

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

Rev. Wilakatupotha Sri
Seelanandabhidana, Chief
Sanganayake of Pahala Dolospattuwa,
(passed away)
Rev. Nikaweratiye Mangala Thero,
Viharadhipathy,
Swarnabimbarama Rajamaha Vihara,
Usgala, Kobeygane.

Substituted Plaintiff

C.A. No. 293 / 2000 F

Vs.

D.C. Kuliypitiya No. 5384 / L

Wedanaidelage Signappu Naide alias
Signappu,
Kokkawilagama, Baladora Korahaya,
Kobeigane.

Defendant

AND NOW BETWEEN

Rev. Nikaweratiye Mangala Thero,
Viharadhipathy,
Swarnabimbarama Rajamaha Vihara,
Usgala, Kobeygane.

Substituted Plaintiff Appellant

Vs

Wedanaidelage Signappu Naide alias
Signappu,
Kokkawilagama, Baladora Korahaya,
Kobeigane.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Substituted Plaintiff Appellant- Absent and
unrepresented
Defendant Respondent- Absent and
unrepresented

DECIDED ON : 13.12.2013

UPALY ABEYRATHNE, J.

The Plaintiff instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Kuliyaipitiya seeking inter alia a declaration that the land described in the schedule to the plaint was a property belong to Swarnabimbarama Vihara, Usgala.

The Respondent has filed an answer denying the averments contained in the plaint and praying for a dismissal of the Plaintiff's action. In addition the Respondent has claimed title to the said land on prescription. The case proceeded to trial on 07 issues. After trial the learned District judge has dismissed the Plaintiff's action and has delivered a judgment in favour of the Respondent upon prescription. Being aggrieved by the said judgment dated 20.06.2000 the substituted Plaintiff Appellant (hereinafter referred to as the Appellant) has appealed to this Court.

The Appellant has set out several grounds of appeal in the petition of appeal. His position was that the learned District Judge has failed to consider the

fact that the property belong to Swarnabimbarama Vihara, Usgala was temple property and thereby the learned District Judge has been misdirected on the facts and law.

I have carefully considered the impugned judgment of the learned District Judge and the evidence adduced at the trial. The Respondent has not disputed the fact that the land in suit belong to Swarnabimbarama Vihara, Usgala. Therefore it is clear that the said property is governed under the Buddhist Temporalities Ordinance. Section 34 of the said Ordinance stipulates that “In the case of any claim for the recovery of any property, movable or immovable, belonging or alleged to belong to any temple, or for the assertion of title to any such property, the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance: Provided that this section shall not affect rights acquired prior to the commencement of this Ordinance.”

The Respondent has not led evidence to come within the proviso to the said Section. Hence the Respondent’s plea of prescription should necessarily fail. In the said circumstances I set aside the judgement of the learned District Judge dated 20.06.2000 and enter a decree as prayed for in the plaint. I allow the appeal of the Appellant with costs.

Appeal allowed.

Judge of the Court of Appeal