

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

Lakdasa Senarath Perera of  
No. 441/1, Bloemendhal Road,  
Colombo 13.

**PLAINTIFF**

C.A. 333/1997 (F)  
D.C. Colombo No.6171/SL

Vs.

1. W.A. Somawathie of  
No. 3/9, Mayfield Road,  
Colombo 13.

**1<sup>ST</sup> DEFENDANT**

2. S.A. Methyas Singho of  
No. 3/9, Mayfield Road,  
Colombo 13.

**2<sup>ND</sup> DEFENDANT (DECEASED)**

- 2A. S. A Sumitra Nalini
- 2B. S.A. Chandralatha Kusum
- 2C. S. A. Premila Kanthi
- 2D. S. A. Jagath Saliya
- 2E. S. A. Kamal Chintaka all of  
No. 3/9, Mayfield Road,  
Colombo 13.

**SUBSTITUTED-DEFENDANTS**

3. B. G. Abeysinghe Weerakoon of  
No. 3, Mayfield Road,  
Colombo 13.

**3<sup>RD</sup> DEFENDANT**

**AND**

W.A. Somawathie of  
No. 3/9, Mayfield Road,  
Colombo 13.

**1<sup>ST</sup> DEFENDANT**

**Vs.**

Lakdasa Senarath Perera of  
No. 441/1, Bloemendhal Road,  
Colombo 13.

**PLAINTIFF-RESPONDENT**

- 2A. S. A Sumitra Nalini  
2B. S.A. Chandralatha Kusum  
2C. S. A. Premila Kanthi  
2D. S. A. Jagath Saliya  
2E. S. A. Kamal Chintaka all of  
No. 3/9, Mayfield Road,  
Colombo 13.

**SUBSTITUTED-DEFENDANTS**  
**RESPONDENTS**

B. G. Abeysinghe Weerakoon of  
No. 3, Mayfield Road,  
Colombo 13.

**3<sup>RD</sup> DEFENDANT-  
RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Chandrasiri de Silva for the Defendant-Appellant  
JaliyaBodinagoda for the Plaintiff-Respondent

**ARGUED ON:** 15.11.2012

**WRITTEN SUBMISSIONS**

**FILED ON:** 11.01.2012 (Plaintiff-Respondent)

**DECIDED ON:** 08.02.2012

**GOONERATNE J.**

This was an action filed in the District Court of Colombo for a  
declaration of title and eviction of the Defendants from the land in dispute

with damages. Parties proceeded to trial on 10 issues. Paragraphs 6 & 7 of the plaint has been admitted. The Defendant-Appellant had pleaded and raised an issue based on prescription. (issue No. 4). The 3<sup>rd</sup> Defendant though raised issues (6 – 10) did not participate at the trial.

The position of the Plaintiff-Respondent was as pleaded and in their evidence in court was that by deed No. 588 P1, of 23.10.1973, Plaintiff's mother was the owner of lot B3 in plan P2. Plaintiff's mother had by deed of gift marked P3, gifted the property to Plaintiff on or about June 1981. The boundaries of the land had been demarcated by fences which were erected as from 1973 and it was Plaintiff's mother who surveyed the land (where she purchased) and fenced it. Plaintiff's case is that in 1989 Defendants had removed the fences and when the Plaintiff tried to repair the fence and re-erect it the Defendants objected and they deprived the Plaintiff's peaceful occupation. On those facts admissions recorded may be noted.

At the hearing of this appeal the only matter as pleaded in the Petition of Appeal that was urged is the question of prescription. The learned Counsel for Appellant urged before this court that the Appellants have prescribed to this land, but was never able to convince this court as to how the Appellant could succeed on a plea of prescription. If at all the ingredients

referred to in Section 3 of the Prescription Ordinance need to be established to enable a court of law to rule on the plea of prescription. Perusal of the evidence adduced in the Original Court, I cannot find any material to establish and prove the plea of prescription and or material needed to prove ouster.

This court note the following important matters by way of evidence which demonstrate the weaknesses of the Defendants-Appellant's case.

- (a) On Plaintiff's complaint to the police marked P5, the Defendants made a statement to the police (P4). The portion of relevance was marked P4a by which the Appellant directly or indirectly admit that Plaintiff is the owner, and the 3<sup>rd</sup> Defendant had put up a hut on Plaintiff's land. “පැමිණිලිකාරියගේ වත්තේ මාගේ බැණා වන බන්දු මඩුවක් තනා ගෙන තියෙනවා.”
- (b) Statement P6 by the 3<sup>rd</sup> Defendant it is stated that he is not residing on the land owned by Plaintiff but on the land of one P.C Fernando.
- (c) Evidence of the 1<sup>st</sup> Defendant was that she and her husband resides on the adjoining land. (විවාහයට පසු 1952 ඔය ඉඩමට තිබෙන ලැලි ගෙයි). vide proceedings of 7.1.1997.

I have perused the judgment of the learned District Judge. There is reference in the judgment of the Original Court to document P4 and the Appellant's failure to prove the plea of prescription. The following extract from the judgment very clearly demonstrate the real matters in issue which definitely favour the Plaintiff-Respondent.

වත්තිකාරිය එක එක අවස්ථාවල මෙවැනි කරුණු සඳහන් කර ඇත.

1. මට වරුද්ධව ඇති පැමිණිල්ල කියවා දුන්නා. එය කර ඇත්තේ මගේ වත්තට අල්ලපු වත්තේ අයිතිකරුවන් වන කාමන් පෙරේරා යන තැනැත්තියයි.
2. ඔවුන් අද දින මිනිමදෝරු වරයෙක් ගෙනවිත් ඉඩමේ මායිම් ලකුණු කර වැටක් තැනීමට සූදානම් වුනා. ඔවුන් වැට තැනීම නිසා මගේ නිවසේ සිට මට යාමට පාරක් නැතිව යනවා.
3. මේවායේ පිරිසිදු මායිම් මා නොදනිමි. මට අවශ්‍යය මෙම තැනට වැට මගේ දොරකඩින් නොයන ලෙසයි.
4. මගේ මෙම ඉඩම සම්බන්ධව ආරවුලක් නොමැති අතර, ඔවුන් ගසන වැට සම්බන්ධයෙන් පටලැවිල්ලක් තිබෙන්නේ.
5. පැමිණිලිකාරියගේ වත්තේ මාගේ බැණා වන අයෙක් මඩුවක් තනා ගෙන තියෙනවා.

The very basic concept of prescription is that there must be a denial of title, an exclusion of the contesting owner and an adverse possession. 6 C.W.R at 275. In the case in hand Appellants have not established any of the above points.

Plaintiff-Respondent has established and proved title and possession by oral and documentary evidence marked P1 – P3. Accordingly boundaries had been erected. Defendants-Appellants have admitted that they reside on the adjoining land. (vide P4 etc.) There is reference to some

plantation of coconut trees. That evidence would not suffice to prove the question of prescription or establish 'ouster'. The order made by the Magistrate's Court in case No. 92513/3 (as in admission recorded) has no bearing in the Civil Court. Title need to be proved in the Civil Court. Plaintiffs have properly discharged that burden. No material has been placed before this court to fault the judgment of the District Court. I am not at all convinced with the argument and or the plea of prescription put forward by the Appellant. This is a frivolous appeal.

In all the circumstances of this appeal I see no basis to interfere with the judgment of the learned District Judge. As such I dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL