

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

Welikala Vithanalage Beatrice Rodrigo,
No. 106, “Rodrigo Villa”,
Kandy Road,
Yakkala.
Plaintiff

SC APPEAL NO: SC/APPEAL/01/2019

SC LA NO: SC/HCCA/LA/499/2016

HCCA GAMPAHA NO: WP/HCCA/GPH/186/2010 (F)

DC GAMPAHA NO: 41199/L

Vs.

1. Pradeep Kumara Dissanayaka,
2. Lokuketagodage Gunaseeli
Chandralatha,
Both of No. 92, 42/04,
4th Lane, Aluthgamawatte,
Yakkala.

Defendants

AND

Welikala Vithanalage Beatrice Rodrigo,
No. 106, “Rodrigo Villa”,
Kandy Road,
Yakkala.
Plaintiff-Appellant

Vs.

1. Pradeep Kumara Dissanayaka,
2. Lokuketagodage Gunaseeli.

Chandralatha,

Both of No. 92, 42/04,

4th Lane, Aluthgamawatte,

Yakkala.

Defendant-Respondents

AND NOW BETWEEN

Welikala Vithanalage Beatrice Rodrigo,

No. 106, “Rodrigo Villa”,

Kandy Road,

Yakkala.

Plaintiff- Appellant- Appellant

Vs.

1. Pradeep Kumara Dissanayake,
2. Lokuketagodage Gunaseeli Chandralatha,

Both of No.92, 42/04,

4th Lane, Aluthgamawatte,

Yakkala.

Defendant-Respondent-Respondents

Before: P. Padman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: S.N. Vijithsingh for the Plaintiff-Appellant-Appellant.
Mohan Walpita for the Defendant-Respondent-
Respondents.

Argued on: 16.12.2021

Written submissions:

by the Plaintiff-Appellant-Appellant on 08.03.2019 and
19.01.2022.

by the Defendant-Respondent-Respondents on 22.11.2021
and 20.01.2022.

Decided on: 27.03.2023

Samayawardhena, J.

The plaintiff filed this action against the defendant in the District Court of Gampaha seeking a declaration of title to the land described in the schedules to the plaint and a permanent injunction preventing the defendants from constructing buildings on the land described in the third schedule to the plaint. The defendants are the owners of Lots 65 and 66 of plan 860 marked V1 and the plaintiff is the owner of land on the western boundary of the defendants' land – *vide* plan 279 at page 295 of the Brief. The dispute between the two parties ultimately boils down to a boundary dispute. The defendants filed answer seeking to demarcate the boundary between the two lands as per the plan 279 marked V3.

After trial, the District Court entered judgment for the defendants. On appeal, this was affirmed by the High Court. This Court granted leave to appeal against the judgment of the High Court on the question whether the High Court erred in affirming the judgment of the District Court where relief was granted in favour of the defendants as prayed for in the prayer to the answer by demarcating the boundary as per plan 279 whilst

stating in the body of the judgment that the boundary should be demarcated as per plan 860.

Learned counsel for the plaintiff states before this Court that the plaintiff is willing to demarcate the boundary between the two lands according to plan 860 but not according to plan 279.

What is plan 279? Is it different from plan 860? Plan 279 was prepared on a commission issued by Court. This plan and the report were marked V3 and V3A through the surveyor who prepared this plan. He was called as a witness by the defendants. His evidence-in-chief was led on 26.01.2009 and he was not cross-examined on the same date but on 05.05.2009. It is significant to note that his cross-examination was confined to two pages and the plaintiff did not really challenge his evidence at all. According to his evidence (*vide* report V3A), plan 279 was prepared by the superimposition of plan 860 on the existing boundaries. In other words, plan 279 depicts both the existing boundaries (with darker markings) and the superimposed boundaries as shown in plan 860 (with lighter markings). I repeat that this evidence was not challenged in cross-examination. Therefore, the argument of learned counsel for the plaintiff that the plaintiff is prepared to demarcate the boundary according to plan 860 but not according to plan 279 as they are two different plans is unsustainable. Both plans address the same issue – the latter in clearer terms. According to the report, the survey had been carried out with the participation of both parties and the correct boundary had been shown on the ground and marked by the surveyor in front of both parties.

I see no reason to take a different position than that taken by the two Courts below. The question of law has to be answered against the plaintiff. The appeal is dismissed with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court