

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

C.A. No. 696/99(F)

D.C. Maho Case No. 3292/L

W.D. Mesilin Nona,
No. 91,
Danduwawa,
Nikaweratiya.

Defendant - Appellant

Vs.

W.D. Wilson Fernando, (Deceased)
Danduwawa,
Nikaweratiya.

Plaintiff - Respondent

1A Walimuni Dewage Ranasinghe

1B Walimuni Dewage Rosalin Nona

1C Walimuni Dewage Gunathilaka

1D Walimuni Dewage Kusumawathi

1E Wedage Anulawathi

1F Walimuni Dewage Niluka Sarnan

Priyadarshani

1G Walimuni Dewage Asela Saman Priyadarshana

All of Danduwawa,
Nikaweratiya

Substituted Plaintiff - Respondents

C.A. No. 696/99(F)

D.C. Maho Case No. 3292/L

Before : **Vijith K Malalgoda, P.C., J (P/CA)**

Counsel : A.S.M. Perera, P.C. with Neville Ananda for
Defendant-Appellant.

Chaturanga Perera with Shihan Ananda for the
Substituted-Plaintiff-Respondent.

Argued on : 23.09.2014.

Decided on : 02.10.2014.

Vijith K Malalgoda, P.C. J (P/CA)

This appeal is against the judgment delivered by the District Judge of Maho on 24.06.1999. Plaintiff-Respondent has filed action in the District Court of Maho to evict the Defendant-Appellant from the house situated in the land which was originally allocated to one Walimuni Devage Pelis Fernando on a permit issued under the Land Development Ordinance.

This permit bearing No. 17994 was marked as P1 and produced at the District Court action. It was evidence at the District

Court trial, that the Plaintiff-Respondent is the son of the original permit holder Walimuni Devage Pelis Fernando and the Defendant-Appellant is the step sister of the Plaintiff-Respondent.

Plaintiff in his evidence submitted that he lived in the same house with his father until his father's death in 1977. He further said that he was cultivating the paddy lands and using the other lands allocated his father under the same permit until such time. His step sister who was given on marriage sometime back to a village called Gabbala had come to his house to attend the funeral of his late father and refused to go back, once the funeral was over. That is why he decided to file an action in the District Court in order to evict his step sister.

Plaintiff-Respondent was named as the beneficiary in the Land Development Permit which was marked as P1 by his late father.

However when the Plaintiff-Respondent filed action 1466/L in District Court Maho for the eviction of the Defendant-Appellant, the action was dismissed since the Plaintiff-Appellant was not issued with the Land Development Permit, even though he was named as the beneficiary by his late father.

In September 1985 after the above order, Government Agent had issued the Land Development Permit to the Plaintiff-Respondent

and this was confirmed at the present trial by H.M. Muthubanda Land Officer attached to A.G.A' s office Nikaweratiya.

Counsel appearing for the Defendant-Appellant admits that at the time the present action was filed there was a valid Land Development Permit issued to the Plaintiff-Respondent. However he points out that, at once stage of the first trial Government Agent had proposed to divide the land between the Plaintiff-Respondent and Defendant-Appellant but he admits that after the said proposal was made to courts, the same officer or his successor after an inquiry had decided to issue the Land Development Permit only to the Plaintiff-Respondent. It was established before the District Court trial that the Plaintiff-Respondent was issued with the Land Development Permit with regard to the land and property in question at the time the District Court action was filed. Therefore the District Judge is correct concluding the case in favour of the Plaintiff-Respondent.

Under these circumstances I see no reason to interfere with the judgment dated 24.06.1999 by the District Judge Maho. The appeal is accordingly dismissed. No costs ordered. Registrar is directed to communicate this order to the District Judge Maho.

PRESIDENT OF ~~THE~~ COURT OF APPEAL

AKN