that there is no rational basis for a selective application of the dictum and it is to be noted that it has been applied previously in cases where the accused have been convicted of more offences than one.

"For the reasons set out above, the appellants cannot succeed on the grounds of appeal relied upon by them. The conviction of each of the accused-appellants is therefore affirmed."

REI VINDICATIO ACTION

Ref: 4/6/2004 - Rs. 20.00

In Rei Vindicatio case the burden is solely on the plaintiff to prove his title – A finding of fact by the lower Court is not interfered by the Appellate Courts unless perverse

Paththawaduge Saratchandra –v- K.G. Padma Nalini

C.A. 304/93(F)
D.C. Avissawella Case No. 17942/L

Decided by Udalagama J, and Wijayaratne, J on 23.10.2003

The plaintiff instituted action seeking inter alia a declaration of title to the land morefully described in the schedule to the plaint and for the ejectment of the defendant. The District Court dismissed the action with costs and the plaintiff preferred an appeal therefrom

In dismissing the appeal Udalagama, J (with Wijayaratna, J agreeing) held:-

".....This being a rei vindication case it is settled law that the burden of proving title rests solely on the plaintiff. As held in *Muthusamy v. Seneviratne,* Vol. XXX1, C.L.W. 'it is for the plaintiff to establish title, not for the defendant to show that the plaintiff had no title.'

In any event findings of fact by the trial judge on a consideration of evidence subsequent to seeing and hearing witness, which advantage this court is denied, is rarely interfered with by an Appellate Court. As held in *Mahavithana vs. the Commissioner of Inland Revenue,* 64 NLR 270, 'finding of fact is not interfered with unless perverse....."

REVISION

Ref: 5/4/2004 Rs. 40.00

Petitioner had the right to appeal and therefore remedy of revision is not available unless there are exceptional circumstances – patent lack of *uberima fides* by the petitioner – Interim Injunction refused where importance has not been disclosed - failure to comply with the Supreme Court Rule 46 and file relevant documents.

Ganegoda Appuhamilage Don Laxman Seneviratne –v- Sri Jayawardenapura Kotte Municipal Council and others

C.A. Application No. 1212/2003
D.C. Colombo Case No 6098/Spl

Decided by Shiranee Tilakawardane, J (P/CA) and P. Wijeyaratne, J on 12.11.2003

The Defendant-Respondents in this case had taken up several preliminary objections to this revision application.

Upholding those objections and dismissing the application Ms. Shiranee Tilakawardane, J (P/CA) (with P. Wijayaratne, J agreeing) held:-

".....The District Court Judge of Colombo acting in terms of Section 147 of the Civil Procedure Code came to a finding that the Plaintiff had not given notice to the Municipal Council in terms of Section 307 of the Municipal Councils Ordinance, and thereupon dismissed the action of the Plaintiff-Petitioner. Clearly this was a final judgment and Petitioner had the right to appeal to the Court of Appeal in terms of Section 754(1) of the Civil Procedure Code. In terms of the law this Court is unwilling to exercise the powers of revision unless and until there are any exceptional circumstances that are disclosed
None exists in this case.....

".....In any event, no reason whatsoever has been urged in this application as to why he did not prefer his right to appeal and why he has chosen instead to invoke the exceptional jurisdiction of the revisionary powers of this Court. As the Plaintiff-Petitioner has not indicated any special circumstances which invite the Court to exercise its powers of revision, the application for revision must necessary fail.

"In considering the application of the Plaintiff-Petitioner, it is clear that several matters which were of material importance in this case has not been disclosed in this application, and on those salient matters an interim injunction had been refused on 22/11/2002 by the District Judge of Colombo.

The fact that he was in arrears of rent payable to the 1st Respondent was not even disclosed and that he had entered into a lease agreement with the 1st Defendant-Respondent and therefore on the conduct of the Plaintiff-Petitioner alone, this application has to be refused as there is a patent lack of *uberima fides* by the petitioner.

"The Respondents in this case have also taken up the objection that documents V! – V6, which showed that the case of the Respondents, had never been disclosed and facts had been suppressed by the Plaintiff in his application. These documents were indeed tendered by the Defendant-Respondents marked V1 to V6. Even the order given by the District Judge of Colombo dated 22/11/2002 had not been filed, which document has been marked as R7 by the Defendant-Respondent. The Plaintiff-Petitioner has also failed to file a copy of the lease agreement which document has been produced as R8 by the defendant-Respondents. It is clear that the Plaintiff-Petitioner has failed to apply the Rule 46 of the Supreme Court Rules....

JUDGMENTS TO BE CITED