

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

1. Chitra Damayanthi Perera
2. Lalin Yasendra Perera
3. Dharsana Gayathral Perera
4. Manisha Ajanthi Perera

All of No. 25/1A, Chapel Road,
Nugegoda.

PLAINTIFFS

C.A 451/1998 (F)
D.C. Kalutara No. 4399/L

Vs.

1. Sinniah Velauden of
No. 179/1, Temple Road
Kalutara North.
2. Arumugam Ganeshan Raja of
179/2, Temple Road
Kalutara North.
3. Kandiah Kullamma of
No. 179/1, Temple Road
Kalutara North.

DEFENDANTS

And

1. Chitra Damayanthi Perera
2. Lalin Yasendra Perera
3. Dharsana Gayathral Perera
4. Manisha Ajanthi Perera

All of No. 25/1A, Chapel Road,
Nugegoda.

PLAINTIFF-APPELLANTS

Vs.

1. Sinniah Velauden of
No. 179/1, Temple Road
Kalutara North.
2. Arumugam Ganeshan Raja of
179/2, Temple Road
Kalutara North.
3. Kandiah Kullamma of
No. 179/1, Temple Road
Kalutara North.

DEFENDANTS-RESPONENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Rohan Sahabandu for the Plaintiff-Appellants
M.U.M. Ali Sabry for the Defendant-Respondents

ARGUED ON: 31.01.2012

DECIDED ON: 23.05.2012

GOONERATNE J.

This was an action filed in the District Court of Kalutara for a declaration of title and eviction/damages against the Defendants. The plaint comprises of two schedules. Issue No. 2 indicates that land described in the 2nd schedule is a part of the land described in the 1st schedule. The original owners to the land described in the 1st schedule were one C. Edward Perera and G.O. Perera (issue No. 1). It is recorded as issue No. 3 that the land described in schedule 2 are owned by 1st – 4th Plaintiff-Appellants (grand children of the original owner, except 1st Plaintiff-Appellant who is the wife of Gamini Perera and mother of 2nd – 4th Plaintiffs). The above named Gamini Perera was a son of the original owners namely Edward Perera and G. Orlin Perera. However by deed No. 1490 of 5.1.1959 the said Gamini Perera became the owner of the entirety of the land as on his death the Plaintiff's inherited the property in dispute. The position of the 1st & 3rd Defendant-Respondent was that they were the tenants of the above named Gamini Perera. 2nd Defendant had pleaded prescriptive title to the land described in the 2nd schedule to the plaint.

The record indicates that a settlement was entered in the trial court on 18.11.1997 between the Plaintiff and 2nd Defendant. The 2nd Defendant agreed to have judgment entered in favour of Plaintiff as in sub paragraph 'a' and 'b' of the prayer to the plaint. Therefore this appeal need to consider the position of the 1st & 3rd Defendant-Respondents, more particularly whether these Respondents were in unlawful possession since in an action rei-vindicatio when ownership is proved or established then the Defendants would have to prove their possession to be valid and lawful. The learned counsel for Defendant-Respondent mentioned that 1st & 3rd Defendant-Respondent came into occupation of separate portions of the building in the premises in suit and was originally the tenant of Plaintiff's father, (Gamini Perera) who died and had paid rents and obtained rent receipts from his father. At the trial the 3rd Defendant gave evidence and marked several rent receipts alleged to have been issued by the Plaintiff's father. It was the position of the Respondent that even if the receipts were not issued by the owner any person who had put the 1st & 3rd Defendants into occupation could issue as the landlord, which according to law need not be the owners. The rent receipt and tax receipts in possession of the 3rd Defendant were marked in evidence but Plaintiff required the documents to

be put in proof. In fact the learned District Judge has made certain comments about the weaknesses of each parties case. The proof of the several documents of Defendant-Respondents seems to be in doubt as the 3rd Defendant had given inconsistent evidence as to who issued the receipts but in cross-examination it transpired that late Gamini Perera's Clerk/Agent had issued the receipts on behalf of Plaintiff's father.

This court wish to observe that at the very outset of this case at the trial, as shown and recorded in the proceedings of 3.12.1996 (pg. 1), Respondents had denied Plaintiff's title. Therefore the question is whether there was a gradual shift from the original position? There is another matter that need to be mentioned though parties may have thought that no issue need be raised, based on P6 & P7. Perusal of these documents indicate that the land in question had been released after same had been vested in the Land Reform Commission (P7). The said document also indicate that the Kalutara Assistant Government Agent had taken over possession of the land on 24.11.1977, and the land was returned or handed over on a particular date but the 1st Plaintiff had not turned up to take over the land and during an interim period unauthorized persons were occupying the land and eviction, could be done by the authorities. The effect of vesting agricultural land

under Section 6 of the Land Reform Law is to vest the land in the commission giving the commission absolute title free from encumbrances.

As such any other arrangement which subsisted prior to vesting would have got wiped out in terms of the law. Was it reviewed after release? Both parties have not addressed this point.

The 3rd Defendant-Respondent was added to the case in the District Court, 3rd Defendant was not named as a party Defendant in the plaint. The settlement reached in Case No. L/2067 lot 1 & 3 in plan P1 (323a) given to Plaintiff.

It is also noted that the 3rd Defendant was not served with a quit notice, and the 3rd Defendant was made a party as it appears to be based on facts averred in paragraphs 13 & 14 of 1st Defendant's answer.

There were several points suggested by the Plaintiff-Appellant in the oral and written submissions. I would attempt to briefly refer to same as follows:

1. 1st & 3rd Defendant denied title of Plaintiff-Appellant at the very outset of the trial. As such there is no tenancy between parties.
2. No issue raised to the effect that the 3rd Defendant-Respondent became the tenant of the Plaintiff after the demise of Gamini Perera, Plaintiff being legal heirs of the late Gamini Perera.

3. Plaintiff never accepted Defendants as Tenants and Defendants denied rights of Plaintiff to the land in dispute (title decided).
4. All documents produced by 3rd Defendants (rent receipts, tax receipts) not proved. All documents were admitted in evidence subject to proof but no proof adduced to prove the document. As such tenancy between Gamini Perera and 3rd Defendant not proved – tenancy cannot be presumed.
5. Answer to issue Nos. 6 & 7 inconsistent; having answered issue No. 6 in the affirmative. i.e tenant of Gamini Chandra Perera.
6. Issue 14(vii) not answered by the trial Judge (issue 9 – 12 need not be answered since 2nd Defendant settled the case in the District Court).

The other matter urged by Appellant are more or less mixed question of fact and law. I will consider those relevant matters in my conclusions.

This court wish to observe that in a rei vindicatio action the burden is on the Plaintiff to prove ownership. Plaintiffs have discharged that burden. Thereafter this burden would shift to the Defendant to prove that his occupation is legal and valid. Tenancy need to be established, of that of the Defendant and Plaintiff and not between the former owner and the Defendant. The receipts and documents produced by the 3rd Defendant-Respondent were not proved in this case. All the documents produced by the

Plaintiff-Appellant (P1 – P12) were proved. At the closure of the Plaintiff's case when documents were read in evidence there was no objection by the Defendant. As such documents Plaintiffs produced at the trial becomes admissible and relevant and evidence for all purposes of the case. This is a principle adopted and followed in court from time immemorial 1981 (1) SLR 18 at 24. In the case of the Defendants none of the documents had been proved. In fact the proceedings show that Defendant's documents were not read in evidence at the closure of the Defendant's case. In the absence of proof no tenancy could be established. I am unable to agree with the trial Judge's view that having accepted that the case of the Defendant was weak and that documents were not proved cannot in law admit a contract of tenancy between parties in the manner suggested by the learned Judge. Trial Judge has failed to give his mind to this aspect and examine the evidence in the case. I would pose the question as raised by the Appellant. The question of tenancy with whom?

In a case of this nature court must be mindful of the fact that the whole basis of an action rei vindicatio is the title or rather the superior title of the plaintiff and a denial of that title or an interference with the Plaintiff's rights under it by the defendant. 30 NLR at 16. In the case in hand the

Plaintiffs have proved that their the full owners of the property sought to be vindicated. It was their position that the Defendant-Respondents are in unauthorized possession and entered the property during the period the lands were vested in the Land Reform Commission. (vide P6 & mP7). The burden of proof would shift to the Defendant to place sufficient evidence to prove the basis on which Defendant entered the premises or their legal occupation. Tenancy cannot be presumed. Nor any inference could be drawn on tenancy, on inadmissible evidence.

In Mahawithana Vs. Commissioner of Inland Revenue. 64 NLR

217. H.N.G. Fernando J. held: ..

- (a) If that inference had been drawn on a consideration of inadmissible evidence, or after excluding admissible and relevant evidence.
- (b) If the inference was a conclusion of fact drawn by the Board but unsupported by legal evidence, or
- (c) If the conclusion drawn from relevant facts was not rationally possible, and was perverse and should therefore be set aside.

I also wish to observe that according to Seelawathie Vs. Ediriweera 1982(2) SLR 170... If the owner finds conditions of tenancy are breached. The owner could file action under common law or the Rent Laws. He could choose either.

In all the above circumstances I set aside the judgment of the learned District Judge and enter judgment as prayed for in the plaint.

Appeal allowed without costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL