

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

In the matter of an Appeal in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No.54 of 2006 read together with Article 128 of the Constitution.

Athamlebbe Seiynutheen,
No.149, New Mosque Road,
Aakkaraipattu-6
Plaintiff
Vs.

S.C. Appeal No.157/2014
SCHCCA LA No. 359/2011
Civil Appeal High Court
NO.EP/HCCA/KAL No. 111/08
DC Akkaraipattu Case No.DCA/27/L/03

Sinnalebbei Maraikar Mohamed Kaasim,
Muthaliar Road,
Akkaraipattu-3
Defendant

AND BETWEEN
Athamlebbe Seiynutheen,
No.149, New Mosque Road,
Aakkaraipattu-6
Plaintiff-Appellant
Vs.
Sinnalebbei Maraikar Mohamed Kaasim,
Muthaliar Road,
Akkaraipattu-3
Defendant-Respondent

AND NOW BETWEEN

Sinnalebbei Maraikar Mohamed Kaasim,
(Dead)

Muthaliar Road,
Aakkaraipattu-3

Defendant-Respondent-Appellant

Mohammathismail Maraikkar Avvakuddy,
No.235, Mudaliyar Road,
Aakkaraipattu-03

Substituted-Defendant-Respondent-

Appellant

Vs.

Athamlebbe Seiynutheen,
No.149, New Mosque Road,
Aakkaraipattu-6

Plaintif-Appellant-Respondent

BEFORE : **MURDU N.B. FERNANDO PC, CJ.**
JANAK DE SILVA, J.
ACHALA WENGAPPULI, J.

COUNSEL : Nizam Kariapper, PC with M.I.M. Iynullah, Ilham Kariapper & Ms. Chathurika for the Substituted-Defendant-Respondent-Appellant
V. Puvitharan, PC with Ms. A. Rajasekaran for the Plaintiff-Appellant- Respondent

ARGUED ON : 28th February,2024

DECIDED ON : 25th July, 2025

ACHALA WENGAPPULL J.

This appeal arises from an action instituted by the Plaintiff, seeking a declaration of his title to the land under dispute and ejectment of the Defendant therefrom. The Defendant claimed in his Answer that the disputed land is owned and cultivated by him, on a permit bearing No. AP/20/ES/917/76.

After trial, the District Court of *Akkaraipattu*, dismissed the Plaintiff's action by its judgment dated 21.01.2008. The High Court of Civil Appeal allowed the appeal preferred by the Plaintiff against that judgment and granted relief as prayed for in the Plaintiff. The Defendant thereafter sought leave to appeal from this Court against the judgment of the High Court of Civil Appeal.

This Court, after hearing Counsel, granted Leave to Appeal on the following questions of law, on 09.09.2014;

1. Was the High Court of Civil Appeal, *Kalmunai*, in error in proceeding on the basis that the Plaintiff had title to the land ignoring the conclusions reached by the learned District Judge set out in para 21(i) to (iv) of this Petition? Yes, As a permit holder cannot get a declaration of title to the State land.
2. Did the High Court of Civil Appeal, *Kalmunai*, err in law in granting the relief prayed for by the Plaintiff notwithstanding the fanciful nature of his claim to title borne out by the observations made by the learned District Judge set out in para 21 (viii) to (xiv) of this Petition? Same answer as (1). However, the Plaintiff is entitled to get an order of eviction against the Defendant.

3. Was the High Court of Civil Appeal, *Kalmunai*, in error in ordering the ejectment of the Defendant who had been in possession of the land for more than 47 years without giving any weight to the conclusions made by the learned District Judge set out in para 21 (xv) to (xviii) of this Petition? No.

In instituting action before the District Court, the Plaintiff claimed that he has the title to the parcel of land described in the schedule to the Plaintiff, upon a permit issued under Land Development Ordinance bearing No. AP/20/ES/45, and the Defendant had forcibly occupied the said land in May 2000.

The Defendant, averred in his Answer that he is in possession of a land, the boundaries of which he described in its schedule upon receiving "approval" to enjoy the crown land, under permit No. AP/20/ES/917/76. He alleged that the permit No. AP/20/ES/45, relied on by the Plaintiff to prove his title is a one "*fraudulently prepared*".

The parties have settled for a total of 12 issues among them. The Plaintiff raised his issues in line with the position he had taken up in his Plaintiff. The Plaintiff and the Defendant have raised six issues each.

In view of the questions of law on which the instant appeal was argued on by Counsel, issue Nos. 7 and 11 assume a greater significance. The issue No. 7 was framed to the effect whether the Defendant possessed the land, described in the Schedule to the Answer, on permit No. AP/20/ES/917/76, whereas the issue No. 11, was whether the Plaintiff "*fabricated documents in respect of the land described in the Schedule to the answer by means of undue influence ?*".

It is apparent, even from a cursory examination of the pleadings and the issues raised before the trial Court in this vindictory action, the description of the parcel of land under dispute in the Schedule to the Plaintiff does not match to the description of the land, provided by the Defendant, in the Schedule to his Answer. It is trite law that, in a *rei vindicatio* action, it was for the Plaintiff to establish the identity of the land to which he claims title, and that the Defendant is in its possession.

