

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

S.K. Wimalawathi,  
H. Sunil Wickramaratne,  
both of Akkara 500, Hingure Ara,  
Embilipitiya.

**C.A. Appeal No. 407/2000 (F)**  
**D.C. Embilipitiya No. 4756/L**

**1<sup>st</sup> and 2<sup>nd</sup> Defendants-**  
**Appellants-Petitioners**

V.

2. Seetha Senadheera Wanigatilaka,  
(Deceased)

2A & 4A. Akila Lakshan Wickramasinghe  
of No. 897, New Town, Embilipitiya.

3, 4B. Rupa Senadheera Wanigatilaka

4. Thusantha Senadheera Wanigatilaka  
all of "Thilakawasa", Embilipitiya  
(Dead)

**Plaintiffs-Respondents-**  
**Respondents**

**BEFORE**

: **JANAK DE SILVA, J**  
**K.PRIYANTHA FERNANDO, J**

**COUNSEL** : Athula Perera with Vindya Divulwatta for  
1<sup>st</sup> and 2<sup>nd</sup> Defendants-Appellants-  
Petitioners  
Anuradha Dharmaratne with Srihan  
Samaranayake for the Plaintiffs-  
Respondents- Respondents.

**ARGUED ON** : 18.03.2019

**WRITTEN SUBMISSIONS**

**FILED ON** : 13.03.2019- by  
Defendants-Appellants-Petitioners  
14.03.2019- by  
Plaintiffs-Respondents-Respondents

**JUDGMENT ON** : 06.06.2019

**K. PRIYANTHA FERNANDO, J.**

01. Plaintiffs Respondents (Plaintiffs) filed action in the District Court of Embilipitiya on 21.09.1993 praying for a declaration of title to the land described in the schedule of the plaint, ejectment of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from the land and for damages.
02. 1<sup>st</sup> and the 2<sup>nd</sup> Defendants filing their answer prayed for a dismissal of the plaint, declaration that they are the owners of the land in suit and that they have prescriptive rights to the land.

03. After trial the Learned District Judge delivered the judgment in favour of the Plaintiffs. Being aggrieved by the said judgment, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed this appeal.

**Plaintiff's case**

04. According to the Plaintiffs, the State has given a grant to one Lewis Appuhamy in extent of 1 rood and 8 perches. The said Lewis Appuhamy's rights were devolved to S.D. Wanigathilake. Further, 1 Acre and 3 perches was given to S.D. Wanigathilake by the Land Reform Commission. After the death of Wanigathilake, his rights were devolved on to the Plaintiffs. Plaintiffs have prepared the plan in respect of the land in suit on 02.10.1990, which was marked as P1. Plaintiffs further pleaded that they had entrusted the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to look after the land. On or about 23.07.1993 Defendants have disputed the rights of the Plaintiffs to the land.

**Defendant's case**

05. In their answer Defendants submitted that the 1<sup>st</sup> Plaintiff and the mother of the 1<sup>st</sup> Defendant are sisters and that both sisters cohabited with S. Wanigathilake. Therefore, 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> Plaintiffs and the 1<sup>st</sup> Defendant are children of the same father. The day the 1<sup>st</sup> Defendant married, on 29.10.1974, said Wanigathilake has permitted her and her husband the 2<sup>nd</sup> Defendant to reside and possess the land in suit. Defendants further averred that the land in suit is a portion of the land called *Higure Ara Hen Yaya*. Defendants have prescriptive rights to the land and Plaintiffs have filed this action to take revenge from them due to an assault that had taken place in June 1993.

06. Defendants further pleaded that there was a dispute over the land with a third party named D.K. Weerasinghe and that in case No.13924 in Magistrates Court Embilipitiya, possession of the Defendants was confirmed. Defendants claimed prescriptive rights over that land.
07. Counsel for the Appellants submitted that it is imperative for the Plaintiff who seeks a declaration of title to a land to identify the land. Contention of the Appellants is that the Plaintiffs have failed to identify the land that they seek declaration of their title.
08. Counsel for the Respondents submitted that there was no dispute in identity of the corpus at the trial.
09. *“It is trite law that the identity of the property with respect to which a vindicatory action is instituted is as fundamental to the success of the action as the proof of the ownership (dominum) of the owner (diminus). ... The identity of the subject matter is of paramount importance in a rei vindication action because the object of such an action is to determine ownership of the property, which objective cannot be achieved without the property being clearly identified....”*  
  
*( Latheef and another V. Mansoor and another 2011 BASL Law Journal Page 189).*
10. As submitted by the counsel for the Appellants, Plaintiffs at the trial have raised issue No.08 on the identity of the corpus. Contention of the Plaintiffs is that Lewis Appuhamy got a land in extent of R:1 and P:8 as a grant from the State as per P2 which is depicted in plan P2a, which devolved to the Plaintiffs. As submitted by the counsel for the Appellants, said plan P2a was not superimposed on the plan P1 to show that the land Lewis Appuhamy got

as a grant is included in P1. Even if it is assumed that the land Lewis Appuhamy got in P2a is the land shown as lot No.3 in P1 considering the canal in the eastern boundary, the extent of the land does not tally. The extent in Lot No.3 in P1 is R:1 P:28.8 and the extent in the land shown in P2a is R:1 P:8. There is a 20 perch difference that is not explained.

11. Contention of the Plaintiffs at the trial was that their predecessor S.D. Wanigathilake got a land with the extent of 1 acre and 2 perches from the Land Reform Commission. It was evident that lots 52, 53 and 54 of plan කැ32 dated 07.04.1978 was given to Wanigathilake. However, again, the Plaintiff has failed to superimpose the plan කැ32 on plan P1, which was the easiest way to identify the land accurately. Witness Mangalika Thisera, a clerk from the Land Reform Commission who testified on behalf of the Plaintiff conceded that plan marked P1 does not say that it reflects lots 52, 53, and 54 of plan කැ32. Witness also said that on the face of it she cannot say that plan P1 reflects lots 52, 53, and 54 of කැ32. She also said that she cannot say that the boundaries of the land depicted in P1 tallies with the boundaries of lots 52, 53 and 54 of plan කැ32.
12. In the above premise we find that Plaintiffs have failed to identify the land to which they claim title correctly. Therefore, the case of the Plaintiffs should fail on their failure to prove identity of the corpus.
13. Counsel for the Appellants submitted that the Plaintiffs have failed to establish their title to the land in suit. Counsel for the Respondents submitted that they have proved as to how the Respondents gained title from Wanigathilake and how Wanigathilake got title from the said grant from the State and from the Land Reform Commission.

14. In a Vindictory action, burden to prove title is on the Plaintiff. If the Plaintiff fails to prove title in himself, even though the Defendant has also failed to prove his title, Plaintiff's action will fail. (*De Silva V. Gunathilake* 32 N.L.R. 219, *Samarapala V. Jagoda* [1981] 1 Sri L.R.378).
15. It is the contention of the counsel for the Appellants that Plaintiffs have failed to prove that Lewis Appuhamy who got the State grant was Wanigaratne's father's brother as they claim. 2<sup>nd</sup> Plaintiff Seetha Senadheera Wanigathilake in her evidence failed to show that the said Lewis Appuhamy was her grandfather's brother and also that Plaintiffs father Wanigathilake inherited Lewis Appuhamy's property.
16. Plaintiffs also have failed to produce any notarial executed deed to prove that Wanigathilake got land in extent of 1 acre and 2 perches from Land Reform Commission. Documents marked P3, P3a and P3b are not sufficient to convey title. Witness Mangalika Thisera from L.R.C. in her evidence said that according to the files in the L.R.C, lots 52, 53 and 54 were given to Wanigathilake on a lease and not as outright transfer. She further said that the lease was for one year and that she could not give the dates that the lease expired. The ownership of the land remained with the L.R.C, she said. (Vide page 104 of the appeal brief).
17. Therefore, Plaintiffs have failed to establish their title to the land in suit and the appeal should succeed. Hence the application to lead fresh evidence in Appeal by the Appellants need not be considered.
18. At the argument of this appeal on 18.03.2019, counsel for the Appellants informed court that they would not pursue the cross claim.

Hence, the judgment of the learned District Judge is set aside. Plaintiff's action is dismissed.

Appeal allowed with costs.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**