

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

1. Thalagaharalage Bandara Menike of  
Thalagama, Mahakelwela.
2. Udagedara Chandrawathie Menike of  
Thalagama, Mahakelwela.
3. Padamawathie Menike of Thalagama,  
Mahakelwela.

**Plaintiffs**

Vs.

CA 247/99 (F)

D.C. Kegalle Case No. L 3651

Peramunalarage Loku Banda of Thalagama,  
Mahakelwela.

**Defendant**

AND NOW BETWEEN

Peramunalarage Loku Banda of Thalagama,  
Mahakelwela.  
(deceased)

**Defendant - Appellant**

P. R. Banda, Ehalagama, Makehelwala,  
Kegalle.

**Substituted - Defendant - Appellant**

Vs.

1. Thalagaharalage Bandara Menike of Thalagama, Mahakelwela.
2. Udagedara Chandrawathie Menike of Thalagama, Mahakelwela.
3. Padamawathie Menike of Thalagama, Mahakelwela.

**Plaintiff – Respondents**

**BEFORE: M.M.A. GAFFOOR J**

**S. DEVIKA DE LIVERA TENNEKOON J**

**COUNSEL: Srihan Samaranayake for the Substituted Defendent Appellant**

**K.G.Jinasena for the Plaintiff Respondents**

**ARGUED ON: - 01.03.2017**

**WRITTEN SUBMISSIONS – 06 .07 2017 -**

**DECIDED ON: 21.09.2017**

**S. DEVIKA DE LIVERA TENNEKOON J**

The Plaintiff – Respondents (hereinafter referred to as the Plaintiffs) instituted action in the District Court of Kegalle by Plaint dated 20.06.1986 against the Defendant – Appellant (hereinafter referred to as the Defendant) for *inter alia*;

- a) A declaration that the Plaintiff is the owner of the land described in the Schedule to the Plaint,
- b) For a declaration that the Defendant has no ownership or possession of the said land.
- c) To recover Rs. 1,000/- from the Defendant for the damages caused to him making aggressions claiming the ownership and possession of the corpus, during the period from 30.05.1986 – 11.06.1986 and Rs. 100 per month thereafter.

The Plaintiffs moved to file an amended Plaint dated 12.06.1990 and in reply the Defendants filed answer in February 1989 praying for *inter alia* a dismissal of the Plaint.

When the matter was taken up for trial on 14.02.1992 no admissions were recorded by the parties and the Plaintiffs raised issue Nos. 01 – 12 and the Defendant raised issue Nos. 13 – 18. The Corpus was depicted in Plan bearing No. 650 prepared by Court Commissioner, Licensed Surveyor, M. R. Senviratne dated 22.12.1987 as Lot 2.

The evidence of the said Licensed Surveyor, M. R. Seneviratne, the 2<sup>nd</sup> Plaintiff, one Randenigala Gedara Dharmadasa, Clerk Registrar of Lands, Kandy was led on behalf of the Plaintiff's and documents P1 – P10(a) were marked. The Defendants gave evidence on his behalf and marked documents V1 – V4.

In brief the case for the Plaintiff is that they are the lawful owners of the land described in the schedule to the Plaint and that although the Defendant has no title

or possession of the corpus the Defendant had at several times attempted to possess the Corpus by force which led to the institution of action bearing No. 5677 in the Primary Court by virtue of a Section 66 application which was settled on the basis that the Defendant should resolve the said dispute by way of a civil action. However, the Counsel for the Plaintiff contends that even after such an agreement the Defendant had not taken steps to resolve this matter by way of civil litigation but continued to harass the Plaintiffs which resulted in the Plaintiff instituting proceedings which are now before this Court.

The case for the Defendant is that the Defendant possessed the corpus as morefully described in the schedule to the Answer for more than 10 years and claims title from one Talagaharalage Lokumanike and Talagaharalage Punchibanda and further claims prescription over the corpus.

The parties filed their respective written submissions and the learned District Judge delivered judgment dated 05.01.1999 in favour of the Plaintiffs. The learned District Court Judge came to the said finding on the basis *inter alia* that;

- a) The Plaintiffs have proved their title to the satisfaction of Court on the basis of deeds marked as P2, P3, P4, P5, P6, P7 and P8,
- b) The Defendant has failed to identify the corpus to the satisfaction of Court on the basis of deeds marked V1, V2 and V3.

Being aggrieved by the said judgment the Defendant has preferred the instant appeal on the grounds that the Plaintiffs have failed to identify the corpus and have failed to prove title to same. The Defendant further contends that the learned

District Court Judge has erred in awarding damages to the Plaintiffs as the Plaintiffs have failed to prove damages to Court.

It is pertinent to note that the evidence of the Court Commissioner, Licensed Surveyor, M. R. Seneviratne states that there are no boundaries in between Lot 1 and Lot 2 of Plan bearing No. 650 prepared by Licensed dated 22.12.1987. As correctly submitted by the Counsel for the Plaintiffs in a *Rei Vindicatio* action the Plaintiff has the burden to identify and prove title to the corpus.

The title of the Plaintiffs stems from deed bearing No. 4460 dated 11.01.1944 (marked as P3). The learned Judge has correctly considered the description of the boundaries in the said deed and observed that the land described in the schedule to the amended *Plaint* is one and the same.

The said deed states the name of the land as 'Imbul Palaye Hena saha Watta'. The Defendant's contention is that the corpus is named 'Galgode Hena alias Udagewatta Hena'. As prudently noted by the learned District Court Judge the crux of the matter to be determined by Court is whether the corpus, Lot 2 of Plan bearing No. 650 prepared by Licensed Surveyor, M. R. Senviratne dated 22.12.1987 is 'Imbul Palaye Hena saha Watta' or 'Galgode Hena alias Udagewatta Hena'.

This Court finds that the learned District Court Judge has carefully examined the boundaries of the deeds and found that the land named 'Galgode Hena alias Udagewatta Hena' is situated east of 'Imbul Palaye Hena saha Watta'. Further it was determined that as per Plan bearing No. 650 dated 22.12.1987 the South

boundary is noted as 'Galgode Hena' and 'Galgode Hena' is depicted East of Lot 2 and therefore that the said Lot 2 could never be 'Galgode Hena. Therefore, it can be seen that the learned District Court Judge has considered all the evidence carefully relating to the identity and pedigree of the Corpus and has correctly held in favour of the Plaintiffs.

This Court agrees with the finding of the learned District Court Judge and finds that the Plaintiff has sufficiently identified the corpus and further proved title to same. In relation to the award of damages this Court finds that the said award is not excessive and an award of Rs. 1,000/- from the Defendant for the damages caused to the Plaintiff making aggressions claiming the ownership and possession of the corpus, during the period from 30.05.1986 – 11.06.1986 and Rs. 100 per month is found to be reasonable.

For the reasons morefully described above this Court finds no reason to disturb the findings of the learned District Judge dated 05.01.1999. Therefore this Appeal is dismissed with costs set at Rs. 15,000/-.

*Appeal Dismissed.*

Judge of the Court of Appeal

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

I Agree.

Judge of the Court of Appeal