

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

G.B. Piyadasa,  
Baddewewa Udakella,  
Near the Primary Court,  
Embilipitiya.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/208/2014**

**SC LA NO: SC/SPL/LA/05/2012**

**CA NO: CA/787/96 (F)**

**DC EMBILIPITIYA NO: 3621/L**

Vs.

G.W. Dayasena,  
Near Concrete Yard,  
New Town, Embilipitiya.  
Defendant

AND BETWEEN

G.B. Piyadasa,  
Baddewewa Udakella,  
Near the Primary Court,  
Embilipitiya.  
Plaintiff-Appellant

Vs.

G.W. Dayasena,  
Near Concrete Yard,  
New Town,  
Embilipitiya.  
Defendant-Respondent

AND NOW BETWEEN

G.B. Piyadasa,  
Baddewewa Udakella,  
Near the Primary Court,  
Embilipitiya.  
Plaintiff-Appellant-Appellant

Vs.

G.W. Dayasena,  
Near Concrete Yard,  
New Town,  
Embilipitiya.  
Defendant-Respondent-  
Respondent

Before: Vijith K. Malalgoda, P.C., J.  
Yasantha Kodagoda, P.C., J.  
Mahinda Samayawardhena, J.

Counsel: Rohan Sahabandu, P.C. with Hasitha Amarasinghe  
for the Plaintiff-Appellant-Appellant.  
Defendant-Respondent-Respondent absent and  
unrepresented.

Argued on : 22.07.2021

Written submissions:

by the Plaintiff-Appellant-Appellant on 23.04.2015.

Decided on: 15.10.2021

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court of Embilipitiya seeking a declaration of title to the land described in the first schedule to the plaint, ejectment of the defendant from a portion thereof as described in the second schedule to the plaint, and damages. The defendant sought dismissal of the plaintiff's action. After trial, the District Court dismissed the plaintiff's action on the basis that the plaintiff failed to prove title to the land. On appeal, the Court of Appeal affirmed the judgment of the District Court. This appeal by the plaintiff is from the judgment of the Court of Appeal.

This Court granted leave to appeal to the plaintiff on the following two questions of law:

*As there was an erroneous observation by the trial judge as to deed P16 should the Court of Appeal have returned the matter back to the District Court to adjudicate on the issue*

*of prescription as the District Court had not explained the issue?*

*When the Court of Appeal finds that the plaintiff is entitled to ½ share of the corpus only, could a declaration be granted to the said ½ share and order eviction of the trespasser as the trial Court has not held that the defendant has prescribed to the land or has paper title as he stands in the shoes of a trespasser?*

The plaintiff filed this action on the basis that he is the paper title holder of the land described in the first schedule to the plaint by deed marked P1 from his father. The District Judge rightly concluded that P1 cannot be relied upon as the plaintiff did not prove how his father had obtained title to the land in order for the father to have conveyed it to the plaintiff, since mere execution of deeds does not confer title.

During the course of his evidence, the plaintiff stated that his father got title to the land by deed No. 12205. According to the proceedings of the District Court, this deed had not been marked in evidence and therefore the District Judge stated that it had not been produced. But as the Court of Appeal correctly notes in its judgment, this deed is available in the brief marked P16 and there is an error in recording the proceedings.

Nevertheless, the Court of Appeal does not state that the plaintiff's father obtained title to the land by P16. What the Court of Appeal states is "*Even if P16 is considered as having conveyed title to the father of the plaintiff, yet he is only entitled to an undivided ½ share of the subject matter.*" This cannot be

interpreted to mean that the Court of Appeal came to the definite finding that the plaintiff's father became entitled to an undivided  $\frac{1}{2}$  share of the land by virtue of P16 and that this  $\frac{1}{2}$  share was transferred by P1 to the plaintiff.

As the Court of Appeal has remarked, there is no mention of P16 in P1 as the source of title of the transferor. In P1, the plaintiff's father traces his title to an order delivered in a section 66 application under the Primary Courts' Procedure Act to which the defendant was not a party. Even if this is correct, the Primary Court does not decide on ownership of the land but only on possession.

Moreover, perusal of P16 reveals that it has nothing to do with the land the plaintiff claims title to in the instant action. The land in suit is known as *Baddawewe Udakella* alias *Udakella* but there is no such land described in the schedule to P16.

The position of the defendant is that this is state land. The plaintiff also stated in cross examination that the Mahaweli Authority took preliminary steps to issue permits in respect of this land but the permits were never issued. His evidence on this question is not clear.

By the aforesaid first question of law, the plaintiff seeks to remit the case to the District Court for adjudication on the issue of prescription upon P16 being available in the case record. This has no meaning. There is no correlation between P16 and the plea of prescription.

What is this prescriptive title the plaintiff claims? Whilst stating that he is the owner of the land by deed P1, the plaintiff by issue number 3 states that he has acquired prescriptive title to the land by undisturbed, uninterrupted and adverse possession against the defendant for well over ten years. Does this mean the plaintiff considers the defendant the true owner of the land? The plaintiff filed this case on the basis that the defendant forcibly entered his land described in the schedule to the plaint on a particular day about one year before the institution of the action. The plaintiff's plea of prescription is intrinsically inconsistent and unsustainable.

Both the District Court and the Court of Appeal have correctly concluded that the plaintiff has not proved title to the land.

I answer both questions of law in the negative and dismiss the appeal of the plaintiff but without costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court