

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

D.M. Seneviratne,  
Dodangolla,  
Bibile.

**Court of Appeal:**

**Appeal No: 439/97 (F)    DEFENDANT – APPELLANT**

D.C. Monaragala  
Case No:8329/L

**Vs.**

Ven. Nagala Sumanagala,  
Viharadipathy,  
Nagala Purana Raja Maha Viharaya,  
Dodangolla,  
Bibila.

**PLAINTIFF – RESPONDENT**

**Before     : P.R.Walgama, J**

**Counsel   : Sunil Abeyratne for the Defendant – Appellant.**

**: D.M.G. Disanayake for the Plaintiff – Respondent.**

**Argued on : 28.01.2016**

**Decided on: 13.05.2016**

CASE NO- CA- 439- 97 (F)—JUDGMENT- 13.05.2016

This appeal has been filed by the Defendant - Appellant  
(in short the Appellant) against the judgment of the

Learned District Judge dated, 04.06.1997 in the case bearing No. L/8329 in the District Court of Monaragala, by which judgment the Learned District Judge has entered judgment and decree in favour of the Plaintiff – Respondent (in short the Respondent).

Being aggrieved by the said judgment the Defendant – Appellant preferred the instant appeal to have the said judgment set aside accordingly.

The Petitioner – Respondent instituted action against the Appellant in the above mentioned case for a declaration of title to the land described in the 1<sup>st</sup> schedule to the plaint and for an order of ejectment of the Defendant – Appellant from the land described in the 2<sup>nd</sup> schedule to the plaint which is a part of the larger land described in the 1<sup>st</sup> schedule hereto.

Following are the facts emerged from the plaint of the Plaintiff – Respondent;

That the Plaintiff was the Chief incumbent of the Nagala Purana Rajamaha Viharaya, and the suit property viz a viz the viharaya, for a longer period of time, and for the said reason the Plaintiff has prescribed to the said property.

The Defendant on or about 16.01.1970 has forcibly entered the land described in the second schedule to the plaint. Therefore the Plaintiff moves for an order to eject the Defendant – Appellant from the said land.

The Defendant - Appellant by his Answer had unequivocally refuted the above claim of the Plaintiff - Respondent and asserted thus;

That the Defendant - Appellant is in possession of the land depicted as lot 44 of the final village plan No. 585 which belongs to the State, and more fully known as Hettipoladeniya, which is a paddy field. Therefore it is the position of the Defendant - Appellant that the Plaintiff - Respondent has no locus to maintain this action against the Defendant - Appellant.

It is the position of the Plaintiff- Respondent that the rights of the plaintiff to this property in issue has been decided in the case bearing No. 5816/L in the District Court of Badulla.

It is also to be noted that as per fiscal report, the Writ has been executed on 11.09.1969 and the possession of the subject matter has been duly handed over to the Plaintiff-Respondent accordingly.

The land in suit was identified by the Surveyor and the plan and report filed to that effect was marked and tendered as P3.

It is the position of the Defendant - Appellant that the land in issue is Hettipoladeniya, containing in extent 10 acres and 4 perches. The Defendant - Appellant has tendered a extract from the paddy land registry which is marked and tendered as V1.

The Defendant – Appellant has controverted the position that the above said case instituted against him in the District Court of Badulla in case bearing No. L/5816.

As per decree entered in the above case the possession was handed over to the plaintiff – Respondent.

In dealing with the evidence of the Defendant-Appellant the Learned District Judge has observed that the document marked V1 which is an extract from the paddy land Registry refers to a different land and therefore the document is no proof of the Defendant-Appellant's rights to the land in issue.

The Learned District Judge was convinced of the fact that in the above case in the District Court of Badulla has resolved the dispute and the Plaintiff-Respondent was declared to be the right full owner of the land in suit.

In the above said case the Defendant – Appellant's position was that the subject land belongs to the State, and as such the Plaintiff has no locus standi to maintain this action.

In fact it is abundantly clear that there is no proof to the said effect. On the contrary the Plaintiff-Respondent has proved his title to the suit premises with preponderance of evidence.

Hence in the above setting this court is of the view that this court see no reason to interfere with the

determination of the Learned District and hereby affirm the above judgment and dismiss the appeal accordingly.

Appeal is dismissed subject to a costs of Rs 5000/.

**JUDGE OF THE COURT OF APPEAL**