

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

Thangavetpillai Selvakumar of
Nelukkulam, Vavuniya.

By his Attorney

R. Sellathurai (Deceased) and

Letchumy Sellathurai of
Nelukkulam, Vavuniya.

Plaintiff

SC APPEAL NO: SC/APPEAL/66/2012

SC LA NO: SC/HCCA/LA/112/2011

HCCA NO: NP/HCCA/VAVUNIYA/01/2002/F

DC VAVUNIYA NO: L/514

Vs.

Vallipuram Radhakrishnan of
Neriyakulam Road,
Nelukkulam,
Vavuniya.

Defendant

AND BETWEEN

Vallipuram Radhakrishnan of
Neriyakulam Road,
Nelukkulam,
Vavuniya.

Defendant-Appellant

Vs.

Thangavetpillai Selvakumar of
Nelukkulam, Vavuniya.

By his Attorney

R. Sellathurai (Deceased) and

Letchumy Sellathurai of

Nelukkulam, Vavuniya.

Plaintiff-Respondent

AND NOW BETWEEN

Vallipuram Radhakrishnan of

Neriyakulam Road,

Nelukkulam,

Vavuniya.

Defendant-Appellant-Appellant

Vs.

Thangavetpillai Selvakumar of
Nelukkulam, Vavuniya.

By his Attorney

R. Sellathurai (Deceased) and

Letchumy Sellathurai of

Nelukkulam,

Vavuniya.

Plaintiff-Respondent-Respondent

Before: Vijith K. Malalgoda, P.C., J.
K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: G. Rajagulendra with S. Devapalan for the
Defendant-Appellant-Appellant.

V. Puvitharan, P.C., with Anuja Rasanayakham
for the Plaintiff-Respondent-Respondent.

Argued on: 22.03.2021

Decided on: 04.05.2021

Mahinda Samayawardhena, J.

The Plaintiff instituted this action in June 2000 in the District Court of Vavuniya seeking a declaration that he is entitled to possess the land in suit on the strength of the Permit marked P2 issued in his name under the Land Development Ordinance, ejection of the Defendant from the land on the basis that the Defendant has been in unlawful possession of it since January 1999, and damages. The Defendant filed answer seeking dismissal of the Plaintiff's action. In his answer, the Defendant, whilst admitting that he came into possession of the land in late 1998, further took up the position that the land was a state-owned forest land which he cleared for development. He also avers in the answer that the land described in the schedule to the plaint and the land described in the schedule to the answer are different. After trial, the District Court entered Judgment for the Plaintiff and on appeal, the High Court affirmed it. This Court granted leave to appeal against the Judgment of the High Court on the following two questions of law formulated by the Plaintiff:

(a) Did the High Court err in law when it failed to consider the proper onus of proof in this action?

(b) Did the High Court err in law when it failed that the allotment of land described in the schedule to the plaint and the allotment of land described in the schedule to the Power of Attorney has not been identified as one and the same land?

The first question of law quoted above is unclear, and at the argument, learned counsel for the Defendant-Appellant did not assist the Court to understand it either. However, I believe I was able to discern its meaning by reading the Judgment of the District Court along with the written submissions filed in this Court. Let me explain.

The Defendant raised issue No. 7 on the identification of the land. It reads as follows: “*Are the boundaries of the land which are described in the schedule to the plaint and the boundaries of the land which are claimed by the Defendant one and the same?*” The learned District Judge answered this question in the affirmative.

The land described in the schedule to the plaint and the land described in the schedule to the Permit are the same. The Permit was issued in 1990. The Plaintiff claims the land according to the metes and bounds described in the Permit.

In the schedule to the plaint, the boundaries given are as follows: North by the land of V. Ponniah and Road; East by the land of Suppiah Kathiresan; South by the land of R. Ponnammah; and West by the Path.

The answer of the Defendant was filed in 2001 – eleven years after the Permit was issued. In the schedule to the answer, the boundaries given are as follows: North by the land of Mahadevan; East by the State Forest; South by the land of Sivarasa; and West by the Neriyaikulam Road.

It is relevant to bear in mind that the land in question and the parties to this action are from Vavuniya in the Northern Province. Many people in this province were displaced due to the civil war; perhaps as a result, the names of the claimants of the adjoining lands may have also changed over the years.

It is true that the Plaintiff has not taken out a commission to identify the land described in the schedule to the plaint. However, in the facts and circumstances of this case, this does not go to the root of the Plaintiff's case. The Permit P2 has been issued by the Land Officer in Vavuniya. At the trial, the Land Officer was summoned to give evidence on behalf of both parties. When he was summoned by the Defendant, he stated in his evidence that the Defendant made an application to him for a Permit to the land he was in possession of, and when he checked with the Settlement Officer and examined the Land Ledger, Alienation Registry etc., he realised that a Permit had already been issued on the land. The Land Officer then informed the Defendant of his findings. The Permit the Land Officer made reference to, was the Permit issued to the Plaintiff. At that point in time, the Defendant had not taken up the position that he was claiming a different land. This means the land described in the schedule to the Permit (and the plaint) and the land claimed by the Defendant are the same. The Land Officer was not cross-examined further on this matter. On this basis, the identification of the land was established before Court.

However, the learned District Judge states in his Judgment that the burden is on the Defendant to prove that the two lands – the land described in the Permit and the land in the possession of the Defendant – are different. This finding is erroneous. The burden is on the Plaintiff to prove that the

land the Defendant is in possession of is the same as that described in the schedule to the plaint. However, no prejudice was caused thereby to the Defendant as the Plaintiff had already adduced evidence and the learned District Judge had already accepted that the land the Defendant is currently in possession of is the land described in the Permit and the plaint.

In the Judgment of the High Court, there is no specific reference to the burden of proof in terms of the identification of the corpus. The two sets of written submissions filed by the Defendant before the High Court are available in the brief. In the said written submissions, the Defendant has not taken up this issue on the burden of proof. The said written submissions are largely if not solely dedicated to the defects in the Plaintiff's Power of Attorney (as the action was filed by a Power of Attorney holder). If the Defendant did not take up such a matter before the High Court, the formulation of the first question of law in the manner as it stands is misleading. I answer the first question of law against the Defendant.

However, even if this question was answered in favour of the Defendant, I would not be inclined to set aside the Judgment of the High Court on that basis, as I am satisfied the Plaintiff has discharged his burden in establishing the identity of the corpus.

Let me now turn to the second question of law. Similar to the first, this question is also not very clear. I am unable to comprehend why it was raised. This question suggests that the land described in the schedule to the plaint and the land described in the schedule to the Power of Attorney are different. Perusal of the two reveals this is not so.

In fact, even if there was a discrepancy, it would be immaterial as the Power of Attorney holder has been given the appropriate authority to deal with the land described in the Permit. The Permit number and the other relevant instructions are given in the Power of Attorney itself. Furthermore, there is no legal requirement to describe the land by metes and bounds in the Power of Attorney. For the above reasons, I also answer this question of law against the Defendant.

There is no merit in this appeal.

I dismiss the appeal with costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

K.K. Wickramasinghe, J.

I agree.

Judge of the Supreme Court