

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

CA 1229/96

DC Kagalle 2573/L

RASNAKA RALLAGE HEENBANDA,
UDUGAMA,
PATHTHAMPITIYA,
RAMBUKKANA.
DEFENDANT-APPELLANT

MORAWAKAYALAGE SIRIYAWATHIE,
PATHTHAMPITIYA,
RAMBUKKANA.

MORAWAKAYALAGE JAYASURIYA,
PATHTHAMPITIYA,
RAMBUKKANA.

SUBSTITUTED-PLAINTIFF-RESPONDENTS

Before: AWA Salam, J
PARTIES ABSENT AND UNREPRESENTED
Decided on : 14.01.2011.

A W A SALAM, J

This is an appeal from the judgment of the learned district judge of Kagalle dated 10 October 1996. By the said judgment the plaintiff was granted relief as prayed for in the plaint. The action filed by the plaintiff against the defendant was one of declaration of title to the property described in the schedule to the plaint. The plaintiff averred in his plaint that he was granted a permit under the Land Development Ordinance to occupy the subject matter of the action and he in fact possess the same until such time he left the premises situated on the subject matter to take treatment. In the meantime he alleges that his brother unlawfully entered the said land and premises and occupied the same without any manner of title. The plaintiff by way of relief sought a declaration of title in his favour and ejectment of the defendant therefrom.

The learned district judge has analyzed the evidence given by both parties carefully and come to the conclusion that on 1 April 1980 the defendant has unlawfully entered the land of the plaintiff for which the latter has had a valid permit to occupy the same.

The basis on which the learned district judge has come to the conclusion is that the evidence given by the plaintiff is much more creditworthy than that of the defendant. In fact, at a

certain stage of the judgment the learned district judge has commented that the admission of the defendant that he entered the land on the 1st April 1980 amply corroborates the evidence of the plaintiff as to the main allegation that the defendant had forcibly entered the land in question.

Taking into consideration the admission made by the defendant that he entered the land on 1st April 1980 and the plaintiff being the permit holder of the allotment of land in question, I see no grounds to interfere with the judgment of the learned district judge. Besides, the findings of the learned district judge are based on credibility of the witnesses. Hence, this appeal is dismissed without costs.

Judge of the Court of Appeal

NR/-