

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

C. A. 889/97 (F)

D. C., Kegalle Case No. 2925/L

1. Thalagune Seelarathna
Thero of Parilleyya Wana
Aramaya,
Weragala, Narangoda.
(Deceased)
- 1A. Rambukwelle Vipassi Thero,
Perilleyya Wana Aramaya,
Weragala, Narangoda.
2. Rajamantree *alias* Acharige
Appu Naide,
Weragala

PLAINTIFF-APPELLANTS

VS.

1. Senadeeralage Ukku Banda,
Weragala. *(Deceased)*
- 1A. Sunil Thilakarathna,
Weragala
2. Gamaralalage Sumanapala,
Weragala *(Deceased)*
- 2A. N. A. Asilin Nona

DEFENDANT-RESPONDENTS

Before : **M. M. A. Gaffoor, J.**

Counsel : Chathura Galhena for the 1st Plaintiff-Appellant
Athula Perera for the 2nd Plaintiff-Appellant
M. C. M. Sudharshini Cooray for the Defendant- Respondents

Written Submission filed on : 1st Plaintiff-Appellant - 30.01.2019
2nd Plaintiff-Appellant - 22.02.2019
Defendant-Respondent – 07.01.2019

Decided on : **04.04.2019**

M. M. A. Gaffoor, J.

The Plaintiff-Appellants filed this action against the Defendant-Respondents, praying *inter alia* (according to their amended plaint dated 08.06.1987, vide page 48-51 of the appeal brief) for a declaration for the land described in the 1st schedule to the plaint and for damages against the Defendant-Respondents (Respondents).

In the District Court, the Appellants took up the position in their plaint that the land described in the 1st schedule to the plaint belonged to Narangoda “Paraleiyyawanaramaya” and that the Chief Incumbent (the 1st Plaintiff-Appellant) and the ‘Dayaka Committee’ transferred the said land to the 2nd Plaintiff-Appellant.

Whilst, the Respondents filed their answer and pleaded that the land described in the schedule to their answer is “Kirikanawatte Owita” and that their predecessors in title have been in possession of the land for more than 50 years and that by a Deed bearing No. 4566 dated 10.12.1861 (1V1) rights of this land had been transferred to the two predecessors in title of both the Respondents.

Having heard both parties, the learned District Judge fixed the case for trial on 11 issues (vide page 68 of the appeal brief). After conclusion of the trial, the learned District Judge delivered the judgement on 13.03.1997 dismissing the Plaintiff-Appellants’ action, however, granting the cross claim of the Respondents. Being dissatisfied with the said judgment the Plaintiff-Appellants preferred this appeal to set aside the judgment dated 13.03.1997 and grant reliefs sought as per their amended plaint.

In this appeal, Counsel for the Respondents submitted that, at the trial the 1st Plaintiff-Appellant gave evidence and stated that inter alia, he had not obtained the Chief-Incumbent of Narangoda Paraleiyyawanaramaya and that it was Rev. Siri Niwasa was the Chief Incumbent at one time and that after his demise, the chief incumbent is Rev. Sarantissa and that according to such disclosures the plaint is partly incorrect. He further submitted that this fact had been admitted by the deceased 1st Plaintiff-Appellant during his cross examination. Therefore, it was the position of the Respondents that the averments on the plaint are erroneous. Also it was another submission of the Respondent that,

for asking a declaration for the land in suit, the Appellants did not tendered a single paper title on the land.

It is seen from the case proceedings that the Licensed Surveyor C. K. Beddewela who gave evidence with respect to Plan No. 85/7 dated 30.09.1985 admitted in cross examination that when superimposing lot No. 113 of the land shown by the Appellants and the Respondents, he could not find any marking on the land. Although the Surveyor stated that the superimposition is correct, and he admitted that there are few dissimilarities with respect to the North, East and South boundaries (vide page 85 & 86).

In these circumstances, this Court observed that the learned District Judge carefully analysed the oral and documentary evidence placed before him and held that the Appellants have failed to prove that they have any *dominium* and control of property of the land in suit.

It is trite law that who seeking a declaration (or dominium) of a property, has a duty to prove of his *own title*, to a decree in his favour for the recovery of the property and for the ejection of the person in wrongful occupation. (Vide ***R. W. Pathirana Vs. R. E. De. S. Jayasundara*** [58 NLR 169]).

In the aforesaid reasons, I hold that the learned District Judge correctly held with the Respondents. Therefore, I do not wish to interfere with the judgment dated 13.03.1997.

Accordingly, I dismiss this appeal without Cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL