

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

**CA NO: 1050/95(f)  
D.C. Embilipitiya case No: 2878/L**

Subasinghage Heenhamy of  
Hingurana, Embilipitiya

**Plaintiff/Respondent**

Hewage Ariyaratne of near  
Yatiana Kade  
Embilipitiya.

**Defendant/Appellant.**

**Counsel:** H. Wittanachchi for the

**Defendant/Appellant.**

Anuruddha Dharmarathne for the

**Plaintiff/Respondent.**

**Arguments:** 11-09-2009

**Written Submissions:** 15-2-2010

**Before:** Rohini Marasinghe J.

**Judgment:** 24-06-2011

CA 1050-95

The plaintiff had filed a possessory action against the defendant. The premises in suit are described in the plaint. In a possessory action the plaintiff must prove;

1. That he had possession of the premises
2. Which was held quietly and peaceably
3. During a period of an year and a day
4. The plaintiff was ousted or his possession was disturbed within the year.

What is the character of possession recognized by law? The possession is composed of two elements. They are;

1. Physical possession- *detentio*
2. Mental possession- *animus possidendi*

In order to prove whether a particular person has possession of a particular thing both those elements must be established. *Detentio* in brief means that a person must have the power at his will of dealing with the thing as he likes and of excluding others. And, *animus possidendi means the* intention of the holder or occupier to hold and to exercise the control of the thing for his own benefit and not for any other person.

In this case the premises was State Land. It had been given on a permit by the Mahaweli Authority. The permit had been marked as P1. The permit is in the name of one Nicholas. The plaintiff admits that the permit is in the name of

said Nicholas. The plaintiff had stated that she was the mistress of Nicholas. As admitted by the plaintiff the lawful title to the premises in suit was not with the plaintiff. The plaintiff claims title through the said Nicholas. The plaintiff in order to institute this action should prove that the plaintiff herself had lawful title, and that she held the title on her own as the owner, and, not as a servant or agent of the owner. The plaintiff's own evidence was that the lawful owner of the premises in suit was the said Nicholas. The said Nicholas had transferred the premises in suit by deed No: 512 dated 11-1-1986 to the Appellant. The Appellant was placed in possession of the premises in suit by Nicholas. I do not intend to deal with the validity of that transfer. That is a separate matter.

The learned trial judge in the impugned judgment had dealt with the question of possession. He had held that the plaintiff had possession by considering only the fact that the plaintiff had a strong intention to possess the land. As I have stated earlier *animus possededi* is only one element of proof of possession. The element of *detentio* was admittedly not with the plaintiff. Consequently, the plaintiff could not maintain this action. The judgment is set aside.

The appeal is allowed.

Rohini Marasinghe J

Judge of the Court of Appeal.