

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

CA 849/99(F)

D.C. Kegalle Case No. 1341/L

1. Elipangamuwe Jayaneris  
(Deceased)
- 1a. Elipangamuwe Gunawardena
- 1b. Elipangamuwe Udaya Kumara  
Ekanayake
2. Elipangamuwe Gironis  
(Deceased)
- 2a. Elipangamuwe Gunawardena
- 2b. Elipangamuwe Udaya Kumara  
Ekanayake  
All of Kandegama, Algama

**Plaintiffs**

Vs.

1. S. M. Alpenis  
(Deceased)
- 1a. Angoda Liyanage Lushiamy alias  
Angoda Liyanamudiyanselage  
Lushiamy  
Paraitikanda,  
Kandegama, Algama
- 1b. S. M. Wijesekara  
Parapitikanda,  
Kandegama, Algama
- 1c. S. M. Sirisena  
Rasnagala, Alawala
- 1d. S. M. Piyasena  
Audakanda, Alawala
- 1e. S. M. Wijesundara  
Karasnagala, Alawala

2. S. M. Karunaratne  
Kandegama, Algama

**Defendants**

**AND NOW**

Elipangamuwe Gunawardena  
Kandegama, Algama

**Substituted 1a, 2a Plaintiff – Appellant**

Elipangamuwe Udaya Kumara  
Ekanayake  
Kandegama, Algama

**Substituted 1b, 2b Plaintiff – Appellant**

**Vs.**

1. S. M. Alpenis  
(Deceased)
- 1a. Angoda Liyanage Lushiamy alias  
Angoda Liyanamudiyanselage  
Lushiamy  
Paraitikanda,  
Kandegama, Algama
- 1b. S. M. Wijesekara  
Parapitikanda,  
Kandegama, Algama
- 1c. S. M. Sirisena  
Rasnagala, Alawala
- 1d. S. M. Piyasena  
Audakanda, Alawala
- 1e. S. M. Wijesundara  
Karasnagala, Alawala
2. S. M. Karunaratne

Kandegama, Algama

**Defendant – Respondents**

**BEFORE: M.M.A. Gaffoor J.**

**S. Devika De Livera Tennekoon J.**

**COUNSEL: W.Dayaratne P.C. with R.Jayawardena for the substituted  
1(a) 1(b) 2(a) and 2(b) Plaintiff Appellants**

**Amrith Rajapakshse with Buddhika Jayaweera for the  
Defendent Respondents**

**ARGUED ON: 02.03.2017**

**WRITTEN SUBMISSIONS – Plaintiff – Appellants- 10.07.2015**

**Defendant – Respondents– 24.07.2015**

**DECIDED ON: 06.07.2017**

**S. Devika De Livera Tennekoon J.**

The Plaintiff – Appellants (hereinafter referred to as the Plaintiffs) instituted action in the District Court of Kegalle by plaint dated 28.06.1976 and subsequently filed amended Plaint dated 28.07.1986 seeking *inter alia*;

- a) A declaration of title stating that the Plaintiffs are the absolute owners of the land morefully described in the 1<sup>st</sup> and 2<sup>nd</sup> Schedule of the Plaint,

- b) A declaration that the Plaintiffs are the absolute owners of Lot B which has been marked in Plan No. 770 prepared by Licensed Surveyor C. Kurukulasooriya,
- c) To eject the Defendants and all those who are holding under them and to restore the Plaintiffs to the possession of Lot B,
- d) Damages from 28.06.1976 till the Plaintiffs are placed in property of the said Lot.

The Defendants contended that corpus was a part of the land called "Welikumbura Watte Hena" described in the schedule to the Answer, which belonged to the 1<sup>st</sup> Defendant under and by virtue of Deed No. 12596 dated 27.11.1936 and by long exclusive possession and prayed for a dismissal of the action of the Plaintiffs.

The Plaintiffs took out a Court commission which was prepared by Licensed Surveyor C. Kurukulasuriya Plan bearing NO. 770. The trial commenced and 9 issues were raised on behalf of the both parties on 01.03.1989.

The learned Additional District Judge by her Judgment dated 06.10.1999 dismissed the action of the Plaintiffs on the basis that the Plaintiffs had failed to prove title to the corpus and further that the Defendants had acquired prescriptive title to the corpus on the basis that the corpus formed part of a larger which belonged to the Defendants.

Being aggrieved by the said judgement the Plaintiffs preferred this instant application to *inter alia* set aside the said judgment dated 06.10.1999 on the basis *inter alia* that the learned Trial Judge had erred in law in determining that the Plaintiffs have not proved their case although they have failed to produce

document marked P1, which is the final decree of DC Kegalle Case No. 14930 and Plan bearing No. 915 depicting the corpus as Lot 4.

Firstly, it is clear that the Plaintiffs have failed to produce material documents to prove their case. This is adverted to by the learned District Judge in judgment dated 06.10.1999.

In a *Rei Vindicatio* action it is trite law that the burden of proving title to corpus is on the person asserting same. Admittedly, the Plaintiffs have failed to produce material documents to establish title to the corpus. The Plaintiff contends that the learned District Judge had erred in law by not complying with the provisions of Section 114(2) of the Civil Procedure Code and refers to the case of *Podiralahamy Vs. Ran Banda* (1993) 2 SLR 20 where it was held that there is a duty on Court to take the documents tendered and marked at the trial to its custody and keep them filed of record and that documents marked in evidence become part of the record.

On an examination of the evidence placed before the trial Court it is observed that the Plaintiffs has failed to produce fundamental documentary evidence to substantiate their contention and as correctly noted by the learned District Judge in her judgment dated 06.10.1999.

The said judgement correctly refers to the fact that the Plaintiff has failed to produce the final decree in District Court Kegalle Case No. 14930 and Plan bearing No. 915 and further the learned additional District Judge notes that although reference is made to case bearing No. 1213 the Plaintiffs have failed to produce this document.

As admitted by the 1<sup>st</sup> Plaintiff in evidence in chief the final decree in District Court Kegalle Case No. 14930 had been handed over to his proctor and the proctor had misplaced it. He further states that when he attempted to obtain a certified copy of the decree from Court, the Registrar had informed them that the case record could not be found. This is collaborated by the evidence of the 1<sup>st</sup> Plaintiff's son who acknowledges same in cross examination.

It is further evident that although the Plaintiffs contend that this fundamental document relating to the title of the Plaintiff was lost as aforementioned the Plaintiffs have failed to support this contention with the required evidence and as such this Court finds that the learned Additional District Judge was correct in determining that the Plaintiffs have failed to prove their case.

The case of Podiralahamy Vs. Ran Banda (1993) 2 SLR 20 relied by the Plaintiffs concerns documents marked and produced in Court and documents on which evidence has been led without any objection from the opposing party i.e. admitted by the parties and such must be distinguished from the instant case.

Secondly, the learned Counsel for the Plaintiff is of the view that the learned District Judge erroneously answered issues No. 8 and No. 9 in favour of the Defendants without evidence been led before Court concerning same. It is, however, observed that the learned District Judge had correctly evaluated the evidence placed before Court and specifically referred to Deed bearing No. 12596 dated 27.11.1936 marked as V1 by the 2<sup>nd</sup> Defendant by which his father, the 1<sup>st</sup> Defendant, had purchased an undivided half share of the land called "Welikumbura Watte Hena" and the learned Trial Judge has satisfied herself as to the boundaries of the said Deed in comparison to the corpus and thereafter

determined that issues No. 08 and No. 09 must be answered in favour of the Defendants.

Considering the above this Court finds no reason to interfere with the findings of the learned Additional District Judge dated 06.10.1999 and as such the instant Appeal is dismissed without costs.

*Appeal dismissed.*

Judge of the Court of Appeal

**M.M.A. GAFFOOR J**

I Agree.

Judge of the Court of Appeal