

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

1. Wahalawatte Ranjith Gunatileke
 2. Wahalawatte Ananda Gunatileke
- Both of No. 10, Soysakelle,
Nawalapitiya.

PLAINTIFFS

C.A. Case No.941/2000 (F)

D.C. Nuwara eliya Case No.
363/L

-Vs-

P. Ramalingam,
Main Street, Agarapatana.

DEFENDANT

AND NOW BETWEEN

P. Ramalingam,
Main Street, Agarapatana.

DEFENDANT-PETITIONER

-Vs-

1. Wahalawatte Ranjith Gunatileke
 2. Wahalawatte Ananda Gunatileke
- Both of No. 10, Soysakelle,
Nawalapitiya.

PLAINTIFF-RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Safana Gul Begum for the Defendant-Appellant

M.S.Z. Khan for the Plaintiff-Respondents

Written Submissions on: 17.05.2017

Argued on : 12.10.2016

Decided on : 10.10.2017

A.H.M.D. Nawaz, J.

By a plaint dated 10.06.1993 the Plaintiff-Respondents (hereinafter sometimes referred to as “the Plaintiffs”) filed this *rei vindicatio* action against the Defendant-Appellant (hereinafter sometimes referred to as “the Defendant”) praying for a declaration of title to the lands described in the 1st and 2nd schedules to the plaint, ejectment of the Defendant, his agents, servants and others holding under him from the land morefully described in the 2nd schedule to the plaint and damages in a sum of Rs.2,500/- *per mensem* with effect from 15.03.1993.

The Defendant filing his answer dated 16.05.1995 sought a dismissal of the action of the Plaintiffs whilst praying for prescriptive title to the land described in the schedule to answer, which he averred he had been in possession since 1983. The Plaintiffs counter-claimed by his replication dated 04.06.1996, praying for a dismissal of the Plaintiffs’ claim.

The vindicatory action of the Plaintiffs is based on P1-an order confirming a fiscal sale under the hand of the District Judge of Nuwaraeliya, which passed title to the father of the Plaintiffs Wahalawatte Hemapala Gunatileke of a property as depicted in P1. The fiscal sale had taken place on 11.06.1970. The father bought this property morefully described in P1 which was in an extent of 25.75 perches.

This order of confirmation of sale marked P1 and bearing the signature of the District Judge describes the land that the father of the plaintiffs Wahalawatte Hemapala Gunatileke bought at the fiscal sale as “all that divided and specific portion of Agra Ovuha Bazaar (*being a portion of Lot G depicted in Plan No.870 dated 06.03.1956 made by T.I.A. Anandappa Licensed Surveyor also depicted in Plan No.956 dated 04.05.1953*). The father later conveyed the land to his two sons for a consideration of Rs.40,000/- on 21.01.1990.

As the learned Counsel for the Defendant-Appellant contended, the schedules in P1 (what the father got in P1) and in P2 (what the father conveyed to the Plaintiffs in P2) differ materially in that the southern boundaries to the land described in both schedules are not the same. It is observed that even the southern boundary described in the 1st schedule to the plaint to which the Plaintiffs seek vindication of title differ from the southern boundary of the land described in the deed conferring title on the Plaintiffs (P2). This leads me to the conclusion that the identity of the corpus of the land to which the Plaintiffs seek vindication has not been established satisfactorily and the discrepancies have not been explained at all at the trial. In fact the power of attorney holder giving evidence did not give a sufficient explanation as to how the discrepancy between the schedules in P1 and P2 could be reconciled.

Moreover, even the land depicted in the 1st schedule to the plaint bears a different southern boundary that remains unexplained. In the circumstances I am irresistibly drawn to the conclusion that the identity of the land as depicted in the 1st schedule to the plaint to which the Plaintiff seeks a vindicatory title has not been established. It is trite law that the identity of the property with respect to which a vindicatory action is instituted is fundamental to the success of the action as the proof of the ownership (dominion) of the owner (dominus)-see the observation of Marsoof J. in *Amaldeen Abdul Latheef v. Abdul Majeed Mohamed Mansoor and Another* (2010) 2 Sri L.R 333.

If the subject-matter of an action to which a Plaintiff seeks a vindicatory title is erroneously described in the schedule to the plaint, it has to be rectified by an amended plaint filed with the permission of Court and a duty is cast upon the Plaintiffs to explain the grounds for omission of the correct boundary and identification of property to enable the Court to give him the declaration which he has sought. In fact, the Counsel for the Plaintiff-Respondents, when he was confronted with the issue of identification of the land sought to rely on an answer given by the Defendant at the trial where the Defendant admitted in a question by Court that the subject-matter of a previous 66 application and the instant civil action was the same - vide p.67 of the appeal brief.

This admission, in my view, cannot create an estoppel as the primary Court in the 66 application would not have gone into title of the Plaintiffs and it was possible that whoever had dispossessed the Plaintiffs, if they were the complainants in the 66 application, could have possessed more or less of the corpus of the *rei vindicatio* action. Therefore, the admission as to the subject-matter of the 66 application cannot be a substitute for the duty of the Plaintiffs in a *rei vindicatio* action to establish the identification of property unless the corpus in this case was identified as the corpus in the 66 application. In the absence of such an identification, I take the view that as the identity of the corpus has not been established to the satisfaction of Court, I proceed to allow the appeal and set aside the judgment dated 06.12.2000.

JUDGE OF THE COURT OF APPEAL