

IN THE SUPREME COURT OF

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal in terms of section 5C of the High Court of the Provinces (Special provisions) Act No.19 of 1990 as amended by Act No. 54 of 2006 against a judgment delivered by the Provincial High Court exercising its jurisdiction under section 5A of the said Act.

SC Appeal No. 124/2022

SC Leave to Appeal Application No.
SC/HCCA/LA/332/2020

Civil Appellate High Court Case
Application No. 73/2019

District Court Kegalle Case No.6853/L

Bothalayage Athula Sumanasekara

Alawala, Thunthota.

PLAINTIFF

Vs

1. Mananalage Sumathipala
2. Dissanayake Ralalage Ajith Munaweera
3. A. Rapiel Singho (deceased)
- 3a. Ganthota Karagalage Nandawathie

All at:

Alawala, Thuntota

4. Galigamuwa Pradeshiya Sabhawa
Pitagaldeniya

DEFENDANTS

AND THEN BETWEEN

Bothalayage Athula Sumanasekara

Alawala, Thunthota

PLAINTIFF-APPELLANT

Vs.

1. Mananalage Sumathipala
2. Dissanayake Ralalage Ajith Munaweera
- 3a. Ganthota Karagalage Nandawathie
4. Galigamuwa Pradeshiya Sabhawa
Pitagaldeniya

DEFENDANT-RESPONDANTS

AND NOW BETWEEN

1. Mananalage Sumathipala

DEFENDANT-RESPONDANT-APPELLANT

Vs.

Bothalayage Athula Sumanasekara

Alawala, Thunthota

PLAINTIFF-APPELLANT-RESPONDANT

1. Dissanayake Ralalage Ajith Munaweera
2. A Rapiel Singho
3. Ganthota Karagalage Nandawathie

All at:

Alawala, Thunthota.

4. Galigamuwa Pradeshiya Sabhawa
Pitagaldeniya

DEFENDANT-RESPONDANT-RESPONDANTS

Before: **VIJITH K. MALALGODA, PC, J**

P. PADMAN SURASENA, J

MAHINDA SAMAYAWARDHENA, J

Counsel: Ms. Nishadi Wickramasinghe for the 1st Defendant-Respondant-Appellant
Ranjan Suwandarathne, PC with Anil Rajakaruna for the Plaintiff-Appellant-Respondent

Argued on: 27-03-2023

Decided on: 09-02-2024

P.Padman Surasena J:

According to the amended Plaintiff (dated 01-10-2003), the Plaintiff-Appellant-Respondent (hereinafter referred to as the Plaintiff) had instituted the instant action against the 1st Defendant-Respondent-Appellant (hereinafter sometimes referred to as the 1st Defendant), the 2nd Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 2nd Defendant), the 3rd Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 3rd Defendant), and the 4th Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 4th Defendant or Pradeshiya Sabha of Galiamuwa). As the 3rd Defendant had passed away his wife Ganthota Karangalage Nandawathie has been added as (3a) Defendant-Respondent-Respondent. The Plaintiff in his action has prayed *inter alia* for the following relief:

- (a) A declaration that he is the owner of the land more-fully set out in the schedule to the Plaintiff,
- (b) A declaration that he is entitled to a judgment demarcating the eastern boundary of Lot 3 in Plan No. 6053/PA and also in terms of Plan No. 2143 dated 25-05-2003,
- (c) A permanent injunction preventing the Defendants from disputing the demarcation of the boundary.

The Plaintiff, according to the amended Plaintiff, states that he is the lawful owner of the land more-fully described in the schedule to the amended Plaintiff. According to the said schedule this land is Lot 3 in extent of 3 Roods and 13.34 Perches (රූ: 03, ප්: 13.34) which is depicted in the Plan No. 6053/PA dated 15-11-1975 prepared by L. A. D. C. Wijetunga Licensed Surveyor. The said Plan is the Final Plan prepared for the partition case No. 18733 in the District Court of Kegalle. The boundaries to said Lot 3 according to the schedule to the amended Plaintiff are as follows:

- *To the north – Veralugollena*
- *To the east – a footpath*
- *To the south – Lot X, Lot Y and Lot No. 04*
- *To the west – Lot No. 2*

Indeed, according to the Plaintiff, the District Court of Kegalle in the said partition action had allotted the said Lot 3 to Godayalage Lafi who stood as the 6th Defendant to that partition action. It is thereafter that the Plaintiff had purchased said Lot 3 from aforesaid Godayalage Lafi through the Deed No. 3575 attested by Earl Dunstant Milroy Jayawardhena Notary Public on 06-07-1997.

According to the Plaintiff, the roadway situated in the eastern boundary of this land had been in existence as a footpath in Plan No. 6053/PA dated 15-11-1975. The position taken up by

the Plaintiff in his amended Plaintiff is that the 1st and 2nd Defendants on or around 12-09-2000 had widened the said footpath to make it a four feet wide roadway by encroaching upon the Plaintiff's eastern boundary without his permission. It was the position of the Plaintiff on the Plaintiff that he had thereafter restored his boundary fence to its previous position by making a fence using about 20 concrete posts on or about 25-08-2002.

The Plaintiff has thereafter stated in the Plaintiff that on about 26-08-2002 1st, 2nd and 3rd Defendants had removed the concrete fence he had installed on his eastern boundary. He also has stated that on 28-08-2002, an officer from Galigamuwa Pradeshiya Sabha had come to the scene and told him that he had to take his boundary about 1 foot backwards to make the correct width of the road. It is in that backdrop that the Plaintiff had alleged that the 1st, 2nd and 3rd Defendant's had encroached upon his eastern boundary and widened this roadway on 28-08-2002.

At this stage, it is relevant to peruse the Plan No. 2143 dated 25-05-2003. In this Plan, the alleged encroached portion (by the 1st, 2nd and 3rd Defendants) has been depicted as Lot 1. The cause of action of the Plaintiff was on the basis that he is entitled to demarcate his boundary in accordance with the eastern boundary of Lot 3 in Plan No. 6053/PA.

1st, 2nd and 3rd Defendants have denied the positions taken up by the Plaintiff and taken up the following positions in their joint answer:

- (i) The roadway relevant to this case which is Alawala-Egodadeniya Road has been in existence for a long time initially as a by-lane which was later widened into a 8 feet wide roadway.
- (ii) The villagers had continuously and regularly used this roadway for a long time. The roadway was such that even the tractors had been travelling on that road.
- (iii) The 1st, 2nd and 3rd Defendant's along with the other villagers had been using this 8-feet-wide road since about the year 1980 and as such they have acquired a prescriptive right to use this as a common roadway of the village.
- (iv) Despite the fact that this road was a 8 feet wide roadway, the Plaintiff by misrepresenting facts, had attempted to extend his boundary by making the said roadway narrower than the existing 8 feet.
- (v) The Defendants have admitted that the rest of the land is owned and possessed by the Plaintiff.
- (vi) Even the Plaintiff is using the same road which is 8 feet wide, to access his land.

- (vii) When the Plaintiff had obstructed this roadway by extending his eastern boundary, the 1st Defendant on 25-08-2002 had lodged a complaint to Pindeniya Police Station

The 4th Defendant, Galigamuwa Pradeshiya Sabha, in its answer, had taken up the position that the roadway relevant to this action is a roadway, which is 3.65 Metres wide and it is owned and maintained by the 4th Defendant. The 4th Defendant had relied on the Gazette dated 18-06-1993 and the Gazette dated 26-01-2001 to establish this fact.

The trial in the District Court had proceeded on 26 issues. At the end of the trial, the learned District Judge by his judgment dated 07-03-2019, had concluded the followings:

- (i) The Plaintiff has established his paper title to the land described in the schedule to the Plaint.
- (ii) The Plaintiff is not entitled to the relief prayed for in the other prayers as the Plaintiff had failed to properly identify his land.
- (iii) The roadway more-fully depicted in the Plan No. 4818 dated 25-10-2004 produced marked **1V1**, has been a road which is 8 feet wide; the said roadway has been used in that manner for a long time; the said roadway is a roadway owned and maintained by Galigamuwa Pradeshiya Sabha.

Being aggrieved by the judgment dated 07-03-2019 pronounced by the District Court of Kegalle, the Plaintiff had appealed to the Provincial High Court. After the argument, the Provincial High Court of Civil Appeals for the reasons set out in its judgment, had proceeded to set aside the judgment of the learned District Judge and allowed the appeal.

Being aggrieved by the judgment of the Provincial High Court of Civil Appeals, the 1st Defendant-Respondent-Appellant sought Special Leave to Appeal from this Court. This Court, upon hearing the learned counsel for the 1st Defendant-Respondent-Appellant and the learned counsel for the Plaintiff-Appellant-Respondent, by its order dated 13-10-2022, had granted Leave to Appeal on the following questions of law:

- a. Is the impugned judgment dated 10-09-2020 erroneous and contrary to law?*
- d. Did the Learned Judges of the High Court of Civil Appeals fail to consider and appreciate the evidence produced in case bearing No. 6853/L in the District Court of Kegalle?*
- f. Did the Learned Judges of the High Court of Civil Appeals fail to consider and appreciate the inconvenience caused to the villagers using the road relevant to the said application by setting aside the judgment of the District Court in case bearing No. 6853/L?*

Perusal of Plan No. 6053/PA shows clearly the presence of a roadway along the eastern boundary of Lot 3. The said Plan had identified that roadway as a footpath (අඩිපාර). However, the plan does not give the width of that roadway. According to the Gazette dated 18-06-1993, the width of this road is mentioned as 2 meters which is approximately about 6.56 feet. According to the Gazette No. 1188 dated 08-06-2001, the 4th Respondent Pradeshiya Sabha, in terms of section 24 of the Pradeshiya Sabha Act No. 15 of 1987 has declared that this road is a 3.65 meter (approximately 12 feet) wide road owned and maintained by Galigamuwa Pradeshiya Sabha. The said Gazette notification had called for any objections by the owners of the lands relevant to this roadway within one month.

