

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

C A. 293/99 F

DC Maho 2290/M

Herath Mudiyansele Kalubandage
Ukkubanda,
Walaliya, Ambanpola

Plaintiff-Appellant

Vs

Kariapperuma Mudiyansele
Kapurubandarage Herathbanda,
Walaliya, Ambanpola

Defendant-Respondent

BEFORE: A.W.A.SALAM, J (P/CA) & SUNIL RAJAPAKSHE, J

COUNSEL: Vishwa de Livera Tennakoon with Niranjan
Arulprakasam for the Plaintiff-Appellant and D
M G Dissanayaka for the Defendant-Respondent.

ARGUED ON: 08.10.2013

WRITTEN SUBMISSIONS TENDERED ON: 22.01.2014

DECIDED ON: 08.07.2014

A W A Salam, J (P/C.A)

This appeal is from the judgment of the learned district
judge dated 8 February 1999 by which the action filed by
the plaintiff-appellant (hereinafter referred to as the
“appellant”) against the defendant-respondent (hereinafter

referred to as the “respondent”) for a declaration of title was dismissed by the learned district judge. The plaintiff’s action was dismissed basically on the legal principle that he did not have title when the action was instituted. In the said judgment the learned district judge quite correctly relied on the judgements in Silva vs. Hendrik Appu 1 NLR 13, Ponnamma Vs Weerasooriya 11 NLR 217 and Kattu Bawa vs vs Shanmugam 54 NLR 467.

It must be observed that the concept of *exceptio rei venditae et traditae* has no application to a title acquired under the Land Settlement Ordinance. This has been endorsed in the case of period Periya Karuppan Chettiar Vs Proprietors and agents Ltd 47 NLR 121 and Karunadasa Vs Abdul Hameed 60 NLR 352.

In the circumstances, the learned district judge cannot be faulted for dismissing the plaintiff’s action for want of proof of title. Appeal dismissed.

There shall be no costs.

President/Court of Appeal

Sunil Rajapaksha, J

I agree

Judge of the Court of Appeal