

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

Malabadagamage Wimalawathie,  
Madayamalalanda,  
Koggalle.

Plaintiff

C.A. No. 755/2000 F

Vs.

DC Hambantota No. 1210/L

Vincent Jayawarnasinghe,  
Welewadiya, Modarapiliwala,  
Koggalle.

Defendant

**AND NOW BETWEEN**

Malabadagamage Wimalawathie,  
Madayamalalanda,  
Koggalle.

Plaintiff Appellant

Vs

Vincent Jayawarnasinghe,  
Welewadiya, Modarapiliwala,  
Koggalle.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSELS : Collin Amarasinghe with G.R. Perera for the  
Plaintiff Appellant  
Sudarshani Cooray for the Defendant  
Respondent

WRITTEN SUBMISSIONS ON : 10.01.2012 and 21.02.2012

ARGUED ON : 20.11.2012

DECIDED ON : 21.03.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) seeking for a judgment declaring her right to possess the land described in the schedule to the plaint. The Respondent filed answer denying the averments contained in the plaint and prayed for a dismissal of the Appellant's action. The Respondent averred that he has been in possession of the said land since 1979 and on 01.11.1998 the Deputy Commissioner of land, Hambantota had issued the land permit bearing No 64896 in his name and he was the permit holder of the land in dispute. After trial the learned District Judge has dismissed the Appellant's action. Being aggrieved by the said judgement dated 25.04.2000 the Appellant has preferred the present appeal to this court.

The Appellant has claimed the land in dispute upon a land permit issued by the Divisional Secretary. But at the trial the Appellant in his evidence at page 69 of the brief had admitted that her land permit was cancelled by the Divisional Secretary. Although she had stated that the said cancellation was later revoked she could not produce such a letter of cancellation. In this regard the Appellant has relied upon a letter which had been produced at the trial marked V 16. I have perused the said document. But the said document V 16 cannot be treated as a letter which had been issued revoking the letter of cancellation of the land permit issued to the Appellant. It was a notice sent under 6<sup>th</sup> schedule of the Land Development Ordinance to the Appellant directing her to pay a fine for non compliance of the terms and conditions of the land permit.

Apart from that the official witness who was called to give evidence for the case of the Appellant has testified at page 88 of the brief that the land permit issued to the Appellant has been cancelled. Hence it is correct to decide that the Appellant was not the permit holder of the land in dispute.

The Appellant further contended that the boundaries of the two land permits were different and the learned trial Judge has not properly considered this matter in the judgment. I have noted that at the commencement of the trial both parties had admitted the corpus of the action. Hence the Appellant cannot now raise matters touching the identity of the subject matter of the action.

The Appellant further contended that she has filed the action in the District Court on 03<sup>rd</sup> of September 1991 and the land permit has been cancelled on 23.10.1991 and since the said cancellation of the land permit has been taken place after the institution of the action rights of the parties to be decided as at the date of institution of the action. In this regard the Respondent contended that he is in

possession of the land in dispute upon a land permit issued to him on 01.11.1988 and the Appellant has never been in possession of the land dispute.

In this regard I have considered the document produced marked V 16. According to the said document the Appellant has failed to take over the possession of the land after the death of the original permit holder. It further appears that Wilson Jayawardena, the Respondent was in possession of the land. At the trial, the Respondent has produced his land permit dated 01.11.1988 marked V 14. It is clear from V 14 that the Respondent has come in to the possession of the land long before the granting of the land permit to the Appellant and the Respondent has been in possession continuously. Upon the said circumstances the Appellant in this case cannot contend that the right of the parties to be decided as at the date of institution of the action. Hence I am of the view that the learned District Judge has rightly concluded that the Respondent was the permit holder of the land in dispute.

Hence I see no reason to interfere with the said judgement of the learned District Judge dated 25.04.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal