

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

CA 128/98 (F)
DC Kalutara 4474/L

Kankanamge Dona Pushpa Namali,
Gomerakanda,
Payagala.

PLAINTIFF

Juwan De Silva Kankanange Opalin Nona
418, Siylarama Road,
Panikkigoda,
Payagala.

DEFENDANT

AND NOW BETWEEN

Juwan De Silva Kankanange Opalin Nona
418, Siylarama Road,
Panikkigoda,
Payagala.

DEFENDANT-APPELLANT

Vs -

Kankanamge Dona Pushpa Namali,
Gomerakanda,
Payagala.

PLAINTIFF-RESPONDENT

BEFORE: A W A SALAM, J

COUNSEL: Rohan Sahabandu for the Defendant
Appellant and M.C.M. Muneer for the Plaintiff Respondent

ARGUED ON: 24.10.2011.

WRITTEN SUBMISSIONS TENDERED ON: 18.01.2012

DECIDED ON: 24.04.2012

A W Abdus Salam, J

The plaintiff-respondent (hereinafter referred to as the "respondent") filed action against the defendant-appellant (hereinafter referred to as "appellant") for a declaration of title to the subject matter of the action and permanent restraining order preventing the defendant from using a road across the subject matter. The respondent in his answer, counter sued the plaintiff for a declaration that he is entitled to use the right of way by reason of his having used it for a long period of time. In the course of the trial and before its conclusion, the parties agreed for an inspection of the subject matter to enable the district judge to observe the physical features, if any, and then make an order as to the existence or nonexistence of the right of way in question.

The learned district judge, as invited by the parties inspected the subject matter, made his observations and then entered judgement declaring the existence of the roadway available to the defendant across the land, by

reason of his having used the same for a considerable period of time. In the same judgement, the learned district judge has observed that the land in question was in a state of neglect and had not been looked after by the plaintiff and the defendant therefore has had a fairly good opportunity to use a road, across the land.

One of the grounds of appeal urged by the learned counsel of the defendant is the alleged failure of the learned district judge to comply with section 187 of the Civil Procedure Code in delivering the judgement. In terms of section 187 of the CPC, the judgment shall contain a concise statement of the case, the points for determination, the decision thereon and more importantly the reason for such decision. The learned counsel complained that the impugned judgement is devoid of any reason. In this matter, even though issues had been raised at the beginning, recording of evidence had been abandoned as the parties invited the learned district judge to inspect the subject matter and then pronounce his judgement on the issue relating to the existence of the right of way. On a perusal of the judgement of the learned district judge, it appears that the learned district judge has recorded his observation as to the existence of the right of way and provided the roadway as described in detail in his judgement. As the learned district judge has inspected the subject matter on the invitation of the parties and rightly made his observation thereafter, and provided a road along the subject matter as stated in the

judgment, I am of the opinion that the defendant has failed to make out a case warranting the intervention of this court with the impugned judgement.

For reason stated above, I am of the view that this appeal should stand dismissed.

JUDGE OF THE COURT OF APPEAL

KL/-