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

C.A. No:779/97(F)

D.C. Kegalle Case No:2335/L

Kuda Kandayalegedara Magilin

Selawa

Hemmathagama

Plaintiff

Vs.

Peris Fernando

Selawa

Hemmathagama

Defendant

And now between

Peris Fernando

Selawa

Hemmathagama

Defendant-Appellant

Kuda Kandayalegedara Magilin

Selawa

Hemmathagama

Plaintiff-Respondent (Deceased)

Pattiyagamayale Gedara Sunil Premarathna

No:132/1

Leelagama

Ussapitiya

Substituted Plaintiff-Respondent

BEFORE : M.M.A. GAFFOOR J AND

S. DEVIKA DE L. TENNEKOON J

COUNSEL : M.D.J. Bandara for the Defendant-Appellant

Mahinda Nanayakkara for the Substituted Plaintiff-Respondent

ARGUED ON : 19.05.2017

WRITTEN SUBMISSIONS
TENDERED ON : 13.07.2017 (Substituted Plaintiff-Respondent)
08.09.2017 (Defendant-Appellant)

DECIDED ON : 16.11.2017

M.M.A. GAFFOOR J

This appeal emanates from an appeal of a judgment given by the learned District Judge of Kegalle in respect of a plaint that had been filed by the plaintiff-respondent seeking, that he be declared the absolute owner of the property described in the schedule to the plaint, and for ejectment of the defendant and his agents. It is also to be noted that the plaintiff-respondent sought damages estimated at Rs.3000 from the defendant. The above plaint had been amended by the amended plaint dated 19.10.1987. The defendant has filed answer and the case proceeded on issues raised at the trial dated 3rd April 1990. Issues No. 1 to 9 were raised by the respondent and issues Nos. 10-23 were raised by the appellant.

The appellant gave evidence and called a witness Rev. Welihene Dhammapaha Thero and closed the case by marking documents V1 to V7. The plaintiff-respondent gave evidence and marked documents P1 to P8. The learned District Judge on 7th October 1997 delivered the judgment granting relief to the plaintiff-respondent. Being aggrieved by the said judgment the defendant-appellant had lodged this appeal in this Court. (The learned District Judge had considered the evidence and the documents marked by the respective parties and had analyzed the evidence adduced before her.)

The plaintiff in the original Court adduced evidence and said that the original owner of the land in dispute Galamunalage Ukku and the said Ukku had transferred the said property to one Pina. Pina subsequently had transferred the ownership of this land by Deed bearing No.5379 dated 22nd May 1974 to the plaintiff-respondent Kuda Kandalagedara Magilin Silva. The said Deed had been marked as P1. The land described in the schedule is referred in the third schedule as Gallena Mulla Hena in extent 3 Pela of paddy. The defendant-appellant had contested the identity of the corpus and had tried to show that the plaint does not describe the land in dispute precisely. The Preliminary Survey Plan bearing No.832 was marked as X1 and the corresponding report as X1. The contention of the defendant-appellant in the original Court was that the extent of the land is 3 acres and ¾ acre according to

the above said Plan marked as X and his contention was that the extent according to the plaint 2 Acres, 1Rood, 6 Perches.

The learned District Judge had very correctly analyzed the above contention and had observed that 3 boundaries marked in the above Plan marked X are compatible with that of the plaint and therefore the contention regarding the identity of the corpus cannot be contested.

The plaintiff-respondent had marked 8 documents. P1 Deed bearing No.5379, P2 Notice of assessment of standard crop small holdings for the year ending 1935, P3 Notice of assessment of standard crop small holdings for the year ending 1936, P4 a similar document for the year 1938. All P2 to P4 indicate the proprietor/lessee as Pina. Document marked P6 pertains to a land dispute pertaining to a breach of the peace where the OIC of Aranayaka Police had filed information in which the first party is the plaintiff-respondent and the second party is the defendant-appellant. According to the journal entries the parties had agreed to file action in the relevant Civil Court to vindicate their rights and the defendant-appellant asserts that he was given possession in the said land in dispute. But the learned District Judge had very clearly stated – "තමන් මෙම ඉඩම බුක්ති විඳින බව විත්තිය කයා සිටියත්, විත්තියට ඒ අකාරයෙන් බුක්ති විඳීමට අවස්ථාව ලැබී තියෙන්නේ මෙම ආරවුල සම්බන්ධයෙන් පැවති මහේස්ත්‍රාත් අධිකරණ තීන්දුවෙන් බව පැහැදිලි වේ. මහේස්ත්‍රාත් අධිකරණ

