

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

1. M. K. Piyadasa
2. V. L. Dayalias  
both of Polpagoda, Yakkalamulla.

**PLAINTIFF**

Vs.

C.A. 1295/1998 (F)

1. W. Jayasena of  
Hirimburawa, Polpagoda,  
Yakkalamulla.
2. D. D. A. Gunasekera of  
No. 144, Matara Road, Unawatuna.
3. G. D. A. Gunasekera
4. G. D. A. Gunasekera  
All of No. 144, Matara Road,  
Unawatuna.
5. A. H. E. Jayasena  
Polpagoda, Yakkalamulla.
- 1A K. P. Podihamy
- 1B W. G. Gunawathie
- 1C. W. G. Edward  
All of Hirimbura, Polpagoda,  
Yakkalamulla.

Substituted in place of 1<sup>st</sup> Defendant  
(Deceased)

**DEFENDANTS**

**AND NOW BETWEEN**

A. H. E. Jayasena  
Polpagoda, Yakkalamulla.

**5<sup>TH</sup> DEFENDANT-APPELLANT**

Vs.

1. M. K. Piyadasa
2. V. L. Dayalias  
both of Polpagoda, Yakkalamulla.

**1<sup>ST</sup> and 2<sup>ND</sup> PLAINTIFF-  
RESPONDENTS**

2. D. D. A. Gunasekera
3. G. D. A. Gunasekera
4. G. D. A. Gunasekera  
All of No. 144, Matara Road,  
Unawatuna.

**2<sup>ND</sup> – 4<sup>TH</sup> DEFENDANTS-  
RESPONDENTS**

- 1A. K. P. Podihamy
- 1B. W. G. Gunawathie
- 1C. W. G. Edward  
All of Hirimburawa, Polpagoda,  
Yakkalamulla.

**1A – 1C DEFENDANTS-  
RESPONDENTS SUBSTITUTED  
IN PLACE OF 1<sup>ST</sup> DEFENDANT-  
RESPONDENTS  
(Deceased)**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Defendant-Appellant is absent and unrepresented  
S. Rajapaksa for the Plaintiff-Respondent

**ARGUED ON:** 03.05.2012

**DECIDED ON:** 28.08.2012

**GOONERATNE J.**

This was a land case filed in the Galle District Court by the two Plaintiffs against the 1<sup>st</sup> Defendant (now substituted 1A – 1C Defendant-Respondents) for a declaration of title and eviction/damages as pleaded in the plaint and paragraph 1 of the Petition of Appeal. The land in dispute is described in paragraph 2 of the plaint and depicted in plan Nos. 702 A & 301 of Surveyors Ambawatte and one B. Silva respectively. To state very briefly the land in dispute was on an unallotted lot in partition decree in Case No. P/2970. The 11<sup>th</sup> Defendant Charles Dias Abeygunawardena in the partition case possessed and occupied the said unallotted lot from the date of the partition decree. In paragraphs 4 – 9 of the annexed plaint gives the devolution of title and as to how the Plaintiff became entitled to the land in

dispute (and as pleaded in paragraphs 4 – 6 of the Petition of Appeal). In the plaint there is reference to one Abeywickrema Gunasekera who possessed the land of his own right and on his death his wife and children became entitled to the land in question. His children were 2<sup>nd</sup> – 4<sup>th</sup> Defendants in the trial case. However the material disclose that the Plaintiff became entitled by deed 4579 of which the said wife of Abeywickrema Gunasekera sold her ½ share to the Plaintiff. The prayer to the plaint seek a declaration of title by the two plaintiffs-Respondents and 2<sup>nd</sup> to 4<sup>th</sup> Defendant-Respondent (issue Nos. 2/3).

Parties proceeded to trial on 2 admissions and 13 issues. It seems to be the position of the 1<sup>st</sup> Defendant-Respondent that as from the date of partition decree he was a tenant cultivator of the entire land and possessed and prescribed to the land in question on continuous and undisturbed possession for 25 years (issue No. 10). The 5<sup>th</sup> Defendant-Appellant according to issue No. 11 had by deed No. 125 of 12.10.1988 purchased the rights of the 1<sup>st</sup> Defendant. The 5<sup>th</sup> Defendant-Appellant challenge the judgment of the learned District Judge dated 11.9.1998. The 5<sup>th</sup> Defendant was added as a party in the Original Court. Plaint was filed for the reason that 1<sup>st</sup> Defendant disputed the rights of the Plaintiff. Paragraph 16 of the Petition of Appeal sets down the grounds of appeal. At the hearing

of the appeal the Appellant was absent and unrepresented. Counsel for Plaintiff-Respondent supported the judgment of the learned District Judge.

