

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

Rev: Passara Upananda,
Viharadhipathi & Trustee,
Passara Raja Maha Viharaya,
Passara.

PLAINTTEFF

Vs.

**C.A No: 541/97 (F)
D.C. Badulla
Case No: 9464/L**

S.A. Violet Menika,
Garadigidy, Palugolla,
Passara.
Presently,
No: 9B/17L,
National Housing Scheme,
Raddolugama.

DEFENDANTS

AND

S.A. Violet Menika,
Garadigidy, Palugolla,
Passara.
Presently,
No: 9B/17L,
National Housing Scheme,
Raddolugama.

DEFENDANT - APPELLANT

Vs.

(Dead) Rev: Passara Upananda,
Viharadhipathi & Trustee,
Passara Raja Maha Viharaya,
Passara.

PLAINTIFF – RESPONDENT

Rev: Medawalagama Upalena,
Chief Incumbent & Trustee,
Passara Raja Maha Viharaya,
Passara.

**SUBSTITUTED – PLAINTIFF –
RESPONDENT**

Before : P.R.Walgama, J

**Counsel : Pubudu de Silva with D.P.P. Dasanayake for the Def.
Appellant.**

: M.D.J. Bandara for the Petitioner – Respondent.

Argued on : 15.12.2015

Decided on: 01.04.2016

CASE-NO- CA-541/97 JUDGMENT- 01.04.2016

P.R.Walgama, J

This appeal assails the Judgment dated 23 of May 1997, pronounced by the Learned District Judge in favour of the Plaintiff – Respondent.

The Plaintiff – Respondent instituted action against the Defendant – Appellant and claimed the reliefs inter alia;

- a. For a declaration that he is entitled to the field more fully described in the schedule to the plaint as

the Trustee and Viharadhipathy of the Passara Rajamaha viharaya,

- b. For an order ejecting the Defendant and all others claiming under him, and to place the Plaintiff in possession of the disputed land,
- c. For an order against the Defendants to deliver to the Plaintiff 17 Bushals of paddy or to pay its equivalent value amounting to Rs. 561 as damages.

The facts emerged from the plaint of the Plaintiff-Respondent are crystallized as follows;

The subject land belongs to the Passara Rajamahaviharaya was gifted by one Mauassagolla Sumana Thero to the then Viharadipathi Botota Medankara Thero.

Subsequent to the demise of said Botota Medankara Thero the disputed land devolved on his pupil Rev. Sapuroda Sobitha, who also died and was succeeded by Rev. Parapawe Sri Sumana Thero and after his demise the Plaintiff succeeded to the Viharadhipathy ship.

Pursuant to the above succession the Plaintiff was duly appointed Trustee of the temple above by the Public Trustee in accordance with the provision of the Buddhist Temporalities Ordinance.

It is asserted by the Plaintiff that the above temple was the lawful owner of the land described in the schedule

here to and had been in possession for well over 60 years of the said land.

It is alleged by the Plaintiff that the Defendant took forcible possession of the said paddy field on or about 11.01.1974 and was working the said paddy field till August 1974, and thereafter since 1975 the plaintiff was in possession through his tenant cultivator, who had worked as the tenant cultivator of the plaintiff of the said land.

Thereafter once again the Defendant had forcibly entered the said paddy field and started working the paddy field. Therefore in the above setting the Plaintiff moved for the said relief from the District Court.

As a comprehensive response to the above claim the Defendant – Respondents, by their Answer has stated the following;

That the land more fully described in the schedule to the Answer is a land known as 'MADDEPITA KIMBURA' containing in extent 2 Roods and 20.7 Perches, and depicted in Plan No. 112 dated 09.09.1979 made by Premachandra Licensed Surveyor.

The original owner of the said land was G.G.H. Pinhamy and after his demise his daughter G.G.H. Punchi Nona became entitled to the disputed land.

The said Punchi Nona was the second Defendant in the original court and after her death her heirs has been substituted accordingly.

Further it is stated that the land claimed by the Plaintiff is to the West of the land possessed by the Defendants.

The threshold issue to be resolved in the instant appeal is the identification of the land in dispute.

The land that is claimed by the Plaintiff is known as KURUMINI KOTE KUMBURA also known as KURUMINI KOTE YATITURE KUMBURA containing in extent two pelas of paddy sowing. (approximately 2 and half acres)

But the land in which the Defendants possess is known as MADDEPITAKUMBURA containing in extent 2 roods and 20 perches depicted in plan No. 112 dated 09.09.1979 made by Premachandra licensed surveyor.

The Learned District Judge has also considered the evidence adduced by one Nandawathi who worked as the Tenant Cultivator in the land in dispute, under the Plaintiff.

It was the position of said Nandawathi that she was the tenant cultivator of the Plaintiff and the 1st Defendant forcibly entered the disputed paddy field in 1974 and started working in the paddy field. As a result there was a complaint made to the

Deputy Commissioner of Agrarian Services of Haliella. After the inquiry by the Deputy Commissioner of Agrarian Services by his order marked as P7 placed the said Nandawathi in possession of the disputed paddy field.

The Learned District has also dealt with the plan No. 112 tendered and marked as P1 which was prepared by the surveyor on a commission issued by Court. The plan that was prepared according to the said commission was never challenged by the Defendant - Appellants.

Further the Learned District Judge was of the view that the Defendants were not agreeable to accept the said plan they should have got another commission and established the fact that the disputed land is the land that they are entitled to and not the land that the Plaintiff is claiming.

Therefore in the above setting the Learned District has arrived at the conclusion that the paddy field in dispute is the paddy field that is been claimed by the Plaintiff.

When reviewed the impugned judgment in its totality this Court is of the view that the Learned District Judge has arrived at the above determination in the correct perspective, and as such warrants to affirm the same.

Thus I hold that the appeal is devoid of merits and should stand dismissed.

Appeal is dismissed, subject to a cost of Rs. 5000/-

JUDGE OF THE COURT OF APPEAL