

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

Nilanthi Kumari,
No.2717, 3rd Step,
Anuradhapura

4th Defendant-Appellant

C.A. 1421/2001 (F).
D.C.Anuradhapura No.1736/L

Vs.

Ranamuka Wimal Gunawardhena,
No.3011, 3rd Step,
Anuradhapura.

Plaintiff-Respondent.

1. Kulasinghe Arachchige Nihal Kulasinghe

2. Hettiarachchige Milton Perera

Both No.231, Jayasiripura,
Anuradhapura.

3. Chandrani Pieris,
No.2466, 3rd Step,
Anuradhapura.

Defendant-Respondents.

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BEFORE : A W A SALAM, J
COUNSEL : D.H.Siriwardena for the 4th Defendant-
Appellant.

Chatura Gallhena for the
Plaintiff-Respondent.

ARGUED ON : 29.06.2011

Written-submissions tendered: 22.3.2012.

DECIDED ON : 08.06.2012

A.W.A. Salam, J.

This was a possessory action filed by the plaintiff-respondent (plaintiff) to obtain a declaration that he is entitled to the possession of the subject matter and to have the 1st and 2nd defendants ejected therefrom. The plaintiff pleaded inter alia that the owner of the subject matter is the Town Council of Anuradhapura and that he was placed in possession consequent upon his entering into a lease agreement with the said Town Council as is evident from the lease agreement produced at the trial marked as P1. Subsequent to the plaintiff having entered into the lease agreement, it is pleaded that the possession of the subject matter was handed over to the plaintiff by the work superintendent of the Town Council on 2.1.1995. The

document marked at the trial as P2 dated 28.12.1994, is the proof furnished by the plaintiff of the fact that the subject matter was handed over to him on 2.1.1995. Subsequently, the plaintiff has caused a plan approved by the Town Council in order to construct a building on the land. The plaintiff complains that the defendant encroached upon his land on or about 7.8.1999 and destroyed the foundation put up by him to build a house and taken possession of the land by taking the law into his hands.

The 3rd and 4th defendants were added as parties to the action on the application of the plaintiff, based on the allegation that they had attempted to construct a fence on the subject matter subsequent to the filing of the action. In the answer, the 1st and 2nd defendants took up the position that the land in question had been allocated for a playground and it cannot be given on lease by the Town Council. The 3rd and 4th defendants in their answer took up the same position that the subject matter of the action is part of a playground and the plaintiff is an influential politician in the area who has persuaded the Town Council to give a lease of the subject matter to him. Both in the answer filed jointly by the 1st and 2nd defendants and also by 3rd and 4th defendants there appears to be an implied admission that the plaintiff had been in possession of the subject matter of the action.

Even though, there has been no admission recorded from the pleadings, it is quite clear that the plaintiff was in possession of the subject matter on the strength of the lease

agreement entered into between the Town Council and him. The only question raised both by the 1st and 2nd defendants jointly and also by the 3rd and 4th defendants is the legality of the lease agreement, inasmuch as the subject matter had been allocated to be a playground. In my view, the defence raised in this manner by the contesting defendants cannot be considered as a valid ground to defeat the plaintiff from obtaining the relief that he is entitled to regain possession.

In so far as the evidence led at the trial is concerned, the official witnesses called by the plaintiff had adequately testified as to the lease agreement entered into between the plaintiff and the Town Council. The learned District Judge accepted the testimony of the official witnesses as to the documentary proof tendered with regard to the circumstances that led to the plaintiff having been placed in possession of the subject matter.

As regards the damages claimed by the plaintiff, the learned District Judge has come to the conclusion that the plaintiff has failed to prove the quantum of damages he suffered as a result of his being subject to dispossession.

Another important aspect of this appeal need to be mentioned at this stage. As far as the 2nd, 3rd, and 4th defendant are concerned, no appeal has been preferred by them against the impugned judgement. In the circumstances, the court is obliged only to evaluate the grounds of appeal urged by the 1st defendant.

Taking into consideration the uncontrovated assertion of the plaintiff that he was dispossessed by the 1st and 2nd defendants and the unusual defence raised jointly by the defendants as to the propriety of the lease agreement, it is abundantly clear that the learned District Judge was correct in holding that the plaintiff was in possession of the subject matter, prior to the institution of the possessory action.

The evidence of the Grama Niladhari and the work superintendent clearly indicates that the plaintiff had been placed in possession of the subject matter. The 1st and the 4th defendants have admitted (vide page 176 to 184 of the brief) that they did not have any authority to enter and occupy the premises in question. Even assuming that the lease agreement is contrary to law, yet in a possessory action it does not constitute a valid defence.

In the aforesaid circumstances the appeal preferred merits no favourable consideration. Hence, the judgment appealed against is affirmed. Appeal dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL

WC/-