

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

In the matter of an Appeal

Danthasinghe Patabendi  
Hangidigedera Abeyrathna  
No.29, Pannawa, Ganewatta.

**Plaintiff**

SC Appeal 156/2015  
SC/HCCA/LA/556/2012  
NWP/HCCA/KUR/135/2005(F)  
DC Kurunegala Case No.5442/L

Vs

B.G. Nimal Kumara Hemasiri of  
Kumbukgate

**Defendant**

And

B.G. Nimal Kumara Hemasiri of  
Kumbukgate

**Defendant-Appellant**

Vs

Danthasinghe Patabendi  
Hangidigedera Abeyrathna  
No.29, Pannawa, Ganewatta.

**Plaintiff-Respondent**

**AND NOW BEWEEN**

B.G. Nimal Kumara Hemasiri of  
Kumbukgate

**Defendant-Appellant-Petitioner-Appellant**

Vs

Danthasinghe Patabendi  
Hangidigedera Abeyrathna  
No.29, Pannawa, Ganewatta.  
(Deceased)

1a. Danthasinghe Patabendi  
Hangidigedera Mangalika Abeyrathna

2a. Danthasinghe Patabendi  
Hangidigedera Lakshman  
Prasad Abeyrathna  
Both of No.29, Pannawa, Ganewatta.

**Substituted Plaintiff-Respondent-  
Respondent-Respondents**

Before : Sisira J de Abrew J  
Prasanna Jayawardena PC J  
L.T.B.Dehideniya J

Counsel : Athula Perera with Nayomi N Karunaratne for the  
Defendant-Appellant-Petitioner-Appellant  
Kamal Dissanayake instructed by Samadi Seneviratne for the  
1(a) and 1(b) substituted Plaintiff-Respondent-Respondent-Respondents

Argued on : 14.2.2018

Written Submission

Tendered on :11.12.2015 by the  
Defendant-Appellant-Petitioner-Appellant  
13.1.2016 by the Substituted Plaintiff-Respondent-  
Respondent-Respondents

Decided on : 21.6.2018

**Sisira J de Abrew J**

The Plaintiff-Respondent-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed case No.5442/L in the District Court of Kurunegala against the Defendant-Appellant-Petitioner-Appellant (hereinafter referred to as the Defendant-Appellant) asking for a declaration that he is the lawful lessee of the lands described in the plaint and to eject the Defendant-Appellant. The learned District Judge by his judgment dated 1.9.2005 granted relief sought by the Plaintiff-Respondent. Being aggrieved by the said judgment of the learned District Judge, the Defendant-Appellant appealed to the Civil Appellate High Court. The Civil Appellate High Court by its judgment dated 8.11.2012 dismissed the appeal. 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 22.9.2015, granted leave to appeal on questions of law set out in paragraphs 17(a),(b) and (c) of the petition of appeal dated 20.12.2012 which are set out below.

1. In the circumstances of the case, has the plaintiff established before court the ownership of the two lands in dispute vested with Maha Vishnu Dewalaya of Kandy and the plaintiff is the lawful tenant/lessee of the lands in dispute?
2. Has the plaintiff identified the land in dispute to obtain a declaration that he is the tenant of the lands?
3. In the circumstances pleaded, are the judgments of the learned District Judge as well as the Civil Appellate High Court according to law and according to the evidence adduced in the case?

The Plaintiff-Respondent in his plaint and evidence claims that he, on a permit issued by Vishnu Dewalaya Kandy marked P4, was in possession of the lands described in the plaint; that he is the lawful lessee of the said property; that in October 1997 the Defendant-Appellant forcibly entered the said property; that on 13.10.1997 he made a complaint to Gokarella Police Station complaining of the said unlawful acts of the Defendant-Appellant; and that he is the lawful lessee of the said property.

The Defendant-Appellant in his answer and the evidence takes up the position that he is the owner of the property described in the plaint. He relies on Deed No. 16016 dated 20.11.1997 (V1) attested by Padma Kumari Wanigasuriya, Notary Public.

On an application made by the Plaintiff-Respondent, District Court issued a commission on H.M. Karunaratne Licensed Surveyor who prepared Plan No.24899. The said plan was produced at the trial marked as P1. H.M.

Karunaratne Licensed Surveyor in his evidence states that he surveyed the lands described in the plaint and that the lands described in the plaint are depicted in his Plan No. 24899. The Defendant-Appellant too made an application for a commission and the District Court issued a commission on H.B.Abeyratne Licensed Surveyor who prepared Plan No.2885. The lands described in the plaint according to the evidence of the Plaintiff-Respondent and H.M. Karunaratne Licensed Surveyor are situated in a village called Kumbukgate and the names of the lands are Dalupothyaya and Paluwatta. Are these the same lands claimed by the Defendant-Appellant? When H.B.Abeyratne Licensed Surveyor surveyed the land, the Defendant-Appellant has shown the land. But the land shown by the Defendant-Appellant is not situated in a village called Kumbukgate. It is situated in a village called Waliharagedera. The distance between Kumbukgate and Waliharagedera is about one kilometer. Further the name of the land shown by the Defendant-Appellant is Galkamathagawa Godapillaawa Dambagahamulahena. It has to be noted here that the land described in the plaint is situated in Kumbukgate. Further the Plaintiff-Respondent too had been present when the when H.B.Abeyratne Licensed Surveyor surveyed the land. The Plaintiff-Respondent had told H.B.Abeyratne Licensed Surveyor that this was not the land in dispute. The above evidence has been given by H.B.Abeyratne Licensed Surveyor. When the above evidence is considered, it is clear that the land described by the Defendant-Appellant is not the land described in the plaint. The Defendant-Appellant relies on Deed No.16016 dated 20.11.1997 marked (V1). The said deed too described the land situated in a village called Waliharagedera and the name of the land is

Galkamathagawa Pillaawa Dambagahamulahena. When I consider all the above matters, I am of the opinion that the Defendant-Appellant's claim that he is the owner of the lands described in the plaint cannot be accepted and should be rejected. When I consider all the above matters, the contention of learned counsel for the Defendant-Appellant that the corpus had not been identified has to be rejected and is hereby rejected.

The Land Officer of the Vishnu Dewalaya Kandy K.B.Piyasiri states in his evidence that the land described in the permit marked P4 was leased to the Plaintiff-Respondent; that the Plaintiff-Respondent has been paying yearly rent to the Vishnu Dewalaya Kandy; and that permit marked P4 was issued by Basnayake Nilame of the Vishnu Dewalaya Kandy. When I consider all the above matters, I hold that the judgment of the learned District Judge giving relief to the Plaintiff-Respondent is correct and the judgment of the Civil Appellate High Court dismissing the appeal of the Defendant-Appellant too is correct. In view of the conclusion reached above, I answer the 1<sup>st</sup> question of law as follows.

The Plaintiff-Respondent has established that he is the lawful lessee of the lands in dispute.

The 2<sup>nd</sup> question of law is answered as follows.

The Plaintiff-Respondent has identified the lands in dispute to obtain a declaration that he is the lessee of the lands described in the plaint.

The 3<sup>rd</sup> question of law is answered as follows.

Both judgments of the District Court and the Civil Appellate High Court are correct.

For the above reasons, I affirm the judgments of the District Court and the Civil Appellate High Court and dismiss this appeal with costs.

*Appeal dismissed.*

Judge of the Supreme Court.

**Prasanna Jayawardena PC J**

I agree.

Judge of the Supreme Court.

**L.T.B.Dehideniya J**

I agree.

Judge of the Supreme Court.