

An important feature of the *actio rei vindicatio* is that it has to necessarily fail if the plaintiff cannot clearly establish his title. Wille's *Principles of South African Laws* (9th Edition – 2007) at pages 539-540 succinctly sets out the essentials of the *rei vindicatio* action in the following manner:-

To succeed with the *rei vindicatio*, the owner must prove on a balance of probabilities, first, *his or her ownership in the property*. Secondly, *the property must exist, be clearly identifiable* and must not have been destroyed or consumed. Thirdly, the defendant must be in possession or detention of the thing at the moment the action is instituted. The rationale is to ensure that the defendant is in a position to comply with an order for restoration. (*emphasis added*).

In *Abeykoon Hamine v. Appuhamy* (1950) 52 NLR 41, Dias, SPJ. quoted with approval, the decision of a Bench of four judges in *De Silva v. Goonetilleke* (1931) 32 NLR 27 where Macdonell, C.J., had occasion to observe that-

There is abundant authority that a party claiming a declaration of title must have title himself. "To bring the action *rei vindication* plaintiff must have ownership actually vested in him"- 1 Nathan p.362, s. 593.....This action arises from the right of *dominium*.....The authorities unite in holding that plaintiff must show title to the *corpus* in dispute, and that if he cannot, the action will not lie".

In *Dharmadasa v. Jayasena* [1997] 3 Sri LR 327 G.P.S de Silva, C.J., equated an action for declaration of title with the *rei vindicatio* action, and at page 330 of his judgement, quoted with approval the *dictum* of Heart, J., in *Wanigaratne v. Juwanis Appuhamy* (1962) 65 NLR 167, for the proposition that the burden is on the plaintiff in a *rei vindicatio* action to clearly establish his title to the *corpus*, echoing the following words of Withers, J., in the old case of *Allis Appu v. Endris Hamy* [1894] 3 SCR 87 at page 93-

In my opinion, if the plaintiff is not entitled to revindicate his property, he is not entitled to a declaration of title,.....If he cannot compel restoration, which is the object of a *rei vindicatio*, I do not see how he can have a declaration of title. I can find no authority for splitting this action in this way in the Roman-Dutch Law books, or decisions of court governed by the Roman-Dutch Law.

As Ranasinghe, J., pointed out in *Jinawathie v. Emalin Perera* [1986] 2 Sri LR 121 at page 142, a plaintiff to a *rei vindicatio* action "can and must succeed only on the strength of his own title, and not upon the weakness of the defence." In *Wanigaratne v. Juwanis Appuhamy*, (1962) 65 NLR 167 at page 168, Heart, J., has stressed that "the defendant in a *rei vindicatio* action need not prove anything, still less his own title." Accordingly, the burden is on the Respondents to this appeal to establish their title to the land described in the schedule to their petition, and they can only succeed by showing that Mohamed Ibrahim Lebbai Noor Lebbai had the power and authority to convey the title (*dominium*) of the said land to the Respondents by executing Deed No. 6165 (P1). It is for this purpose vital to prove the Power of Attorney marked P7 by which, it is claimed, that Sadakku's son Mohideen Abdul Cader appointed Noor Lebbai as Attorney for executing the Deed marked P1 and that the said deed operated to convey the alleged title of Mohideen Abdul Cader to the Respondents. These were clearly not matters raised for the first time at the stage of grant of special leave to appeal, and ought to have engaged the attention of the learned District Judge in view of issue 1, 6 and 7 framed at the commencement of the trial.