

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

M. P.Sumanawathi of
No. 7, Middle Class Housing Scheme
Panagamuwa, Rambadagalla.

PLAINTIFF

C.A. 247/1997
D.C. Kurunegala 1497/L

Vs.

M. B. Jayakaduwa of
Pussalla, Pussalitenna.

DEFENDANT

And

M. P. Sumanawathi of
No. 7, Middle Class Housing Scheme
Panagamuwa, Rambadagalla.

PLAINTIFF-APPELLANT

Vs.

M. B. Jayakaduwa of
Pussalla, Pussalitenna.

DEFENDANT-RESPONENT

BEFORE: Anil Gooneratne J.

COUNSEL: L. Chaminda for Plaintiff-Appellant
P. Abeykoon with R.H.H. Ratnayake
for Defendant-Respondent

ARGUED ON: 01.9.2011

DECIDED ON: 31.10.2011

GOONERATNE J.

This was an action filed in the District Court of Kurunegala for a declaration of title and eviction/damages against the Defendant-Respondent. By judgment delivered on or about 11.3.1997, learned District Judge dismissed plaintiff's action. Parties proceed to trial on 10 issues. The case of the Plaintiff was that by partition decree in case No. 8772/P one Pina and Ranbanda became entitled to the land in question and those two sold the land in question to Sophia alias Mallika by deed No. 40891 of 15.6.1980. Thereafter the said Mallika by deed No. 2655 of 21.10.1980 sold the premises to the Plaintiff. The documents relied upon by Plaintiff-Appellant had been produced at the trial without objection marked P1 to P4,

inclusive of plan filed of record in the above partition case No. 8772/P, Issue Nos. 1 -3 were answered in favour of the Plaintiff-Appellant. It relates to the above transfers of the property and that by Deed P2 Plaintiff became entitled to the property.

The case of the Defendant-Respondent were that the Defendant was in possession of the property since 1970, and had effected improvements as suggested in issue No. 8. It is also the position of the Defendant that he is entitled to the land in dispute by long possession of his predecessors. (issue No. 9) By issue No. 10 the Defendant has sought the relief prayed in his amended answer. The prayer to the amended answer refer to the following inter alia.

- (a) dismissal of plaintiff's case
- (b) on prescriptive title Defendant's father Martin is entitled to the land (declaration is sought to that effect.
- (c) Compensation for improvements and plantation.

I have examined the evidence of the Plaintiff. In brief Plaintiff has been truthful to testify that the land was purchased on or about 1980 and almost at the same time a house was given to her in the Rambodagalla Housing Scheme. Thereafter they went to that housing scheme and occupied that house in the housing scheme. Thereafter Plaintiff did not have the opportunity to possess the land in dispute.

The evidence in chief of the Plaintiff suggest that Plaintiff never possessed the land in dispute. In evidence Plaintiff describes the plantation and state that the Defendant forcefully occupied the land in dispute. In cross-examination the Plaintiff also admit that her predecessors in title never occupied the disputed land. Only position that the Plaintiff testified is about Sopiya from whom she purchase the property and state that Sopiya possessed for about 5 months.

The other witness for Plaintiff was Ranbanda who was the Plaintiff in partition case 8774. In the judgment there is reference to the following in his evidence.

Q: පිස්කල් මාර්ගයෙන් භුක්තිය භාර ගත්තාද?

A: ඔව්

Q: පිස්කල් සහතිකය තිබෙනවාද?

A: නැත

No other evidence regarding possession had been placed in the original court, on behalf of Plaintiff-Appellant.

The Defendant-Respondent had produced documents V1 to V7 and each of those documents support Defendant's possession Material

produced indicate that possession was established as from 1978. In the year 1978 a boutique had been established by the Defendant. The Defendant's father had put up a house in 1969 and he had occupied the land since 1954.

The judgment of the District Judge refer to several weaknesses in the Plaintiff-Appellant's case and the overall picture indicates that Plaintiff though had paper title the Defendants have prescribed to the land with long independent and undisturbed possession. Defendant has satisfied the ingredients contained in Section 3 of the Prescription Ordinance. The judgment of the original court need not be disturbed on any of the factual matters referred to therein and all of which are supported by evidence.

At the hearing before me the learned counsel for Appellant took up the position that the answer of the Defendant does not specifically deny the specific averments in the plaint and as such Plaintiff's cause of action is therefore not denied by Defendant and is admitted. I am unable to give my mind to any matter or fact not challenged and contested.

It is trite law that parties proceed to trial on the issue raised once issues are accepted by court pleading recede to the background.

There is ample evidence to support long and independent possession of Defendant-Respondent. It is supported with documentary proof. On the contrary, Appellant's version has not been established with

any certainty. The following extract of the judgment from the original court would indicate that Appellant has failed to establish her case.

1994.11.07 දින සාක්ෂි සටහන්වල හරස් ප්‍රශ්ණවල 6 වැනි පිටුව අනුව පැමිණිලිකාරිය මෙම දේපල බුක්ති නොවින්ද බවට පිලිගෙන ඇත. එසේම ඇයගෙන් එම හරස් ප්‍රශ්ණවලද ඇයගේ පුර්වගාමීන් ද මෙම ඉඩම බුක්ති වින්දේ නැතැ යනුවෙන් නගන ලද ප්‍රශ්ණයට ඒ අය බුක්ති විඳින්නට ඇති වශයෙන් පිලිතුරු දී ඇත. පැමිණිලිකාරියගෙන් ඇයට මෙම ඉඩම විකුණු සොපියා නොහොත් මල්ලිකා යන අය මෙම දේපල කොපමණ කාලයක් බුක්ති වීද තිබේද? යන ප්‍රශ්ණය ඇය ඒ බව නොදන්නා බව සඳහන් කර ඇති අතර එසේම මෙම දේපලේ තිබූ වගාවන් ගැන ද හරිහැටි නොදත් බව ඇයගේ සාක්ෂියෙන් පැහැදිලි වේ. එසේම දේපල මායිම් ගැනවත් ඇයට කිමට බැරි බව හරස් ප්‍රශ්ණවලදී පැහැදිලි වේ.

In Wanigaratne Vs. Juwanis Appuhamy 65 N.L.R 167. In an action rei vindicatio Plaintiff must prove and establish title. In a declaration of title to land the Defendant was in possession of land. Dias J. held the initial burden of proof rests upon the Plaintiff to prove his title including identification of the boundaries. Peiris Vs. Savundahamy 54 N.L.R 207. In a rei vindicatio action the burden is on the Plaintiff to establish title pleaded and relied on by him. The Defendant need not prove any thing. Deeman

Silva Vs. Silva 1997 (2) S.L.R 382. Only when the legal title to the premises is admitted that the burden of proof is shifted to the Defendant to show his lawful occupation Wijetunge Vs. Thangarajah 1999 (1) S.L.R 53 (Judgment of Ismail J.).

In all the above circumstances it is abundantly clear that Plaintiff has failed to establish title and or possession , including even her boundaries to the property. Appellant's appeal has to fail. I affirm the judgment of the District Court. Appeal dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL