

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

Wipulasena Lawulupitiya,
Thalawattegedara,
Kalugamuwa.

1(a) and 2nd Defendant-Appellant

CASE NO: CA/644/2000/F

DC KURUNAGALA CASE NO: 3755/L

Vs.

Silpadipathiyalage Siriya,
Thalawattegedara,
Kalugamuwa.

Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Kumar Dunusinghe for the Defendant-
Appellants.

M.S.A. Sahed for the Plaintiff-Respondent.

Decided on: 13.12.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action against the defendants claiming a right of way to have access to his land over the land of the defendants, as depicted in Lots 1-3 in Plan No.91/263 marked P1. The defendants filed the answer seeking dismissal of the plaintiff's action. After trial the District Judge delivered the Judgment in favour of the plaintiff, except for damages. The District Judge decided that the said right of way shall be 12 feet in width. Being aggrieved by this Judgment, the defendants have preferred this appeal.

Plan No.91/263 was prepared for the purpose of this case.

The plaintiff purchased her land, namely, *Polkotuwa watta*, by deed marked P5 in 1981. The defendant purchased her land, namely, *Koangahamula watta/Kahalagoda watta*, by deeds marked P7 and P8 in 1986.

The complaint of the plaintiff is that the road depicted in Plan No.91/263 was already there when the plaintiff purchased her land; but after the defendant purchased her land, she obstructed the plaintiff using that road.

The police complaint made in 1989 has been marked P9.

The section 66 application filed regarding this dispute has been dismissed in 1990 on the basis that there was no breach of the peace.

The plaintiff has produced *inter alia* two old Plans to substantiate her position—Plan No.349 made in 1934 marked P3, and Plan No.204 made in 1987 marked P4.

The surveyor who prepared Plan No.91/263, in his evidence, has stated that the road depicted in that Plan had been obstructed. Although there was no superimposition, he has also stated that the road shown in Plan No.349 is similar to the disputed road.

Plan No.349 depicts *Kirikosgahamula watta*. According to Plan 91/263, *Kirikosgahamula watta* lies to the south of Lot 2 in that Plan. The said Lot 2 is part of the disputed road. The surveyor has also identified the road shown in Plan No.204.

Plan No.204 depicts the plaintiff's land, *Polkotuwa watta*. It has been prepared for another case. The surveyor who prepared Plan No.204, in his evidence, has stated that he went to the plaintiff's land in his vehicle in order to prepare that Plan. That means there had been a motorable road in 1987. It is the position of the plaintiff that the surveyor drove along the disputed road.

The Gramaseva officer also has given evidence in favour of the plaintiff regarding this road.

The road is also referred to in the deeds marked V5, V6, P14 etc.

Once the issues are raised, pleadings recede to the background. Therefore, in view of issue No.5, granting a 12-foot-wide road (instead of a 10-foot-wide road as pleaded in the plaint) by the District Judge is not against the law.

The reasoning of the District Judge that when a servitude of right of way becomes attached to a land, it passes to the new owners of the land, despite it not being specially mentioned in the deeds of transfer, is legally correct.

The District Court has considered that the road is also necessary as a way of necessity. The defendants have not shown

any other usable alternative road although they have put it in issue.

For the aforesaid reasons, there is no necessity to interfere with the Judgment of the District Court.

Appeal is dismissed without costs.

Judge of the Court of Appeal

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