

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

Dona Baby Nona Welikala

**1A Substituted-Defendant-Appellant**

**C.A. NO.501/98 (F)**

Vs.

**D.C.AVISSAWELLA No.13982/L**

Kalubowilage Dona Nandawathie  
and others

**Substituted-Plaintiff-Respondents**

K.Nanda Wickramanayake  
**2<sup>nd</sup> Defendant- Respondent**

Donage Babanona Gunasekera  
**3A Substituted-Defendant-  
Respondent** and others

**Defendant-Respondents**

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

**COUNSEL** : W.Dayaratne P.C.with D.Dayaratne and  
Subash Goonetilleke  
for the Substituted 1A-Defendant-Appellant

Dinesh De Alwis with Janaki Sandakelum  
for the 2a,2b,2c,2e,2f1,2f2,2f3 Substituted -Plaintiff-  
Respondents

**WRITTEN  
SUBMISSIONS  
FILED ON** : 13th June 2014 by the 2a,2b,2c,2e,2f1,2f2,2f3  
by the Substituted -Plaintiff-Respondents  
18<sup>th</sup> June 2014 by the Substituted 1A  
Defendant-Appellant

**DECIDED ON** : 07. 08. 2014

**CHITRASIRI, J.**

Two plaintiff-respondents (hereinafter referred to as the plaintiffs) filed this action in the District Court of Avissawella seeking to have a judgment declaring that the plaintiffs, along with two others are entitled to the land morefully described in the schedule B to the plaint and to have damages until the plaintiffs are restored to the possession thereof. The plaintiffs in their plaint, having set out the manner in which they became entitled to the land in suit, have averred that Don Podisingho Appuhamy and Emis Appuhamy became entitled to the land by virtue of a Crown Grant dated 11.12.1918 which was marked as P1. The land subjected to in the said Crown Grant is depicted in the Title Plan No.335160 dated 11.12.1918. The way in which the two plaintiffs became entitled to the land that was owned by those two grantees to the Crown Grant had been shown having produced the deeds marked P2, P3, P4 and P5.

At this stage, it is necessary to advert to the geography of the land in suit before looking at the claims of the respective parties since the 1<sup>st</sup> defendant-respondent, (hereinafter referred to as the 1<sup>st</sup> defendant) claims only a part of the land claimed by the plaintiffs. Accordingly, it must be noted that a roadway is running from south to the north over the land claimed by the plaintiffs separating it to two sections. The picture as to the way in which the roadway is found over the land claimed by the plaintiffs can be seen in plan bearing No.11 marked as Y. In that plan it is stated that the land called Namanethikovila referred to in Title Plan 331560 is depicted therein and that land comprises lots

A,B,C,D and E. Lot A falls on to the west of the road whilst lots B,C,D and E falls on to the eastern side of the road.

The 1<sup>st</sup> defendant in his answer dated 21.10.1974 as well as in the issues raised on his behalf, took up the position that the 1<sup>st</sup> defendant's claim is only to the section of land that falls on to eastern side of the roadway and the plaintiffs are entitled only to the western side of it. In support of his claim, he has produced the plan bearing No.4530 marked 1V1 and has stated that he is the owner of Lots 1 and 2 referred to in the aforesaid Plan No.4530.

Plaintiffs have produced the plan 524 marked "X" having superimposed the Plan 11 (marked "Y") and the plan 4530 (marked 1V1) on to the same, to show the manner in which those plans do fit in, to the plan "X" having drawn red, green and blue lines on it. Plaintiffs have claimed that they are entitled to both lots on either side of the roadway while the claim of the 1<sup>st</sup> defendant is to the land on to the eastern side of the road. Accordingly, it is clear that the disputed land is lot 2 in plan "X" or in other words lot "B" in Plan "Y". The said land is the land described in the Second schedule to the plaint as Lots B, C and D.

It is also necessary to note that the 2<sup>nd</sup> defendant-respondent has not raised any issues at the trial. Accordingly, the learned District Judge has not considered his claim made in the answer. No appeal has been preferred by the 2<sup>nd</sup> defendant and therefore the decision of the learned District Judge in

respect of the claim of the 2<sup>nd</sup> defendant prevails. 3<sup>rd</sup> defendant-respondent sailed with the plaintiffs and the plaintiffs have shown his entitlement and to which the 3<sup>rd</sup> defendant had no contest. Hence, the issue in this appeal is the conflicting claims made by the plaintiffs and by the 1<sup>st</sup> defendant as to the rights they have in respect of lot 2 in plan "X" or in other words lot "B" in Plan "Y". It is the land referred to in the second schedule to the plaint.

Findings of the Learned District Judge are that the 1<sup>st</sup> defendant has no rights to the land referred to in the schedule B to the plaint and accordingly, he has decided that the plaintiffs are entitled to the same. This appeal by the 1<sup>st</sup> defendant is to canvass the said decision of the learned District Judge.

As mentioned before in this judgment, the 1<sup>st</sup> defendant has claimed title to lot B in Plan 11 marked "Y" or to lot 2 in Plan "X" on the basis of Plan 4530 marked 1V1. Learned District Judge has decided that the 1<sup>st</sup> defendant has failed to establish such a claim. In the petition of appeal, the substituted 1A defendant-appellants, without pursuing the aforesaid basis that they have taken up in the court below, has claimed that the 1<sup>st</sup> defendant has prescribed to the land. However, at the argument stage of this appeal, having abundant all those stands that were taken on behalf of the 1<sup>st</sup> defendant, learned Counsel for the appellant took up the position that the plaintiffs have failed to establish title to the land in dispute as required by law.

Accordingly, I will now move on to consider whether the plaintiffs were able to establish title to the land that they have claimed in this case. Then the issue is to ascertain whether the learned District Judge is correct or not when he decided that the plaintiffs are entitled to the land referred to in the schedule B to the plaint.

Learned District Judge in her judgment has referred to the evidence of the substituted 2A plaintiff having adverted to the deeds produced to establish title of the plaintiffs. The manner in which she has considered the evidence of the 2A plaintiff is as follows:

පළමුවෙන්ම සාක්ෂි දී ඇති, 2අ පැමිණිලිකාරිය කියා සිටියේ නම නැති කෝට්ටිලෙන්ද නැමැති ඉඩම රජයට අයිති ඉඩමක් වූ අතර, රජය මගින් පැ.1 දරණ ඔප්පුව මත කලබෝවිලගේ දොන් පොඩ් සිංඤ්ඤ අප්පුනාමි සහ එමගේ ජේමිස් අප්පුනාමිට පවරා ඇති බවත්, ජේමිස් අප්පුනාමි ඔහුගේ අයිතිය අංක.1061 සහ 1926.11.1 වැනි දින ඔප්පුවෙන් දොන් සිමියෝන් අප්පුනාමිට පවරා ඇති බවත්, පොඩ් සිංඤ්ඤ අප්පුනාමි ඔහුගේ අයිතිය 1930.12.06 සහ අංක 14966 පැ.3 ඔප්පුව මගින් සීමන් අප්පුනාමි සහ 3 වැනි විත්තිකාර පිමන් අප්පුනාමිට පවරා ඇති අතර, සීමන් අප්පුනාමිගේ අයිතිවාසිකම් අංක 15411 සහ අංක 15412 දරණ 10.02.1957 වැනි දින දරණ ඔප්පුව මගින් මෙම නඩුවේ 1 වැනි පැමිණිලිකාර මාරින් සිංඤ්ඤවද 2 වැනි පැමිණිලිකාර කලබෝවිල අප්පුනාමිලාගේ දොන් කුමාරදාස අප්පුනාමිවද පවරා දී ඇත. ඒ අනුව 1, 2 පැමිණිලිකාරවනට ඉඩමෙන් 3/4 ක්ද, 3 වැනි විත්තිකාරවට 1/4 ක්ද හිමි බවට සාක්ෂි ඉදිරිපත් කර ඇත.

*[Vide proceedings at page 160 in the appeal brief]*

The above consideration by the trial judge shows the manner in which she has considered the title of the plaintiffs to the land referred to in the first schedule to the plaint that included the land described in the second schedule as well. She has also looked at the evidence as to the identity of the land claimed by the plaintiffs. The evidence of the surveyor, who surveyed the land, had also been evaluated by the learned District Judge particularly as to the extent of the land in dispute. When doing so, the trial judge has compared the extent shown in all the Plans marked "X", "Y" and "1V1". Finally, she has concluded that the plaintiffs are entitled to Lot "B" in Plan "X". It is the land shown in Plan No.11 marked "Y" as well.

Having evaluated the totality of the evidence, she has come to the conclusion that Lots B,C,D and E shown in Plan No.11 marked "Y" forms part of the land referred to in the deeds produced to support the entitlement of the plaintiffs. She has finally come to the conclusion that the 1<sup>st</sup> defendant is not entitled to the aforesaid land though he has made such a claim at the trial. [*vide at page 164 in the appeal brief*].

Learned District Judge has also considered the boundaries of the land claimed by the plaintiffs and has satisfied herself that the Lots A,B,C,D and E in Plan "X" is a part of the land referred to in the deeds produced on behalf of the plaintiffs. [*vide at page 166 in the appeal brief*].

Roadway which runs across the land is the other aspect that had been looked at carefully by the learned District Judge. In that she has found that the aforesaid roadway which cuts across the land of the plaintiffs has been referred to, in the deeds marked P1 to P5 as well. [*vide proceedings at page 172 in the appeal brief*]. In the circumstances, it is clear that the learned District Judge has carefully considered the evidence as to manner in which the title of the plaintiffs has derived and as well as the issue of identity of the land in dispute. She has even looked at the claim of the 1<sup>st</sup> defendant when the question of identity of the land was determined. In the circumstances, it is seen that the learned District Judge has carefully considered every aspect of the claim of the plaintiff when she decided that the plaintiffs are entitled to the land described in the second schedule to the plaint.

I do not see any error as to the manner in which the learned District judge has evaluated the evidence on the question of devolution of title of the plaintiffs, as well as the identity of the land claimed by them. Hence, it is clear that the learned trial judge has followed the criteria necessary to determine the title of the plaintiffs to the land in suit.

Moreover, it had been repeatedly held that the appellate courts are slow in interfering with the findings of the original court judges when it comes to the decisions arrived upon considering the facts of the case. Generally, such decisions are being interfered with, only when those are perverse and

irrational. This position of law has been clearly stated in the cases of **Frad Vs. Brown & Co. 28 NLR 282, Mahawithana Vs. Commissioner of Inland Revenue 64 N L R 217, De Silva Vs. Seneviratne 1981 (2) SLR 8, Alwis Vs. Piyasena Fernando 1993 (1) S L R 119, C A minutes dated 06.06.2014 in C.A.No.396A/98 (F) and C A minutes dated 4.6.2013 in C.A.No.151/98.**

For the aforesaid reasons, I am not inclined to interfere with the findings of the learned District Judge in this instance. Accordingly, this appeal is dismissed. Considering the circumstances of this case, I make no order as to the costs of this appeal.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL