

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

C A 787/96 F

DC Embilipitiya 3621/L

G.B.Piyadasa,  
Beddewewa,  
Udakella,  
Embilipitiya.  
***Plaintiff-Appellant***

**Vs.**

P.W. Dayasena,  
Beddewewa, Udakella,  
Embilipitiya  
***Defendant-Respondent***

**Before** : **A.W.A. Salam, J.**

**Counsel** : Manohara de Silva PC. With Arindra Wijesurendra for the Plaintiff-Appellant and Niroshana Igalahewa for the Defendant-Respondent.

**Argued on** : 27.1.2011

**Written Submissions**

**filed on** : 05.09.2011

**Decided on** : 29.11.2011

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Abdus Salâm J.

The plaintiff filed action seeking a declaration of title to the subject matter of the action and for the ejectment of the defendant. Plaintiff pleaded that his father Gunasekera Belpamullage Don Andiris who was entitled to the subject matter by right of prescriptive possession transferred the same to him on deed No.381 dated 3.11.1983 attested by Sirihewagama NP. The land which is the subject matter of the action is said to be in extent of six and half acres comprising of a paddy field in extent of one and half acres and a high land of five acres. He alleged that the defendant on 24.1.1989 entered a portion of the subject matter set out in schedule B to the plaint and continues to occupy the same causing damages at the rate of Rs.500/= a month. The defendant in his answer basically denied the ownership of the plaintiff and averred that he is in possession of an allotment of land in extent of 25 perches as set out in the schedule to the answer.

The matter of the dispute proceeded to trial on 15 issues. The plaintiff gave evidence and led the evidence of Karunamunige Gunaratne from the Embilipitiya police station and closed his case reading in evidence documents marked P1 to P20. The defendant gave evidence but produced no documents. The learned district judge dismissed the plaintiff's action for failure to establish the title to the land in suit. The district judge further observed that the plaintiff had failed to produce deed No.12205 by virtue of which he claimed that his father became the owner of the land in question. This observation appears to have been made by inadvertence as the plaintiff had produced a certified photostat copy of the same marked as

P16. On a perusal of P16 it appears that Coranelia Sepala Ratnayake, Nensi Sepala Ratnayake, Backy Ratnayake, Leela Sepala Ratnayake and Jamis Alwis Sepala Ratnayake have transferred an undivided 5/84 shares from and out of Ethhondagala and rights in three other lands the description of which are illegible in P16 to Abeypala Weerabaddana Dissanayake and Gunasekera Belpamullage Don Andris.

Even if P16 is considered as having conveyed title to the father of the plaintiff, yet he is only entitled to an undivided  $\frac{1}{2}$  share of the subject matter. The plaintiff claimed that he has got title for the entire land by virtue of P1. Quite remarkably, in P1 the aforesaid Andris has not recited his title or at least to deed No.12205 as the source by which he became entitled to the land in question.

In a *revindicatio* action the burden is on the plaintiff to establish on a balance of probability the identity of the corpus and his title. Even if P1 and P16 had been taken into consideration the learned district judge could not have in any event given relief to the plaintiff. In the circumstances, I see no reason to interfere with the findings, judgment and decree entered by the learned district judge. Accordingly, this appeal is dismissed subject to costs.

Judge of the Court of Appeal