

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

In the matter of an Appeal under Section
755 (3) of the Civil Procedure Code.

C.A. 800/99F

D.C. (Marawila)

A.K.N.P.Perera

Gonavila North

Dankotuwa.

Plaintiff Appellant

Vs

K.R.Nobert

Ranagammulla,

Waikkala.

Defendant Respondent

BEFORE

: P.W.D.C. JAYATHILAKE, J

COUNSEL : Rohan Sahabandu P.C. with
Surekha Withanage for the
Plaintiff Appellant.
W. Dayaratne P.C. with
Kevin Rajitha for the
Defendant Respondent.

ARGUED ON : 31.10.2014

DECIDED ON : 16.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Appellant instituted this Action seeking a declaration that the Defendant is not entitled to any servitudinal right over the

land described in the schedule of the Plaint, for a declaration, in particular, that the Defendant has no servitude right to use a road over the said land from the Village Council Road to the Defendant's land. The Defendant, in his answer, has stated that he and his predecessors in title have been using the road in dispute and had acquired servitudinal rights. The Defendant has further averred that he has no other road way from his land to the Public Road and on that basis he claims the same on prescription and also on necessity. The learned District Judge has decided the case in favour of the Defendant declaring that the Defendant has the right to use a Cart Road over the Plaintiff's land from the Defendant's land, namely, Mirissankotuwa to Dankotuwa Village Council Road.

This is an Appeal against the said judgment preferred by the Plaintiff Appellant.

The Appellant has taken the position that once the Plaintiff proves that he is the owner of the land, the burden casts on the Defendant as the person who claims the right of way of proving that he has

used the roadway for over ten years. The counsel for the Appellant contended that the learned District Judge had reversed the burden of proof and had drawn adverse inference that it is for the Plaintiff to show the contrary.

The Plaintiff's case is a negative action in its nature. He wants the court to declare that the Defendant has no right of way over his land. Therefore, as it is, it is the Plaintiff shall prove that the Defendant has no right of way.

On perusal of trial proceedings, it is clear that the Defendant has led evidence to show that the road in dispute had been in use even by the parents of his predecessor. One ex Grama Niladhari has testified that he had used this road during his tenure of officer from 1972 to 1986. He has especially referred to the fact that the road which was along the middle of the load was put along its boundary with his intervention.

In the circumstances, I see no reason to interfere with the judgment of the learned District Judge and I, therefore, dismiss the Appeal with cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL