

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

1. Katlandage Podineris
2. G. Selenchina of Neluwakkakna,
Dedugla.

Defendants – Appellants

C.A. Case No. 296/1999(F)

Vs.

D.C.(Kegalle)

Case No. 2963/Land

1. Dona Emalyn Nona Liyange of
Nilwakka, Kegalle and 8 others.

Plaintiff - Respondents

BEFORE

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

COUNSEL

**: Sunil Abeyratne with
S.P.P. Samaranayake for the
Defendant Appellant.**

ARGUED ON : 21.11.2014

DECIDED ON : 24.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Respondents had instituted this Action to get the ownership declared of the amalgamated lands named, "Ritigaha Hena" and "Thittha Atagahamula". The extent of the land given in the schedule is 10 "Pelas" of paddy. The court commissioner who has surveyed the land on the commission issued to him has submitted the Plan No. 549 dated 18.01.1987. According to the said Plan, the extent of the subject matter is 3 roods and 28.8 perches. It has been averred in the Plaint that the 1st Plaintiff as the widow of the person who owned this land in 1934 and 2nd to 9th Plaintiffs as children became entitled to the property in dispute. The course of action, according to the plaint is the Defendant's denial of the Plaintiffs' title and disputes their rights.

The 1st Defendant, in his answer, has stated that the land depicted in the plan No. 549 had been given to the 1st Defendant's father for cultivation by the original owner of this land. He has further stated that his father Singho developed the land and possessed it for more than 25 years till his demise. The 1st Defendant claimed prescriptive title to the property on the basis that he and his predecessors had possessed the property as against the Plaintiffs and others for more than 25 years.

The learned trial judge has come to the conclusion that Singho had looked after the property on leave and license of Karunanayaka.

The counsel for the Appellant contented that the learned trial judge has not taken the evidence of the Appellant into consideration which stated his father Singho cultivated the rubber plantation and commenced tapping in 1970 as his own property. On perusal of the evidence of the 1st Plaintiff it appears that she had no knowledge about the nature of the possession of Singho. She has admitted that Singho had obtained the rubber cultivation permit in his name. She has further admitted that she did not take any step to prevent the 1st Defendant from constructing a house in this land.

According to the Surveyor's report, this land has been planted with cloves, coffee, coconut and rubber. There are several jack trees and other mixed plantations.

The learned District Judge has not addressed the issue that on what basis Singho had developed this land and whether the Plaintiffs' case has been brought on a proper course of action. The opinion of this court is that the conclusion of the District Judge deciding that Singho had looked after the property in dispute right through out with the consent and the licence of Karunanayaka and his successors is not a considered decision. Therefore, this court sets aside the judgment of the learned District Judge and dismisses the Plaintiffs' case without cost.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL