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

1. Hidellana Janasiri Seneviratne,
Thiriwanaketiya, Ratnapura.
2. Balaberakarayalage Prematunga,
Marapana, Ratnapura.
3. Balaberakarayalage Gunapala,
Marapana, Ratnapura.
4. Balaberakarayalage Suwaneris

[DECEASED]

4A. Balaberakarayalage Hemalatha,
Kirindigala, Balangoda.

4B. Balaberakarayalage
Chandralatha, Kirindigala,
Balangoda.

4C. Balaberakarayalage Piyaseeli.
Kirindigala, Balangoda.

5. Naiyanndikarage Vidhyananda,
Marapana, Ratnapura.
6. Gamchaari Hemangani
Vidhyalankara,
Marapana,
Ratnapura.

Court of Appeal Case No:
DCF – 314/2000 (f)

DC Ratnapura:
Case no 4221/L

Plaintiffs

Vs.

S. K. Podimappuhamy,
Morathota, Palamaddulla.

Defendant

AND

S. K. Podimappuhamy, Morathota,
Palamaddulla.
[DECEASED]

Defendant-Appellant

S. K. Linton Karunaratna,
Rabuka, Morathota, Palmadulla.

Substituted Defendant-
Appellant

Vs.

1. Hidellana Janasiri Seneviratne,
Thiriwanaketiya,
Ratnapura.
[DECEASED]

1A. Leelawathie Seneviratne

1B. Hidellana Piyasamara
Seneviratne,

1C. Hidellana Puraka Seneviratne,

all of No. 10 3/5, Thiriwanaketiya,
Ratnapura.

2. Balaberakarayalage Prematunga,
Marapana,
Ratnapura.

3. Balaberakarayalage Gunapala,
Marapana,
Ratnapura.

3A. Balaberakarayalage alias
Bamunusinghege Jayantha
Chandrasiri,
of Marapana, Ratnapura

4. Balaberakarayalage Suwaneris
[DECEASED]

4A. Balaberakarayalage Hemalatha,
Kirindigala, Balangoda.

4B. Balaberakarayalage
Chandralatha,
Kirindigala, Balangoda.

4C. Balaberakarayalage Piyaseeli.
Kirindigala, Balangoda.

5. Naiyanndikarage Vidhyananda,
Marapana, Ratnapura.

6. Gamchaari Hemangani
Vidhyalankara, Marapana,
Ratnapura.

Plaintiff-Respondents

Before: **Prasantha De Silva,**
K.K.A.V. Swarnadhipathi, J.

Counsel: Anurudhdha Dharmaratne AAL and Srihan Samaranayake AAL for the
Defendant-Appellant.
Navin Marapana, PC, with Saumya Hettiarachchi AAL and Thanuka
Meegahawatte AAL for the Plaintiff-Respondents.

Written Submissions: Written submissions filed on 26/03/2014, 01/04/2016, 03/12/2019
filed on and 28/02/2023 by Defendant-Appellant.
Written submissions filed on 28/02/2020 and 9/03/2023 by Plaintiff-
Respondents.

Delivered on: 02.08.2023

Prasantha De Silva J.

Judgement

The Plaintiff instituted an action bearing no 4221/L in the District court of the Ratnapura seeking a declaration of title to the land described in the schedule to the Plaint. Plaintiffs had sought an interim injunction in the first instance and a permanent injunction, restraining the Defendant and his servants, agents and anyone coming under him from gemming in the said land, until the final determination of this case.

It appears that the application for interim injunction was supported on 11.07.1980 and the court granted an interim injunction *ex-parte* and issued notice on the Defendant. Consequently, the Defendant's proxy was filed on 11.07.1980 and he had objected to the issuance of interim injunction. However, interim injunction was not dissolved by the learned District Judge.

It is to be noted that on 16.03.1980 counsel for the Plaintiffs had moved for a commission to survey the land claimed by the Plaintiffs.

At this stage counsel for the Defendant had informed court that the land which the Defendant claims and is in possession is depicted in plan bearing no 416 dated 22.08.1980. The counsel for the Defendant had made an application to super impose the said plan on the commissioned plan moved by the Plaintiffs.

The said Commission was returned by the licensed surveyor S. Ramakrishan with plan bearing no 1436 dated 29.12.1980 to court.

The said 1st commissioned plan and the report was marked and produced in evidence as X and X1 respectively.

