**IN THE SUPREME COURT**

**OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

Mohammed Abdul Gaffoor
No.77/05, Vishaka Mawatha
Bandarawela

**Defendant-Respondent-Appellant**

**S.C.APPEAL No.95/2013**
**SC/HC/CALA No.113/2012**
**HCCA CASE**
**NO.UVA/HCCA/BDL/74/2004[F]**
**D.C.BANDARAWELA**
**CASE NO.1/1413**

**Vs**

Mohamed Jethum Umma
No.77/05, Vishaka Mawatha
Bandarawela

**Plaintiff-Appellant-Respondent**

**BEFORE** : **SISIRA J.DE.ABREW J.**
**K.T.CHITRASIRI J.**
**NALIN PERERA J.**

**COUNSEL** : Shantha Jayawardena with Duleeka Imbuldeniya for the Defendant-Respondent-Appellant

M.Nizam Kariapper with M.C.M.Nawas
for the Plaintiff-Appellant-Respondent

**ARGUED ON** : **07.06.2016**

**WRITTEN SUBMISSIONS ON** : 19.07.2013 by the Defendant-Respondent-Appellant
17.12.2013 by the Plaintiff-Appellant-Respondent

**DECIDED ON** : 21.06.2016

**CHITRASIRI, J.**

Plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) filed this action in the District Court of Bandarawela by her plaint dated 16.02.1999 seeking for a declaration to the effect that she is the owner of the land morefully described in the first schedule to the plaint. She also sought to have the defendant-respondent-appellant (hereinafter referred to as the defendant) evicted from the land referred to in the second schedule in that plaint. The defendant filed his answer seeking to have the aforesaid plaint dismissed and also sought for a declaration that he is entitled to possess the land referred to in the schedule to his answer dated 26.04.1999. He did not claim title to the land that he alleged to have been in possession.

Plaintiff had relied on a Grant issued by the State which is named as "Jayaboomi Oppuwa" that was marked in evidence as P1, to establish her rights. (vide at page 251 in the appeal brief) Admittedly, the defendant had no title to the land that he claimed. According to him, he is in possession of a land belonging to the State.

Learned District Judge after a protracted trial, dismissed the plaint of the plaintiff. He had basically considered the possession of the respective parties when he dismissed the plaint. He had come to the conclusion that the disputed portion of the land referred to in the plan marked P7 had been in the possession of the defendant. It is also seen that the learned District Judge had

not properly addressed his mind to the entitlement of the plaintiff that she has claimed on the basis of the Grant marked P1 issued by the State. Neither has he considered the issue of identity of the land referring to the plan bearing No.157 marked P6 when he decided to dismiss the action of the plaintiff. Basically, it is only the possession of the land that had been considered by the learned District Judge to dismiss the action.

Being aggrieved by the aforesaid decision, the plaintiff filed an appeal in the High Court of the Uva Province (exercising its civil jurisdiction) to have the judgment of the learned District Judge reversed. Having considered the merits of the case, learned High Court Judges in the Civil Appellate High Court allowed the appeal of the plaintiff and set aside the judgment dated 06.10.2004 of the learned District Judge of Bandarawela.

Being aggrieved by the aforesaid decision of the learned Judges in the Civil Appellate High Court, the defendant preferred this appeal seeking to set aside the judgment dated 14.03.2012 of the Civil Appellate High Court. When the application for leave was considered by this Court on 07.06.2013, parties agreed that the only dispute in this case relates to the identity of the *corpus* subjected to in this case. Journal entry entered on that date reads thus:

> *"Parties agree that only dispute in this case relates to the corpus and the identity of the corpus. Under these circumstances leave is granted only on the question of law as to whether the corpus has been properly identified."*

At the outset, it must be noted that such a question of law upon which the leave was granted does not give rise to a specific question of law as such, but it is an issue that would depend basically on the facts and circumstances of the case. However, I do not say for a moment that an appellant is totally prevented from raising such a question that involves facts to determine his/her rights in an appeal. It is more so since some of the original court judges might tend to deviate or disregard completely the evidence before them when they are to decide cases filed in those courts. Trial judges should not be permitted to arrive at findings that would become perverse or irrational. In order to prevent such perverse or irrational decisions being made, questions involving facts are also permitted to argue in an appeal in a restricted manner. Accordingly, such an argument involving facts could be advanced even at the appeal stage upon framing a question to that effect. Framing of questions of law that are to be decided by an appellate court had been well considered in the determination made by a five Judge Bench of the Supreme Court in **Collets Ltd. Vs. Bank of Ceylon. [1982 (2) S L R 514]**

However, it must be noted that when such an issue involving facts and circumstances of a given case is to be determined, the Appellate Courts are always slow to interfere with such decisions of the trial Judges since trial judges are the judges who personally hear and see the witnesses giving evidence. Hence, they become the best judges as to the facts of the case. This position of the law had been well accepted in the cases of:

- **De Silva and others v. Seneviratne and another [1981 (2) SLR 8]**
- **Fradd v. Brown & Co.Ltd [20 NLR at page 282]**
- **D.S.Mahawithana v. Commissioner of Inland Revenue [64 NLR 217]**
- **S.D.M.Farook v. L.B.Finance [C.A.44/98, C.A.Minutes of 15.3.2013]**
- **W.M.Gunatillake vs. M.M.S.Puspakumara [C.A.151/98 C.A.Minutes of 9.5.2013].**

Furthermore, in the case of **Alwis v. Piyasena Fernando [1993 (1) SLR at page 119**, G.P.S.de.Silva, J (as he then was) held thus:

> "*It is well established that findings of primary facts by a trial Judge who hears and sees the witnesses are not to be lightly disturbed on an appeal".*

In the circumstances, I will now turn to consider whether it is correct to consider the material as to the ownership of the land in dispute and the identity of the same at the appeal stage as those would amount to be the facts of the case. Contention of the learned Counsel for the defendant-appellant in this case is that the boundaries referred to in the document marked P1 by which the plaintiff became entitled to the land in question are different to the boundaries referred to in the plans marked P6 and P7 which were produced to identify the land mentioned in the Grant marked P1. (filed at pages 53 and 61 respectively in the appeal brief). He submitted that the northern boundary in the Grant is the land belonging to Sudu Menika whilst the northern boundary in the plan marked P6 is a leased land of S.H.Dharmadasa. However, it is to be noted that the land of Sudu Menika is also found towards the north western direction in the plan marked P6. The eastern boundary both in the permit as well as in the plan is Pradeshiya Sabha road. There is no difference found

there. The southern boundary in the permit is the land belonged to M.Rafaideen whilst the land to the south in the plan is the land of Haniff Jawaldeen. The western boundary is different in both the plan and in the permit.

However, these discrepancies as well as the similarities found in the permit marked P1 and in the plan marked P6 had been carefully looked at by the learned High Court Judges in the Civil Appellate High Court. The learned High Court Judge in his judgment, the issue of identity of the land subjected to in this case had been dealt with in the following manner:

> *"The only confusion is as regards the identity of the corpus. The Court Commissioner in his evidence as well as in his plan and report marked P6 and P6A states that the boundaries are almost identical but later admits that there are minor discrepancies such as the boundary given as the northern boundary is more or less is towards the northwest and the western boundary which is given as Rafideen's land could not be identify as there was no person by the name Rafideen. Instead in his plan, the land on the west belongs to one Sitti Karesha and the southwestern boundary is the land belongs to Haneef Jawaldeen. However, the surveyor seems to be positive about the identity of the corpus. The next matter I wish to refer to is P7. P7 is a plan prepared by the Surveyor General on a request made by the Divisional Secretary with a view to settle the boundaries of the corpus. The same land possessed by the appellant is identified by the Surveyor*

*General as the land that belongs to the appellant and the portion encroached by the respondent with a minor discrepancy in the extent as I have mentioned above. The only difference between the two plans visible to the naked eye is that there is a little tilt shown in the boundary between the portion now possessed by the appellant and the encroachment portion. However, my observation cannot be relied upon although I mentioned it as a passing matter. The Surveyor General's plan and her report has not been disputed. Hence we have to presume that the Surveyor General's plan is accurate as regards the boundaries of the corpus and the encroachment. Therefore, I am of the view that the little confusion express by the court commissioner has to be overlooked in the light of the Surveyor General's plan and report. The Surveyor General's plan has been made on 11/02/1998 after the survey in November/December 1997 before the institution of this action. As I mentioned before the fact that the Government Surveyor has stated in her report dated 03/05/1998 lot no. ඇ (B) should be given to the appellant from an out of the land occupied by the respondent does not mean in any way that lot no. ඇ (B) is a land of the respondent. The lot no. ඇ (B) and the rest of the land occupied by the respondent is also State land. Since, Lots B and C in P7 consists of the land described in the Grant to the appellant, for all purposes it should be considered that lots B and C consists of the land alienated to the appellant by the Grant. It should also be borne in mind that the illegal*

*possession of a person cannot restrict the State from disposing the State land according to the desires of the State. Therefore, I am of the view that the identity of the corpus covered by the Grant to the appellant is established. Hence, I am of the view that the Learned District Judge has erred in answering the issues no.1, 2, 3, 4, 5, 8, 11, 12 and 19 in favour of the respondent with cogent evidence. Therefore, I am of the view that issues 1, 2, 3, 4, 5, 8, 11, 12 and 19 should be answered in favour of the appellant."*

When looking at the above consideration by the learned High Court Judge, I am of the view that the question of identity had been carefully and properly addressed to, by him. He has given ample reasons as to his findings in respect of the issue as to the identity of the *corpus*. I am unable to find such an analysis of the evidence by the learned District Judge, particularly in relation to the main relief prayed for by the plaintiff in this case. The aforesaid evaluation of the evidence by the learned High Court Judge show that he, in that appeal has intervened to correct an irrational findings of the learned District Judge. If the High Court was not allowed to consider the facts of this case, then there would have been a serious miscarriage of justice. Therefore, it is my opinion that it was a fit case to consider the facts of the case even by an appellate forum. In the circumstances, I am not inclined to interfere with the judgment of the learned High Court Judge.

Reason as to why I stated that the decision of the learned District Judge is irrational is seen when looking at the manner in which the trial had taken place in the District Court. It would become clearer when looking at the impugned judgment as well. Claim of the plaintiff is to obtain a declaration as to the ownership to a block of land found between the two lands possessed by the plaintiff and the defendant. The relief prayed for by the plaintiff was on the question of ownership to that block of land. Then the identity of the corpus is very material. Indeed, the issue No.4 had been raised to determine the identity of the corpus. That issue had been answered in the negative despite the fact that there were two plans namely the documents marked P6 and P7 had been produced in evidence to establish the identity of the corpus. Learned District Judge has basically considered the possession of the land disregarding the ownership that the plaintiff had claimed through a State Grant. Therefore, it is clear that the learned District Judge has misdirected himself even as to the main relief sought by the plaintiff. On the other hand, issue on the question of identity of the corpus had been well considered by the learned Judges in the Civil Appellate High Court. Having done so, they have come to the correct decision reversing the judgment of the learned district Judge.

In the circumstances, I do not see any reason to interfere with the judgment of the learned High Court Judges in the Civil Appellate High Court of the Uva Province. Accordingly, judgment dated 14.03.2012 of the Civil Appellate High Court is affirmed. The question of law on which the leave was granted by

this Court is decided in favour of the plaintiff-respondent. Defendant-appellant is not entitled to have the reliefs prayed for in his petition of appeal dated 24.0-3.2012. Accordingly, this appeal is dismissed with costs fixed at Rupees Seventy-Five Thousand. (Rs.75,000/-)

*Appeal dismissed.*

JUDGE OF THE SUPREME COURT

**SISIRA J.DE ABREW, J**

I agree

JUDGE OF THE SUPREME COURT

**NALIN PERERA, J**

I agree

JUDGE OF THE SUPREME COURT