

**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.

C.A Case No. 850/97(F)

Mohomed Lafeer Mohamed Najeed

DC (Kegalle)

Jayabima Centre, 78/1, Kandy Road,

Case No. 2815/L

Warkapola.

Plaintiff

Vs.

1. Samsudeen Bacha Ameer Bacha
Of Mangedara, Nangalla.
2. Mohamed Wadood Mohamed Jaleel
198/2, Ganithapura, Warakapola.

Defendant

AND NOW

Mohomed Lafeer Mohamed Najeed
Jayabima Centre, 78/1, Kandy Road,
Warkapola.

Plaintiff Appellant

Vs.

1. Samsudeen Bacha Ameer Bacha
Of Mangedara, Nangalla.

2. Mohamed Wadood Mohamed Jaleel
198/2, Ganithapura, Warakapola.

2a. Mohamed Fareed Ummu Nisa

2b. Mohamed Jaleel Riaz

2c. Mohamed Jaleel Mohamed Riswan

2d. Mohamed Jaleel Fathima Jazeera

All of 198/2, Ganithapura, Warakapola.

Defendant Respondents

COUNSEL

: Chatura Galhena for the Plaintiff

Appellant.

Isuru Somadasa for the 1st

Defendant Respondent.

ARGUED ON

: 16.06.2014

DECIDED ON

: 24.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Appellant has instituted this action seeking declaration of title to the premises No.198/2 with 1/42nd undivided share of the land described in the schedule to the plaint. It has been averred in the plaint that Sitthi Sanoba transferred the said rights to him on 02.10.1978 by a deed of transfer. The cause of action that he has referred to in the plaint against the Defendant Respondents is the forcible entry to the said premises on or about 15.10.1978. The Defendant Respondents, in their answer, have stated that they are co-owners of the land called "Kahatagahawattha" alias "Kahatagahamulawattha", in the portion of that land which has been divided as lot No. 3 and 4 of the Plan No. 2982.

The Plaintiff Appellant, in his evidence, has admitted that he did not search for the title of Sitthi Sanoba who transferred 1/42 undivided share to him. He has further admitted that he was not aware of the plan of Baddewala, licenced surveyor by which the co-owners had amicably partitioned their undivided rights. Admittedly, the Plaintiff Appellant has not occupied the premises in suit after purchasing it. Instead, he has kept a caretaker to look after it. It was after

12 days of purchasing the property the Defendants had come to forcible occupation.

The Plaintiff Appellant had not come to court seeking relief in a possessory remedy action. Instead, he has filed "rei vindicatio action" vindicating his title to the premises in dispute.

Even though the learned trial judge had decided that Sitthi Sanoba had been a co-owner of the property and her rights had been transferred to the Plaintiff Appellant by P 2 , the learned judge had been of the opinion that the link of this right to the subject matter has not been proved. The matter that this court too sees is though the assessment number of the premises in suit is mentioned in the deed P2, the fact that her ownership to the said premises has not been proved. Therefore, this court finds no error in the conclusion of the learned trial judge. As such, the Appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL