

In the Court of Appeal of the Democratic  
Socialist Republic of Sri Lanka

C A. 72/97 F

DC Kurunegala 4768/L

P D Nimal Dharmasiri,  
Kelaperanakanda, Weuda

**Defendant-Appellant**

Vs

W A Simion Peiris,  
No 5, Singhapura, Weuda

**Plaintiff -Respondent**

**BEFORE: A.W.A.SALAM, J**

**COUNSEL: Kuwera de Soyza PC for the defendant-  
appellant.**

**Argument was fixed for: 13.3. 2013**

**DECIDED ON: 11.06.2014**

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**A.W.A.Salam, J**

The plaintiff-respondent (who is referred to in the rest of this judgment as the "plaintiff") filed action for a declaration of title and ejectment of the defendant-appellant (who is referred to in the rest of this judgment as the "defendant"). Admittedly, the corpus had been the subject of a grant by the State in favour of the plaintiff under the Provisions of Act No 43 of 1979.

The position of the plaintiff was that he was in possession of the corpus for nearly 14 years from the year 1977 running a grocery and the defendant on or about 11 November 1994 along with certain others chased away the plaintiff and unlawfully entered the land, and took over forcible possession thereof.

The defendant in his answer pleaded inter alia that the land which is the subject matter of the action was owned by the Land Reform Commission which was transferred to one R Premadasa. He further pleaded that Lot No 18 of the land called Ilukewalawatta was given to him. Explaining the manner in which he came to possess the subject matter of the action, the defendant stated that on an informal writing he exchanged lot No 18 of the land called Ilukewalawatta with the subject matter of this action with R Premadasa on 2 January 1976 and remains in the possession thereof. The informal writing by which the defendant came into possession of the corpus was produced marked as P1. It is to be noted that by P1 the defendant has exchanged Lot 18 of the land called Ilukewalawatta with one G D Nimal Dharmadasa and not with R Premadasa.

As opposed to the informal writing marked as P1 on the strength of which the defendant claimed that he was in possession of the subject matter of the action, the plaintiff relied heavily on the grant made by His Excellency the President under the Land Grants (Special Provisions) Act, No. 43 of 1979. In terms of Section 3 of the said Act the President is empowered to transfer, by an instrument of disposition substantially in the Form set out in the Schedule to the said Act.

The instrument by which the plaintiff has thus become entitled to possess the subject matter has not been seriously contested by the defendant. The only objection raised in this appeal against the impugned judgment relates to the identity of the corpus. The defendant contended that the village in which the subject matter is situated has not been specified and therefore the plaint has not been drawn in compliance of section 41 of the Civil Procedure Code. As has been admitted by the defendant, in the plaint the land which is the subject matter of the action has been referred to as being situated within the Gramasevaka area No 652 in Mawathagama Pradheshiya revenue officer's division. In addition, the plaintiff has also produced the survey plan relating to the subject matter. Above all, the defendant has never contested the identity of the corpus.

The learned district judge having examined the evidence adduced by both parties had come to the conclusion that the plaintiff is entitled to a declaration that she is the owner of the subject matter of the action and is entitled to the possession thereof to the exclusion of the defendant and all those holding under him. On a careful consideration of the basis on which the learned district judge has come to the conclusion, I find it difficult to disagree with the findings of the learned district judge.

As a matter of fact, the position taken up by the plaintiff in the original court that he became entitled to the land on P1, has not been seriously controverted by the defendant. In the circumstances, I see no reason to interfere with the findings and the judgment of the learned district

judge granting relief to the plaintiff. Hence, this appeal stands dismissed subject to costs.

Judge of the Court of Appeal

TW/-