

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

1. P.A Jayasuriya of
Dulmore, Kapuliadde
Thalatuoya.
2. Renjit Hewavitharana
3. G. Somawathi
Both at Rikkillagaskanda
Bogamuwa Vidyalaya
Rikkillagaskanda - 20730

Plaintiffs/Appellants

C.A. Case No. 550/97 (F)

DC Kandy Case No. 17848/Land

Vs

M.W. Silva alias Sayaneris Silva
Of 131D, Anuragama
Kapuliadde - 20206

Defendant/Respondent

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Bimal Rajapakshe with Muditha

Perera and Amrit Rajapakshe

For the Plaintiffs - Appellants

Defendant – Respondent is
absent and unrepresented.

ARGUED ON

: 11th March, 2015

DECIDED ON

: 05th June, 2015

Deepali Wijesundera J.

The first to third plaintiff appellants have filed action in the District Court of Kandy against the respondent to get a decree declaring the first plaintiff appellant as the lawfull owner of the disputed property and to declare that the respondent is in unlawful occupation of the said property and to get vacant possession of the property and for damages. The learned District Judge after trial delivered his judgment on 31/07/1997, declaring the 1st plaintiff appellant does not hold a valid permit therefore he is not entitled to the relief prayed for. The plaintiff-appellants have filed this action against the said judgment.

The learned District Judge in his judgment has mainly relied on the fact that there was no formal document to show the first plaintiff-appellant was given a grant by the state. The first appellant who lost his land to the Mahaweli Authority was given a land to occupy by **P1** dated 03/06/1984 by the Mahaweli Authority. He has lawfully taken possession of the said land on 08/05/1985 as shown in **P1**. By **P2** he has been asked to pay a sum of Rs. 5,416/80 in ten installments for the said land, which he has paid in full. The receipt by the Mahaweli Authority is marked as **P3**.

The first appellant has given this land to his niece the third appellant to live after informing the said authority by **P5**. The second and third appellants who are husband and wife both being school teachers were transferred out of the said area and have given the house they constructed in this land to the respondent on a one year lease to occupy. The agreement is marked as **P13**. The respondent who came into occupation on the said lease agreement has refused to vacate the premises after one year.

The learned trial judge has held that since there was no state grant in the name of the appellant he has no title to the land. The District

Judge has not considered **P1** as a valid permit under Sec. 24(2) of Land Development Ordinance.

The first appellant lost his property due to implementation of the Mahaweli Scheme and in exchange he was given the subject matter to this action. He had a legitimate expectation that the state would grant him formal legal proof of ownership by a Grant.

Sec. 24 (1) and (2) of the Land Development Ordinance states;

24 (1). The date on which a person is selected to receive a permit or a grant of State land shall be the material date for the purpose of ascertaining whether such person is duly qualified to receive such permit or grant.

24 (2). Where land alienated to a person on a permit is subsequently alienated to the same person on a grant, the material date for the purpose of ascertaining whether such person is duly qualified to receive such land on a grant shall be the date on which such person was selected by the Government Agent to receive the same land upon a permit.

The respondent giving evidence in the District Court has stated that a permit was given to the first appellant by the Mahaweli Authority. He has further stated that a permit was never issued to him by the said authority.

ප්‍ර: මහවැලි සංවර්ධන අධිකාරියෙන් මෙම ඉඩම සම්බන්ධව අවසර පතක් දිලා තිබෙන්නේ තමුන්ටද ජයසූරියටද ?

පි: ජයසූරියට.

ප්‍ර: තමුන්ට මේ සම්බන්ධයෙන් මහවැලි අධිකාරියෙන් ලිපියක් තිබුත් කලාද මෙම ඉඩම තමුන්ට සහ තමුන්ගේ භාර්තවට අවසර දෙන බවට ?

පි: නැත.

On the admission of the respondent himself it is evident that the Mahaweli Authority has granted a permit marked as **P1** to the first appellant and he has also paid the money due to the Mahaweli Authority for the land.

The appellant's counsel citing the judgment in ***Ratwatte Vs Bandara 70 NLR 231*** where it was held that fresh evidence can be produced at the stage of appeal if it is justified had produced the grant made in favour of the first appellant by the President of Sri Lanka.

In *Ratwatte Vs Bandar* it is stated thus;

“Reception of fresh evidence in a case at the stage of appeal may be justified if three conditions are fulfilled, viz., (1) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial, (2) the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive, (3) the evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, although it need not be incontrovertible”.

This grant dated 23/05/2003 was marked as X and produced; there was no objection to this being produced by the respondent. Since the production of this document fulfills the three conditions stated in the afore mentioned judgment this court can accept the said Grant as a legal document to prove the first appellant's ownership to the said land.

The respondent to whom notices were issued several times by this court has never come to court. He has not filed any objections to this appeal.

The first appellant who possessed a permit to occupy the said land by not having a formal grant which is just a formality can not be said is not the owner of the land because he held a permit given by the said authority until a formal grant was made. The learned District Judge has erred when he said the first plaintiff appellant was not the owner of the land in dispute. Even the defendant respondent has stated the first plaintiff appellant had a permit from the Mahaweli Authority and he was not given a permit by the Mahaweli Authority. The learned District Judge has failed to evaluate the evidence placed before him properly when arising at his findings. Therefore this court has to interfere with the findings of the learned District Judge.

For the afore stated reasons we set aside the Judgment dated 31/07/1997 of the District Judge of Kandy and grant relief as prayed for in the plaint dated 30/03/1994. The appeal of the plaintiff appellants is allowed.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL