

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

C.A. Case No. 294/99(F)

1. Waranakulasuriya Jude Dilan

D.C. (Marawila)

Fernando

Case No. 453/L

2. Waranakulasuriya Suresh Anajalo

Fernando

Both of Mudukatuwa, Marawila

Plaintiff

Vs.

1. Angoda Liyanage Seelawathie

2. Hugh Modestus Royal Jayathilake

3. Angoda Liyanage Indra Lalanie Royal

Jayathilake

All of Mudukatuwa, Marawila

Defendants

And Now Between

1. Angoda Liyanage Seelawathie

1A. Deric Lusian Royal Jayathilake

1B. Hugh Modestus Royal Jayathilake

1C. Indra Lalanie Royal Jayathilake

All of Mudukatuwa, Marawila

Substituted 1st Defendant Appellants

3. Indra Lalanie Royal Jayathilake

Mudukatuwa, Marawila

3rd Defendant Appellant

Vs.

1. Waranakulasuriya Jude Dilan

Fernando

2. Waranakulasuriya Suresh Anajalo

Fernando

Both of Mudukatuwa, Marawila

Plaintiff – Respondents

1. Hugh Modestus Royal Jayathilake

Mudukatuwa, Marawila

2nd Defendant Respondent

BEFORE

: **P.W.D.C. JAYATHILAKE, J**

COUNSEL

: Sashikala Igalawithana for the

1st and 3rd Defendant

Appellant.

ARGUED ON

: 12.02.2015

DECIDED ON

: 24.07.2015

P.W.D.C. Jayathilake, J

The Plaintiffs had filed this case against the Defendant Appellants for declaration of the title to a portion of land called Mudukatuwayaya described in schedule 3 of the Plaint. It has been averred in the Plaint that the land described in schedule

3 is a divided portion of the amalgamated land consisting of the lands described in schedules 1 and 2 of the Plaint. The cause of action, according to the Plaintiffs, is the denial of the Defendant Appellant's to the title of Plaintiffs on the basis that it is a different land called Bogahahena owned by the Defendants.

The learned counsel for the Appellant contended that no commission had been obtained to identify the corpus but only a photo copy of the Plan No. 725 had been produced. But the learned trial judge has observed that the surveyor plans produced in evidence of Plaintiffs' case had not been challenged by the Defendants. She has further observed when the survey plans marked as P 1, P 3 and P 5 are being considered, it is obvious that the lot No. 8 in P 1 is shown as the eastern boundary of the land depicted in P 3 and P 5. Accordingly, the learned District Judge had decided that the land in dispute was a portion of Mudukatuwayaya and had been possessed as a part of the said land.

The other item of evidence which the learned District Judge had taken into consideration was a settlement entered into in the case No. 13190 of Primary Court, Wennappuwa which has been marked as P 7. In that settlement the first Defendant, as the second party of that case, has accepted the surveyor Plan No. 725 and had agreed to get the boundaries demarcated according to the said plan. The learned District Judge has expressed the view that according to the settlement entered into by the parties in the Primary Court case, the Defendants

had accepted that lot No. 8 of the survey Plan 725 was a portion of the land called Mudukatuwayaya. Though the learned counsel for the Appellant contended that the learned District Judge had erred in law in placing the burden of proof on the Defendants, what the learned trial judge has stated in her judgment is that even though the Defendants have stated that the land in dispute is a land called Bogahahena, they had not been able even to explain whether it was certainly known as Bogahahena.

The learned District Judge has carefully analysed the evidence of the Plaintiffs case and the Defendants' case in respect of the identification of corpus and the ownership attached to it. She has decided on the balance of probability that the subject matter is the land described in the plaint and its ownership is with the Plaintiffs. Accordingly, the case has been decided in favour of the Plaintiffs. No reason can be found by this court to interfere with the judgment of the learned trial judge. Therefore, this court dismisses the appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL