue has stated thus:

> **"ප්‍රධාන වශයෙන් විත්තියෙන් කියා සිටින්නේ පැමිණිලිකරු පැමිණිල්ලේ උපලේඛණයේ පොල් ගස් 20 ක් පමණ සිටුවිය හැකි නොහොත් රූඩ් 3ක් පමණ විශාල ඉඩමක් යන්න බව සඳහන් කර ඇති අතර, පැමිණිලිකරුගේ උපලේඛණයේ සඳහන් ඉඩම රූඩ් 3ක් විශාලත්වයෙන් යුක්ත ඉඩමක්ද විය හැකිද යන්නය? මෙයට උත්තර සපයා අධිකරණයේ කාලය මිඩංගු කිරීමක් අවශ්‍ය නොවේ. මක් නිසාද යත් මෙම අධිකරණයේ අධිකාරී පත්‍රයක් මත නඩුවට අදාල විෂය වස්තුව නැතහොත් ආරවුල් ගත ඉඩම විත්තිකරුත්, පැමිණිලිකරුත් මානකවරයාට පෙන්වා දී ඇති අතර, ඒ අනුව ඔවුන් ඉදිරියේ ඔහු විසින් එය මැන අංක 2954 දරණ පිඹුර සකස් කර අධිකරණයට ඉදිරිපත් කර ඇත. එම පිඹුර අනුව නඩුවට අදාල විෂය වස්තුව නැතහොත් ආරවුල් ගත දේපලේ විශාලත්වය රූඩ් 3යි පර්චස් 2.25 කි. ..... පැමිණිලිකරු මෙම ඉඩම් වල අයිතිය ලබා ගත්තේ පැ.4, පැ.6, පැ.7 ඔප්පු වලින්ය. ඒ අනුව ඔහුගේ එකී ඔප්පුවල සඳහන් උපලේඛණයේ තිබූ පොල් ගස් 30ක් නැමැති කොටස පසුව නිවැරදි අයුරින් රූඩ් 3 පමණ යනුවෙන් සඳහන් කොට ඇත. එබැවින් පැමිණිල්ලේ උපලේඛණයේ විස්තර කර ඇති පොල් ගස් 30 වන ඉඩම් කොටස වෙනුවට රූඩ් 3ක් පමණ විශාල ඉඩම් කොටසක් ඉල්ලා නඩුව පවත්වාගෙන යා හැකි බවට විත්තියේ තර්ක කිරීම ප්‍රතික්ෂේප කරමි.**

(Vide proceedings at page 147 in the appeal brief)

Accordingly, it is seen that the learned District Judge has compared the extent of the land referred to in the schedule to the plaint with that of the extent shown in the plan marked P10. Also, he had been mindful of the extent described with reference to the extent that needs to plant 20 coconut trees since such an extent also is referred to in the schedule to the plaint as well as in the title deeds marked and produced by the plaintiff. The aforesaid reasoning of the learned District Judge shows that he has carefully considered the question of identity of the land in suit and accordingly has come to the conclusion that the plaintiff has established the identity of the land by producing the Plan bearing No.2954 marked P10 in evidence. I do not see any error in the aforesaid reasoning of the learned District Judge

Learned President's Counsel highlighting the extent that needs to plant 20 coconut trees referred to in the title deeds and in the schedule to the plaint submitted that such an extent does not cover 3 roods as claimed by the plaintiff. Hence, the contention of the learned President's Counsel for the appellant is that the plaintiff is only entitled to an extent

where 20 coconut trees can be planted. As referred to above, learned District Judge has carefully addressed his mind to this aspect and has declined to accept the position of the defendant. I too agree with his findings on this issue.

It must be noted that even though the extent of the land claimed by the plaintiff is described as an area covered by 20 coconut trees, it is also being described in the title deeds of the plaintiff as 3 roods in extent. When the extent of a land is specifically described in a globally accepted manner, such a description should be accepted over other ways which may not capable enough of assuring accuracy in measuring extent. Accordingly, it is my view that when the extent of the land in dispute is described as 3 roods in the deeds, it should prevail over the extent described as an area that needs to plant only 20 coconut trees.

Moreover, the plaintiff also has given clear evidence in answer to cross examination in respect of the boundaries of the land claimed by him. [vide proceedings at pages 81,82,83 and 84 in the appeal brief] Evidence in respect of the boundaries referred to in the plan marked P10

do tally with the boundaries in the title deeds marked and produced to establish the title of the plaintiff. He has also explained the reason why there is a roadway now in existence between lots 2 and 3 in the plan marked P10. His evidence in this connection is as follows:

"ප්‍ර: අළුත් ගම්සහා පාරක් තිබෙනවාද?

උ: ඔව්

ප්‍ර: ඒක තමාගේ ඉඩමට මායිම් වෙනනේ නැහැ?

උ: බස්නාහිරට මායිම් වෙනවා. දකුණු පැත්තට මායිම් වන්නේ නැහැ.

ප්‍ර: දෙවන වතාවේ ගම්සහා පාර කලින් තිබුණු ගම්සහා පාරට කිට්ටුවෙන්ද වැටිල තියෙන්නේ?

උ: ඔව්. කිට්ටුවෙන් පර්චස් 13 කැල්ල කැඩුවේ ඒකෙන්.

ප්‍ර: ඒ දෙවැනියට අලුතින් සැදුනු ගම් සහා පාර කොයි කාලයේද වැටුනේ?

උ: ඒක වැටුනේ මා හිතන විදියට 1930 ගනන් වල වෙන්න ඕන.

ප්‍ර: ඒ පාර වැටුනේ තමාගේ ඉඩමේ දකුණු මායිමේ සිට තමාගේ ඉඩමෙන් එළියට නොවේ?

උ: දකුණු මායිම දෙකට කැඩිලා වැටුනා."

[vide proceedings at page 84 and 85 in the appeal brief]

As described above, it is clear that the plaintiff has successfully established the identity of the land he claims, not only by producing in

evidence his title deeds and the plan P10 but also by giving un-contradictory evidence as to the boundaries of the land in question. In the circumstances, it is correct to decide that the land claimed by the plaintiff contains 3 roods in extent as stated in the schedule to the plaint even though the said extent also is described therein as an extent that needs to cover the area where 20 coconut trees could be planted.

At this stage, it must also be noted that the plaintiff having produced the deeds marked P1 to P7 has established that he became entitled to the land referred to in the schedule to the plaint. That evidence adduced through the title deeds have not been challenged at all. Therefore, the learned District Judge is correct when he accepted the title of the plaintiff as claimed by him. The defendant has not produced any title deeds to this land. He, in his evidence has merely stated that Lot No.2 in Plan marked P10 is owned by Dingiri Menika and Podi Nona. (vide proceedings at page 125 in the appeal brief). They are not parties to this action. Neither have they given evidence in this case. No clear evidence too, is forthcoming as to the way in which the land been possessed by the defendant.

The aforesaid materials clearly show that the plaintiff has established that he is entitled to the land referred to in the schedule to the plaint. Therefore, it is clear that the learned District Judge is correct when he decided to grant the reliefs prayed for in the plaint dated 24th March 1986.

In the circumstances, I am not inclined to interfere with the findings of the learned District Judge. For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL