IN THE COURT OF APPEAL

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. Victor Ariyaratnam Chinniah

1st Defendant-Appellant

C.A. No. 996/98(F

D.C. Hambantota Case No.656/L

2. Puwaneswari Chinniah

3rd Defendant-Appellant

Both of
9/4, Edmonton Road,
Kirulapone, Colombo 6.

Vs

Manage Jinasena

146, Detagamuwa,

Kataragama.
Plaintiff-Respondent

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

Counsel : Athula Perera with Ranjith Perera and Chathurani de Silva for the 1st and 3rd Defendant-Appellants

K. G. Jinasena for the Respondent-Respondent

Argued &

Decided on : 19.03.2014

K. T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases. This is an appeal seeking to set aside the judgment dated 08.10.1998 of the learned District

Judge of Hambantota. By that judgment, learned trial judge decided the case in favour of the respondent as prayed for in the plaint dated 07.08.1981. In the prayer to the plaint, the respondent has prayed *inter alia* that he be declared entitled to the land referred to in the schedule to the plaint. In that schedule the land claimed by the respondent is described as the lot 2 A of the land called Thihawa Badde in extent of 2 acres 1 rood and 22 perches which is being referred to in the Plan 1031 dated 18.10.1958. Title deeds Marked P1 and P2 of the respondent too refer to the identical land and it is found in the schedule 'B' in the deed 45 marked as P1 and also in the schedule in the deed 985 marked P2. Those are the two deeds by which the title of the respondent has derived.

Contention of the learned Counsel for the appellant is that the respondent has not identified the land that he claims in this case. In the plaint as well as in the title deeds of the respondent, he claims title to lot 2A shown in Plan 1031. Admittedly, the aforesaid Plan 1031 drawn by F.A.B.B. Licensed Surveyor has never been produced in evidence. Hence, there is no evidence forthcoming to ascertain the exact land claimed by the plaintiff-respondent. Mere reference to a number of a plan without it being marked in evidence is not sufficient to identify the land. Not even a commission had been obtained by the respondent to show the land he claims. This is evident in the proceedings found at pages 85 and 86 of the appeal brief. The said evidence reads thus:

ප්‍ර: විජේන්ද්‍ර මහතාගේ පිඹුරක් ලකුණුකර තියෙනවා, 1958 ඔක්තෝබර් මස 18 වෙනිදින අංක. 1031-පැ.1 කේ සඳහන් පිඹුර, තමා ඉදිරිපත් කරනවද?

උ: නැහැ. මෙම ඉඩමේ ප්ලෑන් එකක් තියෙන්නේ, මුත්තා ඉන්නකොට සිටි ගෙදරමයි. නඩුව ඉදිරිපත් කරන වෙලාවෙ මම ගෙදර සිටියේ නැහැ. ප්ලෑන් එක මා සොයා බැලුවා. මානක විජේන්ද්‍ර මහතා දැනට ජීවතුන් අතර නැහැ. මුත්තා සිටින කාලයේ මම දැකල තියෙනවා. පැ.2න් මුල් ඔප්පුව මට ලැබුනෙත් නැහැ. පිඹුර මට ලැබුනෙත් නැහැ.

Accordingly, it is clear that the judgment in this case had been delivered without identifying the land claimed by the respondent. Then the question is whether the learned District Judge is correct when he delivered the judgment without the land in dispute being correctly identified.

The plan relied upon by the respondent to identify the land had not been produced in evidence. Respondent himself has admitted that he is unable to produce the said Plan in court. Therefore, mere reference to the said Plan 1031 without it being produced in evidence does not amount to establishing the identity of the corpus.

None production of the plan upon which the respondent filed the plaint, has been discussed in the impugned judgment as well. In that judgment, learned District Judge was of the view that the identity of the corpus can be established upon obtaining a commission even after the judgment is entered. Said findings of the learned District Judge reads as follows:

මෙම නඩුවේ පැමිණිල්ල සමග පිඹුරක් ඉදිරිපත් කර නැති නමුදු සිවිල් නඩු විධාන සංග්‍රහයේ 344 වගන්තිය අනුව යම් නඩු කටයුත්තකදී එම විෂය වස්තුව සම්බන්ධ විසඳිය යුතු සියලු කරුණු එකම නඩුවකදී විසඳිය යුතු බැවින් මෙම නඩුවේදී පැමිණිල්ලට අවශ්‍ය නම් තමුන්ගේ ඉඩම වෙන්කර ගැනීම සඳහා කොමිසමක් ලබාගැනීමට අවකාශ ඇත. එබැවින් විත්තිය විසින් මෙම නඩුවේ පිඹුරක් ඉදිරිපත් කරනැති බැවින් මෙම නඩුව පවත්වාගෙන යාමට නොහැකි බවට ඉදිරිපත් කරන ලද තර්කය අධිකරණය පිලිනොගනී. පිඹුරක් නොමැති වුවත් මෙම නඩුවේ විෂය වස්තුව උපලේඛනයේ නිසි පරිදි විස්තර කර ඇති බැවින් ඒ අනුව ඉඩම මැන ගැනීම සඳහා පිඹුරක්, එම දොපලට අයිතිය ලැබු පසු අයිතිය ලැබු පුද්ගලයාට මැනීම සඳහා කොමිසමක් ලබා ගැනීමේ අයිතිකම ඇත.

[*Vide proceedings at pages 162 and 163 of the appeal brief*]

Then the question is whether the learned District Judge is correct or not when he decided that the identity of the corpus can be established even after entering the judgment. In the case of ***Lathief and another Vs Mansoor and another [Bar Association Law Reports 2011 at page 189],*** it was held thus:

> *"It is trite law that the identifying the property with respect to which a vindicatory actions are instituted is as fundamental to the success of the action as the proof of the ownership (domonium) of the owner (dominus).*

This position in law had been followed in several decisions decided in this court including that of **Sirisena V Piyadasa [CA minutes dated**

30.01.2014 in CA 957/98] and Ananda Kodagoda V Moraj Udesshi. [CA minutes dated 22.01.2014 in CA 175/98]

In view of the law referred to above, it is essential to have identified the land in question, this case being a *re-vindicatio* action, by the respondent in order to have a judgment in his favour. Therefore, it is incorrect to have decided the case in favour of the respondent having stated that the land claimed by the respondent could be identified at the time of the decree being executed.

The matters referred to hereinbefore show that the respondent has failed to identify the land to which he claims title. Therefore, the respondent's action should necessarily fail. In the circumstances, it is clear that the learned District Judge misdirected himself when he decided the action in favour of the respondent without properly identifying the land in question.

Accordingly, I allow the appeal having set aside the judgment dated 08.10.1998 of the learned District Judge of Hambantota. Appellant is entitled to the costs of this appeal.

Appeal allowed with costs.

JUDGE OF THE COURT OF APPEAL

AKN