

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

**C.A.739/98 F**

D.C.Puttalam Case No.387/L

H.M.K. Herath  
No: 07/01,  
Goodshed Road,  
Puttalam.

**Petitioner**

**-Vs-**

Kanagarathnam Ananda Raja

S. Ananda Raja

Both Are

No: 09,  
Service Road,  
Puttalam.

**Respondent**

BEFORE : K. T. CHITRASIRI, J  
COUNSEL : Plaintiff-Appellant is absent and unrepresented  
Nishantha Sirimanne for the Substituted 1<sup>st</sup>  
Defendant-Respondent  
ARGUED &  
DECIDED ON : 05. 06. 2014

**K. T. CHITRASIRI, J**

When this matter was taken up for argument on the last date, namely on 12.05.2014, Mr.Nizam Kariappar who appeared for the plaintiff-appellant moved for a date to inform Court, the authorities that are available (if any) to establish whether it is permissible in law to obtain a decree for eviction without having a prayer for a declaration of title to a particular land. Neither Mr.Kariappar nor the appellant is present in Court today. Accordingly, this appeal is taken up for consideration in their absence.

This is an appeal seeking to set aside the judgment dated 6.3.1998 of the learned District Judge of Puttalam. By that judgment, the plaint of the plaintiff was dismissed on the basis that the plaintiff has failed to establish title, to the land referred to in the schedule B to the plaint. In that judgment, it is also stated that the plaintiff is not entitled in law to have the defendants evicted from

the aforesaid land without seeking for a declaration of title. (Vide proceedings at pages 122 & 125 in the appeal brief).

I will first examine whether it is correct to decide that the plaintiff has failed to establish title to the land referred to in the schedule B to the plaint. The deed marked P2 by which the plaintiff alleged to have become entitled to the land in question does not show the exact or the specific land that he claims in this action. The land claimed by the plaintiff-appellant is the land referred to in the schedule B to the plaint. Having stated so in the plaint, the plaintiff in his evidence has mentioned the boundaries of the land that he claims. (Vide proceedings at pages 72 & 3 in the appeal brief). In that evidence, he has admitted that the land referred to in his title deeds is different to the land that he claims in this action. His evidence in this connection reads thus:

“ප්‍ර. තමන් ගත්ත ඔප්පුවේ තමන් ගත්ත කොටසට උතුරු මායිම්, විකුණුම්කාරියට අයිති ඉඩම කියල තමන්ගේ ඔප්පුවේ සඳහන් කරල තියෙනවා තමන් පිලිගන්නවද ?

උ. එහෙම ඉඩමක් නෑ.

ප්‍ර. නමුත් ඔප්පුවේ ලියල තියෙනවා ඒ විදිහට නැතිනම් තමන් ඔප්පුවේ ලියල තියෙනවා තමන් දන්නේ නැද්ද ?

උ. එහෙම ඉඩමක් නෑ.

ප්‍ර. ඔප්පුවේ ලියල තියෙනවා නම් ඒක වැරදියි ?

උ. ඔව්.

ප්‍ර. තමන්ගේ ඔප්පුවේ තියෙන එක වැරදියි ?

උ. ඔව්.

ප්‍ර. නැගෙනහිරට :- කියල නියෙන්නේ විකුණුම්කාරියට අයිති ඉතිරි කොටස කියල ඒක තමන් පිලිගන්නවද ?

උ. එහෙම ඉඩමක් තිබුනෙ නෑ.”

(Vide proceedings at page 73 in the appeal brief)

The aforesaid evidence shows that the land, he has referred to in the plaint is not the land that he is entitled to, by virtue of the deeds which were marked in evidence. The plaintiff has also failed to identify the land that he has claimed with reference to a plan either. Furthermore, the land described in the schedule to the deed marked P2 does not specify the area or the extent of the land entitled to by the plaintiff. It gives title to the plaintiff only to an undivided portion of a larger land. In the circumstances, it is clear that the learned District Judge is correct when she decided that the plaintiff has failed to establish title to the land referred to in the second schedule to the plaint.

The next question is whether a decree could be obtained evicting a person from a land without having prayed for, for a declaration of title in a *rei vindicatio* action. This question of law had been decided in the case of **Attanayake v. Aladin. [1997 3 S.L.R. at page 389]** In that judgment Weerasekera J has held thus:

*“Clearly therefore what was decided by Gratien, J was that in a vindicatory action the relief of ejectment would only be the consequent to a declaration or vindication of the right to possess. In this case the plaintiff-appellant whilst only stating that he came to possess on the permit under the Land Development Ordinance did not seek a declaration from Court that he was entitled to possess the land in dispute on the alleged yearly permit issued under the Land Development Ordinance. The consequential relief of the ejectment of the alleged trespasser cannot therefore arise”.*

Accordingly, it is clear that no relief can be sought to have a defendant evicted in a *rei vindicatio* action without praying for a declaration of title in that action. Admittedly, no prayer is found to have a judgment declaring that the plaintiff is the owner of the land referred to in the schedule B to the plaint dated 20.5.1982. (Vide at page 51 in the appeal brief). Upon perusal of the plaint, it is clear that no relief has been sought to have a declaration of title though the manner in which the plaintiff became the owner of the land had been described in the plaint as well as in the evidence led on behalf of the plaintiff-appellant. It does not fall into the category of a possessory action either. This position is established even by looking at the issue No.2 raised by the plaintiff-appellant. Accordingly, as decided in the case of **Attanayake Vs Aladin**, (supra) the plaintiff is not entitled in law to obtain a decree for eviction without praying for a declaration of title.

In the circumstances, it is clear that the learned District Judge is correct when she decided that the plaintiff-appellant has not establish title to the land in suit and that the plaintiff is not entitled to have the defendant evicted as prayed for in the plaint without seeking to have a declaration of title. Accordingly, I am not inclined to interfere with the judgment dated 06.03.1998 of the learned District Judge of Puttalam.

For the aforesaid reasons, this appeal is dismissed with costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL