

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

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

01. Obada Pathirannahalage

Karunathilake,

02. Obada Pathirannahalage

Leelawathie

C.A. Case No. 733/99(F)

03. Obada Pathirannahalage

D.C.(Kegalle)

Ariyaratna,

Case No. 1813/L

04. Hapu Arachchilage Dingiri

Menika,

All at Devalegama,

Karadatiyana.

Defendant – Appellant

Vs.

01. Koswatte Rallage Dingiri Amma,

02. Koswatte Rallage Leelawathie

03. Koswatte Rallage Kusumawathie,

04. Koswatte Rallage Rajakaruna

Thilakarathna,

05. Koswatte Rallage Dharmasena,

06. Koswatte Rallage Gunathilaka,

07. Koswatte Rallage Dayarathna,

08. Koswatte Rallage Tilak Bandara,

All at Devalegama,

Karadatiyana.

Plaintiff - Respondents

BEFORE

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

COUNSEL

: S.A.D.S. Suraweera for the

Defendant Appellant.

Gamini Hettiarachchi for the

Plaintiff Respondent.

ARGUED ON : 18.02.2015

DECIDED ON : 20.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Respondents instituted this Action seeking *inter alia* declaration of title to two Lots of land called "Anduwe Mukalana and Rosite Watupare Reservation Kotasa" described in the schedule to the Plaint and the ejection of the Defendant from the said two Lots of land. It has been averred in the plaint that Podiappuhami the husband of the 1st Plaintiff and the father of the 2nd to 8th Plaintiffs acquired the prescriptive title to those two lands by

undisturbed and uninterrupted possession for more than thirty five years. They claim that they became the owners of this land after the demise of Podiappuhami. The course of action, according to the plaintiff, is Defendant's entering this land by force after Podiappuhamis death. It has to be noted that there is no specific time during which this had taken place.

T.N. Carder, the licenced surveyor, on the commission issued to him had surveyed the land in dispute and submitted the Plan No. 620 dated 12.07.1982 which has been marked as P1 at the trial. The surveyor has described the land depicted in P1 which is 16 preaches in extent as "Rosite Estate" alias "Anduwe Mukalana" (State Jungle) situated in Karadetiya Village.

The learned trial judge has narrated the evidence led for the Plaintiff and the Defendant and has rejected the Defendant's claim on the basis that the subject matter is not the land claimed by the Defendant, namely, "Puhu Kosgahamula Watta". On that conclusion, she has decided the case in favour of the Plaintiffs declaring the Plaintiff's title to the subject matter.

The learned counsel for the Defendant Appellant contended that not only by the name of the subject matter, but, according to the matters revealed in evidence, the subject matter is a state land. Therefore, the point raised by him is that the District Court is unable to declare the title of the state land to Plaintiffs.

Even it is presumed that the subject matter is a state land, that fact has no relevancy to the present matter because the instant Action is a private Action between two private parties and by the judgment of this Action only the parties of this Action are bound and the state is not bound by the judgment of this Action is the counter argument raised by the counsel for the Plaintiff Respondent. But, the learned counsel has not shown any legal reference to justify his argument.

Even though this matter was not a point of contest at the trial this court is unable to overlook this matter. If a surveyor finds that the land or part thereof that he has surveyed is a state land, it is his duty to expressly mention it either on the plan or in report. Similarly, it is duty of court to see that the state is a

party of the case when the subject matter or a part thereof is found to be a state land. The 1st Plaintiff, in her evidence, has accepted that the subject matter had once been owned by the state. The witness, Perumal Ramalingam in his evidence, has stated that the subject matter belonged to “Rosite Estate” which was acquired by the government in 1978.

Despite the fact revealed that the subject, matter is a state land, the case had proceeded without making the state a party. If the court tolerates this for the reason that it was not an issue among the parties, it leaves the situation to anyone to get the title to a state land acting in collusion with another party. Therefore, I am of the view that the judgment of this case cannot stand as it has been delivered without making the state a party while the subject matter or a part thereof belongs to the state. As such, I set aside the judgment of this case dated 18.08.1999.

The judgment set aside.

JUDGE OF THE COURT OF APPEAL