

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

In the matter of an application for Leave to
Appeal.

SC.Appeal No.203/16

SC.HC.CALA NO.430/2015

WP/HCCA/COL/173/2010(F)

D.C.Colombo 21391/L

Deniyadura Stephen De Silva

No.307, Muthuwella Mawatha, Modera,

Colombo 15.

Plaintiff-Respondent-Petitioner

Vs.

Reginet Anthony

No.97/9A, St James Street,

Colombo 15.

Defendant-Appellant-Respondent

BEFORE : **SISIRA J. DE ABREW, J.**

VIJITH K. MALALGODA, PC, J. &

P. PADMAN SURASENA, J.

COUNSEL : Athula Perera with Vindya Divulwewa for the
Plaintiff-Respondent-Appellant.
Mrs. K. Sivapathasundaram with Daya Guruge for the
Defendant-Appellant-Respondent.

ARGUED &

DECIDED ON : 27.02.2019.

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases. This is an appeal against the judgment of the learned Judges of the Civil Appellate High Court dated 12.11.2015 wherein, they set aside the judgment of the learned District Judge dated 07.10.2010. Learned District Judge by the said judgment held the case in favour of the Plaintiff. Learned High Court Judges however, by the said judgment set aside the judgment of the District Judge. When we read the judgment it appears that the learned Judges of the Civil Appellate High Court have set aside the judgment of the District Judge on the basis that the corpus had not been properly identified. Mr. Athula Perera who appears for the Plaintiff-Respondent-Appellant too submits that the learned Judges of the Civil Appellate High Court have set aside the judgment on the basis that the corpus had not been properly identified.

Mrs. Sivapathasundaram who appears for the Defendant-Appellant-Respondent too admits this position. Therefore, the most important question that must be decided is whether the learned Judges of the Civil Appellate High

Court were correct when they set aside the judgment of the learned District Judge. The Defendant-Appellant-Respondent (hereinafter referred to as the Defendant-Respondent) at the trial has raised issues of prescription relating to the disputed land. The disputed land is shown as Lot 3 in Plan No.10164 dated 22.04.2008. This Plan was prepared on a commission issued by the learned District Judge. The most important question that should be considered is whether the Defendant-Respondent is entitled to raise the point that the corpus had not been identified when the Defendant-Respondent has claimed prescriptive title to the corpus. In my view, when the Defendant-Respondent claims the disputed land (the corpus) on the basis of prescription, he is not entitled to raise the question of non- identification of the disputed land (the corpus) because when he raises the plea of prescription, he has impliedly admitted the identification of corpus. Therefore, the question that the corpus had not been properly identified cannot be raised in this appeal. Unfortunately, learned Judges of the Civil Appellate High Court have set aside the judgment of the learned District Judge on the basis that the corpus had not been properly identified. As I pointed out earlier the Defendant-Respondent has impliedly admitted that he has identified the corpus. When we consider all the above matters we are unable to permit the judgment of the Civil Appellate High Court to stand. Further, we note that the Defendant has not disputed the identification of corpus in the District Court. This Court by its order dated 27.10.2016 has granted leave to appeal on questions of law set out in paragraph 22(a)(b)(c)(d) and (e) of the Petition of Appeal dated 18.12.2015 which are set out below,

- (a) In the circumstances of the case, has the defendant disputed the identification of the corpus, in that whether lot 3 in plan 10164 dated 06.06.2008 is the portion of land encroached by the defendant from the land described in the 1st schedule to the amended plaint?

- (b) Are lots 1, 2, 3 in plan 10164 dated 06.06.2008 form the subject matter of this case?
- (c) Is the plan 10164 dated 06.06.2008 a valid plan, in that has the Commissioner of Surveyor had prepared the said plan according to available information?
- (d) In the circumstances pleaded is the judgment of the High Court according to law and according to the evidence adduced in the case?
- (e) In the circumstances pleaded is judgment of the District Court according to law and according to evidence adduced in the case?

For the above reasons, we answer the question No.1 as follows.

The Defendant has not disputed the identification of the corpus. When we answer the question No.1, we hold that the question No.2 & 3 do not arise for consideration.

We answer question No.4 as follows,

The judgment of the High Court is not according to the law.

We answer question No.5 in the affirmative.

For the above reasons, we set aside the judgment of the learned Judges of the Civil Appellate High Court dated 12.11.2015 and affirm the judgment of the learned District Judge.

Appeal allowed.

Sgd. **JUDGE OF THE SUPREME COURT**

VIJITH K. MALALGODA, PC, J.

I agree.

Sgd. **JUDGE OF THE SUPREME COURT**

P.PADMAN SURASENA, J.

I agree.

Sgd. **JUDGE OF THE SUPREME COURT**