

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

Sinhala Pedige Appuwa
Of Boyagoda, Atala.

PLAINTIFF

C.A. Case No.916/97(F)

DC Kegalle Case No. 3901/L

Vs

1. Alankarage Sendiya alias Podiya
(dead)
- 1A. Alankarage Gunasekara
2. Alankarage Gunasekara
3. Rankiran Pedige Jayarathne
All of Boyagoda, Atala.

Defendants

AND NOW

Sinhala Pedige Appuwa
Of Boyagoda, Atala (dead)

Plaintiff-Appellant

Sinhelage Priyantha
Of Walawwaththa
Kubaldeewala, Molagoda.

Substituted-Plaintiff-Appellant

Vs

1. Alankarage Sendiya alias Podiya of
Boyagoda, Atala(dead)

1A. Alankarage Gunasekera
of Boyagoda, Atala.

2. Alankarage Gunasekera
of Boyagoda, Atala.

3. Rankiran Pedige Jayarathne
of Boyagoda, Atala.

Defendant-Respondents

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Rohan Sahabandu PC for the
Substituted-Plaintiff-Appellant.

S.A.D.S. Suraweera for the 1st
and 2nd Defendant-Respondents.

Udaya Bandara for the 3rd
Defendant-Respondent.

ARGUED ON

: 13th July, 2015

DECIDED ON

: 11th December, 2015

Deepali Wijesundera J.

The plaintiff appellant has instituted an action in the District Court of Kegalle against the first to third defendant respondents for a declaration of title and ejectment of the defendant from the land described in the schedule to the plaint. The plaintiff appellant stated that the original owners of the land called "*Haduwehena*" were Ukkiriya, Waththuwa and Hapi who were entitled to $\frac{1}{4}$, $\frac{1}{2}$, and $\frac{1}{4}$ shares respectively. Ukkiriya's $\frac{1}{4}$ share was conveyed to Rankira and Laminduwa by Deed no. 19883. This $\frac{1}{4}$ share of the land was inherited by Rankira's son the plaintiff. This fact, the learned District Judge by answering issues no. 1 and 2 in favor of the plaintiff has accepted the plaintiff appellant's title and claim to $\frac{1}{4}$ share of the land.

The plaintiff claimed the first and second defendants came into unlawful occupation of the said land in 1986 causing damage to the plaintiff appellant's land.

The first and second defendant respondents have claimed prescriptive title to the land and stated that a survey plan is necessary to identify the land in issue and to make a final decision on the said land in issue. The learned District Judge after trial has delivered the judgment

on 16/10/1997 answering the first and second issues in favor of the plaintiff appellant but has dismissed the plaintiff's case. The instant appeal is against the said judgment.

The learned District Judge has stated that the share claimed by the plaintiff appellant should go to the plaintiff appellant but at the same time it has been said by answering issued no. 22 and 23 in favor of the defendant respondents that for a correct order to be made the land had to be identified by a survey plan by a court commissioner. The learned District Judge should have done this at the commencement of the trial when the parties made no admission regarding the corpus.

The defendants have claimed the rights of Hapi who was one of the original owners. The learned District Judge in her judgment at one point states that Siriya was Hapi's daughter and again she states that Siriya was Wattuwa's daughter. This is a clear misdirection of facts as well as evidence.

The District Judge has failed to evaluate the evidence placed before court and has not given reasons as to how the issues were answered, at some points contradicting each other. The District Judge

has granted part of the relief claimed by the plaintiff appellant by answering issue 1 and 2 in his favor and accepted his title but has answered the rest in the negative.

The District Judge has referred to the Magistrates Court case filed under *Sec. 66 of Primary Courts Ordinance* where it has been stated there were no clear boundaries on the land and to get the permanent boundaries demarcated by filing a civil action in the District Court. This shows that the District Judge failed to take into account that a final judgment can not be reached until the land is properly identified and boundaries demarcated.

The plaintiff's title has been admitted by the District Judge but the defendants have failed to show that they are in occupation legally. When the plaintiff's title is accepted by court the defendant has to prove his that he is in lawful occupation of the land. **Theivandran Vs Ramanathan Chettiar 1986 1 SLR 219** , **Beebi Johora Vs Warusavitharana 1998 3 SLR 9** since the title was admittedly in plaintiff appellant the burden was on the defendant respondents to show by what right they were in possession of the premises. This has not been considered by the learned District Judge.

After admitting the plaintiff appellant's title to the land the District Judge has gone on to say by answering issues 22 and 23 in favor of the defendant respondents that the plaintiff can not proceed with the case without a proper plan to identify the land in dispute and its boundaries and dismissed the plaintiff's action. This is a clear misdirection of facts and law.

For the afore stated reasons I decide to set aside the judgment of the learned District Judge of Kegalle dated 16/10/1997 and order a *trial de novo*.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL