

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

**LANKA**

**C.A. No. 484/97(F)**

**H.M.P. Mudiyanse**

**Heelogama, Kongaswalayagama,**

**D.C. Maho No. 2660/L**

**Plaintiff**

**Vs**

**H. M. Herath Banda,**

**“Kalyani” Heelogama**

**Defendant**

**AND NOW BETWEEN**

**H.M.P. Mudiyanse**

**Heelogama, Kongaswalayagama,**

**Plaintiff-Appellant**

**Vs**

**H. M. Herath Banda,**

**“Kalyani” Heelogama (now decd)**

**Defendant-Respondent**

**S.A.M. Ranmenika of**

**Heelogama, Nikaweratiya**

**And 7 others**

**Substituted-Defendant-Respondents**

**BEFORE**                    **Deepali Wijesundera J.,**  
**M. M. A, Gaffoor J.,**

**COUNSEL**                **P. Peramunegama for the Plaintiff-Appellant**  
**B. Gamage for the Defendant Respondent**

**ARGUED ON**            **03.03.2016**

**DECIDED ON**          **06.05.2016**

**Gaffoor J.,**

The Plaintiff has filed this action by his plaint dated 17.06.1987 and which was amended on 02.07.1990. stating that he is entitled to the land morefully described in schedule (i) of the Plaint and the land described in schedule (ii) of the Plaint is a portion of the land described in schedule (i). The Plaintiff is seeking a declaration of title to the land described in schedule (i) and ejectment Defendant from the land described in the schedule (ii) which is forcibly occupied by the Defendant.

The Plaintiff states that his father Punchirala was granted Lot 272 and the Defendant's father Appuhamy was granted Lot 273 by Crown Grants and they both were cultivating those lots jointly and divided the yields between them. The Plaintiff further says that by deed No. 5674 dated 5.4.1987 marked as "P1" his father Punchirala sold the said Lot 272 to him and after this transfer, when he went to cultivate his land, the defendant obstructed him from cultivating the

portion shown as Lot 5 in Plan No. 235/Maho/90, which made him to file this action.

The Respondent's story is contrary to this. He says that his father Appuhamy was the owner of Lot 273 which adjoins Lot 272 on the southern side, that by deed No. 31096 dated 27.2.1975 marked as 'V1' his father Appuhamy gifted the said lot 273 to him and since he became entitled to this land he has been cultivating lot 273 which was cultivated on the same extent by his father and he denies the allegation of encroachment as stated by the Plaintiff. His position is that Lot 5 is part of Lot 273.

The learned District Judge rejected the Plaintiff's evidence and entered judgment in favour of the Defendant. This appeal is preferred by the Plaintiff to this court from the judgment of the District Court.

The Defendant's position is that his father was granted Lot 273 and the Plaintiff's father was granted Lot 272 and between those two lots there is a Niyara ( ) which separates the said lots. The disputed lot 5 in Plan No. 235/Mahawa/90 is shown outside the niyara which position is supported by the Plaintiff's witnesses, especially Plaintiff's father Punchirala. It is clearly stated by him that the southern boundary of Lot 272 was this 'niyara' and he cannot remember when this was erected. This undoubtedly establishes the fact that the southern boundary of the Plaintiff's land was this 'niyara' which was in existence long before the Defendant became entitled to this land bearing Lot No. 273.

The Plaintiff has failed to prove that the Defendant had encroached on this land depicted as Lot 5 in Plan No.235/Mahawa/90 on 24.3.1987 or on

**25.3.1987. As against the Defendant's position that he had been cultivating Lot 5, along with his other portion of Lot 273, the Plaintiff has not adduced any tangible evidence against the Defendant that the Defendant had encroached on Lot 5 in 1987. In the absence of any such evidence, the Defendant's position that he has been cultivating Lot 5 in Plan No. 235/Mahawa/90 along with his Lot 273 should be accepted.**

**Furthermore, the Plaintiff's father Punchirala in his evidence did not say that the Defendant had encroached on Lot 5 which is part of his land bearing Lot 272. If the Defendant had been cultivating Lot 5 since he became entitled to Lot 273 in 1975, along with Lot 273, the Defendant's evidence that he prescribed to Lot 5 must also be accepted without doubt.**

**There is no evidence led in this case that prior to 25.3.1987, the Plaintiff cultivated Lot 5 in Plan No. 235/Mahawa/90 by himself. If the dispute has arisen only on 25.3.1987 why did the Plaintiff not complain about it to the Cultivation authorities or to the Police. The Defendant's witness W.M. Wijeratne's evidence shows that the Plaintiff never made any complaint about this dispute to the cultivation authorities. It is the custom in the rural areas that when dispute arose with regard to paddy lands, the parties first complain to the "Vel vidane" or "Govi Karaka sabawa". Those steps the Plaintiff has failed to follow. Hence, a doubt arises that after the Plaintiff became entitled to Lot 272 by deed P1. he might have filed this action with the idea of getting some order in his favour in respect of Lot 5 which is in dispute as he has paper title.**

Analyzing the evidence led in this case by both parties, the learned District Judge has come to a correct decision that the Plaintiff has failed to prove that the Defendant has encroached on Lot 5.

I am therefore of the view that the findings of the learned District Judge must stand and should not be disturbed.

I dismiss the appeal with costs.

**JUDGE OF THE COURT OF APPEAL**

**Wijesundera J.,**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**