

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

**CA 1292/98 (F)**

**DC Galle Case No.11337/L**

N.K. Jayaratne

**Defendant-Appellant**

**Vs.**

A.M. Sithy Fathima,  
Navinna,  
Unuvatune,  
Galle.

**Plaintiff - Respondent.**

CA Case No. 1292/98(F)

DC Galle No. 11337/L

Before : **Anil Gooneratne, J.**

Counsel : Defendant Appellant is absent and unrepresented.  
S.N. Vijithsingh for the Plaintiff Respondent

Argued &

Decided on : 27.08.2012

**Anil Gooneratne, J.**

This was an action filed in the District Court of Galle for a declaration of title and ejectment / damages against the Defendant-Appellant. The land in dispute is described as lots 9 and 10 in plan marked P 1 bearing No. 134A. At the trial Plaintiff has also produced a final decree marked as P 3 in case No. L 124. By the said final decree the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in that case became entitled to the said lots 9 and 10. There is also evidence to the effect that Plaintiff's mother is the 3<sup>rd</sup> Defendant in case No. L 124. There is also evidence to the effect that the 2<sup>nd</sup> Defendant is the Plaintiffs mother's sister and as such 2<sup>nd</sup> & 3<sup>rd</sup> Defendants are both sisters. It has also been submitted to this Court by learned counsel for Respondent that the 2<sup>nd</sup> Defendant died subsequent

to decree marked P 3. It was also in evidence that by deed of gift marked P 4, the 3<sup>rd</sup> Defendant in case No. L 124 became entitled to the inheritance of the deceased 2<sup>nd</sup> Defendant in case No. L 124. It is also in evidence that the Plaintiff's mother (3<sup>rd</sup> Defendant in case No. L 124) during her life time executed a deed of gift marked as P 4 bearing No. 3469 in favour of the Plaintiff Respondent. When deed marked P 4 was produced in evidence in the District Court there was no objection to the said deed.

The position of the Defendant Appellant is that he has prescribed to the above lots shown as lot Nos 9 and 10 in plan marked P1 . In order to prescribe to the said lots 9 and 10 it is important for the party concerned to satisfy Court that he has established the ingredients in Section 3 of the Prescription Ordinance. In this case the Defendant Appellant relies on deed marked V 3 to prove his title to lots 7 and 8 of plan marked P 1. Lots 9 and 10 are adjacent to the above lots 7 & 8. The learned District Judge having considered the evidence led at the trial has entered judgment in favour of the Plaintiff Respondent. Perusal of the judgment it appears that the Trial Judge has been satisfied that the Defendant Appellant has not proved prescriptive title to the above lots 9 and 10. This Court having perused the judgment in relation to the evidence led at the trial is satisfied that the Trial Judge has correctly

arrived at a finding rejecting prescriptive rights of the Defendant Appellant. I do not wish to disturb the findings of the learned District Judge. As such I affirm the judgment of the District Judge. Appeal dismissed without costs.

**JUDGE OF THE**

KL./-