

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

M. Siltan Fernando, Uyankele, Panadura.

Deceased Plaintiff

Wedige Jaslin Fernando,
No.3, Sri Medhananda Road, Uyankele, Panadura.

Substituted Plaintiff

CA 1161-1162/2000 (F)

D.C. Panadura Case No.14192/L

Vs.

1. M. Thawlin Fernando (Deceased)
No.333, Galle Road, Panadura.

1A. Mandadige Teslin Fernando,
No.333, Galle Road, Pattiya South, Panadura.

2. Thuyyadurage Littleson Silva (Deceased)

2A Mandadige Teslin Fernando,
No.333, Galle Road, Pattiya South, Panadura.

2B. Thuyyadura Suwineetha De Silva

2C. Thuyyadurage Sriyani De Silva,
No.53/3, Nevil Perera Road, Panadura.

2D. Thuyyaduge Lalith De Silva,
No.727, Galle Road, Panadura.

2E. Thuyyadurage Thilakani De Silva,
No.661, Galle Road, Panadura.

2F. Thuyyadurage Ranjith De Silva,
No.661, Galle Road, Panadura.

2G. Thuyyadurage Malani De Silva,
No.689, Galle Road, Panadura.

2H. Thuyyadurage Dilani De Silva,
No.142/3, Samagi Road, Wekada, Panadura.

2I. Thuyyadurage Damith De Silva,
No.661, Galle Road, Panadura.

2J. Thuyyadurage, Sudath De Silva,
No.661, Galle Road, Panadura.

3. Kumarapatabendige Premalal Siri Fernando,
No.17, Samudra Road, Panadura.

Defendants

AND NOW BETWEEN

Kumarapatabendige Premalal Siri Fernando,
No.17, Samudra Road, Panadura.

3rd Defendant-Appellant.

Vs.

Wedige Jaslin Fernando (Deceased)
No.3, Sri Medhananda Road, Uyankele, Panadura.

Substituted Plaintiff-Respondent.

Lathaa Salgado,
No.02, Sri Medhananda Road, Uyankele, Panadura.

Substituted Plaintiff-Respondent.

1A 2A Mandadige Teslin Fernando,
No.2, Sri Medhananda Road, Uyankele, Panadura.

2B. Thuyyadura Suwineetha De Silva,
No.661, Galle Road, Panadura.

2C. Thuyyadurage Sriyani De Silva,
No.53/3, Nevil Perera Road, Pandura.

2D. Thuyyaduge Lalith De Silva,
No.727, Galle Road, Panadura.

2E. Thuyyadurage Thilakani De Silva,
No.661, Galle Road, Panadura.

2F. Thuyyadurage Ranjith De Silva,
No.661, Galle Road, Panadura.

2G. Thuyyadurage Malani De Silva,
No.689, Galle Road, Panadura.

2H. Thuyyadurage Dilani De Silva,
No.142/3, Samagi Road, Wekada, Panadura.

2I. Thuyyadurage Damith De Silva,
No.661, Galle Road, Panadura.

2J. Thuyyadurage, Sudath De Silva,
No.661, Galle Road, Panadura.

Defendant-Respondents

BEFORE: **PRESHANTHA DE SILVA J.**
K.K.A.V. SWARNADHIPATHI J.

COUNSEL: Ranjan Swadrathna, PC, with Ranjith Perera
For the 3rd Defendant-Appellant in case No.1162-00F

Jayantha Bandaranayake
1st and 2nd Substituted Defendant-Appellant in case No.1161-00F

Uditha Mallasekera
For the Substituted Plaintiff-Respondent.

Argument: By way of written submissions

Judgment delivered on: 11.10.2022

K.K.A.V. SWARNADHIPATHI J.

JUDGMENT

On 14.11.1974, Plaintiff filed an action in the District Court of Panadura under case No.14192/L. and prayed for a declaration of title;

- to eject the Defendants from 17.09.1974 and the damages at the rate of Rs.10/- per month,
- to eject the Defendants and hand the peaceful possession to the Plaintiff.

The Plaintiff had mentioned only one schedule to the Plaint, a land situated at Panadura Thalpitidebathe, Pattiya South the Bulughawatha Kattiya in the extent of 01 Rood and 13 perches.

Only two Defendants were named.

