

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

Muthuantrige Vincent David Fernando,  
No. 43, St-Anthony's Road, Kadalana, Moratuwa.

**Plaintiff**

**C.A. No. 1020/98(F)**

**D.C. Panadura Case**

**Vs.**

**No. 12669/L**

- 1.** W. Nicholas Joseph Markus Fernando,  
No. 45, St-Anthony's Road, Kadalana,  
Moratuwa.
- 2.** W. Paul Timothy Marvin Fernando, No. 45,  
St-Anthony's Road, Kadalana, Moratuwa.  
**(Deceased)**
- 2A/4A** W. Nelson Francis Fernando, No. 275,  
Grandpass Road, Colombo 14.
- 2B/4B** W. Mary Milrad Paternal Fernando, No. 45,  
St-Anthony's Road, Kadalana, Moratuwa.
- 2C/4C** W. Charls Peter, Crislogus Fernando.

- 2D/4D** W. Nicolas Joseph Marcus Fernando.
- 2E/4E** W. Clemant Lenard Fernando.
- 2F/4F** W. Francis Joseph Eldidnes Fernando,  
Cement Corporation Palavi, Puttlam.
- 4G.** W. Paul Tmothy Marvin Fernando, No. 45,  
St-Anthony's Road, Kadalana Moratuwa.  
**(Deceased)**
- 2H/4H** W. Mary Agnus Ivon Princy Fernando.
- 2I/4I** W. Selin Manel Bernadette Fernando,  
No. 20, Plam Grove Avenue, Colombo 03.
- 2J/4J** W. Jenet Bernadette Fernando, No.5/75,  
Paramatta, Victoria Road, N.S.W. 2150,  
Australia.
- 2K/4K** W.R.L. Wasana Fernando, No. 45,  
St-Anthony's Road, Kadalana, Moratuwa.
- 3.** W. Charles Peter Chrisologus Fernando.  
**(Deceased)**
- 4.** K.M.H.B. Fernando  
**(Deceased)**

**Defendants**

**AND NOW**

Muthuantrige Vincent David Fernando, No. 43,  
St-Anthony's Road, Kadalana,  
Moratuwa.

**Plaintiff-Appellant.**

Vs.

1. W. Nicholas Joseph Markus Fernando,  
No. 45, St-Anthony's Road, Kadalana,  
Moratuwa.
2. W. Paul Tmothy Marvin Fernando, No. 45,  
St-Anthony's Road, Kadalana, Moratuwa.

**(Deceased)**

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Grandpass Road, Colombo 14.

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St-Anthony's Road, Kadalana, Moratuwa.

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Cement Corporation Palavi, Puttlam.

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**2K/4K** W.R.L. Wasana Fernando, No. 45,  
St-Anthony's Road, Kadalana, Moratuwa.

**3.** W. Charles Peter Chrisologus Fernando.  
**(Deceased)**

4. K.M.H.B. Fernando  
(Deceased)

Defendants-Respondents.

Before : Hon. A.W.A. Salam, J (P/CA)

Counsel : Ranjan Gunarathne for the Plaintiff-Appellant.  
Harsha Soza, P.C., with S. Samaranayake 1<sup>st</sup>, 2A, 4A, 2C/4C, 2D/4D,  
2F/4F, 2H/4H, 2I/4I, 2J/4J and 2K/4K Defendants-Respondents.

Argued on : 27.06.2014.

Decided on : 31.07.2014.

A W A Salam, J

This appeal arises from the judgment of the learned district judge of Panadura dated 15 October 1998 in a *rei vindicatio* action. The plaintiff-appellant (referred to in the rest of this judgment as the "plaintiff") filed action against the defendant-respondents (referred to in the same manner as the "defendants") for a declaration of title to the corpus from the western side of the land called Delgahawatta which he claims is in extent of 28.5 perches. The learned district judge dismissed the plaintiff's action for his failure to establish the title and the identity of the corpus.

The title of the plaintiff to the subject matter is connected with P1 to P11. The land in respect of which the plaintiff claims title consists of an undivided extent of 22 perches amalgamated with another portion of a land in extent of 29 1/4 perches. The learned President's Counsel has contended that the identity of the corpus and its exact location are so inexact which warrants the conclusion that the plaintiff is not entitled, as has been held by the learned district judge to a declaration of title to the said land of 28.5 perches.

Since the land which is in extent of 22 perches has been identified separately, it is pertinent to refer to the plan which depicts the said land of 22 perches. P 13 which is a plan prepared in 1892 depicts the said land of 22 perches. Another plan produced at the trial was Plan No 436 A dated 18 May 1922. This was produced by the defendants. In this plan the western side is marked as B and the eastern side as A. According to this plan, lot A is in extent of 1 Rood and 23 1/3 perches. The extent of lot B is 31 2/3 perches and the total extent of both the lots A and B aggregates to 95 perches. However, the title passes on P1, P2 and P3 is only in respect of 22 perches. It is to be noted that the 2<sup>nd</sup> land mentioned in P3 (6875) deals with an undivided 1/12 of a land called Delgahawatta.

The vendee in P3 Balapuwaduge Danial Mendis by P4

transferred a portion from and out of the allotment of land in extent of 22 perches by reference to the length and breadth as stated in the schedule to the deed. Thereafter, the vendee in P4 has transferred 22 perches and 4/14 shares of a separate portion of Delgahawatta in extent of 29 41/100 perches. The emphasis made by the learned President's Counsel as to the irreconcilableness of the different extents given in the deed, needs to be given serious consideration.

It is deep-rooted principle of law, that in a *rei vindicatio* action every ingredient necessary has to be proved by the plaintiff. The two main ingredients necessary to be established for a successful prosecution of the suit are the identity of the corpus and the devolution of title. The weakness of the defence, whatever magnitude it may be, is of no use to the plaintiff to claim absolution from his responsibility. Taking into consideration the contradiction with regard to the extent of the corpus and the uncertainty of its location, it is hardly possible to conclude that the learned district judge has erred in dismissing the action.

As regards the chain of title to the particular portion of land, the plaintiff has failed to establish the devolution of rights in question from the original owner to the present owner with special regard being had to the extent of the corpus. As has been submitted by the learned President's

Counsel, there is no identifiable existence of a land in the Western 1/3<sup>rd</sup> portion of Delgahawatta to which the plaintiff could be declared entitled to in a *rei vindicatio* action.

In the circumstances, it is my view that the learned district judge cannot be faulted for dismissing the plaintiff's action. Hence, the impugned judgment is affirmed and the appeal dismissed subject to costs.

President/Court of Appeal

AK/-