

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

1. Panane Dasanayake Mudiyanse  
Ralahamilage Piyadasa Bandara,  
of Delgoda.
2. Panane Dasanayake Mudiyanse  
Ralahamilage Navaratne Bandara,  
of Delgoda.
3. Panane Dasanayake Mudiyanse  
Ralahamilage Piyasena Bandara,  
of Delgoda.
4. Don Eddie Abeywickrema,  
of Koswatte,  
Kalawana.  
Plaintiff-Appellants

**CASE NO: CA/DCF/1220/2000**

**DC RATNAPURA CASE NO: 11660/Land**

Vs.

Land Reform Commission,  
C82, Gregory's Road,  
Colombo 7.

Defendant-Respondent

Before: Mahinda Samayawardhena, J.  
Counsel: Gamini Marapana, P.C., with Navin  
Marapana, P.C., and Thanuja  
Meegahawaththa for the Plaintiff-Appellants.  
Dr. Sunil Cooray with Hashan Pietersz for the  
Defendant-Respondent.  
Decided on: 20.07.2020

Mahinda Samayawardhena, J.

The Plaintiffs filed this action in the District Court of Ratnapura against the Defendant, the Land Reform Commission, seeking a declaration of title to the Plaintiffs' undivided rights to the land described in the schedule to the plaint, damages in a sum of Rs.10,000/= and a permanent injunction preventing the Defendant from disturbing the possession of the Plaintiffs of the land. The Defendant filed answer seeking dismissal of the Plaintiffs' action. After trial, the learned District Judge dismissed the Plaintiffs' action with costs. Hence this appeal by the Plaintiffs.

Under section 18 of the Land Reform Law, Robert George Delgoda, together with two others, made statutory declarations in respect of certain lands including the land in suit.

The Defendant *inter alia* published Notices under section 29 of the Land Reform Law directing interested parties to make claims for compensation. Several persons had made claims and, as there was a dispute regarding entitlement to compensation, the

matter was referred to the District Court under section 30 of the Land Reform Law. After an inquiry, the District Court by V9 ordered compensation to be paid only to Robert George Delgoda.

Giving evidence at the trial, the 1<sup>st</sup> Plaintiff stated that although he was aware of the section 29 Notice published in the Gazette, he did not think it fit to make a claim for compensation, as his rights to the land were unaffected by the statutory declaration made by Robert George Delgoda.

There are two schedules to the plaint describing two lands, but it is not clear from the plaint and the issues which land the Plaintiffs claim undivided rights to. I presume the Plaintiffs claim undivided rights to the land described in the 1<sup>st</sup> schedule, which is a portion of the larger land described in the 2<sup>nd</sup> schedule to the plaint. The land has not been properly described by way of a Plan, except by a reference in the 2<sup>nd</sup> schedule to “No.27AO”, which is only a Lot number without a Plan number.

The larger land, known as *Delgoda Nindagama*, is about 600 *amunam* in extent, which is, supposedly, about 1500 acres. Of this land, the Plaintiffs are claiming undivided rights to a portion in extent of 143 acres and 5 perches. No Plan has been produced by the Plaintiffs to identify the said portion, but they state it has been produced by the Defendant as part of V2. V2 is a photocopy of a portion of a Plan found at page 222 of the Brief and does not satisfy the requirement in this regard.

In any event, the Plaintiffs do not say they are the only co-owners of the land known as *Delgoda Nindagama*. As seen from

the Gazette marked V4, 520 acres of *Delgoda Nindagama* was vested in the Land Reform Commission upon the statutory declaration of Robert George Delgoda.

The 1<sup>st</sup> Plaintiff unequivocally admits in his evidence that Robert George Delgoda was also a co-owner of this land. Then, upon his statutory declaration at least, Robert George Delgoda's rights would have passed to the Land Reform Commission, thereby making the Land Reform Commission also a co-owner of the land. In addition to the Plaintiffs and the Land Reform Commission, there should be other co-owners of the land.

The claim of the Plaintiffs that they have acquired prescriptive title to the land (presumably described in the 1<sup>st</sup> schedule to the plaint) has been dismissed by the District Judge. The Plaintiffs do not canvass that finding of the District Judge in this appeal.

Against this backdrop, can the Plaintiffs file an action for declaration of title in order for the Court to decide their undivided rights to the land described in the 1<sup>st</sup> schedule to the plaint?

The Plaintiffs also state the Defendant is in unlawful possession of the land. One co-owner cannot object to another co-owner possessing the common property.

In the unique facts and circumstances of this case, in my view, the Plaintiffs should have filed a partition action, not a declaration of title action. I see no prohibition for them to do so even now.

The main contention of the Plaintiffs is the Land Reform Commission could not have acted on the declaration made by Robert George Delgoda, without conducting a proper investigation. This is a declaration of title action, not a writ application. The Plaintiffs may challenge the administrative decisions of the Land Reform Commission in a properly constituted writ application, if they so desire.

The dismissal of the Plaintiffs' action by the District Judge is, in my view, flawless. The appeal is dismissed with costs.

Judge of the Court of Appeal