After many amendments to the Plaint, Plaintiff finally amended his Plaint on 15.02.1988. In this amended Plaint, there are three schedules; the second schedule is identical to the schedule in the original Plaint. However, in the last amended Plaint, Plaintiff had limited his prayer to the third schedule, which is only 18 perches of land. His prayers were:

- To declare the land and building described in the third schedule to the Plaint belongs to the Plaintiff.
- To eject the 1st Defendant and all who holders under her from the premises.
- Until such time, damages of Rs.10/- per month from 01.11.1974
- The possession of the building and land is to be given to the Plaintiff.

According to the amended Plaint first owner of the land described in the first schedule were Maduma Waduge Elias Fernando and his wife, Anna Salgado. From then onwards, he had described the pedigree of the land. One Porolis Fernando had inherited 1/3rd of the land. When he died without leaving a Last Will, it devolved on his wife and the six children. One of the children was Sisiliya. The wife of Porolis transferred her share to five children and did not leave anything to Sisiliya. Finally, when all died without marriage or issues, the entire property held by Porolis devolved into Sisiliyana. In 1970 by Deed No.3699 attested by Ranjith Weerasekera (N.P.) Sisiliyana gifted the land she held and the two houses to Plaintiff.

Plaintiff had said that the 1st Defendant and his son-in-law were the licensees of Sisiliyana. After the death of Sisiliyana, Plaintiff allowed the 1st Defendant to stay on the premises as his licensee. In September 1974, he requested the 1st Defendant to leave the premises. Ending his licensee, Plaintiff had written to the 1st Defendant through a lawyer.

The 3rd Defendant laid out a different pedigree to the land. According to his pedigree, the 1st owner was Thevarathanirige Kamal Fernando. He had described the devolution of title and claimed absolute ownership of the property where the 1st and the 2nd Defendants reside. All parties had agreed that the 1st and 2nd Defendants were residing in the subject matter of the case.

In Perusing issues, the identity of the corpus was questioned. In his second amended Plaintiff, he spoke of a 2 Roods land. The 3rd Defendant-Appellant had agreed that the Plaintiff-Respondent must establish the identity of the corpus. He must have a clear idea from which land he wants the 1st and the 2nd Defendants ejected. One argument by the 3rd Defendants-Appellant is that the amended Plaintiff dated 15.07.1980 refers to two schedules. In the 1st schedule, the extent is given as 1 Rood and 13 perches and is in Plan No.268 of H.O. Scaniwel, Licensed Surveyor. The 2nd schedule, 18 perches, is part of the land depicted in Plan No.268.

1st and 2nd Defendants filed their Answer denying the position of the Plaintiff but accepting the pedigree of the 3rd Defendant. They further took up the position that they entered the premises with the consent of the predecessor to the title of the 3rd Defendant and now continue possession as tenants of the 3rd Defendant. Issues were entered, and the trial proceeded. On 22.09.2000, the judgment was pronounced in favour of Plaintiff.

Aggrieved by that judgment, two appeals were lodged before this court. At the inquiry, all parties agreed to abide by one judgment in both cases as the matter to be determined is similar. Both the Appellants had argued that Plaintiff had not identified the corpus. In a re-vindicatio action, the Plaintiff must prove his title against the Defendants. The Defendants need not prove anything as the burden of proof lies in the hands of the Plaintiff.

Even though the Appellants argued regarding the corpus in this court, a perusal of the issue accepted for trial dated 11.01.1989 does not have any issue raised on the identity of the corpus. Issue No.1 was raised by Plaintiff regarding the schedule to amend the Plaint, which the learned Judge had answered in the affirmative, giving reasons and referring to documents.

The learned District Judge had discussed the pedigree of the Plaintiff, referring to documents produced at the trial and emphasising the failure of the Defendants to show any lapses in the pedigree. He had discussed the plan marked as “P3” and identified the 3rd schedule, not the Plaint in “P3”, which is as way back as 1904, referring to case No.4817/P. At the District Court of Panadura, the learned Judge had observed that documents produced in that case by the 3d Defendant do not depict premises No.333, but the documents of the Plaintiff reveal the existents of the premises in the documents before that case.

However, referring to case No.4817, the learned Judge had pointed out that the 3rd Defendant’s documents do not speak of premises No.333 mentioned in the case. The learned District Judge had pointed out why the Plaintiff’s claim was more substantial than the claim of the 3rd Defendant.

The argument regarding the identity of the corpus placed before the court cannot be gone into because that was not an issue before the District Court. None of the Appellants had raised such an issue. However, as pointed out above, the District Judge has identified the corpus.

For the reasons discussed above, I see no reason to disturb the judgment dated 27.09.2000 by the learned District Judge of Panadura entered in case No.14192/L.

The appeal is dismissed; I make no order for costs.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal