

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

Ravindran Aranthavanathan,

No. 43, 2nd Lane,

Ratmalana.

Plaintiff

C.A. No. 222 / 2000 F

Vs.

D.C. Moratuwa No. 126 / L

Paranakulasuriya Mahawaduge Harrold
Vaz,

52, Kandawala Mawatha,

Ratmalana.

Defendant

And Now Between

Ravindran Aranthavanathan,

No. 43, 2nd Lane,

Ratmalana.

Plaintiff-Appellant

Vs

Paranakulasuriya Mahawaduge Harrold
Vaz,

52, Kandawala Mawatha,

Ratmalana.

Defendant -Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Wijeyadasa Rajapaksa PC with Nilantha
Kumarage for the Plaintiff Appellant.
Sandamal Rajapaksa for the Defendant
Respondent

ARGUED ON : 29.03.2012

DECIDED ON : 08.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) seeking inter alia for a declaration of title to the land described in the 3rd schedule to the plaint and a permanent injunction to restrain the Respondent from entering in to the said land or constructing any wall along the boundary of the said land.

The Respondent filed answer denying the averment in the plaint and claiming prescriptive title to the land in dispute.

The learned District Judge has dismissed the appellant's action as well as the Respondent's claim for a declaration of title on prescription.

The Appellant's case was that Tilanie de silva, the original owner of the land, had sold the land described in the first schedule to the plaint to Charles Windsor by deed of transfer No 253 dated 28.12.1962. Said Tilanie de Silva had sold another portion of the said original land described in the 2nd schedule to the plaint to Sitha Arunthavanathan by deed of transfer No 262 dated 28.01.1963. Said

Charles Windsor had died intestate and his estate was administered in the District Court of Galle and Probate was issued to Chalet Windsor. Thereafter said Chalet Windsor gifted the said land described in the first schedule to the plaint to said Sitha Arunthavanathan by deed of gift bearing No 58 dated 20.04.1965.

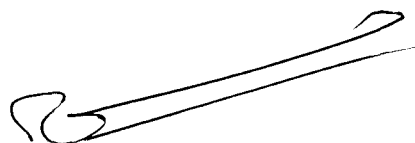
Thereafter the said Sitha Arunthavanathan has become the sole owner of the property described in the 1st and 2nd schedule to the plaint and has amalgamated the said two lands and subdivided in to three lots. Thereafter she has gifted lot 3 of the said subdivided lots to the Plaintiff Appellant by deed of transfer bearing No 1332 dated 04.12.1991.

At the trial the Appellant has produced the title deeds marked p 1 to P 5. The Respondent's contention was that the Appellant has failed to prove the title of said Tilanie de Silva.

I have carefully considered the said submission of the Respondent and also the titles deeds produced marked P 2 to P 6 which had been admitted as evidence without subject to proof. P 2 is a deed of transfer bearing No 253 dated 28.12.1962. Accordingly the Appellant has proved the chain of title from 1962. Said proof of title suffices to succeed in a case of declaration of title.

It appears from the impugned judgment that the learned Additional District Judge has failed consider the said evidence led in this case on a balance of probability. Therefore I set aside the judgment of the learned District Judge dated 19.04.2000 and allow the appeal of the Appellant with costs.

Appeal allowed.



Judge of the Court of Appeal