

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

C A 857/1999 F

DC MT: LAVINIA: 886/97

W A Cyril,
No 239, High Level Road,
Nawinna , Maharagama
Defendant-Appellant

Vs.

H Sugathadasa,
Sugathadasa Stores, No
296, Angampitiya,
Padukka
Plaintiff-Respondent

Before : **A.W.A. Salam, J.**

Counsel : Mayura Gunawansa for the defendant-appellant and
Upali Almaida for the plaintiff-respondent.

Argued on : 10.01.2011

Written Submissions filed on: : 01.04.2011

Decided on : 06.10.2011

Abdus Salâm J.

This is an action filed by the plaintiff to eject the defendant from land and premises described in the schedule to the plaint and to obtain peaceful possession thereof based on the premise that the latter is in unlawful possession of it, despite the termination of the licence granted to him. The defendant whilst denying paragraph 3 of the plaint wherein the plaintiff alleged that the defendant had admitted the licence granted to him, averred in addition that the plaintiff was not entitled to the subject matter of the action either upon a deed or by right of inheritance. Therefore, he urged that if he were to be estopped from denying the title of the plaintiff, the title to the land in suit ought to have been pleaded by the plaintiff. As the plaintiff has failed to plead the title the defendant contended that the action against him cannot be maintained as it is constituted. Further, the defendant claimed that he is entitled to the subject matter by right of long and prescriptive possession.

The trial proceeded mainly on the issue as to whether the defendant was the licensee of the plaintiff and that the licence

granted to him had been duly terminated. As far as the substantive relief sought by the defendant is concerned, the principal issue was whether he had acquired a valid prescriptive title to the subject matter of the action against the plaintiff.

At the trial the plaintiff gave evidence and led the evidence of a police constable, an officer from the Maharagama Pradesiya Sabawa, Handalage Dharmasena and Edirappulige Sachischandra. The 12 documents produced by the plaintiff in support of his case were marked as P1 to P12. At the conclusion of the plaintiff's case, the defendant gave evidence and closed his case without producing any documents.

The learned district judge's findings were that the defendant was in possession of the subject matter of the action as the licensee of the plaintiff and that it had been duly terminated. Hence, the trial judge held that the continued possession of the defendant subsequent to the termination of the licence is unlawful and therefore is liable to be ejected. In addition, the trial judge granted the plaintiff damages in a sum of Rs 1000/- per month as prayed for in the plaint. The issue raised by the plaintiff as to whether the defendant had fraudulently denied the licence granted to him was answered in the negative. By

reason of the finding that the defendant was holding the property in question as a licensee, it is quite obvious that the learned district judge had no alternative but to hold against the defendant on the question of prescription.

As regards the finding of the learned district judge that the defendant is the licensee under the plaintiff of the subject matter of the action, no serious argument was placed by the defendant in opposition. As the finding of the learned district judge on that issue is based on factual matters arising from the credibility of the witnesses and the documents produced I am not inclined to interfere with the said finding as it does not on the face of it amount to any manifest unreasonableness or travesty of Justice.

At the hearing of the appeal the learned counsel for the defendant- appellant placed much reliance on the decision in Lewis Singho Vs Ponnampereuma 1996(2) SLR 320 in support of his argument that the plaintiff had failed to establish or plead his title. The learned counsel of the plaintiff conceded that this argument no doubt stems from paragraph 3 of the answer although no issue had been framed relating to the failure of the plaintiff to plead his title.

As has been submitted by the learned counsel of the plaintiff, what in fact came up for determination in the case of Lewis Singho (supra) is the nature of the distinction between a *rei vindicatio* action and a declaratory action. In that regard it was held in that case that in a *rei vindicatio* action the cause of action is based on the sole ground of violation of the right of ownership and as such proof is required of the ownership of the plaintiff in addition to the proof that the land is in the possession of the Defendant. The court further clarified that in an action for declaration of title and ejection the proof that a plaintiff had enjoyed earlier peaceful possession and that subsequently he was ousted by the Defendant would give rise to a rebuttable presumption of title in favour of the Plaintiff and thus could be classified as an action where dominium need not be proved strictly. The main distinction between the two types of cases appears to be that in an action for declaration of title and ejection the plaintiff need not sue by right of ownership but could do so by right of possession and ouster. In fact in such a case the plaintiff's claim is a possessory remedy rather than the vindication of ownership".

Vignaswaran, J thus highlighting on the development of law stated in that judgment that the law permits a person who has possessed peacefully but cannot establish clear title or ownership to be restored to possession and be quieted in possession.

The present action, as has been submitted is purely based on leave and licence granted and is neither a *rei vindicatio* nor a declaratory action. There are no averments embodied in the plaint with regard to the title of the plaintiff, except a reference to the doctrine of estoppel in terms of section 116 of the Evidence Ordinance which lays down that no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

It is quite appropriate at this stage to refer to the judgement in the case of Reginal Fernando Vs Pabilinahamy and another 2005 SLR 1 38 in which the Supreme Court held inter alia that upon the plaintiff (licensor) establishing that the defendant is a licensee, the former is entitled to take steps for ejection of the

latter even in the absence of proof as to the ownership of the land.

Taking into consideration the overwhelming evidence led by the plaintiff to establish that the defendant was a mere licensee warrants the conclusion that his possession subsequent to the termination of the licence is unlawful and that he is liable to be ejected as had been decided by the learned district judge.

For the foregoing reasons I am not of the view that the impugned judgment does even scarcely warrant any manner of intervention by way of exercise of appellate jurisdiction either on the question of facts or on law. Hence, the instant appeal should necessarily fail and therefore dismissed subject to costs.

Judge of the Court of Appeal

Kwk/-