

In the Court of Appeal of the Democratic Socialist
Republic of Sri Lanka

CA 1265/96 F
DC Kandy 15081/L

Athapaththu Mudiyansele
Loku Menika,
Muwagammana,
Hatharaliyadda

Plaintiff-appellant

Vs

Premawathie wife of Jamis
alias Kira,
Muwagammana,
Hatharaliyadda

Defendant-Respondent

Before : A W A Salam, J

Counsel: S N Vijith Singh for the plaintiff-appellant and Sanath
Weerasingha for the defendant-respondent.

Argued on: 23.03.2011

Written submissions tendered on : 01.08.2011

Decided on : 22.11.2012

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A W A Salam, J

The plaintiff-appellant (hereinafter referred to as the "plaintiff") filed action against the defendant-respondent (hereinafter referred to as the "defendant") seeking inter alia a declaration that she is the owner of the land described in the schedule to the amended plaint. The defendant in her answer took up the position that she is the owner of the subject matter of the action by right of prescription along with another person called T.G Piyadasa who is not a party to the case. The action filed by the plaintiff proceeded to trial on 19 issues. The plaintiff testified on her behalf and also called two witnesses and closed her case reading in evidence documents marked as P1 to P14.

In the conduct of the defence, the defendant gave evidence and called two surveyors to testify on her behalf. After the conclusion of the trial the learned district judge by judgment dated 29 May 1996 dismissed the action of the plaintiff and granted relief to the defendant as prayed for in her amended answer.

As a result of the learned district judge having given judgment in favour of the defendant as prayed for in the answer, it is not

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only the defendant but a person who is not a party to the action had been declared entitled to the subject matter of the action by right of prescription.

In the case of Dharmadasa vs Alles 1985 Volume 2 Sri Lanka Law Report page 35 the plaintiff sued the 1st defendant for a declaration of title to certain lots of a land partitioned by the final decree of court. While conceding paper title in the plaintiff the 1st defendant's position was that his father had prescribed to the disputed lots. The 1st defendant did not claim title to these lots from his father. It was held that a party to a suit cannot under section 3 of the Prescription Ordinance set up title of a third party who is not his predecessor in title and who has not been joined in the action. It was emphasized in that case that the judgment must be declaratory of the right of a party to the suit and not of a stranger.

In any event the evidence led on behalf of the defendant in this case, as to her possession indicates a clear lack of consistency. There is no evidence relating to the commencement of the period of prescription and above all, the evidence on which the learned district judge has relied upon to give judgment in favour of the defendant cannot be considered as being persuasive or cogent.

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In the circumstances, it is my considered view that the judgment of the learned district judge cannot be allowed to stand and as such should be set aside. Accordingly, the impugned judgment of the learned district judge is set aside and the case sent back for retrial.

There shall be no costs.

Judge of the Court of Appeal

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