කීන්දුව පරිදි ආරවුලට ලක්වී ඇති ගසේ වටිනාකම රුපියල 835.75 ක මුදලක් එම නඩුවේ දෙවන පාර්ශවකරු වූ මෙම නඩුවේ විත්තිකරු තැන්පත් කර ඇති අතර සමථය වූ දින සිට මාස තුනක් තුල දිසා අධිකරණයේ සිවිල් නඩුවක් පැවරීමට විත්තිකරු එකඟ වී තිබේ. ලී ඉරීම් සඳහා ගිය වියදම වන රුපියල් 415/- ක මුදල දිසා අධිකරණයේ කීන්දුව අනුව සිදු විය යුතු බවත්, මාස තුනක් තුළ පළවෙනි පාර්ශවකරු දිසා අධිකරණයේ සිවිල් නඩුවක් නොපැරුව හොත් ඉඩම සැලව විහාරයට අයිති යයි පිලිගන්නා බවත් ය. විත්තිකරු වැඩිදුරටත් සාක්ෂි දෙමින් මෙම ඉඩමේ වගාව තමාත් තමන්ගේ පියා විසින් කරනු ලැබූ බවටත් කියා සිටියේ ය. විත්තිකරු වැඩිදුරටත් සාක්ෂි දෙමින් මහේස්ත්‍රාත් අධිකරණ නඩුවේ දී තමන්ට බුක්තිය ලැබුනු බව කියා ඇතත් එවැනි නියෝගයක් මහේස්ත්‍රාත් අධිකරණයේ දී ඇති බව ලියවිලි වලින් පෙනී යන්නේ නැත"(Page 342 of the appeal brief). The defendant-appellant had marked V2 a Plan bearing No.94694, but the learned District Judge had very clearly analyzed and had come to the conclusion that this plan does not throw any light on the disputed land and that she had very correctly said – "තවද මෙම විෂය වස්තුව සැලව විහාරයට අයිති බව විත්තිය කියා ඇතත් එකි විහාරස්ථානයෙන් විත්තිකරුට විෂය වස්තුව බදු දීමක් සිදු වූයේ ද යන්න සම්බන්ධයෙන් හෝ එවැනි ලියවිල්ලක් හෝ ඉදිරපත් කර නැත. විත්තිය වෙනුවෙන් මල්වතු මහාවිහාරයේ ඉඩකඩම් භාරකාරත්වය පිළිබඳව කටයුතු කරන ස්වාමින් වහන්සේ සාක්ෂියට කැඳවා සිටියේ ය. එකි ස්වාමින් වහන්සේ සාක්ෂි දෙමින් වී.2 වශයෙන් ලකුණු කර අංක 94694 දරන පිඹුර ඉදිරිපත් කර ඇති අතර මෙම පිඹුරේ ගංතුනයාහේන කුමන ස්ථානයට

ඇතුලත් වන්නේ ද යන්න සම්බන්ධයෙන් තෝරා බේරා ගැනීමට හැකි සාක්ෂියක් නැත. අංක 94694 දරන මිනින්දෝරු දෙපාර්තමේන්තුවෙන් සකස් කරන ලද පිඹුර තුලට විෂය වස්තුව ඇතුලත් වී ඇතිද යන්න පිළිබඳව අධිෂ්ඨාපිත කරනල පිඹුරක් ද ඉදිරපත් කර නැත. සැලව විභාරයට නියමකර ඇති දේපල සම්බන්ධයෙන් ලැයිස්තුවක් වී.3 වශයෙන් ලකුණු කර ඇති අතර, එකී වී.3 ට ගංතුනයාහේන ඇතුලත්වන බව සඳහන්කර තිබේ" (Page 343 of the appeal brief). Furthermore, the learned District Judge had observed that no superimposition had been done by the defendant-appellant. In this context the vital documents marked by the defendant does not even prove on the balance of probability that the disputed land was possessed by him.

After analyzing the said evidence the learned District Judge had come to the correct conclusion and held with the plaintiff-respondent. As contended by the said plaintiff-respondent the learned District Judge had the opportunity of hearing and seeing the witnesses before her.

The most recent judgment in this respect is ***Alwis vs. Piyasena Fernando*** 1993 1 SLR page 119, His Lordship G.P.S. De Silva as he then was held that "it is well established that the findings of

primary facts by a trial judge who sees and hears the witnesses are not likely to be disturbed in appeal". In the circumstances, we see no reason to interfere with the judgment of the learned District Judge. Hence, the appeal stand dismissed.

JUDGE OF THE COURT OF APPEAL

S. DEVIKA DE L. TENNEKOON J

I agree.

JUDGE OF THE COURT OF APPEAL