

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

In the matter of an Appeal

Walpola Liyanage Premarathne,  
No. 131/1, Udamadura,  
Talawa.

**Plaintiff**

SC Appeal 118/2018  
SC. HC. CA. LA. Application No. 35/2016  
CP/HCCA/Kandy 94/2013(F)  
D.C. Nuwaraeliya Case No. 1446/9/L

Vs-

Abeydeera Arachchige Charlet  
Kamalawathie,  
No. 15, Nildannahinna.

**Defendant**

AND

Abeydeera Arachchige Charlet

Kamalawathie,  
No. 15, Nildannahinna.  
**Defendant-Appellant**

Vs

Walpola Liyanage Premarathne,  
No. 131/1, Udamadura,  
Talawa.

**Plaintiff-Respondent**

AND

Abeydeera Arachchige Charlet  
Kamalawathie,  
No. 15, Nildannahinna.

**Defendant-Appellant-Petitioner**

Vs.

Walpola Liyanage Premarathne,  
No. 131/1, Udamadura,  
Talawa.

**Plaintiff-Respondent-Respondent**

AND NOW

Abeydeera Arachchige Charlet,  
Kamalawathie,

No. 15, Nildannahinna.

**Defendant-Appellant-Appellant**

Vs.

Walpola Liyanage Premarathne,

No. 131/1, Udamadura,

Talawa.

**Plaintiff-Respondent-Respondent  
(deceased)**

- 1a. M.M.G. Karunawathie
- 1b. W.L. Nandawathie
- 1c. W.L. Rupawathie
- 1d. W.L. Kamalawathie
- 1e. W.L. Ariyawathie
- 1f. W.L. Gunarathne
- 1g. W.L. Thusarika Kumari
- 1h. W.L. Chandra Kumari
- 1i. W.L. Lalitha Kumari
- 1j. W.L. Devika Kumari

All at No. 48, Udamadura,  
Talawa, Nildannahinna.

**1(a) to 1(i) Plaintiff-Respondent-  
Respondents**

Before: Sisira. J. de Abrew J  
Murdu Fernando PC J  
Gamini Amarasekara J

Counsel: Gamini Hettiarchchi for the Defendant-Appellant-Appellant  
Bimal Rajapaksha for the substituted Plaintiff-Respondent-Respondent  
Argued on : 24.9.2020

Decided on: 2.6.2021

Sisira. J. de Abrew, J

The name of the Defendant in the original plaint is Abeydeera Arachchige Charlet Kamalawathie. But in the Petition of Appeal filed in this court it has been typed as Abeydeera Arachchige Violet Kamalawathie. I have, in this judgment, stated the name appearing in the original plaint.

I have read the draft judgment of His Lordship Justice Gamini Amarasekara. I agree with His Lordship when he decided to dismiss the appeal.

This is an appeal against the judgment of the Civil Appellate High Court Kandy dated 14.12.2015. The learned District Judge by her judgment dated 31.10.2013, held the case in favour of the Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent). Being aggrieved by the said judgment of the learned District Judge, the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant-Appellant) appealed to the Civil Appellate High Court Kandy. The learned Judges of the Civil Appellate High Court Kandy by their judgment

dated 14.12.2015, affirmed the said judgment of the learned District Judge. Being aggrieved by the said judgment of the Civil Appellate High Court, the Defendant-Appellant has appealed to this court. This court by its order dated 4.7.2018, granted leave to appeal on the following question of law.

“Whether the learned Judges of the Civil Appellate High Court erred in law by failing to appreciate that the action filed by the Plaintiff is not an action for a declaration of title and without first praying for a declaration of title, the Plaintiff cannot seek for the ejectment of a defendant from the land?”

The facts of this case may be briefly summarized as follows. The Plaintiff-Respondent filed action in the District Court of Nuwara Eliya seeking the ejectment of the Defendant-Appellant from the land in question. The Defendant-Appellant filed answer seeking to dismiss the Plaintiff-Respondent’s action; for a declaration that she is the owner of the land in question; and for a declaration that that Deed No.3008 is null and void. The Defendant-Appellant stated in her evidence that she did not sign the Deed No.3008. The Plaintiff-Respondent stated in his evidence that he became the owner of the land in question in terms of Deed No.3008 dated 5.5.2008 attested by Edmond Rajapakshe Notary Public. One of the important questions that must be decided in this case is whether the Deed No.3008 dated 5.5.2008 marked P1 attested by Edmond Rajapakshe Notary Public has been proved or not. The Plaintiff-Respondent stated in his evidence that the Defendant-Appellant signed Deed No.3008 dated 5.5.2008 marked P1 attested by Edmond Rajapakshe Notary Public and transferred the land in question to him. The Defendant-Appellant stated in her evidence that she signed only blank papers but did not sign Deed No.3008 dated 5.5.2008 marked P1. However, she accepts the position that she received a sum of Rs.200,000/- from the Plaintiff-Respondent at

the time she placed her signature on blank papers. The learned District Judge has noted that the Deed No.3008 dated 5.5.2008 marked P1 is a printed form and that her signature is also found near printed letters. I have examined the Deed No.3008 dated 5.5.2008 marked P1 and it is a printed form and the words Charlet Abeydheera (written in Sinhala language) have been written in pen near the printed letters of the said Deed. Thus, the learned District Judge was correct when she made the above observation. The Defendant-Appellant has further stated in her evidence that the signature found in her proxy given to her own Attorney-at-law is not her signature but similar to her signature. This proxy was marked as P2. The learned District Judge has noted in her judgment that that words Charlet Abeydheera(written in Sinhala language) are found in the proxy. I have examined the proxy marked P2 and the above mentioned observation made by the learned District Judge, in my view, is correct. The learned District Judge after considering the totality of the evidence has, in her judgment, rejected the evidence of the Defendant-Appellant but relied on the evidence of the Plaintiff-Respondent.

The Plaintiff-Respondent, in his evidence, states that the Defendant-Appellant, two attending witnesses and Edmond Rajapakshe the Notary Public signed the Deed No.3008 dated 5.5.2008 marked P1. One of the attesting witnesses in the Deed No.3008 dated 5.5.2008 marked P1 is Wamuni Wasimalay. The Plaintiff-Respondent called Wamuni Wasimalay. He, in his evidence, confirmed the signatures found in the Deed No.3008 dated 5.5.2008 marked P1 and identified his signature and the signatures of Charlet Abeydheera (the executant of the Deed), Irsha one of the attesting witnesses and Edmond Rajapakshe the Notary Public. He further stated in his evidence that he knew the Defendant-Appellant for the last 25 to 30 years. Edmond Rajapakshe the Notary Public who attested the Deed No.3008 dated 5.5.2008 marked P1 in his attestation has stated that he knew the two

attesting witnesses and they (the two attesting witnesses) knew Charlet Abeydheera, the executant of the Deed.

Section 68 of the Evidence Ordinance reads as follows.

*“If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.”*

When I consider the above evidence and Section 68 of the Evidence Ordinance, I hold that the Deed No.3008 dated 5.5.2008 marked P1 has been proved in accordance with Section 68 of the Evidence Ordinance and that the learned District Judge was correct when she accepted the said Deed.

When I consider all the aforementioned matters, I hold that the title to the property in question has been proved and that the Plaintiff-Respondent has proved that he is the owner of the property in question.

The next question that must be considered is whether the Plaintiff-Respondent in this case could seek the ejectment of the Defendant-Appellant without a specific prayer for a declaration of title. I now advert to this question. In order to find an answer to this question it is necessary to consider certain judicial decisions. In the case of Jayasinghe Vs Tikiri Banda [1988] 2 CALR 24 Viknaraja J held that where title to the property has been proved, as in this case the fact that one had failed to ask for a declaration of title to the property will not prevent one from claiming the relief of ejectment.

In Dharmasiri Vs Wickramatunga [2002] 2 SLR 218 Weerasuriya J held that even though the plaintiff has not asked for a declaration of title it does not prevent him from seeking the relief for ejection.

In the case of Pathirana Vs Jayasundara 58 NLR169 at page 172 Gratiaen J held as follows.

*“In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejection of the person in wrongful occupation.”*

In an action of this nature (Plaintiff seeks the ejection of the Defendant without a specific prayer for a declaration of title), if it is established that the Plaintiff is the owner of the property in question, it becomes the duty of the Judge to declare that the Plaintiff is the owner of the property in question. This duty of the Judge cannot be obstructed by action or non-action of the parties. Thus, the failure on the part of the Plaintiff to state a prayer in the plaint for a declaration of title to the property in question does not and cannot prevent the Judge from declaring that the Plaintiff is the owner of the property in question when the Plaintiff's title to the property in question has been established at the trial. If the court fails to follow the above observation, then the Plaintiff will have to file another action for a declaration of title. If that is so, the principle enunciated by Sansoni CJ in the case of H.A.M. Cassim Vs Government Agent Batticaloa in 69 NLR 403 that 'there must be finality in litigation' would be violated. Considering the above observation and the legal literature, I hold that in an action for ejection of the defendant from the property in question, once the plaintiff's title is proved, he (the plaintiff) is entitled to ask for ejection of the defendant from the property in question even though there is no prayer in the plaint for a declaration of title.

In the present case, the Plaintiff-Respondent in the body of the plaint has pleaded his title to the property in question and the issue No.1 at the trial was whether the Defendant-Appellant, by the Deed No.3008 dated 5.5.2008, transferred the property in question to the Plaintiff-Respondent. The learned District Judge has answered this issue in the affirmative. When I consider the evidence led at the trial, I hold that the above decision of the learned District Judge is correct and that the Plaintiff-Respondent is the owner of the property in question.

For the above reasons, I answer the question of law raised in this case in the negative.

For the aforementioned reasons, I hold that the learned District Judge was correct when she decided the case in favour of the Plaintiff-Respondent and that the learned Judges of the Civil Appellate High Court were correct when they dismissed the appeal of the Defendant-Appellant. I therefore affirming the judgment of the Civil Appellate High Court dismiss this appeal of the Defendant-Appellant with costs.

*Appeal dismissed.*

Judge of the Supreme Court.