

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

Benette Abeysekera,
“Abhaya Nivasa”,
Sripada Godella Mavatha,
Baddegama.

C.A. No. 1122 / 2000 (F)

Plaintiff

Vs.

D.C. Galle No. 10823 / L

Somapala Gamaratne,
Pandithagewatta,
Baddegama South,
Baddegama.

Defendant

And Now Between

Somapala Gamaratne,
Pandithagewatta,
Baddegama South,
Baddegama.

Defendant-Appellant

Vs

Benette Abeysekera,
“Abhaya Nivasa”,
Sripada Godella Mavatha,
Baddegama.

Plaintiff -Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Defendant Appellant – Absent and
Unrepresented
S.A.D.S. Suraweera for the Plaintiff
Respondent

WRITTEN SUBMISSIONS ON : 16.01.2012

ARGUED ON : 08.02.2012

DECIDED ON : 25.04.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Galle seeking for a declaration of title that lot 11 B depicted in plan No 2203 is a part of lot 11 and ejection of the Appellant from lot 11 B of the said plan. The Appellant filed answer denying the averments in the plaint and praying for a dismissal of the Respondent's action. The case proceeded to trial upon 22 issues. After trial, the learned Additional District Judge has delivered judgement in favour of the Respondent as prayed for in the amended plaint. Being aggrieved by the said judgment dated 15.02.2000 the Appellant has preferred the present appeal to this court.

In paragraph 22 of the petition of appeal the Appellant has set out several grounds of appeal. It seems from the said grounds of appeal that the main grievance of the Appellant was that the learned Additional District Judge has failed to evaluate the evidence adduced on behalf of the Appellant. I now consider the said grounds of appeal.

According to the evidence of the Respondent his title to the land in dispute has emanated from a partition decree entered in case No. 203/L, D.C. Galle. Said fact has not been disputed by the parties. The Respondent has produced a plan No 2203 and report dated 22.09.1986 marked P 1 and P 1A which was superimposed on plan No 532 filed of record of D.C. Galle Case No. 203/L. According to the said Plan No. 2203 lot 11B is the portion of land encroached by the Appellant.

The Appellant's evidence was that his title also had commenced from a partition decree entered in case No. 77 / P. His position was that the said land has been depicted as lot A 1 and A 2 in plan No. 1116 and A 2 was the portion of land encroached by the Respondent.

The Appellant has produced a certified copy of the partitioned plan No 1138 marked V 4 which had been filed of record of case No P/77. I have carefully examined the said plan. It is apparent from the said plan that the land claimed by the Appellant has been depicted as lot 1 and 2 in the said plan 1138. But It is remarkable to note that although the said lot 1 and 2 has not been shown in the said plan No. 1116 the Surveyor has gone to depict some transferred boundaries of plan No. 1138 from which the boundaries of said lot 1 and 2 cannot be correctly ascertained.

When I consider the said evidence I am of the view that the Appellant has failed to prove his case on a balance of probabilities. Hence I see no reason to interfere with the judgement of the learned District Judge dated 15.02.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal