

As stated above the wrong description of the boundaries in the permit 'P1' can be overlooked. Nevertheless the difference in the extent given in the permit 'P1' and the survey plan X which is a substantial difference in the context of the statement made by the Surveyor during his cross examination to the effect that the land depicted in the plan 'X' may not be the land described in the plaint would certainly amount to a failure in the identification of the corpus.

In S.C. Appeal No. 104/05 decided on 27-10-2010 Hon. Saleem Marsoof J. states as follows:-

"It is trite law that the identity of the property with respect to which a vindicatory action is instituted is as fundamental to the success of the action as the proof of the ownership (*dominium*) of the owner (*dominus*)..."

"Where the property sought to be vindicated consists of land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method. It is obvious that ownership cannot be ascribed without clear identification of the property that is subjected to such ownership...."

It is observed that the Appellants (Defendants in the District Court Case) have not done anything meaningful to establish their title to the part of the land presently possessed by them. In my view this fact alone will not assist the Respondent. In Wanigaratne Vs. Juwanis Appuhamy 65 NLR 167 it has been held that the Plaintiff cannot ask for a declaration of title in his favour merely on the strength that the Defendants title is poor or not established.

In the circumstances mentioned above I answer all 3 questions of law on which Leave to Appeal was granted in the affirmative.

I set aside the judgment of the High Court in case No. SP/HCCA/MA/288/2004F of the Southern Province holden at Matara dated 2nd July 2010.

I observe that the Respondent was prevented from obtaining relief at the District Court due to the conduct of the licensed surveyor who functioned as a Court Commissioner. Accordingly, I set aside the judgment of the District Court