

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

1. Ranthatidurage Selestina (Deceased)
- 1(a). Namminnage Mahathun,
- 1(b). Namminnage Saradiyel,
- 1(c). Namminnage Ariyasena,
2. Namminnage Babasingno (Deceased)
3. Namminnage Karunawathie (Deceased)
- 3(a). Namminnage Manjula Kumari,
All of Udahena, Idama, Kolonna.
Defendant-Appellant-Appellants

SC APPEAL NO: SC/APPEAL/75/2016

SC SPL LA NO: 232/2015

CA NO: CA/1010/1996 (F)

DC AMBILIPITIYA NO: 3902/L

Vs.

Leelaratne Illesinghe (Deceased)
Shanthi Sirima Illesinghe of No. 62,
Kumbuka West, Gonapola Junction,
Horana.
Substituted Plaintiff-Respondent-
Respondent

Before: Buwaneka Aluwihare, P.C., J.
 A.H.M.D. Nawaz, J.
 Mahinda Samayawardhena, J.

Counsel: Chatura Galhena with Manoja Gunawardena for the
Defendant-Appellant-Appellants.
Srihan Samaranayake for the Substituted Plaintiff-
Respondent-Respondent.

Argued on : 05.02.2021

Decided on: 05.09.2023

Samayawardhena, J.

The Plaintiff filed this action against the three Defendants in the District Court of Embilipitiya seeking a declaration of title to the land described in the schedule to the plaint, the ejectment of the Defendants therefrom and damages. The Defendants filed answer seeking the dismissal of the Plaintiff's action and a declaration of title to the land described in the schedule to the answer. After trial, the District Court entered Judgment for the Plaintiff except for damages. The Court of Appeal affirmed the Judgment of the District Court and dismissed the Defendants' appeal. This appeal with leave obtained is from the Judgment of the Court of Appeal.

In summary, this Court granted leave to appeal on two main questions of law: (a) has the Plaintiff established that he is the owner of the land described in the schedule to the plaint? and (b) has the land described in the schedule to the plaint been properly identified? It is common ground that if the answers to both or one of them is in the negative, the Plaintiff's action shall fail. At the argument, learned Counsel for the Defendants placed special emphasis on (b) above, i.e. failure to identify the land.

The land the Plaintiff claims title to, as described in the schedule to the plaint, is as follows:

The land called and known as Lunulandahena situate at Kolonna in the Kolonnagam Pattu of Kolonna Korale in the District of Ratnapura of the Sabaragamuwa Province bounded on the North by Heendeniya, South by Heena, East by Watumandiya and West by Divulgahawatta in extent of forty Kurunis of Kurakkan sowing area.

Although it is not decisive, according to traditional Sinhala land measurements (as cited in *Ratnayake v. Kumarihamy* [2002] 1 Sri LR 65 at 81), in general terms, one *Laha* or *Kuruni* of Kurakkan sowing area is equivalent to one acre and one *Laha* or *Kuruni* of Paddy sowing area is equivalent to ten perches. The Plaintiff claims title to a portion of land in extent of forty *Kurunis* of Kurakkan sowing area. This means, the Plaintiff in the plaint claims a portion of land in extent of about forty acres.

On what basis does the Plaintiff claim title to this land? He traces title to the land to a decree entered in favour of his father on 11.02.1944 by the Court of Requests of Ratnapura in case No. 1845 marked P5. But the land described in the said decree is not identical to the land described in the schedule to the plaint. The land described in the decree is as follows:

The land called and known as Lunulandehena situate at Kolonna bounded on the North by Meedeniya [not Heendeniya as claimed by the Plaintiff], South by Heenna, East by Watumandiyahena [not Watumandiya as claimed by the Plaintiff] and West by Divulgahawatta in extent of forty Seers [not forty Kurunis as claimed by the Plaintiff] of Kurakkan sowing area.

Learned Counsel for the Plaintiff submits that “*Kuruni*” instead of “*Seers*” in the description of the extent of the land in the plaint is a typographical error and the variance in the northern boundary from “*Meedeniya*” to “*Heendeniya*” may be due to the lapse of time. Learned Counsel is silent

about the discrepancy in the eastern boundary. In my view, this is not the stage to correct typographical errors or explain discrepancies in the boundaries. Those matters ought to have been addressed at the trial Court and not in the final Court. No explanation on this has been given by the Plaintiff in his evidence before the District Court.

Even assuming “*Kuruni*” instead of “*Seers*” is a typographical error, according to the same source cited above, one *Kuruni* is equivalent to four Seers. Forty Seers then means ten acres.

However, the Plaintiff in his evidence says the land he claims is approximately two acres. This is manifestly irreconcilable. It is difficult to understand how a forty-acre land or ten-acre land reduces to a two-acre land. There is no explanation forthcoming from the Plaintiff.

How does the Plaintiff describe the land in his evidence? The Plaintiff does not properly describe the boundaries of the land. He says the four boundaries are now different from the description of the land in the schedule to the plaint. He speaks of only two boundaries: North by a ditch and East by a road and live fence, which are incompatible with the boundaries given by him in the schedule to the plaint. He also says “*towards the Defendants’ land lies Watumandiya.*” (Page 39 of the Brief) This answer lends support to the Defendants’ position that the Defendants are in possession of a different land because Watumandiya is the eastern boundary of the Plaintiffs’ land as described in the schedule to the plaint.

Making confusion worse confounded, the Plaintiff in the document marked P2 says the land in suit is also known as Watumandiyahena (not Watumandiya). P2 describes the land as Lunulandehena alias Watumandiyahena. It may be recalled that in the decree marked P5, Watumandiyahena is the eastern boundary of Lunulandehena. In other

words, Lunulandehena and Watumandiyahena cannot be the same land but are two adjoining lands. Further, according to P3 marked by the Plaintiff, the land is also known as Watumandiya and Maiyaundage Idama. P3 says Lunulandehena alias Watumandiya alias Maiyaundage Idama.

It is also relevant to note that the Plaintiff in his evidence states at one stage that Lunulandehena comprises several lands. (Page 42 of the Brief)

The Defendants claim a different land by name, boundaries and extent. It is described in the schedule to the answer as follows:

The land called and known as Dunlandagawattahena situate at Kolonna in the Kolonnagam Pattu of Kolonna Korale in the District of Ratnapura of the Sabaragamuwa Province bounded on the North by Ditch and Live Fence, East by Road and Live Fence, South and West by Live Fence in extent of about two acres.

In my view, the Plaintiff in his evidence claimed two acres of land because the land claimed by the Defendants in the answer is a land in extent of about two acres. Also the Plaintiff vaguely gave boundaries such as “North by Ditch; and East by Road and Live Fence” in contradiction to the boundaries given in the plaint because these are the boundaries given by the Defendants in their answer describing the land they claim.

This approach of the Plaintiff is unacceptable in a vindicatory action such as this. The Plaintiff in a vindicatory action cannot come to Court in anticipation of proving his case with the material provided by the Defendant. Nor can the Plaintiff in such an action strengthen his case by highlighting the weaknesses of the Defendant’s case. The Defendant in a vindicatory action has no burden to discharge until the Plaintiff proves his title. It is only after proof of the Plaintiff’s title that the burden shifts to the Defendant to prove on what right he is in possession of the land.

However, I must add that proof of title without proper identification of the land is futile. Title shall be proved in respect of a properly identified portion of land which forms the subject matter of the dispute. If identification of the corpus fails, the action must fail. There is no need to go into the question of title.

The plaint is not accompanied by a plan to identify the land as required by section 41 of the Civil Procedure Code; nor did the Plaintiff take out a commission to prepare a plan after the institution of the action.

Section 41 of the Civil Procedure Code reads as follows:

When the claim made in the action is for some specific portion of land, or for some share or interest in a specific portion of land, then the portion of land must be described in the plaint so far as possible by reference to physical metes and bounds, or by reference to a sufficient sketch, map, or plan to be appended to the plaint, and not by name only.

If the land the Plaintiff claims title to cannot be identified on the ground with precision, in the event the Plaintiff succeeds in the action, how can the Fiscal eject the Defendants and hand over possession of the land to the Plaintiff when the Defendants have taken up the position that they are not in possession of the land described in the schedule to the plaint? The delivery of possession in such circumstances is not possible. *Vide David v. Gnanawathie* [2000] 2 Sri LR 352, *Gunasekera v. Punchimenika* [2002] 2 Sri LR 43.

It was held in *Peeris v. Savunhamy* (1951) 54 NLR 207 that a Plaintiff in a *rei vindicatio* action must not only prove *dominium* to the land but also the boundaries of it, by evidence admissible in law.

In *Hettiarachchi v. Gunapala* [2008] 2 Appellate Law Recorder 70 at 79, it was held that if the Plaintiff fails to identify the land he claims *dominium* to with the land on the ground, his action must fail.

Marsoof, J. in *Latheef v. Mansoor* [2010] 2 Sri LR 333 at 378 expressed the same in greater detail:

The identity of the subject matter is of paramount importance in a rei vindicatio action because the object of such an action is to determine ownership of the property, which objective cannot be achieved without the property being clearly identified. Where the property sought to be vindicated consists of land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method. It is obvious that ownership cannot be ascribed without clear identification of the property that is subjected to such ownership, and furthermore, the ultimate objective of a person seeking to vindicate immovable property by obtaining a writ of execution in terms of Section 323 of the Civil Procedure Code will be frustrated if the fiscal to whom the writ is addressed, cannot clearly identify the property by reference to the decree for the purpose of giving effect to it. It is therefore essential in a vindicatory action, as much as in a partition action, for the corpus to be identified with precision.

The Defendants have disputed the identification of the corpus in the answer and also raised it by way of an issue. Issue No.16 raised by the Defendants is as follows: “*Is the land described in the schedule to the plaint a separate one different from the land described in the schedule to the answer?*” The learned District Judge, without analysing the evidence, perfunctorily answered this issue in the negative and the Court of Appeal affirmed it.

There is real confusion about the identification of the land the Plaintiff claims in terms of name, boundaries and extent. The Plaintiff has failed to identify the land in suit, which is of paramount importance to succeed in this action. Both the District Court and the Court of Appeal failed to address this vital issue, which goes to the root of the case, in its proper perspective. I answer question (b) upon which leave was granted in favour of the Defendants.

In view of the above finding, there is no necessity to go into the question whether the Plaintiff proved title to the land in suit.

The Judgments of both the District Court and the Court of Appeal are set aside and the appeal of the Defendant-Appellants is allowed. The plaintiff's action in the District Court shall stand dismissed. On the facts and circumstances of this case, I make no order as to costs.

Judge of the Supreme Court

Buwaneka Aluwihare, P.C., J.

I agree.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court