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

C.A. Case No. 916/2000 F

D.C. Kuliyapitiya Case No. 10888/L

Kodikara Arachchilage Gunaratne,
of Makandura, Gonawila.
PLAINTIFF

-Vs-

1. Pannala Lekamlage Chandralatha
2. Senanayake Appuhamilage Premarathne
Both of Temple Road,
Makandura, Gonawila.
DEFENDANTS

AND

1. Pannala Lekamlage Chandralatha
2. Senanayake Appuhamilage Premarathne
Both of Temple Road,
Makandura, Gonawila.
DEFENDANT-APPELLANTS

-Vs-

Kodikara Arachchilage Gunaratne
of Makandura, Gonawila.
PLAINTIFF-RESPONDENT

Kodikara Arachchilage Chandrasiri
of Makandura, Gonawila.
SUBSTITUTED PLAINTIFF-RESPONDENT

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

COUNSEL : Dr. Sunil Coorey with C. Amaratunga for the 1st and 2nd Defendants-Appellants.

M.C.Jayaratne with M.D.J.Bandara for the substituted Plaintiff-Respondent

Decided on : 29.06.2018

A.H.M.D. NAWAZ, J,

The Plaintiff being a maternal uncle of the 1st Defendant filed this plaint against the niece-the 1st Defendant and her husband-the 2nd Defendant alleging encroachment of his land by the Defendants. Both Defendants filed answer denying the encroachment and set out in their answer as to how they came to possess their distinct and separate lot which was contiguous to the Plaintiff's land. According to the Defendants, admittedly the contiguous lots had devolved on the Plaintiff and his sister-mother of the 1st Defendant, as these lots were allotted to both the Plaintiff and his sister in the final partition decree that had been entered on 23rd June 1996 in District Court, Kuliyapitiya Case No.2645/P.

Whilst lot 3 in the partition decree was allotted to the Plaintiff, lot 2 was allotted to the 1st Defendant's mother who was the sister of the Plaintiff. The Plaintiff alleged in his plaint that the 1st Defendant – his niece had encroached on the northern boundary of his land in conjunction with her husband-the 2nd Defendant. It was in those circumstances he sought a declaration that the portion that 1st Defendant had annexed to his land be declared as his entitlement. He also sought damages in a sum of Rs 5000 jointly and severally form both the Defendants. The 1st and 2nd Defendants filed answer denying encroachment and prayed for a dismissal of the plaint.

Thereafter the Plaintiff obtained a commission and the licensed surveyor W.B. Abeyratne when executing his commission had superimposed the partition plan and in his report to Court which was marked as 'Y', he states that there was no encroachment that he could observe physically on the ground. In fact his version was that when he drew a red line, it had gone on the black line both of which showed a common fence between the two in separate and distinct lots and it was his observation that there was no encroachment.

The surveyor was emphatic in his report that neither the Plaintiff nor Defendants had encroached each other's land (please vide Para-5 at page 117 of the appeal brief). The surveyor had also fixed every 66 feet pegs in order to make a straight fence and both the Plaintiff and Defendants accepted this position and the common fence. This plan of the surveyor had been done on 1st March 1997 and the plan and the report of the commissioned surveyor both bear the date 15th March 1997.

Fortified with a plan and the report which confirmed the existence of a common boundary and the fact that there was no encroachment on the part of the Defendants, the parties entered into a settlement on the 10th July 1998.

The following salient terms of the settlement are worthy of repetition;

1. Both parties admit that there is a common boundary namely a fence which existed on the ground.
2. It consisted of a barbed wire fence.
3. Lot no. 5 depicted in plan no. 2166 belongs to the Plaintiff, and lot no. 2 depicted in the same plan belongs to the Defendants.
4. Whilst the common wire fence that divides the Defendants' lot (lot 2) and the Plaintiff's lot (lot 5) should not be disturbed, both the Plaintiff and the Defendants agreed to put up a permanent fence with concrete posts.

In other words both Plaintiff and Defendants could put up a fence with concrete post inside their lands without touching the existing fence-see proceedings dated 8.2.1999 of page 60 of the brief. If these terms constituted the terms of settlement between the parties

in 1999 and the parties accordingly signed the records-see journal entry 26 that should have signaled the end of the case. The Journal entry No 26 dated 10th February 1999 confirms that the parties that signed the records and the proceedings on that date indicate that the parties had reiterated the settlement entered into on 10th July 1998 and the learned District Judge directed that a commission be issued to the licensed surveyor Mr. Abeyrathne who had executed a previous commission,

Although before the trial the parties had tried to settle this action, this action proceeded to trial on 28.02.2000. At the trial the following questions were raised by both parties and the answer of the learned District Judge in her judgment is given in bold.

There was only one admission recorded at the trial, namely, paragraphs 2 and 5 of the plaint were admitted by both parties.

Issues raised by the Plaintiff

1. Is the northern boundary of lot 3 or the boundary between lot 2 and 3, of which lot 2 the Plaintiff became entitled by Partition Case bearing No.2654/P of which the 1st defendant is a co-owner, uncertain? **No**
2. Accordingly has the Plaintiff a right to demarcate a common boundary and to construct a fence? **Presently there is a fence and a common boundary. The common boundary can be demarcated with the help of the Surveyor.**

Issues raised by the Defendants

3. Has the Plaintiff filed this action to obtain ownerships of part of the land described in the schedule to the plaint? **Yes**
4. Has the Plaintiff stated the said portion of land in plaint? **Yes**
5. If the 3rd issue is answered in the affirmative and the 4th issue is answered in the negative can the Plaintiff maintain this action? **Can maintain**

6. Cannot the Plaintiff obtain any relief on the averments made in the plaint? **The Plaintiff can demarcate the boundary as depicted in Plan 'X' between Lot2 and Lot 5.**

7. Has the Plaintiff averred a cause of action, in the plaint according to the reliefs he has prayed for in the prayer to the plaint? No

8. However have the Defendants obtained a prescriptive title over the land in which they are in possession and their predecessors in title without any alternation of the boundaries? **The Defendants have obtained a prescriptive right to Lot 2.**

9. If the Defendants have encroached on to the Plaintiff's land have they obtained a prescriptive right over the portion on which the Defendants have encroached onto? **The Defendants have not encroached onto a portion of the Plaintiff's land.**

A commission was issued to superimpose the land in dispute on Plan No.1103 which was the plan submitted to Court in DC Kuliyapitiya Case No.2645/P. Accordingly the Plan No.2166 was prepared by H.B. Abeyarathne Licensed Surveyor and Court Commissioner (at page 115). At the trial in behalf of the Plaintiff, the said Surveyor gave evidence and stated that although there is a slight difference between the Plan No.1103 and Plan No.2166, in the boundary between Lot 2 and 5 of Plan No.2166 it is not shown in the Plan No.2166 due to the reason the said difference is very negligible (at page 64). In the Surveyor's Report (at page 116) he specifically states that the Plaintiff has not encroached onto the Defendants' land and neither have the Defendants encroached onto the Plaintiff's land (at page 117). He further states in his report that both parties agreed to the common boundary showed by Mr. H.B. Abeyrathne Licensed Surveyor.

Thereafter the Plaintiff himself gave evidence and closed his case leading in evidence **"X"**, Plan No.2166 and report marked as **"Y"**, Plan No.1103 marked as **"Z"**, final decree in DC Kuliyapitiya Case No.2645/P marked as **"P1"** and certificate of non-settlement marked as **"P2"**.

It transpired from, the Plaintiff's evidence that the defendants had removed the fence and re-done the fence from one end to the other end of the fence and that the Defendants had not encroached onto the Plaintiff's land from the middle portion of the boundary between lot 2 and lot 5 of Plan No.2166.

The Defendants did not give evidence and did not mark any documents and closed their case.

Afterwards both parties filed their respective written submissions and judgment was delivered on 05.12.2000. In the judgment the learned District Judge states that the defendants had not encroached onto any portion of the land of the Plaintiff, but however the learned District Judge goes on to state that the Plaintiff can demarcate the boundaries lot 2 and lot 5 through the licensed Surveyor.

It has to be noted that the Plaintiff came into court on the basis of a *rei vindicatio* action and no action for demarcation of boundaries action had been filed. Looking at the prayer to the plaint it is clear that the Plaintiff has prayed that the Defendants be ejected from the portion of land described in the schedule to the plaint and that the Plaintiff be declared the owner of the land in dispute. The Plaintiff has even prayed that damages be paid to the Plaintiff due to the encroachment by the Defendants.

Upon a perusal of the evidence it is clear that the Defendants have not encroached onto any portion of Lot 5 or the Plaintiff's land (as has been answered by the learned District Judge to Issue No.9 above). In such a situation the District Court should have proceeded to dismiss this action.

There was no issue to demarcate the boundary between Lot 1 and Lot 5 as per Plan No.2166. In the circumstances a relief that had not been prayed for cannot be granted. Furthermore if the relief prayed for in the prayer to the plaint is incapable of being granted due to lack of evidence, the plaint is liable to be dismissed.

It has to be accepted that there is not even a scintilla of doubt whether or not this action is a *rei vindicatio* action or a demarcation of boundaries action.

In ***Surangi v. Rodrigo*** (2003) 3 Sri.LR 35, it was held that: *"no court is entitled to or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaint; where the plaintiff has intended to recover Rs.700,000/- from the defendant as damages and she has deliberately and unequivocally prayed for damages in prayer "B". Her intention is to use the damages so recovered as permanent alimony. Therefore her claim is not a claim for alimony at all; in the absence of a prayer for alimony the Court was correct in refusing to allow the petition to frame in issue relating to alimony".*

In ***National Development Bank v. Rupasinghe and others*** (2005) 3 Sri.LR 92 it was held that: *"Jurisdiction of court is limited and restricted to what is prayed for and no other relief could be granted by court if not prayed for".* At page 95 Andrew Somawansa, J. (P/CA) stated that: *"Thus it is to be seen that the interim injunction that has been ultimately issued and the other made by the learned District Judge is much wider than the relief sought by the plaintiff-respondents themselves. It is settled law that the jurisdiction of Court is limited and restricted to what is prayed for and no other relief could be granted by court not prayed for".*

Accordingly I take the view the *rei vindicatio* action should be dismissed for want of evidence and I set aside the judgment dated 05.12.2000 and proceed to allow the appeal.

JUDGE OF THE COURT OF APPEAL.