

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

CA 1144/98 (F)
DC Kandy L/15611

Rev. Hasalaka Seelarathana Thero
Walala Rajamaha Viharaya
Walala, Menikhinna

Plaintiff Appellant

Vs.

1. Walala Eraminiange
Balithiyanagedera Jothipala

2. W.E.N. Ariyadasa

Both of

Walala,
Menikhinna

Defendant Respondent
Respondents

BEFORE : K.T. Chitrasiri, J. &
W.M.M. Malinie Gunaratne, J.

COUNSEL : A.R.L. Jayantha for the substituted-plaintiff-
appellant.
Substituted-plaintiff-appellant is absent.
1st defendant-respondent is absent and
unrepresented.
2nd defendant-respondent is present in Court.

ARGUED &
DECIDED ON : 07.08.2014

K.T. CHITRASIRI, J.

This is an appeal seeking to set aside the judgment dated 25.11.1998 of the learned District Judge of Kandy wherein he has dismissed the plaint filed by the plaintiff appellant.

Basically the reason for the dismissal of the plaint is that the appellant has failed to identify the land put in suit. It is evident by the following paragraph in the impugned judgment.

“එය කෙසේ වුවද අදාළ දේපළ විහාර සතු දේපළක් බවට සැඟීමට පත්වෙන අතර, මෙම නඩුවේ පැමිණිලිකාර ස්වමිත් වහන්සේට විත්තිකරුවන් නෙරපීමට හැකියාවක් නොමැත්තේ වුවද විත්තිකරුවන් හට අදාළ දේපළට විරුද්ධව කාලාවරෝධ අයිතීන් ලබා ගත නොහැකි හෙයින්, අවශ්‍ය වන්නේ නම් මතු දිනකදී අදාළ දේපළ හඳුනාගැනීමෙන් පසු විත්තිකරුවන් නෙරපීම සඳහා පියවර ගැනීමේ බාධාවක් නොවනු ඇත. එහෙයින් පැමිණිල්ලේ අයතීන් පිළිගන්නා

නමුදු නිසි ලෙස ඉඩම හඳුනාගෙන නොමැති හෙයින් එක් කේතුව මත පැමිණිල්ල ප්‍රතික්ෂේප කරමින් විසඳනාටත් මෙලෙස පිළිතුරු දෙමි.”
(Vide at page 220 in the appeal brief.)

This action being an action for declaration of title, it is essential to have the land in dispute identified. The necessity to identify the land to which title is claimed had been discussed by **Marsoof, J in Jamaldeen Abdul Lateef v. Abdul Majeed Mohamed Mansoor and another [2010(2) SLR at page 333]**. It was again referred to in **Ananda Kodagoda vs. Moraj Megji Udeshi [C.A. Minutes in C.A. No. 175/98 dated 22.1.2014]** by this Court as well.

The appellant has not even sought for a commission to show the land he claimed even after filing of the action in the District Court. Therefore, it is clear that the plaintiff has failed to identify the land he claimed which is a *sine qua non* in a *rei vindicatio* action.

In the circumstances, we do not see any reason to interfere with the findings of the learned District Judge. Accordingly, this appeal is dismissed.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-