I have perused the judgment of the learned District Judge. Trial Judge has considered the position of possession after the final decree in the partition case, as to whether 1<sup>st</sup> Defendant or whether the said Charles Dias Abeygunawardena possessed the land. According to P2 (final decree) 1<sup>st</sup> Defendant had no rights on same and no rights to the soil other than being a tenant cultivator. Trial Judge has considered the evidence led at the trial and concluded that the above named Charles Dias Abeygunawardena possessed and whatever possession of 1<sup>st</sup> Defendant was considered by the trial Judge, and I would incorporate the following extracts from the judgment of the trial Judge which clarify the position.

වාර්ල්ස් ඩයස් අබේවර්ධන ගුණසේකර විසින් මෙම දේපල එකී අවසාන තිත්දු ප්‍රකාශය ඇතුළත් කිරීමෙන් පසුව බුක්ති විද ඇති බවය. එම දේපල ඔහු විසින් 1969 සහ 1972 වර්ෂයේ දී ද හුවමාරු කර ඇති බව පෙනී යයි. ඒ අනුව එම දේපල සම්බන්ධයෙන් යම් කටයුත්තක් කර ඇති බව පෙනී යයි. 1 වත්තිකාර පයසේන මෙම දේපලෙහි වාර්ල්ස් ඩයස් අබේගුණවර්ධන ගුණසේකර වෙනුවෙන් සහ ඔහුගේ පවුලේ අයවලුන් වෙනුවෙන් වගා දිගාවන් කර ඇති බව පමණක් පිළිගැනීමට හැකියාවක් ඇත. විශේෂයෙන්ම '5ව1' හි 24 වන පිටුවේ සඳහන් '5ව2' වශයෙන් ලකුණු කර ඇති ලේඛණය අනුව පෙනී යන්නේ 1 වත්තිකරු

මෙම දේපල ඔක්ති වඳ ඇත්තේ වාර්ල්ස් ඩයස් අබේගුණවර්ධන ගුණසේකරගේ අයිතිවාසිකම් වෙනුවෙන් බව පැහැදිලි වේ. ඒ අනුව සෑම කාලයකදීම 1 වන විත්තිකරු මෙම දේපල ඔක්ති වඳ ඇති නමුත් එසේ ඔක්ති වඳ ඇත්තේ පැමිණිල්ලේ සර්ව යුක්තයින් වෙනුවෙන් බව පැහැදිලිවේ. එම දේපල 'පෑ 5' මගින් පැමිණිලිකරුවන්ට පවරා දීමෙන් පසුව එනම් විමලාවති පයවික්‍රම විසින් පැමිණිලිකරුවන්ට පවරා දීමෙන් පසුව එම ඔක්තිය ලබා ගැනීමට 1 විත්තිකරු විසින් අවහිර කර ඇති බව පෙනියයි.

When a person enters a property in a particular capacity i. e. tenant cultivator, his rights would be decided on the prevalent law namely the Paddy Lands Act or Agricultural Lands Law depending on the relevant period. Such a character of tenant cultivator cannot change unless very strong evidence could be shown to satisfy the requirements of Section 3 of the Prescription Ordinance. Mere possession for some years cannot be considered as independent or adverse possession

In Laws of Ceylon - Walter Perera at pg.396...

As regards the mode of proof of prescriptive possession, mere general statements of witnesses that the plaintiff "possessed" the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is necessary that the witnesses should speak to specific facts, and the question of possession has to be decided thereupon by the court (d). It is also necessary that definite acts of possession by particular individuals of particular portions of lands should be proved. Thus, in the Addipola Sannas case (e) it was held that the fact that a certain number of families composed of an

indefinite number of persons claiming to be the descendants of the grantee on an alleged sannas had lived in the land which was the subject of the alleged grant for many years, and that individual members of those families had for upwards of thirty years cultivated such portions of the land as they chose and at such times and intervals as were found to be convenient, was insufficient to give rise to prescriptive rights in the absence of evidence of any individual member of those families and their predecessors in title having been in possession of any particular allotment of land actually or constructively during the prescriptive period.

In all the above circumstances I am not convinced of the material contained in the Petition of Appeal of the 5<sup>th</sup> Defendant-Appellant. However any challenge or disturbance caused directly by the 1<sup>st</sup> Defendant-Respondent is noted. As such I would not allow damages to be awarded against the 5<sup>th</sup> Defendant-Appellant. Subject to the above direction the judgment of the learned District Judge is affirmed. Appeal dismissed without costs subject to above variation.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL