

**LEELAWATHIE HAMINE AND ANOTHER  
V.  
GNANASIRI**

COURT OF APPEAL

WIJETUNGA, J. AND WIJEYARATNE, J.

C. A. 234/82 (F)

D. C. GAMPAHA 22399

MAY 18, 1989

*Boundaries — Definition of boundaries when it lies — Is it appropriate when the dispute is to lots? — How dispute to lots must be resolved.*

An action for definition of boundaries lies only where parties are admittedly owners of contiguous lands and the common boundary between the two lands has become uncertain. When the dispute is to lots the appropriate remedy is an action for declaration of title and ejectment.

**Cases referred to:**

1. *Maria v. Fernando* 17 NLR 65
2. *Jakolis Appu v. David Perera* 69 NLR 548

**APPEAL** from judgment of the District Court of Gampaha

*G. L. Geethananda* for Plaintiff-Appellants.

*Gamini Jayasinghe* with *Miss B. Wickremarachchi* for Defendant-Respondent

*Cur. adv. vult.*

May 25, 1989.

**WIJEYARATNE, J.**

The plaintiffs-appellants filed this action against the defendant-respondent for definition of the western boundary of a land called Galkotuwelanda belonging to them and described in the schedule to the plaint, and depicted in Plan No. 946 dated 12.03.1981 made by Mr. K. A. P. Kasturiratne, Licensed Surveyor.

The plaintiffs in the prayer to the plaint have asked that their western boundary be defined according to title plan No. 290399.

The defendant apparently is the owner of the land to the west of the land of the plaintiffs. The defendant in his answer states that there is a stone fence over 25 years old between the two lands and that it is in good condition, and that there is no dispute about it. Hence he says there is no occasion for definition of boundaries and asked that the plaintiff's action be dismissed.

The plaintiffs at the trial framed the following issues:—

- (1) Has the boundary between the plaintiffs' land and the defendant's land been obliterated?
- (2) Are the plaintiffs entitled to have the boundary defined according to Plan No. 946 filed of record?

The defendant raised the following issues:—

- (3) To the east of the defendant's land, is there a stone fence over 25 years old between the plaintiffs' land and the defendant's land?
- (4) If so, should the plaintiffs' action be dismissed?

On behalf of the plaintiffs, surveyor Kasturiarachchi and Don Manatunga (the 2nd plaintiff) gave evidence. On behalf of the defendant, the defendant himself and Davith Singho gave evidence.

The learned trial Judge held that, as there is a stone fence between the two lands, there is no cause of action to have the boundaries defined, and dismissed the plaintiffs' action with costs.

However, the learned District Judge says that in the evidence both the plaintiffs and the defendant are claiming rights to lot 2 of Plan No. 946. Hence there is a dispute about the location of the boundary.

According to the decisions of the Supreme Court in the cases of *Maria vs. Fernando*, (1) and *Jakolis Appu vs. David Perera*, (2) it

was laid down that an action for definition of boundaries presupposes that the parties are admittedly the owners of contiguous lands and the common boundary between the two lands has become uncertain. Then this action is available to have the boundaries defined.

On going through the evidence in this case, it appears that there is a dispute between the parties to two very small lots, namely lots 2 and 3 in the said Plan 946. It appears that both parties are claiming ownership to both these lots. In these circumstances there is no common undisputed boundary. Hence the appropriate action would have been a declaration of title and ejectment action, with a survey plan being prepared to depict the portions in dispute. It has been stated in the above-mentioned case of *Jakolis Appu vs. David Perera*,<sup>(2)</sup> that in such circumstances the appropriate action is an action for declaration of title and not one for definition of boundaries.

It seems to me that in every case where it is necessary to have the boundaries defined, the same remedy could be obtained in an action for declaration of title, provided that a survey plan is taken out by the plaintiff.

I see no reason to interfere with the judgment of the learned District Judge. I therefore dismiss the appeal with costs.

**WIJETUNGA, J.** — I agree.

*Appeal dismissed.*