

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

Gunawardana Kulawadu Mestrige Jinali
Renuka Fernando,
No. 190B, New Galle Road,
Walana,
Panadura.
2A Substituted Defendant-Appellant-
Appellant

SC/APPEAL/137/2022
WP/HCCA/KAL/77/2016 (F)
DC PANADURA 1487/L

Vs.

Warnakulasuriya Mestrige Sujatha de Silva,
No. 190C, Near New Bridge,
Panadura.
Plaintiff-Respondent-Respondent

Neetha Nandani de Silva,
Palm Grove Farm,
Deman Handiya,
Nittambuwa.
1D Substituted Defendant-Respondent-
Respondent

Before: Hon. Justice P. Padman Surasena
 Hon. Justice Mahinda Samayawardhena
 Hon. Justice Arjuna Obeyesekere

Counsel: Charith Galhena with Piyahasie Dias and Madushika Jayasinghe for the 2A Substituted Defendant-Appellant-Appellant.

Anuruddha Dharmaratne with Upendra Walgampaya for the Plaintiff-Respondent-Respondent.

Argued on: 10.03.2025

Written submissions:

By the Appellant on 12.02.2023 and 03.04.2025.

By the Respondent on 04.07.2023 and 11.04.2025.

Decided on: 22.05.2025

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Panadura against the three defendants, seeking a declaration of title to the land described in the second schedule to the plaint, which encompasses the land described in the fourth schedule, presently in the possession of the 2A defendant.

According to the plaintiff, the land situated immediately to the east of her land, which is described in the third schedule to the plaint, belonged to the 1st defendant and was, at the relevant time, in the possession of the 2nd and 3rd defendants. The 1st defendant did not respond to summons and the case was fixed for *ex parte* trial against her. The 2nd and 3rd defendants filed an answer seeking the dismissal of the plaintiff's action and a declaration that they are entitled to the land described in the schedule to their answer, which does not correspond to any of the lands described in the schedules to the plaint. After trial, the District Court entered judgment for the plaintiff, which was affirmed by the High Court of Civil Appeal of Kalutara. Hence this appeal by the 2A defendant.

The 1st defendant was the owner of the larger land described in the first schedule to the plaint. She transferred a specific portion of this land—Lot 2 in Plan No. 3490 dated 21.12.1983 (2A V1), which is 6.75 perches in extent—to the 2nd and 3rd defendants by Deed No. 4828 dated 19.01.1984 (2A V2), which was registered at the Land Registry on 25.01.1984. The plaintiff did not disclose this Deed in the plaint.

Thereafter, the 1st defendant transferred another specific portion of the larger land—Lot A in Plan No. 855 dated 07.07.1981 (P1), which is 7.75 perches in extent—to the plaintiff by Deed No. 320 dated 01.03.1984 (P3), which was registered at the Land Registry on 17.04.1984. This land is described in the second schedule to the plaint.

The two parcels of land are situated adjacent to each other. The land claimed by the defendants lies immediately to the east of the plaintiff's land. The dispute concerns the precise boundary between the two lands.

There can be no dispute that the defendants' Deed gets priority over the plaintiff's Deed. When the defendants raised the issue of whether they were the owners of the land described in the schedule to the answer, there was no need for a separate specific issue on priority to be raised in the District Court, as that question was subsumed within the broader issue of establishing title.

It is true that the original owner, the 1st defendant, first sold a portion of the land depicted in one Plan to the 2nd and 3rd defendants, and thereafter sold another portion on a different Plan to the plaintiff. However, this sequence of transactions does not suggest any collusion between the 1st defendant and the 2nd and 3rd defendants to defraud the plaintiff, as was suggested by learned counsel for the plaintiff during the argument. At the time the 1st defendant sold the land to the 2nd and 3rd defendants, the plaintiff was unknown to any of the parties. The plaintiff purchased a

different portion of the larger land on the basis of another Plan subsequently.

Learned counsel for the plaintiff argued that the 1st defendant executed an Agreement to Sell No. 4780 dated 29.06.1983 in favour of the 2nd and 3rd defendants to sell Lot B in Plan No. 855 in extent of 11.19 perches and placed the 2nd and 3rd defendants in possession of that portion. This land is described in the third schedule to the plaint. The 2nd and 3rd defendants accept the existence of the said Sale Agreement. What the defendants state is that although an Agreement to Sell was entered into for the sale of Lot B in Plan No. 855 in extent of 11.19 perches, what was ultimately sold was a lesser extent of 6.75 perches on Plan No. 3490 dated 21.12.1983. This is not unusual. The 2nd and 3rd defendants cannot be found fault with it. It cannot be construed as a collusion among the three defendants to defraud the plaintiff.

For the purpose of this case, the plaintiff obtained a commission, and licensed surveyor Sampath Fernando prepared Plan No. 1105 (P7) based on the plaintiff's Plan No. 855. By superimposition, he identified the encroached portion as Lot A3, which is 2.2 perches in extent. There is no dispute over this Plan.

On the other hand, the 2nd defendant also obtained a commission, and licensed surveyor Malwanna prepared Plan No. 2480 (2A V3) based on the 2nd and 3rd defendant's Plan No. 3490. By superimposition, he identified the encroached portion as A2, which is 00.02 perch in extent. In their amended answer, the 2nd and 3rd defendants themselves stated that they are willing to forgo the portion marked as Lot A2 in Plan No. 2480. There is no dispute regarding this Plan either. Both Plans are accurate.

The error committed by the District Court, and perpetuated by the High Court, was in deciding the case based on Mr. Sampath Fernando's Plan No.

1105, rather than on Mr. Malwanna's Plan No. 2480, perhaps because the former was prepared on a commission taken by the plaintiff. However, Mr. Sampath Fernando's Plan, which was prepared based on Plan No. 855, does not assist in identifying the disputed portion, particularly in view of the fact that the Deed and Plan of the 2nd and 3rd defendants take precedence over those of the plaintiff, by reason of priority, as I have already explained. If I may reiterate, the land of the 2nd and 3rd defendants (Lot 2 in Plan No. 3490) must first be identified and excluded. Only thereafter should the plaintiff's land (Lot A in Plan No. 855) be identified. This was not done by the Courts below.

The questions of law on which leave to appeal has been granted are as follows:

- (a) Did the High Court fail to consider the 2A defendant's claim based on prescriptive title?
- (b) Did the High Court err in failing to identify the corpus?
- (c) Did the High Court fail to properly evaluate the evidence relating to the 2A defendant's paper title?

I answer (b) and (c) above in the affirmative. There is no necessity to answer (a) above.

The appeal of the 2A defendant is allowed. The plaintiff's action in the District Court shall stand dismissed. The cross claim of the 2nd and 3rd defendants is allowed. The said defendants are entitled to Lot B in Plan No. 2480 dated 20.01.2004, which is 6.75 perches in extent. The 2A defendant is not entitled to Lot A2 in the said Plan, which is 0.02 perch in extent. That portion shall accrue to the plaintiff's land, unless the plaintiff is willing to sell it to the 2A defendant, as suggested in his answer. The parties shall bear their own costs. The learned District Judge will enter decree in accordance with this judgment.

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