

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

**Kapuru Hamyge Siriwardena,
Iranganie Siriwardena
Both of temple road,
Gomarankadawela**

Plaintiffs

Vs

**Court of appeal No: 1052/99 (F)
DC Trincomalee Case No: 405/DC**

**Manawalage Kapuruhamy
Kapuru Hamyge Wimalratne
Both of Temple Road,
Gomarankadawela.**

Defendants

Now-Between

**Kapuru Hamyge Siriwardena,
Iranganie Siriwardena
Both of temple road,
Gomarankadawela**

Plaintiffs-Appellants

Vs

**Manawalage Kapuruhamy
Kapuru Hamyge Wimalratne
Both of Temple Road,
Gomarankadawela.**

Defendants-Respondents

C.A. 1052/00 (F)

D.C. Trincomalee 405/DC

Before : **A.H.M.D. Nawaz, J.**

Counsel : Piyatissa Abeykoon with M. Satyendran for the
Plaintiff-Appellants.

Defendant-Respondents are absent and
unrepresented.

Argued and

Decided on : 23/05/2016

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

This appeal is against the order dated 17.05.1999 of the learned District Judge of Trincomalee wherein the learned District Judge dismissed the action filed by the two Plaintiff-Appellants (hereinafter sometimes referred to as Plaintiffs). Both Plaintiffs by their plaint dated 06.06.1994 instituted this action for a declaration of title and ejection of the Defendants on the grounds more fully described in the plaint therein. The case of the Plaintiffs in the District Court had been conducted on the basis that the Plaintiffs became the owner of the subject matter described in the schedule by virtue of their relationship with the original owner one Ranmanike who had adopted the 1st Plaintiff. At the forefront of this *rei vindicatio* action before the learned District Judge was the issue whether the 1st Plaintiff became the owner of the land in question

through the said Ranmanike. The 1st Plaintiff gave evidence and asserted that he was adopted by the said Ranmanike who passed away in 1990. By Deed No:1520 executed in 1993 the 1st Plaintiff transferred this land to his daughter, the 2nd Plaintiff. Having regard to the evidence placed before the District Court the learned District Judge has come to a finding that the 1st Plaintiff has not established her title on a balance of probabilities before him. In a *rei vindicatio* action it is imperative on the part of a plaintiff to establish his/her title and once this title is established the burden shifts to the defendant to establish the lawfulness of his/her possession. The fact that the *rei vindicatio* is an action *in rem* was emphasized in **Allis Appu v. Endris Hamy** (1894) 3 S.C.C 87.

The burden of establishing title devolves on the plaintiff. The significance of this requirement is that, where the plaintiff fails to prove title in himself, judgment in the vindicatory action will be given in favour of the defendant, even though the latter has also not been able to establish title. In **de Silva v. Goonetilleke** 32 N.L.R 217- a decision of a Bench of four Judges - Macdonell C.J. said; "There is abundant authority that a party claiming a declaration of title must have title himself. The authorities unite in holding that the plaintiff must show title to the *corpus* in dispute and that, if he cannot, the action will not lie." Once title is established by the plaintiff, the burden of proof shifts to the defendant to prove that he has a right to possession or occupation of the property.

Though both appellants seek to impugn the finding of the learned District Judge on issue number 01 namely; whether the 1st Plaintiff was the owner of the premises in question the Appellants are not able to show any item of evidence which conclusively tilts the question of ownership in the 1st Plaintiff's favour. Except for the bare assertion that

the 1st Plaintiff-Appellant was adopted by the original owner and Ranmanike had passed her title to the 1st Plaintiff in this case, there is nothing to show that title of Ranmanike devolved on the 1st Plaintiff. There are several modes of acquisition of immovable property, such as inheritance, prescription and paper title that could be established at the trial but this court is of the opinion that none of the modes of acquisition of immovable property has been established on a balance of probabilities before the District Judge of Trincomalee. There is a deeming provision in the Adoption of Children Ordinance that whenever someone is adopted in accordance with the provisions of the Adoption of Children Ordinance, he is deemed to be the son or daughter of the adoptive parent. Section 6(3) of the Adoption of Children Ordinance states as follows:-

“Upon an adoption order being made, the adopted child shall for all purposes whatsoever be deemed in law to be the child born in lawful wedlock of the adopter:

Provided, however, that unless the contrary intention clearly appears from any instrument (whether such instrument takes effect *inter vivos* or *mortis causa*), such adopted child shall not by such adoption -

- (a) acquire any right, title or interest in any property
 - (i) devolving on any child of the adopter by virtue of any instrument executed prior to the date of the adoption order: or
 - (ii) devolving on the heirs *ab intestate* of any child born in lawful wedlock of the adopter;
- (b) become entitled to any succession (whether by will or *ab intestate*) *jure representationis* the adopter.”

Even this deeming provision was not satisfied before the learned District Judge of Trincomalee. No paper title was ever pleaded or established before the learned District Judge.

In the circumstances, this court has no reason to interfere with the answer given to the pivotal issue raised in this case namely, whether the 1st Plaintiff-Appellant had title to the subject matter in question. Therefore the 1st Plaintiff couldn't have passed any title to the 2nd Plaintiff (his daughter).

In the circumstances this court proceeds to dismiss this appeal.

JUDGE OF THE COURT OF APPEAL