Although the counsel for the Defendant moved to super impose the said plan bearing no. 416 dated 22.08.1980, which depicts the land claimed by the Defendant - it was not super imposed on the said 1st commissioned plan X by the said surveyor Mr. R. Ramakrishnan.

According to the said surveyor's report X1, it states

1.....

2.....

3. මැනීම සිදුකල ආකාරය

අ: පැමිණ සිටිය පැමිණිලිකරුවන් පෙන්වුම් කල කලාලේ කුඹුර මා විසින් මැන සැලසුමේ පෙන්වා ඇත

ඇ: පැමිණිලිකරුවන් ඉදිරිපත් කළ පැමිණිල්ල අනුව කියා තිබෙන මායිම්වලට මැන ඇති ඉඩම් ඇතුළත් නැති බව විත්තිකරු ප්‍රකාශ කරයි

ඈ: පැමිණිලිකරුවන් කුඹුර බුක්තිවිඳින බවට ප්‍රකාශ කරයි. නමුත් කුඹුර දැනට වැඩ කරනුයේ විත්තිකරුය. ඒ බව අද ගොවියා මාහට පැවසීය

Therefore, it clearly shows that the land surveyed by the said 1st commission is not the land described in the schedule to the plaint and the Defendant is in possession of the land which was surveyed on the said commission.

Since the said plan marked ‘X’ is not in conformity with the land described in the schedule to the plaint, on behalf of the Plaintiffs, a second commission had been taken to survey the land described in the schedule to the Plaint. The said second commissioned plan bearing no 1436 (A) dated 25.02.1981 and the report which was prepared by the same surveyor is marked and produced in evidence as ‘Y’ and ‘Y1’ respectively.

At the trial, no admissions were recorded, and issues numbered 1-5 were raised on behalf of the Plaintiffs and issues numbered 6-14 were raised on behalf of the Defendant.

It is to be noted that on behalf of the Plaintiffs only the 6th Plaintiff had adduced evidence and none of the other Plaintiffs had come forward to give evidence. The 6th Plaintiff adduced evidence and produced documents P1-P3 in evidence.

It seems, most of the deeds marked by the 6th Plaintiff was to prove their title to the subject matter described in the schedule to the Plaint in the Plaintiffs action.

It was the contention of the Plaintiffs that they have proven title to the land in suit which is shown in plan bearing 1436 (A) marked and produced as ‘Y’ in evidence. Therefore, the Plaintiffs contended that they were entitled to a declaration of title in respect of the said land.

In contrast, it was the position taken up by the Defendant that he himself along with some other third parties [who are not Parties to the instant case] are entitled to the land called and known as ‘*Ihala Kalale Kumbrua*’ alias ‘*Kalale Kumbura*’. Which is shown in plans marked ‘X’ and ‘Y’.

It is relevant to note that the Plaintiffs had taken two commissions to survey the land described in the schedule to the Plaint, which is the land described in the title deeds relied on by the Plaintiffs.

When questioning the Plaintiffs witness about taking two commissions to survey the same land, it was the answer of the 6th Plaintiff that since the boundaries of the first Commissioned plan marked 'X' does not tally with their title deeds, to match the boundaries of the said land with their title deeds, they had to take another commission.

I will now draw the attention to the evidence adduced by the Plaintiffs witness in this regard,

ප්‍ර: කලාලේ කුඹුර කියා එකක් දන්නවද?

උ: ඔව්

ප්‍ර: ඒ කුඹුරට තියෙන මායිම් මොනවාද කියා කියන්න ඔබ දන්නවද

උ: මතකයෙන් හරියට කියන්න බැහැ.

[.....]

ප්‍ර: ඉඩම් දෙක සම්බන්දයෙන් මායිම් සඳහන් කර එකම ආකාරයෙන් මිනින්දෝරු මහතාට අධිකාරී පත්‍රයක් ලබාගෙන තිබෙනවා. සම්පූර්ණ ඉඩම මැනල සැලැස්ම ඉදිරිපත් කරන්නේ කියා

උ : ඔව්

ප්‍ර: තම වි1 සහ වි2 දරන අධිකාරී පත්‍ර දෙකේම එකම මායිම් සඳහන් කර තිබෙන්නේ

As indicated from the said evidence of the Plaintiffs witness, it is obvious that the witness was not familiar with the location of the premises in suit with the boundaries.

Furthermore, it is obvious that the same land was surveyed in the 2nd commission by the same surveyor R. Ramakrishnan depicted in both Plan X and Plan Y, described the land to be surveyed by the same extend of 1 acre, 3 roods and 30 perches and same boundaries.

Court observes that the shape of the land depicted in plan X is identical to the land depicted in plan Y.

It clearly shows the Northern-Eastern boundary in both plans X and Y bounded with a 'දෙපා වේල්ල' separating the paddy land and the land named 'අඩි මුල්ල'.

According to the Plaintiffs Eastern-Southern boundary in plan X is රතුලේ කුඹුර and in plan Y it is 'ඉහළ කලාලේ කුඹුර'. On the other hand the Defendant has indicated it as රතුලේ කුඹුර in both plans.

According to the report X1, the boundaries of the subject matter were shown by 2nd, 3rd and 6th Plaintiffs and Defendant. Nevertheless, the said Plaintiffs had not shown the Eastern boundary as ‘ihale kalale kumbura’.

Similarly, the said Parties had shown the Southern-Western boundary in Plan ‘X’ as ‘පහල දෙල්ගහ විල කුඹුර විල් කුඹුර - මහවිල කුඹුර - රැක් ඇත්තන විලේ කුඹුර හෙවත් විල් කුඹුර’. However, the surveyor, has indicated it in Plan Y as ‘වෙනිවල්පිටියේ කුඹුර’ according to the Plaintiffs, and the Defendant has shown it as ‘විල් කුඹුර’.

Therefore, it is seen that the surveyor has not specifically said whether the Southern-Western boundary is විල් කුඹුර or වෙනිවල්පිටියේ කුඹුර. Thus, it seems that the surveyor was uncertain about the said boundary and apparently the surveyor had not attempted to clearly identify the boundaries.

It is observable that the Plaintiffs only witnesses, the 6th Plaintiff had failed to give evidence with regard to the identification of the subject matter and its specific boundaries. The witness had stated in evidence that ‘she does not know the boundaries to the subject matter’.

Therefore, it is apparent that the Plaintiffs had not substantiated that the land surveyed in the 1st and 2nd commission is the land described in the schedule to the Plaint and the land described in schedules to the Plaintiffs’ title deeds.

The learned District Judge had stated in his judgement that

“ආරවුලට විෂය වී ඇති දේපල වන්නේ X නොහොත් Y දරන සැලසුමේ පෙන්වා ඇති ඉඩම බවට දෙපාර්ශවයම පිළිගෙන ඇත”.

Nevertheless, there is no admission to say that the disputed land is the land described in the schedule to the Plaint. What the Parties have agreed to is, the disputed land is depicted in plans X and Y which is not the same thing.

It is evident that the disputed land is the paddy land which the Defendant was in possession.

At the outset, counsel for the Defendant had moved to super impose the land claimed by the Defendant, which is depicted in plan bearing 416 dated 22.08.1980. Although, the learned District Judge allowed the said application for a super imposition, for some reason it has not been done. If it were done, no doubt that the disputed land would have been properly identified with metes and bounds.

However, it is noteworthy that, report Y1 prepared by the surveyor, Mr. Ramakrishnan states,

මැනීමේ සිදු කල ආකාරය

අ: 1981.02.25 දින දරන පිඹුරු අංක 1436A

ආ : පැමිණිලිකරුවන් පෙනුම් කල කුඹුර මා විසින් කලින් මැන සලසුම් අංක දරන 1436 ඉඩමයි.

ඇ: ඉඩමේ හතර මායිම් වෙනස් බවට පැමිණිලිකරුවන් පෙනුම් කරයි. ඔහු කියන ලද ඉඩම් වල නම් සැලස්ම අංක 1436A පෙන්වා ඇත.

ඈ: කුඹුර වැඩ කර ඇත්තේ විත්තිකරු බවට ප්‍රකාශ කරයි.

According to the said report Y1 it seems that the surveyor Mr. Ramakrishnan had not properly identified the subject land and its boundaries. It seems to me that, instead Mr. Ramakrishnan had just indicated the boundaries as informed by the Plaintiffs to match the land described in the schedule to the Plaint and also the land described in the Plaintiffs' title deeds.

It is in evidence that the Plaintiffs were unaware of the identity of the subject land since they did not know the boundaries of their land described in the schedule to the Plaint.

It is apparent that the surveyor had surveyed the land where the Defendants were in possession and named the four boundaries according to the Plaintiff's title deeds and the land described in the schedule to the Plaint in order to fit into the Defendant's land in the instant case.

The learned District judge did not consider why the Plaintiffs moved for a 2nd commission or why the surveyor disregarded the application for super imposition.