The District court had issued a commission on the Licensed Surveyor K.S. Panditharatne to prepare a plan pertaining to this roadway which was to be pointed out by the Defendants. The said surveyor (K.S. Panditharatne) had accordingly prepared Plan No. 4818 dated 25-10-2004 produced marked **1V1**. The report submitted by the said surveyor was produced marked **1 V1 (අ)**.

The Licensed Surveyor Robert Perera was called to give evidence by the Plaintiff. The commission issued on him by the District Court was to superimpose the eastern boundary of Lot No. 03 in Plan No. 6053/PA. The Plan, the Licensed Surveyor Robert Perera has prepared is Plan No. 2143 dated 25-05-2000. This Plan has been produced marked **P2** in the District Court. He has gone to survey the land on 24-05-2003. It is his evidence that the relevant roadway was easily identifiable on the ground along the eastern boundary of Plaintiff's land Lot 3¹. According to this surveyor's evidence it was a 10 feet wide road.

According to the Plaintiff, it was on or about 12-09-2000 that the Defendants had forcibly widened this road. He had stated further that he restored a fence using about 20 concrete posts on 25-08-2002. He had made a complaint to the Pindeniya Police Station on 25-08-2002 as the Defendants are alleged to have removed these concrete posts.

The Licensed Surveyor Sisira Panditharatne who had executed the commission obtained by the Defendants was called to give evidence on behalf of the Defendants. This surveyor also in his evidence had stated that the roadway relevant to this action is 8 feet wide from point A to D and 12 feet wide from point D to B. He too had observed and given evidence to the effect that this roadway had been in use for a long time. He also had taken a firm view according to his observation that it was a road used in common.

¹ Page 113 of the brief.

According to the Plaintiff's surveyor who was called upon to superimpose Lot 3 on the eastern boundary of the land, the roadway was definitely a roadway more than the width of a footpath.

In my view, there is no justification for the Provincial High Court to reject the position of the Defendants that such a roadway was in existence merely because several witnesses called by the Defendants had given slightly different measurements as to the widths of the roads as at different years. Indeed, it is a fact that the width of this road was increased from time to time. It is also in evidence that this has been declared as a public road owned and maintained by the 4th Defendant, Galigamuwa Pradeshiya Sabha. Despite calling for objections as per the Gazette No 1188, the Plaintiff had not offered any resistance for such declaration of this road as a Pradeshiya Sabha Road. Indeed, it is the evidence of all surveyors that they had observed that this is a roadway which had minimum width of 8 feet at one point and is a roadway used by people for a long time. The Plaintiff had not taken any action to challenge the declarations published in the relevant Gazettes. In the absence of such a challenge or any objections, it is also not justifiable and lawful for the Provincial High Court Judge to hold that these declarations are not valid. I see no justification for such conclusion. Thus, it is a mere statement not supported by any factual or legal position and cannot have a place in this case.

Having regard to the evidence adduced in this case, I am of the view that there is sufficient evidence to prove that the impugned roadway was in existence for a long time. I have already held that the reasons given by the learned Judge of the Provincial High Court of Civil Appeals to reject the evidence of the Defendant are not acceptable. Therefore, there is no justification for the Provincial High Court of Civil Appeals to overrule the finding of the learned District Judge that the impugned roadway has been a road which is 8 feet wide; the said roadway has been used in that way for a long time; the said roadway is a roadway owned and maintained by the Galigamuwa Pradeshiya Sabha.

The Defendants have not disputed that the Plaintiff holds the title to the rest of the land described in the Schedule to the Plaint. What they dispute is the apparent encroachment by the Plaintiff moving his eastern boundary on to the disputed roadway which stands widened from a foot path to a much wider road. The evidence adduced in this case at the trial, both by the Plaintiff and the Defendants do not positively establish that the Plaintiff has been successful in establishing the eastern boundary of this land. In view of the above, there is no justification for the learned judge of the Provincial High Court of Civil Appeals to overrule the conclusion of the learned District Judge that the Plaintiff is not entitled to the other relief prayed for, in the other prayers as the Plaintiff had failed to properly identify his land.

For the foregoing reasons, I am of the view that the learned Judge of the Provincial High Court of Civil Appeals has erred when it had set aside the judgment of the learned District

Judge. Rather than answering the questions of law in respect of which this Court has granted Leave to Appeal individually and directly, I find it appropriate to provide a composite answer to all of them as follows:

There is no justification for the learned Provincial High Court judge to overrule the conclusion of the learned District Judge that the Plaintiff is not entitled to the other relief prayed for, in the other prayers in the plaint as the Plaintiff had failed to properly identify his land.

I proceed to set aside the judgment of the Provincial High Court of Civil Appeals and restore the judgment of the District Court. The Defendants are entitled to costs.

JUDGE OF THE SUPREME COURT

VIJITH K. MALALGODA PC, J

I agree,

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA J

I agree,

JUDGE OF THE SUPREME COURT