

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

In the matter of an Application for Special leave to Appeal
in terms of Article 127 and Article 128 of the Constitution
Democratic Republic of Sri Lanka

Mohiden Kasim Bibi
Golu Maradankulama, Nachchiduwa,
Anuradapura

Plaintiff

SC Appeal 154/2015
SC (SPL)LA 206/2013
CA 800/98 (F)
DC Anuradapura 15127/L

Vs

S M Ratnawathi Manike
Athuruwella, Nachchiduwa,
Anuradapura

Defendant

AND

Mohiden Kasim Bibi
Golu Maradankulama, Nacchaduwa,
Anuradapura

Plaintiff-Appellant

Vs

S M Ratnawathi Manike
Athuruwella, Nachchiduwa,
Anuradapura

Defendant-Respondent

AND NOW BEWEEN

S M Ratnawathi Manike
Athuruwella, Nachchiduwa,
Anuradapura

Defendant-Respondent-Petitioner-Appellant

Vs

Mohiden Kasim Bibi
Golu Maradankulama, Nachchiduwa,
Anuradapura

**Plaintiff-Appellant-Respondent
(Now Deceased)**

1. Moonafiya
New Town, Nachchiduwa,
Anuradapura
2. Poisa Umma
New Town, Nachchiduwa,
Anuradapura
3. Badurunisa
No.107, Kandara, Katukaliyawa,
Ihalagama,Mihimnthalaya,
4. Noorthaira Umma
New Town, Nachchiduwa,
Anuradapura
5. SooraThumma
No.41 New,
Golumaradan Kulama
Nachchiduwa,
Anuradapura
6. Muhamath Kamsadeen
New Town, Nachchiduwa,
Anuradapura
7. Saripdeen ge Pausul Janapdeen
New Town, Nachchiduwa,

Anuradapura
8. Mohamad Asmeer Khan
New Town, Nachchiduwa,
Anuradapura

Substituted Plaintiff-Appellant-Respondent-Respondent

Before : Sisira J De Abrew J
Priyantha Jayawardena PC J
NalinPerera J

Counsel : Nuwan Bopage with Kenady Kodikara for the Defendant-
Respondent-Petitioner-Appellant
NM Shaheid with Mohamad Rafi for the
Substituted Plaintiff-Appellant-Respondent-Respondent

Argued on : 13.9.2017

Written Submission

Tendered on : 3.2.2016 by the Defendant-Respondent-Petitioner-Appellant
28.4.2016 by the Substituted Plaintiff-Appellant-Respondent-
Respondent.

Decided on : 10.11.2017

Sisira J De Abrew J

The Plaintiff-Appellant-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed DC Case No 15127/L in the District Court of Anuradahapura asking for a declaration of title to the land described in the Plaint and to eject the Defendant-Respondent-Petitioner-Appellant (hereinafter referred to as the Defendant-Appellant) from the said land.

The learned District Judge by his judgment dated 2.10.1998, dismissed the action of the Plaintiff-Respondent. Being aggrieved by the said judgment of the learned District Judge, the Plaintiff-Respondent appealed to the Court of Appeal and the Court of Appeal by its judgment dated 2.7.2013 allowed the appeal and set aside the judgment of the learned District Judge. Being aggrieved by the said judgment of the Court of Appeal, the Defendant-Appellant has appealed to this court. This court by its order dated 16.9.2015 granted leave to appeal on the questions of law set out in paragraphs 13 (a),(b),(d) and (g) of the petition of appeal dated 7.8.2013 which are set out below.

1. Has the learned Judge of the Court of Appeal failed to consider the fact that the purported grant could not be considered as a valid grant before law?
2. Has the learned Judge of the Court of Appeal failed to evaluate the fact that the Petitioner's (Defendant-Appellant) right should be given priority in considering the ownership of the subsequence?
3. Has the learned Judge of the Court of Appeal failed and neglected to consider the Petitioner's (Defendant-Appellant) possession and improvements effected to the subject matter by the Petitioner (Defendant-Appellant)?
4. Has the learned Judge of the Court of Appeal failed to consider the fact that the Petitioner (Defendant-Appellant) was at least entitled for compensation for the improvements?

The Plaintiff- Respondent took up the position in her evidence that His Excellency the President on **9.8.1982** issued a Grant in terms of Section 19(4) of the Land Development Ordinance in her name in respect of the land described in the schedule to the Plaint and that therefore she is the owner of the said property. The Grant was marked as P2 in evidence.

The Defendant Appellant stated in evidence that she received a permit (marked V1) in respect of the land in dispute on **2.9.1988** and that she is the owner of the land in dispute. Although the grant marked P2 was issued on 9.8.1982 the Plaintiff-Respondent received it only in 1992. Before she received the said grant, permit marked V2 had been issued in the name of the Defendant Appellant in 1988. Considering the above matters the learned District Judge rejected the claim of the Plaintiff-Respondent. In order to answer the question whether the conclusion reached by the learned District Judge is correct or not, it is relevant to consider the evidence of Bandrage Somarathne who is an officer attached to the Divisional Secretary. He stated, in his evidence, that a permit issued under the Land Development Ordinance could not invalidate a Grant issued by His Excellency the President. But the learned District Judge disregarded this evidence and rejected the claim of the Plaintiff-Respondent.

Can a Grant issued by His Excellency the President in terms of Section 19(4) of the Land Development Ordinance be invalidated or cancelled by a permit issued in terms of Section 19(2) of the Land Development Ordinance? When a Grant under Section 19(4) of the Land Development Ordinance is issued by His Excellency the President, the grantee has been declared as the owner of the property. This declaration is found in the Grant. But when a permit in terms of Section 19(2) of the Land Development Ordinance is issued by the land Commissioner, the person who is given the possession of the land is declared as the permit holder. This declaration is found in the permit. Therefore when a person becomes an owner of a land on the basis of a Grant issued by His Excellency the President, another permit issued in terms of Section 19(2) of the Land

Development Ordinance in the name of another person whilst the Grant is in existence cannot invalidate or cancelled the Grant. When the court is invited to answer the question whether the Grant or the permit which has better status in the ownership of the land, the following observation will have to be made. A Grant issued in terms of Section 19(4) of the Land Development Ordinance has to be considered as a deed conveying the title to the grantee by the State. But the same status cannot be given in respect a permit issued in terms of Section 19(2) of the Land Development Ordinance. The permit holder has only permission to possess the land and he gets sufficient title to enable him to maintain a vindicatory action against a trespasser but not against the grantee. This view is supported by the judicial decision in Palisena Vs Perera 56 NLR 407 wherein His Lordship Justice Gratiaen held thus; “A permit holder under land Development Ordinance enjoys a sufficient title to enable him to maintain a vindicatory action against a trespasser.”

Learned counsel for the Defendant-Appellant contended that the Plaintiff-Respondent had failed to discharge his burden regarding the identification of the corpus. But at the beginning of the case both parties had admitted that the subject matter of the case was the land described in the schedule to the plaint. Therefore the above contention cannot be accepted. Learned counsel for the Defendant-Appellant further contended that the Plaintiff-Respondent had not discharged his burden regarding the title of the land. But the Plaintiff-Respondent had, in his evidence, produced the Grant issued by His Excellency the President as P2. Therefore the above contention cannot be accepted. In any event the Defendant Appellant cannot make any claim to the land described in the plaint on the strength of the permit marked V2 as the land described in the said permit relates to Lot No.338H in Plan No. ISPH 1. It has to be noted here that that the land described in

the plaint and the Grant marked P2 is Lot No.771 in Plan No ISPH 1. It is therefore seen that the land described in the permit marked V2 is different from the land described in the plaint.

When I consider all the above matters, I hold that the learned District Judge was wrong when he reached the above conclusion (the conclusion reached in his judgment dated 2.10.1998) and that the Court of Appeal was correct when it reached the above conclusion. In view of the conclusion reached above, I answer the above questions of law in the negative. For the above reasons, I grant the relief claimed by the Plaintiff-Respondent in paragraphs (i), (ii) and (iii) of the prayer to the plaint. The learned District Judge is directed to enter decree in accordance with this judgment. I affirm the judgment of the Court of Appeal dated 2.7.2013 and dismiss the appeal of the Defendant Appellant with costs.

Appeal dismissed.

Judge of the Supreme Court.

Priyantha Jayawardena PC J

I agree.

Judge of the Supreme Court.

Nalin Perea J

I agree.

Judge of the Supreme Court.

