

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

C. A. Appeal No. 358/99 (F)

D. C., Puttalam Case No. 468/L

1A. Mohamed Ismail Mohamed
Sabri,
No. 16B, 2nd Lane, Dehiwala.

1B. Mohamed Ismail Sadhana,
No. 14, Dariel Close, Slough, SLI
5FH, United Kingdom

By her Power of Attorney Holder
Mohamed Ismail Mohamed
Sabri,
No. 16B, 2nd Lane, Dehiwala.

**SUBSTITUTED 1ST PLAINTIFF-
APPELLANT**

02. Mohamed Casim Ganimathul
Fahira
No. 39, 3rd Cross Street,
Puttalam

VS.

01. Abuthalib Sithy Sarena
(Deceased)

1A. Fathima Maheesa,
No. 25, K. K Street,
Puttalam

02. Abuthalib Sithy Sainambu
No. 35, 3rd Cross Street,
Puttalam

03. A. K. Abuthalibu *(Deceased)*

3A. Mohamed Munas
Abuthalibu,
Anuradhapura Road,
Puttalam.

**1A, 2 & 3A DEFENDANT-
RESPONDENTS**

Before : **M. M. A. Gaffoor, J**

Counsel : K. V. S. Ganesharajan with E. Rajakulendra for the
Plaintiff-Appellants

C. Ladduwahetti for the Substituted 1A, 2nd and 3A
Defendant-Respondents

Written Submission

filed on : 07.09.2018 (by both parties)

Decide on : 27.02.2019

M. M. A. Gaffoor, J.

This refers to an appeal from the judgment of the Learned District Judge of Puttalam in respect of a Land action bearing case Number 478/L.

The Plaintiffs – Appellants (hereinafter referred to as the Plaintiffs) instituted this action seeking for an injunction restraining the Defendant-Respondents (hereinafter referred to as the Defendants) and all those people who claim through and under them or on their behalf, from using the right of way and access and declaration of title to the property described in the schedules A and B absolutely.

The Defendants claimed that the Plaintiffs wrongfully and unlawfully obstructed the right of way and they are entitled to the right of way by necessity.

The Learned District Judge of Puttalam who heard the evidence and in his judgment delivered on 14th December 1998 urged that, the Defendants has acquired prescriptive title to the landmarked 'Z' shown in the plan No. 447 and the right of way and that they entitled to have access through A, B, C shown in Plan No. 447 from 3rd Cross Street. Finally he dismissed the case.

The Plaintiffs being aggrieved with the judgment of the Learned District Judge appealed and prayed to set aside the judgment dated 14.12.1998.

The Plaintiffs contented that according to Deed of Gifts bearing No. 2992 dated 02.03.1962 attested by H.S. Ismail Notary Public of Puttalam and No. 5786 dated 11.09.1980 attested by Sinna Meerapillai Mohamed Ibunu Notary Public of Puttalam that the 1st Plaintiff is entitled to the premises described in the Schedule A to the plaint and the 2nd Plaintiff is entitled to the schedule B to the plaint.

Further, the Plaintiffs contented that according to the survey Plan No. 447 lot X and Lot Y belongs to the 1st and 2nd Plaintiffs respectfully and lot Z belongs to the Defendants. In order to enter the Lot X and Y the right of way starts from the point A and then to B and in order to enter Lot Z which belongs to the Defendants there is another point E to D. Further, the Plaintiffs admitted that they had made a clear fence between the land in front of Lot X, Y, and Z is a zinc fence along to the point C.

The Defendants pleaded that the 3rd Defendant who is the father of the 1st and 2nd Defendants purchased the Lot Z upon the Deed Nos. 9559 and

9560 dated 12/02/1983 attested by S.M. Aboothahir Notary Public of Puttalam in high regard of the 1st and 2nd Defendants and he divided the house in to two blocks and given the southern block to the 1st defendant and the Northern block to the 2nd defendant. According to deed No. 9559 the access to the Northern block the Western boundary is shown as pathway being the common means of access.

The Defendants further submitted that the Plaintiffs on or about 14th March 1983 wrongfully and unlawfully obstructed the said right of way and the Defendants and their predecessors were in use of the same right of way over 50 years and claimed the prescriptive title to the right of way.

It is noted that the Defendants purchased the premises according to Deeds Nos 9559 and 9560 dated 12.02.1983 and the schedule of the deeds provided the pathway for common means of access and then the Plaintiffs had made the fence to obstruct the right of way of the Defendants on or after 14.03.1983. It is clear though the Defendant had the common means of access granted by way of Deed No 9559 but it is intentionally restrained by the conduct of the Plaintiffs.

It is observed that the plaintiffs pleaded that the conducts of the Defendants had caused loss and damages to them, but the Plaintiffs had failed prove the alleged loss and damages suffered by them before the trial Court.

It is important to consider that there was a complaint lodged at the Police Station of Puttalam by the Defendants and transferred to the

respective Primary Court under case No. 7122/P upon the unlawful obstruction by the plaintiffs to use the common pathway. The primary court had ordered in favour of the Defendants.

I agree with the same view of the Learned District Judge of Puttalam that the Defendant had prescribed the said right of way and they are entitled to the right of way as it exists now.

I am of the firm view, that the Learned District Judge has delivered his judgment after due consideration of all relevant and attended material facts thereto. Therefore, I see there is no justifiable reason to interfere with the judgment of the Learned District Judge of Puttalam.

For the foregoing reasons, I dismiss the appeal of the Plaintiffs – Appellants with cost.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL