

**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 / 80/2004

SC/ Spl/LA/347/2003

C.A No 274/94 (F)

DC Panadura / 18019 / L

Don Lesley Kannangara,

No. 9, Siddhamulla,

Piliyandala.

Plaintiff

**Vs.**

Thanaweera Arachchige Nihal Wijeratne,

“Samudra”,

Kesbewa,

Piliyandala.

Defendant

**AND**

Don Lesley Kannangara,,

No. 9, Siddhamulla,

Piliyandala.

Plaintiff Appellant

**Vs.**

Thanaweera Arachchige Nihal Wijeratne,

“Samudra”,

Kesbewa,

Piliyandala.

Defendant Respondent

**AND NOW BETWEEN**

Thanaweera Arachchige Nihal Wijeratne,

“Samudra”,

Kesbewa,

Piliyandala.

Defendant Respondent Petitioner

**Vs.**

Don Lesley Kannangara,,

No. 9, Siddhamulla,

Piliyandala.

Plaintiff Appellant Respondent

BEFORE

: B. P. ALUWIHARE, PC, J.

UPALY ABEYRATHNE, J.

ANIL GOONARATNE, J.

COUNSEL : Rohan Sahabandu PC for the Defendant Respondent Appellant

Chathura Galhena instructed by Manoja Gunawardana for the Plaintiff Appellant Respondent

WRITTEN SUBMISSION ON: 10.12.2009 (Defendant Respondent Appellant)  
04.01.2010 (Plaintiff Appellant Respondent)

ARGUED ON : 11.01.2016

DECIDED ON : 21.10.2016

UPALY ABEYRATHNE, J.

The Plaintiff Appellant Respondent (hereinafter referred to as the Respondent) had instituted an action against the Defendant Respondent Appellant (hereinafter referred to as the Appellant) in the District Court of Panadura seeking inter alia a declaration of title to the land described in the schedule to the plaint and to eject the Appellant from the said land. The Appellant had filed an answer denying the averments contained in the plaint and praying for a dismissal of the action of the Respondent. The case proceeded to trial on 09 issues. After trial the learned District Judge dismissed the Respondent's action. Being aggrieved by the said judgment dated 09.03.1994 the Respondent preferred an appeal to the Court of Appeal. After the hearing the Court of Appeal set aside the said judgment dated 09.03.1994 and directed the learned District Judge to enter judgment for the Respondent as prayed for in the plaint.

The Appellant sought leave to appeal to this court from the said judgment of the Court of Appeal dated 07.11.2003 and this court granted leave on the following questions of law set out in paragraph 22(a) i. of the petition of appeal dated 17.12.2003 which reads thus;

“Did the Court of Appeal err in holding that the corpus was properly identified in the circumstances of the case?”

At the trial before the District Court both parties admitted that, W. K. Edwin was allotted Lot A of ‘Kongahawatta’, as set out in the final decree of the partition action bearing No 4081 of the District Court of Colombo, which was described in the schedule to the plaint in the said action. The final plan of the said partition decree had been produced at the trial marked P 2. According to the said plan P 2, Lot No A is bounded on the North by property of W. K. Don Edwin on the East by property of Liyanage Obias on the South by Lot B and on the West by paddy field of W. K. Don Edwin and containing in extent 01 Rood and 33.22 Perches.

According the schedule to the said plaint the land in suit is bounded on the North by property of W. K. Don Edwin on the East by property of Liyanage Obias on the South by Lot B and on the West by paddy field of W. K. Don Edwin and containing in extent 01 Rood and 33.22 Perches. It was the position of the Respondent that he derived title to the said land by the deed of transfer bearing No 1150 dated 05.10.1982 attested by A. A. Karunaratne, Notary Public. It is clearly seen that the boundaries described in the schedule to the said deed No 1150 and the boundaries described in the schedule to the said plaint are identical and tally with the boundaries described in the said final partition plan P 2.

The other matter to be examined is whether the said boundaries physically exist on the soil as the boundaries of the land in suit. In this regard the Court of Appeal has given more weight to the evidence of W. I. I. Fernando, Licensed Surveyor and Court Commissioner, who was called by the Respondent. Surveyor W. I. I. Fernando had prepared the Plan bearing No 1114 dated 18.08.1987 (P 1) superimposing the said final partition plan No 86 (P 2) prepared by Surveyor Athuraliya, the plan bearing No 443 (P 3) prepared by T. C. R. Fernando, Licensed Surveyor and the plan bearing No 3384 (P 4) prepared by Lucas H. De Mel, Licensed Surveyor. In his evidence Surveyor W. I. I. Fernando had testified that as per the superimposed plan, the land claimed by the Respondent had been depicted as Lots A1, A2 and A3 which were depicted as Lot A in plan No 86 (P 2). Surveyor Fernando has further stated that the Respondent showed him the area depicted as X in his plan No 1114 as the portion of land possessed by him. Accordingly the land in suit had been depicted as Lots A1, A2, A3 and X in the said superimposition plan P 1. It is pertinent to note that the extent of lot A depicted in plan bearing No 86 which is one Rood and thirty three Perches tallies with the extent of Lots A1, A2, A3 and X depicted in the said superimposition plan No 1114. Said evidence had not been challenged by the Appellant.

On the hand the Appellant had claimed title to the land in dispute on the deed of transfer bearing No 29130 dated 13.01.1977 (D 6). According to the said deed of transfer the land described therein is depicted in the plan bearing No 443 dated 21.03.1973 (P 3). Since the Respondent has established the identity of the corpus by the said superimposition plan No 1114, the burden has shifted on the Appellant to contradict the said evidence and to establish the identity of the land depicted in the plan 443 by preparing a superimposition plan which should have been made superimposing the plan No 443 on the said superimposition plan No

1114. But the Appellant has failed so to do. In the absence of such evidence I am unable to agree with the submissions of the learned Counsel for the Appellant that the Court of Appeal has erred on facts and in law in holding that the Respondent had proved the identity of the corpus.

In the circumstances I see no reason to interfere with the said judgment of the Court of Appeal. Hence I answer the said question of law in the negative. The instant appeal of the Appellant is dismissed with costs.

*Appeal dismissed.*

Judge of the Supreme Court

B. P. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court

ANIL GOONARATNE, J.

I agree.

Judge of the Supreme Court