

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

Lekamalage Chandanahamige
Podimahattaya,
Neelagama,
Kahawatta.

Plaintiff

Kodikarage Mohottihami,
Neelagama,
Kahawatta.

C.A. 1316/96(F)
D.C. Ratnapura 1358/L

Defendant

Kodikarage Mohottihami,
Neelagama,
Kahawatta.

Defendant-Appellant

Vs.

Lekamalage Chandanahamige
Podimahattaya,
Neelagama,
Kahawatta.

Plaintiff-Respondent

**TO HIS LORDSHIP THE PRESIDENT AND HONOURABLE JUDGES OF THE COURT OF APPEAL
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

Counsel: H Wittnachchi for the Defendant/Appellant
G. Hettiarachchi for the Plaintiff/ Respondent.

Arguments: 11-5-2011

Written Submissions: 16-5-2011

Judgment: 21-11-2011.

Before Rohini Marasinghe J

The plaintiff/respondent (hereinafter referred to as respondent) instituted a *rei vindicatio* action against the defendant/appellant (hereinafter referred to as appellant) in the District Court of Ratnapura seeking inter alia a declaration of title to the land more fully described in the schedule to the plaint.

At the commencement of the trial both parties agreed as to the identity of the corpus. Consequently, the corpus in issue was identified as lots 7,8,9 depicted in the plan bearing No: 694 made by licensed surveyor L.U. Kannangara. on 10-10-1977.

After trial the learned trial judge delivered the judgment in favour of the respondent. This appeal is against that judgment.

This is an *rei vindicatio* action seeking a declaration of title and ejectment. It may be a declaration of title or it may be a possessory action the purpose is to recover the property. However, in a *rei vindicatio* action the cause of action is based on the sole ground of violation of right of ownership to the land. And, in a Possessory action the cause of action is based on the sole ground of violation of the right to possess the land.

In a *rei vindicatio* action the plaintiff claims as the owner of the land- i.e. he has the dominium, and that land is in the unlawful possession of the defendant.

In a case where the plaintiff is suing for a declaration of title not on the basis of ownership or under the terms of section 3 of the Prescription Ordinance but on the basis of possession, then he is claiming a possessory remedy. In such a case the plaintiff need not prove an ownership to the property either by prescription or by title. In a possessory action the plaintiff need to establish only that he possessed the land for an year and a day and that he was forcibly disposed by the defendant. But the point is in a *rei vindicatio* action the burden is clearly on the plaintiff to establish the title pleaded and relied on by him. The plaintiff must show title to the property in dispute and that if he cannot his action will fail. The defendant in a *rei vindicatio* action need not prove any thing, still less his own title. (*Wanigaratne v Juwanis Appuhamy* 64 NLR 167) The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established

Having stated the principles I shall now turn to the facts of this case as disclosed at the trial.

The respondent had given evidence at the trial. According to his evidence the original owners of half of the share of the property were on Anndahamy, Pinhamy, Mithurhamy, and Mudalihamy, and the balance half share was owned by Dineshamy, Mithuruhamy and Ukkuhamy. The plaintiff had purchased this land in issue from the said owners. The deeds P13, P15, P 17, P 23 , P 24, P 27, P 33 P35, P 38, P42, P 46, P 47, P 49 had been marked to prove the transfer of the property. (Vide page 6 of the judgment) Therefore, the trial judge had been satisfied that the respondent had become the owner of this land as a result of these deeds. Additionally, the witness named Patabadge Apppuhamy had given evidence to prove the fact that the original owners mentioned and pleaded by the respondent in fact had owned the land in dispute. The respondent had further established that in the year 1962 he had built a house on this land without objection from any person.

Another witness called on behalf of the respondent was one Sidharupage Kirilamaya. According to said Kirilamaya, the propert in dispute was purchased by said Kirilamaya from one person named Siribohamy. The said Siribohamy is one person through which the respondent had pleaded his title to the corpus. This fact further established the respondent's title. (page 8 of the judgment)

The defendant had given evidence. One witness named Pod Appuhamy had given evidence on behalf of the defendant. The learned trial judge had not been satisfied with the evidence given by PodiApppuhamy. (Page 10 – 12 of the judgment)

Another important fact is the Court of appeal decision in the case bearing No 4997. In the case 4997 the parties were the same parties as in this case. The plaintiff in that case was the appellant in this case. The defendant in that case was the respondent in this case. The Court of appeal had held that the plaintiff in case 4997 has only a possessory remedy. The action had been filed on the basis of prescriptive title. But the Court of Appeal in that case had held that the plaintiff did not have any title to that land other than a right to possess the land. Consequently, the plaintiff's claim in that case for prescriptive title had failed. The Judgment had been marked as P 53. (The relevant portions of the judgment had been quoted in this case in the impugned judgment at pages 14 and 15.

Therefore, I am of the view that the respondent had sufficiently established his title to the property. I am also of the view that the learned trial judge had

correctly approached the issues in this case. I see no reason to interfere with the decision of the trial judge.

The appeal is dismissed.

Rohini Marasinghe J

Judge of the Court of Appeal.