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

C.A 280/1997 (F)
D.C Kurunegala 2213/L

H. M. Abeyrathna Banda
Temple Road, Dehelgamuwa,
Ibbagamuwa.

PLAINTIFF

Vs.

B. M. Weerakoon Banda
Atalla,
Ibbagamuwa.

DEFENDANT

AND NOW

H. M. Abeyrathna Banda
Temple Road, Dehelgamuwa,
Ibbagamuwa.

PLAINTIFF-APPELLANT

Vs.

B. M. Weerakoon Banda
Atalla,
Ibbagamuwa.

DEFENDANT-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: Jacob Joseph for the Plaintiff-Appellant

Thilak Wijesinghe for the Defendant-Respondent

ARGUED ON: 30.4.2012

DECIDED ON: 09.08.2012

GOONERATNE J.

This was a land case filed in the District Court of Kurunegala for a declaration of title. Original plaint was presented to the District Court on 5.1.1984. Thereafter amended plaint has been filed and Journal Entry 8.6.1984 indicates that amended plaint had been tendered. The Defendant had objected to same and Journal Entry 29.5.1985 indicates that this matter was inquired by court and date was given after accepting amended plaint for answer of Defendant. On 20.12 1985 answer was filed. In the original record I find two amended plaints, but perusal of the Journal Entries would given a clue that the amended plaint was filed on 27.1.1988 on which Plaintiff proceeded to trial. The record does not seem to have been maintained in a

systematic way or method. When this appeal was listed for hearing in this court it was brought to the notice of court that documents V1 – V2 were not contained in the original brief or record and this court with the kind assistance of counsel was able to obtain same and registered Attorney for Defendant-Respondent by motion of 28.11.2011 tendered documents V1 & V2 to this court. Attention of this court was drawn to Section 114 of the Civil Procedure Code relating to the principles contained therein as:

(a) no document be placed on record unless proved
(b) proved document to be marked and filed of record.
(c) Documents not proved to be returned

The above principal was discussed in Chandrasena Vs. Piyasena 1999(3) SLR 201. I have also made a note of Journal Entries in the docket, especially to Journal Entry of 19.10.2011, 13.12.2011 & 30.4.2012. Subsequent to a oral hearing both counsel were given an opportunity to file written submissions before 6.6.2012, but it was not done by either party.

Plaintiff-Appellant in this case claim title on prescription. He has no paper title. As such Plaintiff-Appellant should have established the case according to the ingredients of Section 3 of the Prescription Ordinance. Parties proceeded to trial on 16 issues. Plaintiff raised 7 issues. His issue No.

1 refer to identity of the land in dispute with reference to a survey plans (81-'X') in extent of 1 Rood 11.3 perches. Issue 2 is to the effect that Plaintiff was from 1965 in possession of the above land by cultivating same. Defendant disputed his rights in 1983 and on 3.1.1984 Defendant caused damage and attempted to put up a house (issue Nos. 2 – 4)

Plaintiff in his evidence state that he came into occupation of the land in dispute in 1965 and constructed a building and resided for about 7/8 years. He also states he cultivated. He refers to coconut trees. Bread fruits, jack etc. He also states he got permission to tap toddy (P1). There is also evidence to state that Plaintiff changed his place of residence since he went for chena cultivation, in another land. In cross-examination the Plaintiff stated when he gave instructions to file action the land was in extent of about 2 acres. His answer is reproduced as follows: අක්කර දෙදෙක පමණ ඉඩමක්. එකේ සුළු කොටස් තමා මම කැලේ එලිකරගෙන ඉන්නේ. Then in further cross-examination Plaintiff states:

ප්‍ර: තමුන් කියා තිබෙනවා තමාගේ පැමිණිල්ලේ උපලේඛණය කුරක්කන් සේරු 4 පමණ වපසරිය ඇති ඉඩමක් කියා ?

උ: ඒකෙන් සුළු කොටස මට අයිති.

ප්‍ර: තමන්ගේ ඉඩම් මායිම් මොනවද?

තමන් නඩුව බාර දෙන විට ඉඩම මැනල නැහැ?

උ: නැහැ

The above evidence does not correctly give the boundaries of the land in dispute or the correct extent possessed by Plaintiff. For further clarification I would incorporate the following items of evidence.

ප්‍ර: තමන් කොහොමද කියන්නෙ කුරහන් සේරු 4 ක් පමණ කියා? තමුන් නඩුව ඉදිරිපත් කර තිබෙන්නේ තමුන්ට අයත් තමුන් අයිතිවාසිකම් කියන කුරහන් සේරු 4 ක ඉඩමක් විත්තිකාරයා බලහත්කාරයෙන් ගත්තා කියා?

උ : මම අක්කර ¼ කට විතර අයිතිවාසිකම කියන්නෙ.

ප්‍ර : නඩුවේ කියා තිබෙන්නෙ කුරහන් සේරු 4 ක වපසරිය කියා?

උ : ඔව්

ප්‍ර : තමුන් පිළිගන්නවා තමුන් ඔය නඩු දාලා තියෙන කෙටෙස විශාල ඉඩමක කොටසක් කියා?

උ : ඔව්

ප්‍ර : ඒ ඉඩමට තමුන්ට කිසිම ඔප්පු තිරප්පු මොනවත් නැහැ?

උ : නැහැ

ප්‍ර : තමුන්ට කිසිම ලියවිල්ලක් නැහැ මේ ඉඩමට අයිතිවාසිකම් කියන්න? මේක මට අයිතියි කියන්න කිසිම ලියවිල්ලක් නැහැ? ටපාල් ගස් තුනක මැදගන්ට තමුන් ඒ ඉඩමේ තමුන්ගේ අයිතිය කියන්නේ කොහොමද?

උ: උත්තරයක් නැත.

Questioned by Court

ප්‍ර : තමන් කවදාවත් මේ ඉඩමේ පදිංචිව සිටියේ නැද්ද?

උ : අවුරුදු 2 ක් 2 ½ ක් විතර සිටියා. ඒ අවස්ථා වේ රජයේ ඉඩමක් පවරා දුන්නා. මම එතන කන්දේ වගාකර ගෙන සිටියා. ඒකයි මේකයි දෙකම බලා ගෙන සිටියා.

At this point of the evidence Plaintiff states he possessed for about 2 ½ years with his family. He cannot produce electoral lists to prove the facts.

The other evidence led on behalf of Plaintiff party was to show that Plaintiff was in possession may be to prove long years of possession. However what is lacking in the entirety of Plaintiff's version is the correct length of time of possession, and the identity of land showing exact extent of possession. I cannot accept mere possession to be adverse possession to satisfy the requirements of prescriptive possession in terms of Section 3 of the Prescription Ordinance.

Defendant-Respondent relies on paper title and has testified to court the Plaintiff was not in possession of the land in dispute. Defendant states his title is derived from his predecessor who had been in long possession. The Defendant denies any kind of possession by Plaintiff-Appellant.

The learned trial Judge at folios 152and 153 of the original record gives several reasons to reject Plaintiff's case. As observed above the following had been considered by the trial Judge.

(a) Identity of the land in dispute not correctly established

(b) No paper title

(c) Beginning of adverse possession not properly established, and against whom was adverse possession proved?

(d) Whether document P1, issued for the land in dispute is in doubt?

On a consideration of the totality of the evidence led in support of the Plaintiff-Appellant's case, would point in the direction that possession which was attempted to be proved by the Plaintiff never turned out to be adverse possession, and rather doubtful as to who was at the receiving end, to succeed on the plea of prescription. There had been numerous occasions where courts have held that mere possession is not adverse possession in terms of Section 3 of the Prescription Ordinance.

In Walter Pereira's Laws of Ceylon 2nd Ed. 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 possessions necessary to support a title by prescription. Witness is required to speak to specific facts, and the question of possession has to be decided thereupon by court. Peynis Vs. Pedro 3 SCC 125.

In all the above circumstances of this case, I affirm the judgment of the learned District Judge and reject this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL