

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

**An Appeal from the Civil Appellate
High Court holden in Gampaha.**

Galkadu Dewage Nandasena,
No. 379, Uggalboda West,
Gampaha.

Plaintiff

**SC Appeal No. 74/12
SC/HCCA/LA Application
No. 250/2010
Provincial High Court Gampaha
(Appellate) Appeal No. WP/HCCA/
GPH/57/ 2006 (F)
D.C. Gampaha Case No. 40315/L**

Vs

1. Walimuni Senadheerage Malini
Rupasinghe
2. Handunge Saranapala
Both of No. 433, Galwetiya Road,
Uggalboda, Gampaha.

Defendants

AND

1. Walimuni Senadheerage Malini
Rupasinghe
2. Handunge Saranapala,
Both of No. 433, Galwetiya Road,
Uggalboda, Gampaha.

Defendant – Appellants

Vs

Galkadu Dewage Nandasena,
No. 379, Uggalboda West,
Gampaha

Plaintiff - Respondent

AND NOW

Galkadu Dewage Nandasena,
No. 379, Uggalboda West,
Gampaha.

Plaintiff- Respondent- Appellant

Vs

1. Walimuni Senadheerage Malini
Rupasinghe
2. HandungeSaranapala
Both of No. 433, Galwetiya
Road, Uggalboda, Gampaha.

Defendant-Appellant-Respondents

**BEFORE: S. EVA WANASUNDERA, PCJ
UPALY ABEYRATHNE, J
K.T. CHITRASIRI, J**

COUNSEL: P.L. Gunawardena with K.W.E. Karalliyadde and D.G.K. Karunaratne for the Plaintiff-Respondent-Appellant.

Dr. S.F.A. Cooray with Ms. S. Cooray for the Defendant-Appellant-Respondents.

ARGUED ON: 27. 04. 2016.

DECIDED ON: 05. 07. 2016.

S. EVA WANASUNDERA, PCJ.

Leave to appeal was granted on the questions of law set out in paragraphs 20(b), (c), (d) and (e) of the amended Petition dated 08.04.2011. The basis of these questions of law are that the judgment of the Civil Appellate High Court is contrary to law and against the weight of the evidence which was led before the trial judge in the District Court.

An action was filed in the District Court of Gampaha by the Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff) on 17.01.1997 praying for a declaration of title to the land in the schedule to the Plaintiff, for ejectment of the Defendants-Appellants-Respondents (hereinafter referred to as the Defendants) from the northern part of the land and for damages. The land is of an extent of one Rood and 25.2 Perches. The Defendants are husband and wife who had allegedly destroyed the northern boundary of the land and reconstructed a new boundary including part of the Plaintiff's land. Evidence show that after quarrelling about the problem and after complaining to the Police etc. the Plaintiff had filed this rei vindicatio action.

The Plaintiff claims title on Deed No. 2806 dated 01.06.1996. The Vendors were Amuwala Dewage Edward Jayasinghe, Amuwala Dewage Isilin Sumanawathie Wijeratne and Amuwala Dewage Seelin Fernando. They claim title from their mother, Kaluwa Dewage Punchinona who had got title through the Deed of Partition No. 10886 dated 23.06.1962. Punchinona had received a specific lot, namely Lot F from and out of the land called Galwetiye - Kele which was part of a large land of an extent of 7Acres 2 Roods and 27.8 according to the Plan No. 398 surveyed on 16.12.1961. According to this Plan and the Partition Deed 10886, I

observe that one Kaluwa Dewage Milee Nandawathie had got Lot A (3A OR 0 3.5P) , Lot D (OA 1R 25.2P) and Lot E (OA 1R 25.2P) which extents total up to 3 Acres 3 Roods and 13.9 Perches whereas Kaluwa Dewage Punchi Nona had got Lot F which is of a very much lesser extent of only 1 Rood and 25.2 Perches (OA 1R 25.2 P). Milee Nandawathie and Punchi Nona were sisters.

The Defendants in their answer claims Lot F only **on prescription**. They admit that they are husband and wife and also that the wife, **the 1st Defendant**, is the **daughter of K.D.Milee Nandawathie**.

The trial judge in the District Court held with the Plaintiff and observed that the Defendants cannot claim the land now as the 1st Defendant had transferred the land to one Handunge Gamini by Deed marked as V1 for Rs.25000/- after the Plaintiff filed this action in the District Court and before the Defendants filed the answer. In the answer the Defendants had not divulged that fact, namely that they are not the owners of the land since the land was transferred to Handunge Gamini who is not a party to the District Court action. Deed V1 gives the source of title as ' by prescription'. The trial judge had analysed the evidence given by the Plaintiff, the deeds produced by the Plaintiff, the documents such as Plans and the report of the Court Commissioner who also had given evidence in the course of the trial. The evidence of the Defendants also had been analysed and the trial judge had commented that the said evidence does not show credence to their claim on prescription. The Court Commissioner had given evidence to the effect that the newly constructed fence and the destruction of the old boundary was seen at the time he went to survey the land. The Plan done by the Court Commissioner shows that the Defendants had encroached into Lot F by 34.2 Perches.

However, the Defendants' lawyer had cross examined the Plaintiff with regard to the proof of Punchi Nona's title devolving on the three Vendors from whom the Plaintiff got title. The Plaintiff claimed that they were the children of Punchi Nona. Two of the Vendors, namely Edward Jayasinghe and Seelis Fernando had given evidence at the trial. I observe that they were 82 years and 78 years of age at the time of giving evidence. They had produced a letter from the Registrar of Births and Deaths that their registration of birth registers had got decayed and they had by themselves given evidence that their mother was Punchi Nona. They had also testified to the fact that the 1st Defendant was the daughter of their

mother's sister Milee Nandawathie and that the 1st Defendant was entitled to only Lot E under her mother which was adjoining Lot F. The Partition Deed No. 10886 was signed by Milee Nandawathie agreeing that Punchi Nona was entitled to Lot F.

The trial judge had accepted the evidence of the Vendors who transferred the land to the Plaintiff to the effect that they were the children of Punchi Nona. I observe and confirm what the trial judge had concluded to be true, through evidence. Just the fact that the birth certificates could not be produced at the trial for no fault of the Plaintiff as the Registrar of Births had said that they cannot be issued as the books were decayed, should not be held against those who gave evidence to the fact that Punchi Nona was their mother because It would then amount to a miscarriage of justice against the Plaintiff.

The Civil Appellate High Court Judges at page 3 of their judgment , while accepting the principle that the Appellate Court should not disturb the findings of the trial judge, states that:

“Nevertheless, in my view, the findings of the learned District Judge in this case are not mostly based on the credibility of the witnesses. ***The learned District Judge has come to those findings after evaluation of the evidence adduced by the Plaintiff.*** Therefore, I believe this Court has a right to look into the correctness of the learned trial judge’s opinions.”

Having gone through the evidence given at the trial, I observe that the trial judge has not only gone through the evidence of the Plaintiff but considered and ***analysed*** the evidence given by the vendors from whom the Plaintiff had got title to the particular land, who were very old people, as well as others such as the Court Commissioner who made the superimposed plan, and the other witnesses on behalf of the Plaintiff who had deposed to the fact that the Defendants were living in the adjoining land but never possessed or took the fruits of the land in question. The trial judge in fact has commented on the evasive answers given by the 1st Defendant with regard to the partition plan, partition deed and the fact that the land claimed by the Defendants are not their land any more as they had parted with it as soon as this action was filed in the District Court by the Plaintiff .

I am of the view that the Civil Appellate High Court Judges have gone wrong in their view that there was not enough proof of the fact that the Vendors who sold

the land were Punchi Nona's children who had the right title to sell the land to the Plaintiff. I am of the view that the Plaintiff has adduced enough evidence to prove his title as expected in a rei vindicatio action. He bought the land on 1st of June, 1996 by Deed 2806 from three persons, namely two brothers and a sister being the only surviving children of Kaluwa Dewage Punchi Nona who got the land by way of the Partition Deed No. 10886 dated 23rd June, 1962, which is 34 years prior to Deed 2806. The Plaintiff had possessed and enjoyed the fruits of the land until 1996 when the Defendants who had been on the adjoining land to the north of this land in question, had destroyed the northern boundary and erected a new fence. The Plaintiff had then at once complained to the Police and later filed this action for a declaration of title. The District Judge had correctly granted the declaration of title to the Plaintiff.

I therefore hold that the judgment of the Civil Appellate High Court is contrary to law and contrary to the evidence led at the trial before the District Court. I answer the questions of law raised at the leave to appeal stage of this case, in the affirmative, in favour of the Appellant.

I set aside the judgement of the Civil Appellate High Court dated 24. 06. 2010 and affirm the judgment of the District Court dated 15. 05. 2006.

Appeal is allowed with costs.

Judge of the Supreme Court

Justice Upaly Abeyrathne

I agree.

Judge of the Supreme Court

Justice K. T. Chitrasiri

I agree.

Judge of the Supreme Court

