

~~PC~~
~~ELT G. 2.~~

Judgment
35/1965

IN THE PRIVY COUNCIL

No.34 of 1964

ON APPEAL FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF LEGAL STUDIES
- 9 FEB 1966
25...
LONDON, W.C.1.

DR. M. G. PERERA

- and -

MISS DARIA MEMALTA HENRY

80974

CASE FOR THE APPELLANT

HATCHETT JONES & CO.,
90, Fenchurch Street,
LONDON, E.C.3.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

DR. M.G. PERERA

Appellant

- and -

MISS DARIA MEMALTA HENRY

Respondent

CASE FOR THE APPELLANT

- | | | <u>Record</u> |
|----|--|--------------------------|
| 10 | 1. This is an appeal from the Decree of the Supreme Court of Ceylon dated the 20th day of December, 1962 dismissing the Appellant's appeal from the judgment of the District Court of Colombo dated the 19th day of September 1960, whereby it was ordered that the Appellant should demolish and remove two pillars on a road over which it was alleged that the Respondent herein had a right of way. The sole issue is whether or not the Respondent herein had legally established her right of way. | p.48
pp.41 to
44 |
| 20 | 2. By a plaint dated the 31st day of January 1958 the Respondent claimed a right of way over the road marked Lot D on a plan filed with the said plaint and alleged that the defendant had obstructed the said right of way by an erection of two pillars on the said road and claimed damages. In her plaint the Respondent founded her title on a Deed No.139 dated the 20th July 1955 and an attached plan. | p.12

p.78
p.15 |
| 30 | 3. By his amended Answer the Appellant denied the averments in the plaint and alleged that if the Respondent or her predecessors in title had | p.18 |

Record

had any right of way over the said road, it had been lost by non-user and abandonment. He averred his own right of way over the said road and counterclaimed a declaration to that effect.

- p.23 4. At the trial the Respondent's mother gave evidence that her late husband had purchased certain land part of two lots B and C by a Deed exhibited marked P2. The said Deed purported to transfer the said lands with right of way over the said road. Further evidence was given of user of the said road over various periods. The defendant gave evidence and called evidence that the said road had been unusable until he had put it into repair. The said lots B and C are as depicted in plan P1. 10
- p.59
- p.57
- p.41 5. The learned trial judge held without giving any reason that "the plaintiff's father was the owner of lots B and C in the Plan P1 together with the right of way over Lot D in that plan." He further held that there had been use of the said road over various periods, but that no party had acquired prescriptive rights. As the construction of the pillars was admitted he held that this was interference with the respondent's right of way, awarded the agreed damages at Rs.1/- a month and that the pillars be removed within two months. 20
- p.48 6. The Appellant appealed to the Supreme Court of Ceylon which by Decree dated the 20th day of December 1962, dismissed the said appeal without giving any reasons. 30
7. Final Leave to appeal to Her Majesty in Council was granted by Order of the Supreme Court dated the 13th day of May 1963.
8. The Appellant humbly submits that the appeal should be allowed, the Decree of the Supreme Court set aside and the Respondent's case dismissed with costs for the following among other

R E A S O N S

1. BECAUSE the Respondent failed to establish her right of way. 40

2. BECAUSE the learned trial judge failed to consider whether or not the Respondent had established her right of way.
3. BECAUSE there was no legal evidence of the Respondent's title to the said right of way

E.F.N. GRATIAEN,

T.O. KELLOCK

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