The evidence of the Plaintiff is that he cultivated the paddy land under dispute, on the strength of the permit issued under Land Development Ordinance, since his father's demise in 1975, up to the point the Defendant had forcibly came to occupy it in the year 2000. A true copy of the permit No. AP/20/ES/45 was tendered to Court, marked P2.

The boundaries of the land claimed by the Plaintiff are as follows:

North	:	Tank Bund
East	:	Path
South	:	Street & Canal
West	:	Anicut and Canal.

During the hearing of this appeal, learned President's Counsel for the Defendant contended the fact that the identity of the corpus had not been established by the Plaintiff had escaped the attention of the High Court of Civil Appeal in allowing the appeal. Learned President's Counsel for the Plaintiff replied that the identity of the corpus was established to the required degree of

proof by the evidence presented through the Land Officer and the Agrarian Officer.

The Plaintiff, during his evidence, stated that the land under dispute is a agricultural land of 1 ½ acres. He cultivated paddy in that land since 1975. He further said that the Defendant, after coming into occupation, had dug out the paddy land to make ponds to cultivate freshwater fish and he had lodged a complaint with the Agrarian Officer.

The Land Officer and the Agrarian Officer, stated that they both have personal knowledge of the land in dispute, as they regularly make visits to that land. The Land Officer stated that the land is reserved for paddy cultivation and the permit was issued to the Plaintiff for that purpose. The Officer added that, presently the land is used for fish culture. The Land Officer too confirmed that the land under dispute is a paddy land, registered under the Agrarian Development Act as such. This witness too stated that the Defendant made fish ponds on that land and is currently engaged in fish culture, without obtaining prior permission of the Agrarian Commissioner to do so, which is a punishable offence under the said Act.

During cross examination, the Defendant relied on a permit D1 issued to a person S.L.M. Hasim by the Government Agent of Ampara on 12.09.86, which had given the boundaries to the land it relates to as follows:

North	:	Tank Bund
East	:	M.I. Rafi
South	:	Canal
West	:	Canal

With regard to the contention that the identity of the corpus was not established by the Plaintiff, the evidence referred to above clearly demonstrate that there is clear evidence as to the physical identify of land over which the parties dispute for title. That is a parcel of land now under occupation by the Defendant, who dug out fish ponds. It is for the Plaintiff to establish that he has title to that parcel of land now identified by evidence, as the disputed land.

The Schedule to the Plaintiff describes the land in respect of which the action is instituted. The boundaries given to a land of 1 ½ acres, in the said Schedule are as follows:

North	:	Bund of the Tank
East	:	Path
South	:	Path & Canal
West	:	Bund and Canal.

The Schedule to the Answer describes the land in respect of which the Defendant is claiming title. The boundaries given to a land of 2 acres, in the said Schedule are as follows:

North	:	Bund of a Tank
East	:	M.I. Rafi
South	:	Canal
West	:	Canal

During cross-examination of the Land Officer by the Defendant (he was also called as a witness for the Defendant), he was shown the permit relied on by him and questioned whether the land described in the permit of the Plaintiff and the land described in the permit of the Defendant is one and the same. The

witness replied that he cannot say whether both are same or not. However, the witness admitted that the boundaries referred to in the permit issued to the Plaintiff are similar to the ones the Plaintiff had described. The boundaries so admitted by the Land Officer, as given in the permit No. AP/20 ES/45 matches with the one given in the Schedule to the Plaintiff.

The total extent of the lands described in the Schedules to the Plaintiff and the Answer are significantly different. The land claimed by the Plaintiff is a one of 1 ½ acres whereas the land claimed by the Defendant is of 2 acres. The Eastern boundaries as well as the Western boundaries are also show significant differences, which could not be ignored as trivial discrepancies occurred in describing them.

In consideration of the evidence presented before the trial Court, it is clear that the Plaintiff had established the boundaries of the land, to which he claims title under the permit No. AP/20 ES/45. But, the Defendant's attempt to present the land described in the permit No. AP/20/ES/917/76 matches with the description of the land claimed by the Plaintiff had demonstrably failed. Thus, it is reasonable to conclude that the land referred to in permit No. AP/20/ES/917/76 is some other land and not the land described in the Schedule to the Plaintiff and the permit No. AP/20/ES/917/76, to which both parties claim title. Hence, issue No. 7, which was framed to the effect whether the Defendant possessed the land, described in the Schedule to the Answer, on permit No. AP/20/ES/917/76, should be answered as either "Not proved" or "*irrelevant to these proceedings*" as even if he established it is so, that finding will not make him entitled to the land under dispute. The answer to the said issue given in the affirmative, by the District Court is clearly a conclusion arrived erroneously.

Accordingly, the said answer to issue No. 7, is reversed by this Court to read as an answer that reads as - irrelevant to these proceedings.

The case, presented by the Defendant before the trial Court, if condensed to present in summary form, is that he acquired title to the land in dispute upon the permit No. AP/20/ES/917/76 and the permit No. AP/20 ES/45, relied on by the Plaintiff for the same purpose is obtained after "*using illegal influence*". Having dealt with the first part of his case, this Court now turn to consider the remaining part, namely issue No. 7 which was framed to the effect whether the Plaintiff had "*fabricated documents in respect of the land described in the Schedule to the answer by means of undue influence ?*".

