

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

Warusamanapedige Hemachandra
of "Sinhagiri" Kaudaulla, Molagoda.

Substituted-Plaintiff- Appellant

C.A.Appeal No.243/99 (F)
D.C.Kegalle No.3819/L.

Vs

1. M.Gunasekera of Bandara
Mawatha, Kegalle.

1st Defendant-Respondent.

2.Karuna Pedige Premasir
(Deceased)

2a. Karuna Pedige Suresh Anurahda

2b. Suresh Duminda Premasiri

2c. Kalum Suranga

2d. Tharaka Premasiri

2e. Ranhoti Pedige Chandralatha

Substituted 2a to 2e
Defendant-Respondents

BEFORE : M.M.A.Gaffoor,J. and
Devika de L.Tennekoon,J.

COUNSEL : D.Jayasinghe with Ganga Dissanayake
for the Substituted-Plaintiff-Appellant.

Dr.Sunil Cooray with Sudarshani Coorary
for the 1st and 2a-2e Defendant-
Respondents.

ARGUED ON : 12/07/2017

DECIDED ON : 06/12/2017

M.M.A. Gaffoor J

This is an action filed by the Plaintiff-Appellant filed
against the Defendant-Respondents pleaded in her plaint and

subsequently amended plaint that the 1st Defendant namely M.Gunasekera had encroached onto the land of the Plaintiff by South and the 2nd Defendant had encroached the land of the plaintiff's land by North.

In original Court the Plaintiff pleaded a declaration of title for both blocks of land Lots 1 and 3. Defendant had filed answer and pleaded that the 1st Defendant is in possession of the southern part by leave and license of one Sirisoriya and Dissanayake who had brought the rights of the children of Sethi the Defendant pleaded that he is a licensee of Sirisoma where Sirisoma had brought from children of Sethi had inherited rights of Sedara. Sedara was granted Lot No.5 of plan No. 1176 dated 19.02.1955 made by J. Aluvihare LS which is the final plan in D.C. Kegalle Partition action 8890/P a commission had been issued in this case and plan No. K 2649 had been submitted by M.B. Ranathunga License Surveyor dated 28.11.1989 (page 303-271) of the appeal brief.

This disputed lots in the said plan are Lots 1 and 3 . The allegation of the plaintiff is that lot 1 is unlawfully possessed by the 2nd Defendant and lot 3 is possessed by the 1st Defendant as per the final decree of the partition action above mentioned lot 1 of plan No. K2649 which is lot 2 of plan

No.1176 was granted to Sethi who had been the 1st defendant in the partition action. Lot 3 of plan No.k2649 namely lot 5 of plan No.1176 was granted to Sedara which later devolved on his only daughter Sethi. The contention of the Defendant-Respondent is that the plaintiff cannot claim any rights or title as the rights have come to the parties by way of a partition decree. *A right in rem.*

The contention of the plaintiff is that the 2 defendants entered forcibly and dispossessed her in mid - 1986. It is also observed that the owners Sirisooriya Dissanayake and Sirisoma had not litigated their rights in this case in point. This is a requirement under Section 18 of the Civil Procedure code, it is the position of the Plaintiff- Appellant that from the time of the final decree in D.C. Case 8890 entered in 1955 the Plaintiff and her husband and family members had possessed the disputed lands till 1986 and have acquired prescriptive rights to the said lands against all others. It is to be noted a prescriptive rights cannot be claimed secretly. One has to come within the main ingredients of prescription enshrined in the Prescription Ordinance in order to legally become entitled to as Prescription owners.

It is also further contended by the Plaintiff-Appellant that the learned District Judge had failed to comply with Section 187 of the Civil Procedure Code to answer all the issue, as he had not answered issues No.15 and 16. As regards to the framing of issues there is a series of judgment which spells out that District Judge is bound to answer all the issues and these answers has to be precise and comprehensive. This obligation is enumerated in section 187 of the Civil Procedure Code.

This has been reiterated in **Mutukumarasinghe V. Gomez 1994 (3) SLR 101** in the case of **Mckinnon Mackenzie V. Grindlays Bank Ltd.1986 (2) SLR 272** observed thus,

“The Privy Council has stressed that the case must be tried upon the issues on which the right decision of the case appears to the Court to depend”

Taking into consideration the above submission leaving aside all the other submissions there is a fatal error on the part of the learned District Judge for not answering issues No.15 and 16. Therefore the judgment delivered in favor of the Defendants cannot stand as the statutory provisions had not

been correctly followed. Therefore the judgment of the learned Additional District Judge delivered on 18.1.1999 is set aside and Plaintiff-Appellant's appeal is allowed.

JUDGE OF THE CORUT OF APPEAL

S.Devika de L.Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL