

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

Basnayake Mudiyansele Kirimudiyanse  
(Deceased)

No.83, Kebella,  
Kolaniya, Piligama.

PLAINTIFF

C.A. Case No.734/2000 (F)

D.C. Kurunegala Case No.3311/L

Basnayaka Mudiyansele Gnanawathi  
Basnayaka Menike

of Wariyapola Road, Kalugamuwa.

Substituted-PLAINTIFF

-Vs-

1. Anulawathi Menike Yatigammana *alias*  
Anulwathi Jinanandha

of Negambo Road, Kalugamuwa.

2. M.M. Wickramasinghe (Deceased)

of Negambo Road, Kalugamuwa.

DEFENDANTS

2A. D.M. Kumarihamy

of Negambo Road, Kalugamuwa.

Substituted 2A DEFENDANT

AND NOW BETWEEN

Basnayaka Mudiyansele Gnanawathi  
Basnayaka Menike

of Wariyapola Road, Kalugamuwa.

Substituted-PLAINTIFF-APPELLANT

-Vs-

1. Anulawathi Menike Yatigamma *alias*  
Anulwathi Jinanandha  
of Negambo Road, Kalugamuwa.
- 2A. D.M. Kumarihamy (Deceased)  
of Negambo Road, Kalugamuwa.  
DEFENDANT-RESPONDENT

AND NOW BETWEEN

Basnayaka Mudiyansele Gnanawathi  
Basnayaka Menike  
of Wariyapola Road, Kalugamuwa.  
Substituted-PLAINTIFF-APPELLANT

-Vs-

1. Anulawathi Menike Yatigamma *alias*  
Anulwathi Jinanandha  
of Negambo Road, Kalugamuwa.
- 2B. D.M. Kumarihamy  
of Negambo Road, Kalugamuwa.  
Substituted-Substituted-DEFENDANT-  
RESPONDENT

BEFORE

:

A.H.M.D. Nawaz, J.

COUNSEL : M.I.M. Naleem for the Plaintiff-Appellant  
Amrith Rajapakse for the Defendant-Respondent

Decided on : 25.06.2019

A.H.M.D. Nawaz, J.

The Plaintiff-Appellant (hereinafter sometimes referred to as “the Plaintiff”) instituted this action seeking to vindicate his title to a land called “*Gammeddawatta*” morefully described in the schedule to the amended plaint and to eject the Defendants from the land, along with the remedy of damages. The Defendants filed a joint answer followed by an amended answer wherein they took the stance that they be declared entitled to the land and sought a dismissal of the action.

So it was a *rei vindicatio* action filed by the Plaintiff based on prescriptive possession and as I stated in CA 938/1999 (F) CA minutes of 07.08.2018.

“As is axiomatic, a *rei vindicatio* action presupposes that at the time of filing action the Defendant is in unlawful possession and the Plaintiff seeks to vindicate his title and have the Defendant ejected from the subject-matter which is depicted in the schedule to the plaint. In *Moraís v. Victoria* (1968) 73 N.L.R 409 de Kretser, J. said: “the right to possess” (which is one of the rights subsumed in the conception of ownership) “implies the right to vindicate-i.e., to recover possession from a person who possesses without title to possess derived from the owner. It will thus be seen that the cause of action in a *rei vindicatio* action is the trespass which has resulted in the Plaintiff being kept out of property of which he is the owner, and which may have caused him consequential loss-see page 417 (*supra*). The latter element, namely consequential loss, does not constitute an indispensable requisite of the *rei vindicatio*, but merely renders possible an additional claim for damages.”

But the case presented at the trial by the Plaintiff did not establish the ingredients of a claim of prescriptive title. In the course of cross-examination, the Plaintiff admitted that

the predecessors of the Defendants were the owners of the land. There is express assertion from the Plaintiff that Ginananda-the husband of the 1<sup>st</sup> Defendant was the title holder of the property-see p.107 for the answer given by the Plaintiff in cross-examination. He further states that they came on to the land as tenant cultivators. This shows the subordinate capacity in which the Plaintiff had come into occupation of the corpus. Ginananda had passed away in 1985 and the action was instituted in 1988. Another admission as to title of the corpus is found at p.107 of the appeal brief wherein quite unambiguously the Plaintiff admits the title of the Defendants to the land.

There is another admission I find upon the evidence. At an anterior stage to the litigation in 1987, there had been an inquiry at the Agrarian Service Centre of *Wererambagedara, Kalugamuwa* wherein the 1<sup>st</sup> Defendant had sought a rectification of agricultural lands register in relation to a land called "*Aarachiya Kumbura*" that had belonged to her husband-Ginananda.

The 1<sup>st</sup> Defendant had sought to have her name entered as an owner cultivator of this land since her husband passed away. The Plaintiff-Kirimudiyanse giving evidence before the committee that inquired into the matter, stated that he had handed over *Aarachiya Kumbura* upon a promise made by the Defendants that the subject-matter of this action would be handed over to him. This shows that the Defendants had title to the property.

On perusal of the totality of evidence, I take the view that the learned Judge of *Panadura* in his judgment dated 01.09.2000 came to the right decision and I affirm the judgment and dismiss the appeal

JUDGE OF THE COURT OF APPEAL