

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

In the matter of an application for Leave to appeal under Section 5C (i) of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

Pelana Pathiranalage Rahula Ananda  
Senasinghe Perera  
Of Ilukbadagama,  
Kekirawa.

**Defendant-Appellant-  
Petitioner-Appellant**

**SC. Appeal No. 126/2010**

SC(HC) CALA Application No. 142/10

H.C. (Civil) Appeal Anuradhapura  
No. NCP/HCCA/ARP/373/2007(F)

D.C. Anuradhapura Case No. 18179/L

**-Vs.-**

Dissanayake Mudiyansele Kithsiri  
Bandara Dissanayake  
Of "Peak View Rest",  
Purijjala, Matale.

**Plaintiff-Respondent  
Respondent-Respondent**

**BEFORE** : Tilakawardane, J.  
Ratnayake, PC., J. &  
Imam, J.

**COUNSEL** : C.E. de Silva for the Defendant-Appellant-  
Petitioner-Appellant.

M.U.M. Ali Sabry with Shamith Fernando for the  
Plaintiff-Respondent-Respondent-Respondent.

**ARGUED ON** : 30.01.2012 and 13.06.2012

**WRITTEN SUBMISSIONS TENDERED**

**BY THE APPELLANT ON** : 17.01.2012

**WRITTEN SUBMISSIONS TENDERED**

**BY THE RESPONDENT ON** : 30.01.2012

**DECIDED ON** : 07/12/2012

**Tilakawardane, J.**

Leave was granted by this Court on 05.10.2010 on the questions of law set out in paragraph 14(b) and (c).

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The Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent) tendered P-1 and claimed that in terms of Section 19(2) of the Land Development Ordinance, the Mahaweli Authority of Sri Lanka by permit bearing No. 2220/අනු/කලා/මඩ/වර්ෂ/388A was granted possession of the land which is the subject matter of this application described in the schedule to the plaint dated 08<sup>th</sup> of February 2001, and which was in extent 02 Acres and 02 Perches.

He claimed that the Defendant-Appellant-Petitioner-Appellant (hereinafter referred to as the Appellant) was employed by him as a watcher. The Respondent further claimed that he had temporarily handed over the land seeking the assistance of the Petitioner, and continued his cultivation until 1998 when the Respondent together with the said Ajith Roshantha sought to obtain the land. The Petitioner had obstructed them and continued to be in unlawful possession, thus causing loss to the Respondent. The Petitioner originally denied the permit and stated that he had been in possession in cultivation of the land.

The Respondent gave evidence and called several witnesses including the Former Secretary of the Farmers Organization, the Land Officer from the Mahaweli Authority and the Grama Sevaka. He also tendered copies of the documents marked P-1, P-2 and P-3.

The learned District Judge of Anuradhapura delivered his judgment on 02.10.2006 in favour of the Respondent. The decision was appealed to the Provincial High Court of Civil Appeal of the North Central Province sitting in Anuradhapura and judgment was delivered on the 30.03.2010 dismissing the appeal.

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The present application has been preferred against the decision dated 18.03.2010. At the stage of arguments, parties conceded that the substantial issue to be decided by this Court is whether the documents P-1 and P-2 had been validly proved in terms of the law.

The same matter had also been argued before the Court of Appeal where the High Court of Civil Appeal of the North Central Province explicitly commented on the documents, P-1 and P-2.

Counsel for the Respondent stated that the gravamen of the arguments of Counsel appearing for the Appellant was that the Respondent had failed to prove the permit which he relied on in order to prove his title before the District Court of Anuradhapura. He explained that the Appellant was originally employed as a care-taker/watcher to oversee the land and continued unlawfully on the land. The Respondent also testified that the dispute regarding the property had only arisen after 1996.

It was proved before the District Court of Anuradhapura, as admitted by parties, that the land, which was the subject matter of this case, was State land. In his evidence, the Respondent stated that the land in dispute was under the Mahaweli Authority and he had been granted a permit marked P-1, issued under and in terms of Section 19(2) of the Land Development Ordinance, which specifically referred to the property that was presently in dispute, and that this permit had never been cancelled by the relevant Authority. P-2 was the relevant ledger page in the books maintained officially, and was duly produced at the trial by the relevant Land Officer of the Mahaweli Authority.

Indeed the Appellant in his evidence admitted that he had no license or

permit to the land in dispute. The Appellant relied on the fact that he had not objected to the Respondent entering into evidence the permit P-1, on it being subject to proof, and on the basis that the original document should be produced.

It is pertinent to note that when the Respondent closed his case, no objections were made, and he proceeded to mark his documents P-1, P-2 and P-3.

The Respondent's evidence was corroborated by Samarakoon Mudiyansele Sunil Rathna Samarakoon, the Former Secretary of the Farmers Organization, who stated that this allotment of land had been handed over to the Respondent and a permit issued. This evidence was further corroborated by the Land Officer of the Mahaweli Authority, who represented the Authority at the trial. The Officer, Lokubalasuriyalage Ranasinghe Seneviratne, stated that he had examined the documents relating to the said allotment of land and described the boundaries set out in the permit, indicating that the land had been given by permit P-1 to the Respondent. Further he stated that the ledger marked P-2 and the permit bearing No. 2220, relating to lot 388/A in extent of 02 Acres and 02 Roods, had been granted to the Respondent and had not been cancelled to date. The Officer identified the signatures and handwriting of the persons who had issued P-1 and prepared the ledger P-2. He confirmed the documents to be genuine. He explained that during the J.V.P. insurrection the office had been burnt and therefore the documents housed in the building had also been destroyed. Subsequently the documents destroyed in the fire had been reconstructed with the aid of the documents that had been stored in the main office, as well as the permits held by the permit holders. This therefore enabled him to confirm that the permit P-1 was a genuine permit and that the relevant

officer's seal and signature were genuine. He further stated that he had a long association with the officer who had issued the permit and therefore could identify the signatures on the document.

The Evidence Ordinance at Section 64 enables secondary evidence to be put forward where the primary document is unavailable due to one of the exhaustive exceptions set out in Section 65. Further Section 65(3) sets out an exception enabling the use of secondary evidence where primary evidence has been destroyed or lost for a reason not of the Respondent's own fault. The case of **Kandasamy Vs. Sinnahamby** 1985 R (2) 249 can be highlighted to show the application of Section 65(3). Therefore as the original permit was destroyed in a fire and the Officer was able to attest to the validity of the signature and writing on the permit, it is the opinion of this court that the document P-1 falls within the ambit of the decision in that case.

Having proved P-1 and P-2 the Land Officer was able to confirm the authenticity of the document P-1, as well as the fact that it was the permit granted in terms of the Land Development Ordinance and that the permit holder was the Respondent in this case.

Therefore this court is able to affirm the finding that the document P1 was proved to be a valid document by the Respondent and, that the finding of the Learned High Court Judge is correct and will remain unaltered.

It is on this basis that the judgment of the Civil Appellate High Court of the North Central Province holden at Anuradhapura had held in favour of the Respondent and dismissed the application of the Appellant.

The judgment correctly considered the evidence of the Appellant to have been contradictory and inconsistent and also referred to the fact that the

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Appellant had no legal permit or valid authority to claim rights over the disputed allotment of land.

In these circumstances we find that the Appellant's submissions have no legal basis and that the documents P-1 and P-2 have been duly proved and accordingly dismiss the Appeal, and affirm the Judgment of the Civil Appellate High Court of the North Central Province sitting in Anuradhapura dated 18.03.2010. No costs.

**JUDGE OF THE SUPREME COURT**

**Ratnayake, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Imam, J.**

I agree.

**JUDGE OF THE SUPREME COURT**