

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

Thaibdeen Mahalid Mohamed, No.
274B, Maberiya Ukkuwela.

Substituted Plaintiff-Appellant.

CA No. 629/97 (F)

DC Matale NO.4108/L

vs.

Mohamed Makeen Mohamed Rizaf,
No. 145, Ukuwela, Raithalawawela.

Substituted Defendant-Respondent.

Before : M.M.A. Gaffoor, J. and
S. Devika de L. Tennakoon, J.

Counsel : M.C.M. Muneer with Pubudu C. Witharana for the Plaintiff-
Appellant.

Athula Perera with Charthurani de Silva for the Defendant-
Respondent.

Argued on : 17.11.2016

Decided on 10.03.2017

M.M.A.Gaffoor,J.

The Plaintiff-Appellant above named instituted the action No.4108/L in the District Court of Matale seeking inter alia for a declaration of title to the land morefully described in the schedule to the plaint and to eject the defendant-responent there from. The plaintiff-appellant pleaded that the land in dispute as described is the schedule to the plaint as “ **Boraluwewatta**” and described as to how the title was devolved on him.

The defendant in his answer denied the averments contained in the plaint and recited the tile to a larger land known as “ **Kongedarawatta**” described in the schedule of the answer.

However in the evidence of surveyor Mr.Ranchagoda who was the 2nd Commissioner gave evidence on behalf of defendant and his plan supports the contention of the plaintiff and the name of the land is described as “Boraluwewatta “ which is against the contention of the defendant.

In a rei-vindicatio action the cause of action is based on the sole ground of violation of right of ownership to the land. In a rei- vindicatio action the plaintiff claims as the owner of the land he has the dominum and that land is in the unlawful possession of the defendant.

In this matter it is important to consider whether plaintiff-appellant proved he has the dominum to the land morefully described in the schedule of the plaint.

In the case of *Gnaneswary and others Vs. Kanapathi - Pillai Thamu and other BASL news 5/5/2004 C.A. Appeal No.642/86 (F)* decided by Shirani Thilakawardena J. (P/CA) and P.Wijeyarathe J. allowing appeal held “ In the case of *Muithusamy Vs. Seneviratne* 321 CLW 91 it has been specifically stated that in action for declaration of title it is for the plaintiff to establish his title to the land he claims and not for the defendant to show that the plaintiff has no title. In the cases of *Peiris Vs. Sevunhamy* 54 NLR Pg. 207 where it has been held in an action for declaration of title to land where the defendant is in possession of the land in dispute, the burden is on the plaintiff to prove that he has the dominum. In a rei vindication action the plaintiff must provide and establish his title. He cannot ask for a declaration of title in his favour merely on the strength of the defendant’s title

is poor or is not established. All these cases have been followed by the case of *Luwis Singho Vs. Ponnemperuma (1996) 2 Sri LR Pg. 320.*

In this matter plaintiff –respondent state in his plaint inter alia that the premises belonged to Pakker Thambi Uthuma Lebbe who executed the deed of Transfer bearing No.3490 dated 1903.05.11 attested by Kandaiaa Murugesu Pillai Notary Public and thereby transferred his rights to Hasan Ali who is the father of Plaintiff's father Seiadu Mohammadhu Abdul Cader, the only son of said Hassan Ali and departed his life leaving as his intestate heir, his child Seiasdu Mohammadhu Abdul Cader. After the said Abdul Cader demised, his children the plaintiff and his siblings and mother became entitled to his property. Further plaintiff stated in his plaint that his Siblings and mother Ummu Raseena Transferred their rights to the plaintiff by deed No. 9372 dated 25.01.1990 attested by S.B. Wijerathne N.P and plaintiff became the lawful owner of the said premises which deed was marked in evidence as P2, but it was not in the record when Trial Judge delivered his judgment. Once a document is marked at the trial by a party it is the duty of the said party to submit that deed before the judgment even with written submissions. But the plaintiff failed to submit the document marked as P2 in his plaint. In this circumstance the ownership of the plaintiff is not established.

As stated above, in a rei indication action plaintiff cannot expect relief unless and until he proves his case. The judgment of the learned District Judge has specifically stated about the absence of P2 which is the deed is the vital piece of evidence to prove the title of the plaintiff. The plaintiff cannot expect the court to go on a voyage of discovery to ascertain the title of the plaintiff.

Though, the appellant in his written submission to this Court, states that the plaintiff's Instructing- Attorney passed away during the trial, the appeal brief does not indicate such a predicament faced by the appellant.

As per Section 114 of the Civil Procedure Code, there is a duty cast on the part of the Trial Judge to endorse the materiel marked documents, at the same time it is the duty of the party and the Registered- Attorney to tender all marked documents to court.

The document marked P2 the bone of contention in this case, has been marked without subject to proof and had not been objected at the close of the

plaintiff's case. The learned Trial Judge at the close of the case(Proceedings dated 30.01.1997) has specifically stated that document marked P2 to be filed in the case record.

In the light of the above circumstances the learned Trial Judge has properly acted in compliance with Section 114 of the Civil Procedure Code.

In these circumstances, I am in view that the learned District Judge has very carefully and correctly arrived at his determination with correct perspective and analyzed all the verbal and documentary evidence placed before him to come his conclusion. I see no reason to interfere with the findings of the learned District Judge.

Therefore the appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

S.Devika de L.Tennakoon, J

I agree.

JUDGE OF THE COURT OF APPEAL