The Defendant placed heavy reliance on certain findings and observations made by the learned District Judge in support of his contention that the permit of the Plaintiff is obtained through fraud.

Perusal of the judgment of the trial Court, it appears that the said Court had taken certain factors as sufficient "evidence" to establish the disputed question of fact, presented in the form of an issue No. 7. The trial Court, having noted that the permit P2 was tendered to Court through witness but the Plaintiff had filed "*some other document marked as P1*" along with his Plaintiff. The trial Court then considered the evidence of the Plaintiff that P1 was issued to him in 1992 and since the original was lost a photo copy of the permit was filed as P1. Thereafter, he made an application to the Divisional Secretary and was issued with a permit under Land Development Ordinance, which he tendered to Court as P2. The trial Court suspects this claim, due to the fact that the Plaintiff was filed on 21.07.2003 whereas the seal of the Court, that appeared on P2 indicate it was tendered to Court on 23.07.2003 and no original was marked through the Land

Officer, except to R3, when that officer was called by the Defendant. It also considered the fact that the Plaintiff had no permit to present before the Agrarian Officers who inquired into his allegation of digging out the paddy land.

The other factor that made the trial Court to conclude that permit No. AP/20 ES/45 obtained “*by means of undue influence*” was that when the Plaintiff claimed that he had been cultivating the disputed paddy land since 1975, after his father’s demise, he was “only 8 years old”.

It must be noted that any of these factors have no relevance to the dispute presented before the trial Court. The issue No. 11, whether the Plaintiff “*fabricated documents in respect of the land described in the Schedule to the answer by means of undue influence ?*” refers to a land described in the Schedule to the answer and not the Schedule to the Plaintiff.

The trial Court approached the issue No. 11 on the basis that the Plaintiff “*fabricated documents*” in respect of the land described in the Schedule to the Plaintiff by “*means of undue influence*”. The reasoning adopted by that Court confirms this view. But the issue refers to the land described in the Answer and not the Plaintiff. Clearly the schedule of the “*fabricated*” permit No. AP/20 ES/45 makes no reference to any of the boundaries, as described in the Schedule to the Answer of the Defendant. Thus, the said issue should have been answered as a clear “No”.

Despite the said conclusion, it must be noted that the factual analysis undertaken by the trial Court too is clearly erroneous for it had failed to consider the evidence presented before it in the totality.

The Land Officer, during his evidence of the Plaintiff's case, clearly stated that the land permit No. AP/20 ES/45 was issued by the Government Agent of Ampara on 22.05.1992 in the name of the Plaintiff. When the same Land Officer was called by the Defendant, during his case, who admitted the permits relied on by the Plaintiff and the Defendant are different and relates to different lands. Importantly, during the examination in chief by the Defendant, the witness, in answering the question put to him "*according to your ledger was the permit for the crown land issued before issuing the permit under the Land Development Ordinance to Seinudeen?*" answered "*Issued, the number was AP/20 ES/45*". Seinudeen is the Plaintiff, who instituted the instant action .

This was the uncontradicted evidence presented before trial Court on the issuance of the permit No. AP/20 ES/45. The trial Court, in its consideration of the evidence, failed to observe the fact that, in cross examination of the Land Officer by the Defendant, during Plaintiff's case or during the examination in chief, during the Defendant's own case, it was never put to the witness or elicited from him that the permit No. AP/20 ES/45 was issued upon "*fabricated documents*" and "*by means of undue influence*". Thus, the issue No. 11 should have been answered by the trial Court as "*Not proved*", instead of answering "*Yes*". Therefore, the answer to the issue No. 11, is corrected by this Court to read as "*Not proved*".

The issue Nos 1 to 6 that are answered in the negative and the issue No. 12 answered in the affirmative by the trial Court are therefore amended to read as follows;

Issue No. 1 Yes, subject to the conditions stipulated under the permit.

Issue No. 2 Yes.

Issue No. 3 Yes.

Issue No. 4 Not proved.

Issue No. 5 Not proved.

Issue No. 6 Ye, Plaintiff is only entitled to get an order of eviction against the Defendant.

Issue No. 7 Does not arise as irrelevant to these proceedings

Issue No. 8 Does not arise as irrelevant to these proceedings

Issue No. 9 No

Issue No. 10 No

Issue No. 11 Not proved

Issue No. 12 No

The judgment of the High Court of Civil Appeal dated 29.07.2011, by which it set aside the judgment of the District Court, is hereby affirmed, but subject to the variation that the Plaintiff is not entitled to get a declaration of title to the land but is entitled to eject the Defendant from.

The District Court is directed to enter decree accordingly.

Subject to the above variation, the appeal of the Defendant is dismissed, in view of the answers to the three questions of law.

The Plaintiff is entitled to the costs of this appeal as well as the appeal before the High Court of Civil Appeal.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO PC, CJ.

I agree.

CHIEF JUSTICE

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT