

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

In the matter of an Application for Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by Act, No. 54 of 2006.

1. Kodagoda Buddhisena Alfred
(deceased)

1(a). Upul Nanda Kumara Kodagoda,
Indiketiya,
Pelmadulla.

Substituted-Plaintiff

SC APPEAL No. 09/2022

SC/HCCA/LA/Appn No. 211/2018

SP/HCCA/RAT No. 17/2017 [FA]

D.C. Ratnapura Case No. 12640/Land

Vs.

1. Naipanichchi Gamage Nimal
2. Naipanichchi Gamage Rathnayaka
3. Naipanichchi Gamage Senarathna

All of Indiketiya,
Pelmadulla.

Defendants

AND BETWEEN

1(a). Upul Nanda Kumara Kodagoda,
Indiketiya,

Pelmadulla.

Substituted-Plaintiff-
Appellant

Vs.

1. Naipanichchi Gamage Nimal
2. Naipanichchi Gamage Rathnayaka
3. Naipanichchi Gamage Senarathna

All of Indiketiya,
Pelmadulla.

Defendants-Respondents

AND NOW BETWEEN

Naipanichchi Gamage Rathnayaka
Indiketiya,
Pelmadulla.

2nd Defendant-Respondent-
Appellant

Vs.

Upul Nanda Kumara Kodagoda,
Indiketiya,
Pelmadulla.

And now :
Sarvodaya Road, Rilhena,
Pelmadulla.

Substituted-Plaintiff-Appellant-
Respondent

1. Naipanichchi Gamage Nimal
2. Naipanichchi Gamage Senarathna

All of Indiketiya,
Pelmadulla.

1st and 3rd Defendants-
Respondents-Respondents

Before : **S. Thurairaja, PC, J**
Arjuna Obeyesekere, J
K. Priyantha Fernando, J

Counsel : Mr. Anuruddha Dharmaratne for the
2nd Defendant-Respondent-
Appellant.

F.Z. Hassim for the 1st and 3rd
Defendants-Respondents.

Argued on : 22.01.2024

Decided on : 20.03.2024

K. PRIYANTHA FERNANDO, J

1. The instant appeal stems from the judgment of the High Court dated 24.05.2018. The 2nd Defendant-Respondent-Appellant (hereinafter referred to as the appellant) in this case seeks that the judgment of the learned High Court Judges be set aside and that the judgment of the learned District Court Judge be affirmed on the basis that the corpus has not properly been identified.
2. The Plaintiff-Appellant-Respondent (hereinafter referred to as the respondent) in the instant case, filed action in the District Court of Ratnapura in case no. 12640/L against the 1st, 2nd and 3rd Defendants-Respondents-Appellants seeking a declaration that the respondent (original plaintiff) is the permit holder of the land by the name of 'Indiketiya' described in

schedule A to the amended plaint dated 20.01.2011, ejectment of the defendants from the said land and damages.

3. The learned District Judge by his judgment dated 17.11.2016 decided that the appellant cannot be ejected from the land depicted in the Commissioner's plan [P-2], as the corpus has not been properly identified. It was the finding of the learned District Judge that the respondent has failed to prove that the land referred to in the permit marked [P-1] issued in terms of the Land Development Ordinance is the same land depicted in the Commissioner's plan [P-2].
4. Being aggrieved by the said judgment of the District Court, the respondent preferred an appeal to the High Court of Civil Appeal *Ratnapura*. At the argument of the appeal, both parties have agreed to dispose the appeal by way of written submissions. The learned Judges of the High Court set aside the judgment of the District Court, holding that the land described in the permit marked [P-1] has been properly identified by the Commissioner's plan marked [P-2] and granted relief as prayed by the original plaintiff (respondent) in his amended plaint. In that, for the reasons stated in the judgment, the learned Judges of the High Court concluded that the corpus has in fact been properly identified. Being aggrieved by the judgment of the learned Judges of the High Court, the appellant preferred the instant appeal.
5. At the hearing of the appeal, this Court granted leave to appeal on the questions of law set out in sub paragraphs (i), (ii) and (iii) of paragraph 18 of the petition dated 04.07.2018.

Questions of law

- 18 (i) Have the learned Judges of the High Court of Civil Appeals erred in law by arriving at the finding that there is sufficient evidence to identify the land in question granted under the said permit marked 'P-1', is the same as Lot No. 313 of the Final Village Plan No. 196?

- (ii) Have the learned Judges of the High Court of Civil Appeals erred in law by arriving at the finding that the land described in the permit marked 'P-1' can be identified in the survey plan marked 'P-2', and it is the same land described in the schedule 'A' to the amended plaint?
- (iii) Have the learned Judges of the High Court of Civil Appeals erred in law by failing to appreciate and consider that the documents marked P6 to P8 and P10 is insufficient proof to arrive at the finding that the land described in the permit given to the plaintiff and Lot No. 313 of the Final Village Plan No. 196 are one and the same?
6. As all three questions of law relate to the identification of the corpus, all three questions of law will be discussed together.
7. Although notices were issued on the respondent (Substituted-Plaintiff-Appellant-Respondent) on several occasions, the respondent neither appeared in Court nor was he represented by Counsel. The learned Counsel for the appellant filed written submissions and made submissions at the hearing of this appeal and the learned Counsel for the 1st and 3rd Defendants-Respondents-Respondents associated with the same.
8. The learned Counsel for the appellant submitted that, the boundaries and extent of the land referred to in the schedule A to the amended plaint dated 2011.01.20 is different to the boundaries and extent of the land referred to in the permit marked [P-1]. It was further submitted that, as per the schedule A to the amended plaint, the land referred to in [P-1] is 0.150 hectares in extent, however according to the subsequent survey, Lot No. 313 is 60 perches in extent.
9. It was the submission of the learned Counsel for the appellant that, the respondent in his evidence (at pages 148 and 149 of the brief) clearly admits that the boundaries of P-1 are different to the boundaries of P-2.

10. It was further submitted by the learned Counsel for the appellant that, in an attempt to settle the matter between the parties, the respondent has made a request to the Divisional Secretary of *Pelmadulla*. Upon this request, the Divisional Secretary has sent the letter marked [P-6] to *L. Piyadasa* provincial surveyor, stating that the portion of land described in Lot 49 of F.V.P. 196 which is 0.150 hectares in extent had been given to *Kodagodage Buddhisena* (respondent) and to prepare a report showing the boundaries of the same. *L. Piyadasa* kachcheri surveyor, had prepared a tracing and sent it to the District Court by the Divisional Secretary. This however has not been marked at the trial. In his written submissions, the learned Counsel for the appellant stated that the tracing had been prepared according to the boundaries of Lot 313 of F.V.P 196 and the schedule A of the amendment plaint has also been prepared according to this tracing. Despite the kachcheri surveyor being directed to prepare the tracing using the boundaries of Lot 49 of F.V.P 196, the surveyor has disregarded the same and has not identified Lot 49 in F.V.P 196.
11. It was the position of the learned Counsel for the appellant that the learned District Judge was correct in arriving at his finding as to the corpus not being properly identified.
12. It was also his position that, the learned Judges of the High Court have erred in setting aside the judgment of the learned District Judge and arriving at the finding that there is sufficient evidence to state that the land in question which was granted to the respondent under the said permit is similar to the land described in the schedule to the amended plaint in light of the documents marked [P-6], [P-7], [P-8], [P-10]. He submitted that, the boundaries and the extent of the land as described in the permit is in no way comparable to the boundaries and extent of the land as described in the schedule A to the amended plaint.
13. The learned Counsel for the appellant further submitted that, in a *rei vindicatio* action, there is a burden on the plaintiff to identify the corpus. In stating so, the learned Counsel made

reference to the cases of **Fernando V. Somasiri [2012] B.L.R. 121** at page 124 and **Jamaldeen Abdul Latheef V. Abdul Majeed Mohamed Mansoor and another [2010] 2 S.L.R. 333.**

14. The main issue in the instant appeal was, as to whether the boundaries and extent of the land in question by the name of 'Indiketiya' as set out in the schedule A to the amended plaint dated 20.01.2011 tallies with the boundaries and extent of the permit marked [P-1]. Simply put, does the permit marked [P-1] relate to the land as described in the schedule A to the amended plaint dated 20.01.2011.

15. In **Fernando V Somasiri [2012] B.L.R 121** it has been stated that,

“...In a vindictory action it is necessary to establish the corpus in a clear and unambiguous manner. ...”

16. Further, in the Court of Appeal case of **Hettiarachchi V. Gunapala CA 642/1995**, His Lordship Justice Ranjith Silva stated that,

“Thus the question is whether the Defendant is occupying a portion of the land which the Plaintiff claims under the aforesaid permit. This fact should be considered only after the Plaintiff established his rights to the extent of land with specific metes and bounds. In other words it is imperative that the Appellant should first prove the permit marked P1 and then identify the corpus with the land described in the said permit marked P1, as the Respondent denied the title of the Plaintiff to the said land.”

17. In light of the above, the burden is clearly on the respondent in the instant case (original plaintiff) to prove the extent of the land and establish the corpus with specific metes and bounds in a clear and unambiguous manner. The authenticity of the permit marked [P-1] is not in dispute. Therefore, it is on the respondent in the instant case to prove that the specific metes

and bounds of the land in question that the respondent claims which has been described in the schedule A to the amended plaint tallies with the permit marked [P-1].

18. The learned District Judge has clearly set out a diagram which concisely yet comprehensively sets out the metes and bounds of the land as set out in the permit [P-1], the schedule A to the amended plaint, and the Commissioner's Plan [P-2]. I have taken the liberty to reproduce this diagram below.

	ඉඩම	ප්‍රමාණය	ලතුර	නැගෙනහිර	දකුණ	බස්නාහිර
පැ1 අ අවසර පත්‍රය	අග්‍ර 196 ලොක් 49	හෙක්ටයාර් 0.150	ලොක් 156	ලොක් 156, පාර	පාර	ලොක් 156, පාර
සංයෝධිත පැමිණිල්ල අනුව	අග්‍ර 196 ලොක් 313	පර්වස් 60	අග්‍ර 196 හි ලොක් 314	අග්‍ර 196 හි ලොක් 29 1/2 දරණ පියසේනගේ ඉඩම	ඉදිකැටිය සිට කහවත්ත දක්වා පාර	පාර
පැ2 පිළුර	අග්‍ර 196 ලොක් 313	රුඩ් 01 දී පර්වස් 9.4	අග්‍ර 196 හි ලොක් 314	අග්‍ර 196 හි 29 1/2 දරණ පියසේනගේ ඉඩම	ඉදිකැටිය සිට කහවත්ත දක්වා පාර අග්‍ර 196 ලොක් 287	පාර අග්‍ර 196 ලොක්: 289

19. When considering the diagram that has been set out, it is clear that although the metes and bounds of the schedule A to the amended plaint dated 20.01.2011 and the metes and bounds of the commissioner's plan seem to tally with each other, the metes and bounds of the subject matter as described in the schedule A to the amended plaint does not tally with the permit marked [P-1]. The Commissioner's Plan P-2 has been made in respect of Lot No.313 of F.V.P. 196. Further, the schedule A to the amended plaint has also been made based on the Commissioner's Plan [P-2] which refers to Lot No. 313 of F.V.P. 196. However, the permit marked [P-1] is in reference to Lot No. 49 of F.V.P. 196.
20. Further, the respondent in his evidence (at pages 148 and 149 of the brief) has clearly admitted that the boundaries of P-1 are different to the boundaries of P-2.
21. When considering the above, it is apparent that the corpus in the instant case has not properly been identified with the land described in the permit [P-1].
22. Thus, the approach taken by the learned Judges of the High Court cannot stand. The learned Judges of the High Court have in fact erred in holding that the corpus is identified based on the evidence as set out in documents marked [P-6], [P-7], [P-8], [P-10]. This is primarily due to the fact that the tracing which has been prepared by *L. Piyadasa* the kachcheri surveyor has not been marked and produced in evidence at the trial.
23. Thus, as the corpus in the instant case has not properly been identified with the land described in the permit [P-1], all three questions of law are answered in the affirmative.

24. The judgment of the learned Judges of the High Court is set aside and the judgment of the learned District Judge is affirmed.

The appeal is allowed

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA, PC.

I agree

JUDGE OF THE SUPREME COURT

JUSTICE ARJUNA OBEYESEKERE.

I agree

JUDGE OF THE SUPREME COURT