

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

CA 316/00 F
DC Ratnapura 13079 L

Siri Sena Palihawadana,
3D, Main Street,
Rakwana.
Defendant-Appellant

Vs

Weerakoon Malhamilage
Karunawathie,
Main Street, Rakwana.

Plaintiff-Respondent

Before: A W A Salam,J

Counsel: Athula Perera with Miss Jeevani Bandara for the
defendant-appellant and Gamini Marapana PC with Navin
Marapana for the plaintiff-respondent.

Argued on: 01.09.2011

Written submissions tendered on: 28.01.2011.

Decided on: 09.01.2012.

A W Abdus Salam, J

The appellant, the defendant in the action, has preferred this appeal from the judgment of the district court of Ratnapura,. The facts relevant to the appeal briefly are that the plaintiff who features as the respondent in this appeal, filed action seeking a declaration of title to the subject matter of the action and ejection of the defendant therefrom.

The plaintiff claimed that she became the owner of the subject matter (set out in the schedule to the plaint) by deed No 2867 dated 28 September 1995, in addition to her having acquired a prescriptive title by reason of her prescriptive possession and that of her predecessors in title. Her complaint is that the defendant having undertaken to purchase the subject matter by an informal writing dated 23 November 1995 on or before 15 January 1996, continues to remain in possession of the same, disputing her title. By reason of the informal writing to purchase the property, the plaintiff maintained that the defendant is estopped from denying her title.

The defendant while admitting that he entered into the informal writing to purchase the property denied the ownership of the property the plaintiff attributed to herself. His position was that that Alaviya Ismail, the immediate predecessor in title of the plaintiff, being the owner of more than the permitted extent of agricultural land under the Land Reform Law, became the statutory lessee of the lands owned by him and thereafter he was allowed to retain several allotments of land including lots 1 and 2 of Orange Field

Estate referred to under item 2 of the schedule to the Statutory Determination No 3232, published in Gazette Extraordinary of the Republic of Sri Lanka, bearing No 291/18 dated 16 November 1977.

Even though the plaintiff had not referred to the Statutory Determination in the plaint, subsequent to the filing of the answer, made specific reference to the aforementioned Statutory Determination in her replication. According to the Statutory Determination, the aforesaid lots 1 and 2 are depicted in the preliminary plan No PP 64. In the light of the plaint and replication the subject matter is a portion of lot 2 depicted in the aforesaid preliminary plan.

On a perusal of the pleadings of both parties, it is quite evident that the parties were strongly at variance with regard to the identity of the subject matter. Despite such remarkable variance, neither the plaintiff nor the defendant had suggested an issue regarding the identity of the subject matter in relation to the Statutory Determination and the plan of the Surveyor General PP 64. Surprisingly, the variance in the identity of the subject matter between the parties had escaped the attention of court nor has the attention of it been properly drawn to by the parties at the time of settling the issues. Nevertheless, the necessity to ascertain matters of law and facts, on which the parties were at variance did not arise for consideration by court under section 146 (2) as the parties had agreed as to the question of facts and law to be decided between them in terms of section 146 (1) of the Civil Procedure Code. It is trite law that once issues are

framed and accepted by court the pleadings recede to the background.

In any event, when the issues suggested by the defendant and accepted by court are scrutinized, it is quite clear that the defendant was never in a state of confusion as to the identity of the subject matter. This conclusion is inevitable in the light of issue No 7 which poses the question as to whether the plaintiff has any title to the land appended to the plaint. Issue No 8 is whether the defendant has prescribed to the said land. This means that whether the defendant has prescribed to the land described in the schedule to the plaint. Although there is no admission of the identity of the subject matter or the issues of the defendant to be treated as given rise to any kind of admission by implication, the proceedings clearly indicate abandonment on the part of the defendant to the question of the identity of the corpus. (Emphasis is mine).

The issues of the plaintiff are quite clear with regard to the corpus. When issues 1 to 6 are looked at, it would be seen that there is no reference whatsoever to the plan referred to in the Statutory Determination. The plaintiff sought a declaration of title to the land described in the schedule to the plaint. The schedule to the plaint describes a land in extent of 14.2 perches as depicted in plan No 1532 dated 17 January 1974 made by W M Ratnayaka, Licensed Surveyor.

As regards the identity of the corpus let me therefore at the outset deal with the evidence adduced at the trial. The first

witness led by the plaintiff at the trial was that Surveyor, R M W Ratnayaka who prepared plan No 1532 dated 17 January 1974 at the request of the plaintiff. This plan was produced at the trial marked as P1. According to Surveyor in plan No 3532 (P4) two allotments of land are depicted lots 1 and 2. The said two lots are described in the said plan as portions of Orange Field Estate depicted in plan No 19 A in plan No 1598 dated 9.5.1955. The certificate appearing in P4 is to the effect that lot 1 shown in P4 is identically the same as lot 1 in plan No 1532 aforesaid and lot 1 is a portion of lot 53 in town survey plan No 57 (Rakwana). The surveyor has not computed the balance extent of lot 2 as it is of no relevance.

The learned counsel for the defendant has contended that since the present action is to vindicate the title of the plaintiff and to obtain possession of the land, it is the duty of the plaintiff to establish identity of the corpus together with her title. He submitted that upon the failure of the plaintiff to establish the said ingredients through cogent evidence the action must fail. He also relies on the principle that the weakness of the plaintiff's case cannot be strengthened by relying on the imperfection of the case of the defendant. No doubt, the learned counsel has submitted that the law as it is, as regards the requirements to emerge victorious in a *rei vindicatio* action.

According to document P1 produced through the surveyor without any objections from the defendant, lot 1 depicted in plan No 1532 is a portion of lot 2 in plan No PP Rat (Ra) 64 which is also a portion of lot 53 in Town Survey Plan No 57

(Rakwana). This document, particularly the certificate it carries, has not been challenged by the defendant.

Taking into consideration, all these matters it appears to me that the learned district judge cannot be faulted for his finding that the plaintiff has established the identity of the corpus and also her title. It is to be observed that the learned district judge has given undue evidential weightage to the informal writing marked as P9. In any event even if document marked as P9 is excluded, yet there is overwhelming evidence in proof of the identity of the corpus and the plaintiff's title.

Consequently, it is my view the appellant/defendant cannot succeed in this appeal. Thus, the judgment appealed against is affirmed and appeal dismissed without costs.

Judge of the Court of Appeal

RC/-