

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

Case No. CA 666/98 F
DC Ampara 249/L

D. D. Kusumawathie
16 , Hela, Madaanagama,
Damana.

Plaintiff

-Vs-

K. G. Dharmadasa,
Thimbirigolla ,
Madawalalanda

Defendant

And

K. G. Dharmadasa,
Thimbirigolla ,
Madawalalanda

Defendant - Appellant

-Vs-

D. D. Kusumawathie
16 , Hela, Madaanagama,
Damana.

Plaintiff-Respondent

C.A.No. 666/98(F)

D.C. Ampara No. 249/L

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : Sanath Singhege instructed by Kaminda de Alwis for
the defendant- appellant
V. Puvitharan with S. Kalugamage for the plaintiff-
respondent

ARGUED AND

DECIDED ON : 28th January, 2014

K. T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 29.06.1998 of the learned District Judge of Ampara. In the petition of appeal the defendant-appellant (hereinafter referred to as the defendant) also sought for a judgment in his favour. The defendant in his answer has prayed to have the plaint be dismissed whilst seeking for a declaration that he is the person who is legally entitled to possess the land referred to in the schedule to the answer filed by him.

The plaintiff-respondent (hereinafter referred to as the plaintiff) filed this action seeking for a judgment declaring that she is the permit holder of the land referred to in the 2nd schedule to the plaint. Admittedly, the land referred in the 2nd schedule forms part of the land referred to in the 1st schedule thereto. The plaintiff in her evidence has stated that she was given the land referred to in the 1st schedule to the plaint by issuing the permit marked P1 in her name by the Government Agent of the area. (vide pages 44,45,87 and 88 of the appeal brief) The said document had been marked without any objection being raised. The claim of the plaintiff had been on the basis of the said permit marked P1 issued in her name.

The fact that the permit marked P1 had been issued in the name of the plaintiff by the Government Agent was affirmed by the witness namely Ashoka Nandanie. She is an officer from the District Secretariat Ampara who has the authority to say so having looked at the relevant official documents. She also has described the boundaries and the extent of the land claimed by the plaintiff. (vide proceeding at page 37 of the appeal brief) Defendant has not produced any document to show that he is having rights to the said land referred to in the 1st schedule to the plaint. Accordingly, it is clear that the plaintiff is lawfully entitled to possess the land referred to in the 1st schedule to the plaint that includes the land referred to in the 2nd schedule thereto on the basis of the permit marked P1. Exactly, it is the claim of the plaintiff that is

mentioned in the prayer to the plaint. Therefore, it is correct to have granted the said reliefs prayed for in the plaint of the plaintiff.

The defendant in his evidence has stated that he was placed in possession of a land in extent of 2 acres in the year 1974 by Paladawardana Kamituwa. He then has stated that he took steps to have a permit issued in his favour for the said land to which he was placed in possession. However, no permit had been issued by the relevant authorities in the name of the defendant though the possession of a land in extent of 2 acres had been given to the defendant by paladawardana Kamituwa of the area.

Learned Counsel for the appellant also contended that the plaintiff has failed to identify the land that she claims in this instance. The witness from the Divisional Secretariat in evidence has described the boundaries of the land given to the plaintiff. (vide proceedings at page 37 in the appeal brief) Learned District Judge, acting upon the said evidence has decided that the plaintiff has discharged her burden of proving the identity of the land and has answered the respective issues (issues 11 and 12) affirmatively. Moreover, if the defendant was to take up the issue of identity of the land, he should have moved Court for a commission to have a clearer position, which he has failed to do. However, as referred to above, the officer who gave evidence to establish the issuance of the permit marked P1 has identified the land claimed by the plaintiff having given the boundaries to the same. In the circumstances, I do not see any error

on the part of the learned District Judge when he decided the case in favour of the plaintiff.

Learned Counsel for the appellant also contended that the authorities have not taken steps to have a permit issued in favour of the defendant though such an action had been promised by them having placed him in possession of the land in dispute in the year 1974. Such a contention would confirm that there was no permit issued in the name of the defendant in respect of the land in question. Hence, the said submission of the learned Counsel for the appellant would also support the claim of the plaintiff particularly when it comes to the first relief mentioned in the prayer to the plaint. However, the said contention of the learned Counsel cannot be looked into at this appeal stage since it involves matters concerning the facts of the case. Moreover, it is an issue that should be determined only after hearing the persons who are responsible in issuing permits as well.

For the aforesaid reasons, I am not inclined to interfere with the impugned judgment of the learned District Judge. Accordingly, this appeal is dismissed without costs.

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL

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