

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

In the matter of a cross appeal in terms of  
Section 772 (1) and (2) of the Civil Procedure  
Code.

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Henake Ralalage Jayasinghe  
No. 29, Udugodawatte  
Undugoda.

**1<sup>st</sup> Defendant - Appellant**

**C.A. Application No.847/97F**

**D.C. Kegalle No. 2923/L**

**Vs**

Henake Ralalage Gunasekara  
Ealagalla,  
Undugoda.

**Plaintiff - Respondent**  
**and Others.**

**BEFORE**

: Deepali Wijesundera J.

M.M.A. Gaffoor

**COUNSEL**

: Chula Bandara with

S.L. Samarakoon for the

1<sup>st</sup> Defendant-Appellant

Laknath Seneviratne for the

Plaintiff - Respondents

**ARGUED ON**

: 11<sup>th</sup> June, 2016

**DECIDED ON**

: 08<sup>th</sup> March, 2016

**Deepali Wijesundera J.**

The plaintiff respondent has instituted a case in the District Court of Kegalle against the defendant praying for a declaration of title and ejectment of the defendant from the land described in the schedule to the plaint. The disputed land had been allotted by way of a grant to the plaintiff respondent's father H.R. Mohotti Appuhamy in terms of the *Land Development Ordinance*. The plaintiff's father has nominated him as the nominee and the mother as the successor to the land. This has been admitted by the defendant in the District Court but the defendant claimed rights under prescription and also by way of inheritance. The

learned District Judge after trial has delivered the judgment on 18/09/1997 in favour of the plaintiff but has allocated ½ acre of land to the fourth respondent on the basis of prescription. Being aggrieved by the said judgment the defendant has filed this appeal against same.

The learned counsel for the appellant submitted that the plaintiff respondent in his plaint in the District Court has sought declaration of title for two blocks of land described in the schedules to the plaint which the defendant's possessed separately since they are two different blocks, which makes it two different causes of action. The appellants stated that the District Court erred in law by coming to the conclusion that the action could be maintained together which is contrary to the provisions of the Civil Procedure Code.

The appellant submitted that the first respondent never possessed the land though he claimed paper title, and that he has not registered his nomination after the death of his father. The appellant stated that the respondent had failed to prove his paper title or his possession of the land in the District Court. The appellant further stated that the respondent failed to prove his uninterrupted possession under *Sec. 3 of the Prescription Ordinance*.

The respondent's counsel argued that the respondent succeeded to the land upon the death of his father in terms of *Sec. 49 of the Land Development Ordinance*. The learned counsel further stated that since the nomination of the respondent is admitted and not challenged by the defendant appellant it has to be decided whether the land had been identified, and whether the plaintiff respondent could unite two or more causes of action in the same case and whether the plaintiff respondent failed to succeed to the land by not entering the land for possession within six months of his father's death. He stated that there was no dispute in identification of the land in the District Court.

On the argument on whether two or more causes of action could be united in the same action. He stated that under *Sec. 36 (1) of the Civil Procedure Code* it could be done. He further submitted that in terms of *Sec. 37 of the Civil Procedure Code* the appellant is estopped from taking this objection since it was not raised in the District Court.

The respondent stated under *Sec. 68 (2) of the Land Development Ordinance* though it is stated the nominee has to take possession within six months of the death of the person who nominated him the respondent was prevented by the defendant appellant by forcibly entering the said land and taking possession of the same.

The counsel for the respondent stated that the District Judge had erred in holding that the fourth defendant had prescribed to the land when one can not prescribe to any land given on a grant.

**Sec. 161 of the Land Development Ordinance states;**

***“ No person shall by possession of any land alienated on a permit or a grant acquire any prescriptive title thereto against any other person or against the Crown”.***

The appellant can not claim any prescriptive rights to the land in issue therefore the argument of the appellant on prescription fails.

The appellant stated that lots 25 and 75 are two different lands and both can not be included in one case as the corpus. These two blocks are shown in one plan and both are given on a grant to the plaintiff respondent's father by the Crown. This argument fails in terms of *Sec. 37 of the Civil Procedure Code* since they failed to take this up in the District Court. Also the identification of the land was not disputed in the District Court.

The learned District Judge has carefully analyzed the evidence and documents placed before the District Court. This court can not interfere where the evidence has been properly evaluated. On the other hand there are no legitimate legal reasons to allow the appeal of the appellant.

For the afore stated reasons the appeal of the appellant is refused with costs fixed at Rs. 25,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**