

Wijemunige David Singho and Others vs. Wijemunige Elbin Pallehagoda

Supreme Court
Tilakawardane, J..
Imam, J.
Ratnayake, J.
SC. Appeal No. 58/2011
SC.(HC) CA. LA. No. 267/10
SP/HCCA/MA/288/04(F)
DC. Walasmulla Case No.579/L
February 02nd July 2010

Rei Vindacatio Action- Identification of the land in question- Subject matter related to a land given by the State under the Land Development Ordinance. The Surveyor has surveyed a larger land than the land described in the plaint- Action dismissed for non-identification of the corpus.

Held

(i) a mistake has been made in respect of the northern and southern boundaries in the permit 'P1' in that the Southern boundary is given as the Northern boundary and the Northern boundary is given as the Southern boundary; (ii) the said mistake should not affect the identity of the corpus in the case and thus this mistake should not affect the identity of the corpus in the case; (iii) the wrong description of the boundaries in the permit 'P1' can thus be overlooked: (iv) the plaintiff was prevented from obtaining relief due to the conduct of the surveyor who had surveyed a larger land than the land described in the plaint.

The judgment of the DC and CHC were set aside and the DJ was directed to re-survey the land and rehear the case by adopting the evidence already led and by permitting further evidence as to identification of corpus.

Appeal from a judgment of the Civil Appellate High Court of the Southern Province Holden at Matara

Cases Referred to:

- [1]Wanigaratne vs. Juwanis Appuhamy 65 NLR 167
- [2]Jamaldeem Abdul Latheef, Vs Koya Mohideen Nizardeen,S.C. Appeal No. 105/05 decided on 27.10.2010

Acts Referred to:

- [1] Primary Courts Procedure Act No. 44 of 1979
- [2] Land Development Ordinance

W. Dayaratne, P.C. with Ms. R. Jayawardena for 1st -6th Defendant-Respondent-Appellants
Anuruddha Dharmawardane for Plaintiff-Appellant-Respondent