

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

In the matter of an appeal in terms of Article 127 of the Constitution to be read with Section 5(C) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No 54 of 2006.

SC / Appeal / 111/09

SC/ HCCA/LA/ 1/2009

NCP/HCCA/ARP/66/07

DC Polonnaruwa/5555/L

D. K. Peiris Wijerathna,

R.D. 06, Alapara,

Kumburu Niwasa, Kawdulla.

Plaintiff

**Vs.**

A. Bandara Menike,

Gabada Handiya,

Kawdulla.

Defendant

**AND**

A. Bandara Menike,

Gabada Handiya,

Kawdulla.

Defendant Appellant

**Vs.**

D. K.Peiris Wijerathna,

R.D. 06, Alapara,

Kumburu Niwasa, Kawdulla.

Plaintiff Respondent

**AND NOW BETWEEN**

D. K.Peiris Wijerathna,

R.D. 06, Alapara,

Kumburu Niwasa, Kawdulla.

Plaintiff Respondent Appellant

**Vs.**

A. Bandara Menike,

Gabada Handiya,

Kawdulla.

Defendant Appellant Respondent

BEFORE : CHANDRA EKANAYAKE, J.

B. ALUWIHARE, PC, J.

UPALY ABEYRATHNE, J.

COUNSEL : Rohan Sahabandu PC with Hasitha Amarasinghe for the Plaintiff Respondent Appellant

Ms. Sudarshani Cooray for the Defendant Appellant Respondent

WRITTEN SUBMISSION ON: 13.11.2009 (Plaintiff Respondent Appellant)

25.11.2009 (Defendant Appellant  
Respondent)

ARGUED ON : 29.01.2016  
DECIDED ON : 29.03.2016

UPALY ABEYRATHNE, J.

This is an appeal from a judgment of the High Court of Civil Appeal of North Central Province holden at Anuradapura dated 27.11.2008. By the said judgment the Civil Appellate High Court has set aside the judgment of the learned District Judge of Polonnaruwa dated 17.01.2002 and allowed the appeal of the Defendant Appellant Respondent (hereinafter referred to as the Respondent) and dismissed the action filed by the Plaintiff Respondent Appellant (hereinafter referred to as the Appellant) without costs. The Appellant sought leave to appeal from the said judgment of the Civil Appellate High Court and this Court granted leave to appeal on the questions of law set out in paragraph 20 (a) (b) (c) and (d) of the Petition dated 06.01.2009. Said questions of law are as follows;

- (a) Has the Plaintiff identified the land in dispute to obtain a decree of declaration of title?
- (b) Was there a dispute between parties with regard to the identification of the corpus?
- (c) Could the High Court in the circumstances hold that the corpus has not been identified when both parties were agreed on the corpus?
- (d) In the circumstances pleaded is the judgment of the High Court correct and according to law?

It is apparent from the said questions of law that the dispute between the parties revolves around the identification of the corpus. The Appellant has sought a declaration of title to the land in dispute upon a land permit issued under the Land Development Ordinance. The Respondent has taken up the position that the Appellant is not the permit holder of the land in dispute.

The Appellant has produced the said land permit at the trial marked P1. The Respondent contended that alleged land permit P 1 is not a valid land permit issued in terms of Section 19(2) of the Land Development Ordinance. It is pertinent to note that although the Respondent challenged the title of the Appellant she has not claimed any title to the land in dispute. She has claimed only the right of *jus retentionis* in the event the case is decided in favour of the Appellant subject to the payment of compensation as prayed for in the answer.

The Civil Appellate High Court has come to the conclusion that although P 1 is a valid land permit issued in terms of the Land Development Ordinance, the Appellant has failed to identify that the land described in P 1 is the land in dispute which is described in the schedule to the plaint. The submission of the learned counsel for the Appellant is that said finding of the High Court is perverse.

I now deal with the said submission. According to the schedule to the amended plaint dated 26<sup>th</sup> May 1993, the Appellant has sought a declaration of title to an allotment of land bearing No C38 depicted in plan prepared by Surveyor General, situated at Kawdulla in 124 Weheragala Grama Niladari Division of Sinhala Pattu in Medirigiriya Divisional Revenue Officer's Division in the District of Polonnaruwa, bounded on the North by Haye Ela, on the East by paddy land of

Dowita Appuhamy on the South by paddy land bearing No 37 on the west by Kunu Ela and containing in extent 05 acres and 16 perches.

In order to prove his title to the aforesaid allotment of land, the Appellant has produced a land permit said to be issued in terms of Section 19(2) of the Land Development Ordinance. In the said permit the land has been described as “an allotment of land bearing No C38 depicted in plan prepared by Surveyor General, situated at Kawdulla in 124 Weheragala Grama Niladari Division of Sinhala Pattu in Medirigiriya Divisional Revenue Officer’s Division in the District of Polonnaruwa”. It is surprising to note that four boundaries of the said allotment of land have not been described in the said land permit P 1. It is clear from the side note at the margin of the said land permit P 1 where boundaries of the land have to be mentioned that the boundaries of the land would be entered therein if the land is surveyed only. This clearly shows that if the land described in the permit has not been surveyed, then boundaries of such land would not appear in such permit like in the present permit P 1. In such instances a holder of such permit would not be in a position to identify the land granted under such permit by reference to physical metes and bounds.

On the other hand although the said permit P 1 describes “an allotment of land bearing No C38 depicted in plan prepared by Surveyor General”, it does not refer to the number and the date of the Surveyor General’s plan. In the absence of such descriptions which are necessarily required in identifying the land described in P 1, need not to say that the identity of the allotment of land described in P 1 is also in the dark.

In the above context it is clear that the Appellant is not in a position to identify the allotment of land bearing No C38 depicted in plan prepared by

Surveyor General, situated at Kawdulla in 124 Weheragala Grama Niladari Division of Sinhala Pattu in Medirigiriya Divisional Revenue Officer's Division in the District of Polonnaruwa" since the land permit P 1 does not refer to the number and the date of the Surveyor General's plan and also in P 1, the land is not described by reference to physical metes and bounds.

It is well settled law that a plaintiff should clearly identify the land and prove his title to the land in an action for declaration of title. In the circumstance I am of the view that the Appellant has failed to identify the land described in the schedule to the plaint. Hence I uphold the said judgment of the High Court of Civil Appeal and answer the said questions of law in favour of the Respondent. Accordingly the appeal of the Appellant is dismissed with costs.

*Appeal dismissed.*

Judge of the Supreme Court

CHANDRA EKANAYAKE, J.

I agree.

Judge of the Supreme Court

B. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court