It is pertinent to note, that the Plaintiffs had not called the said surveyor Mr. Ramakrishnan to adduce evidence and explained about executing of the said two commissions and prepared plans X and Y, and reports X1 and Y1 respectively.

The burden of proving the identity of the land and proving the title claimed by the Plaintiffs rests squarely and fairly with the Plaintiffs.

It is well settled law that in a vindicatory action the burden of proof rests upon the Plaintiffs to prove his title including the identity of the boundaries.

However, it is clear that the Plaintiffs had failed to identify the land described in the schedule to the Plaint. As such, Plaintiffs' action should fail on that ground alone.

Although the learned Trial Judge pronounced a lengthy judgement of about 33 pages, the only form of analysis of the burden of proof of the Plaintiffs' case is only confined to the last three pages.

The learned Trial Judge had not considered any of the infirmities of the Plaintiffs action, nevertheless the learned Trial Judge held with the Plaintiffs on the assumption that the Defendant had failed to prove his case.

It was held in the case of *Dharmadasa v Jayasena 1997 (3) S. L. R. 327*,

In a rei vindicatio action the burden is on the Plaintiffs to establish the title pleaded and relied on by him. The defendant need not prove anything.

In the recent case of *K. A. Munasinghe v Lal Siriwardena 155/2000(F) [C.A.M. 07.06.2019]*, Janak de Silva J expounded on the duty of the Plaintiff relating to properly identifying the land and its boundaries in the following manner referring to various judicial dictums,

“In a rei vindicatio action it is a paramount duty on the part of the plaintiff to establish correct boundaries in order to identify the land in dispute [Peeris v. Savunhamy (54 N.L.R. 207)]. There is a greater and heavy burden on a plaintiff in a rei vindicatio action to prove not only that he has dominium to the land in dispute but also the specific precise and definite boundaries when claiming a declaration of title [Abeykoon Hamine v. Appuhamy (52 N.L.R. 49)]. To succeed in a rei vindicatio, the owner must prove on a balance of probabilities, not only his or her ownership in the property, but also that the property exists and is clearly identifiable. The identity of the land is fundamental for the purpose of attributing ownership, and for ordering ejectment [Lathee! v. Mansoor and another (2010) 2 SrLL.R. 333 at 349)]. In a vindicatory action it is necessary to establish the identity of the corpus in a clear and unambiguous manner and the action must fail upon the failure to do so [Fernando v. Somasiri (2012 B.L.R. 121)].”

In the instant case the Plaintiffs did not identify the land where the Plaintiffs sought a declaration of title. Since the court holds that the Plaintiffs had failed to prove the land referred in schedule to the Plaint (for which the Plaintiff has sought declaratory relief) is the same land that was surveyed and depicted in Plans X and Y, the Plaintiffs action should fail.

Hence, the Judgement of the learned District judge dated 17.02.2000 is set aside and the Plaintiffs action is dismissed with costs.

Further, court draws attention to issue no. 12 and 13 raised on behalf of the Defendant.

12: පැමිණිලිකරුවන් පතල් කැපීම තහනම් කරමින් වැරදි සහගත ලෙස තහනම් නියෝගයක් ලබා ගත්තේද

උත්තර: තහනම් නියෝගය ලබාගෙන ඇත

13: සාධාරණ සැලකිය යුතු හේතුවක් නොමැති ව එහි එකී නියෝගය ලබා ගැනීමත් විත්තිකරුට සිදුවූ අලාභය කොපමණද

උත්තරය: ඔප්පු කර නැත.

In respect of those issues no 12 and 13, it appears that the Defendant in his amended answer, has prayed relief for damages caused to him by granting of the interim injunction against him and restraining him from gemming in the subject land. It is seen that the Defendant had adduced evidence in this respect.

Accordingly, we hold that the Defendant-Appellant is entitled for damages. Hence, we award Rs. 10,000 as damages prayed in prayer II of the amended answer as the initial capital cost of setting up the gemming operation and also damages prayed in prayer II of the amended answer, as Rs. 1000 per mensem from the date of filing of the Plaint and until the date of pronouncement of this judgement amounting to Rs. 530,000.

It is reiterated that in our law in rei vindicatio action, a significant burden lies on the Plaintiff not only to establish title over the land but to properly identify the corpus of the land and its boundaries. In view of the foregoing reasons Plaintiffs have failed to prove the identity of the corpus thus the Plaintiffs had not discharged this burden. Therefore, the decision of the learned District Judge is set aside, and we allow this appeal.

Appeal allowed with damages.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL