

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

Madagamage Wijedasa,  
Madagama,  
Walawa,  
Amalanthota.  
Defendant-Appellant

**CASE NO: CA/1325/1999/F**

**DC HAMBANTOTA CASE NO: 1064/L**

Vs.

Somapala Pathirana  
Wanigasekera,  
No. 38,  
Chakindarama Road,  
Ratmalana.  
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Buddika Gamage for the Defendant-Appellant.  
Anandalal Nanayakkara for the Plaintiff-  
Respondent.

Decided on: 14.10.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action against the defendant in the District Court for declaration of title to the land described in the 1<sup>st</sup> schedule to the plaint, ejectment of the defendant from a portion of that land, which is described in the 2<sup>nd</sup> schedule to the plaint, and damages. The defendant filed answer basically stating that he is the tenant cultivator of the land. At the trial the only issue raised by the defendant is (a) as the value of the action has not been stated in the plaint and (b) as the land described in the 2<sup>nd</sup> schedule to the plaint is not a part of the land described in the 1<sup>st</sup> schedule to the plaint, the plaintiff cannot maintain this action. After trial, the learned District Judge entered Judgment for the plaintiff. Being dissatisfied with that Judgment, the defendant has preferred this appeal.

The argument of the learned counsel for the defendant before this Court is that the plaintiff has not proved (a) title to the property and (b) the land described in the 2<sup>nd</sup> schedule is a part of the land described in the 1<sup>st</sup> schedule to the plaint.

As the learned counsel for the plaintiff submits, in the facts and circumstances of this case, that argument is not entitled to succeed.

As seen from the complaint made by the defendant to the Commissioner of Agrarian Services, there is no issue with regard to the identification of the disputed portion of the land and the fact that the plaintiff is the landlord of the defendant.<sup>1</sup> The defendant has made that complaint against the plaintiff on the

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<sup>1</sup> Vide page 216 of the Brief.

basis that he is the tenant cultivator of the disputed paddyland under the plaintiff. As seen from the proceedings before the Commissioner of Agrarian Services, this complaint has later been withdrawn because of the instant case.<sup>2</sup> Hence the defendant is estopped in these proceedings from contesting the plaintiff's title to the land. (section 116 of the Evidence Ordinance)

At the trial the plaintiff has produced documents P1-P9 to prove his case. At the closure of the case for the plaintiff, no objection has been taken regarding proof of those documents. Hence all those documents become part of evidence without further ado.

The defendant's evidence runs into a few lines.<sup>3</sup> In evidence he has stated that (a) he does not know to whom this land belongs to, and (b) that he is not the owner of the land. The defendant's evidence in Court is fragile, contradictory and unreliable.

I see no reason to interfere with the Judgment of the District Court. The appeal is dismissed with costs.

Judge of the Court of Appeal

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<sup>2</sup> Vide page 219 of the Brief.

<sup>3</sup> Vide pages 132-133 of the Brief.