

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

CA Case No :984/95

DC Kegalle Case No : 4350/L

01. Gangoda Mudiyansele
Kalubanda

02. Gangoda Mudiyansele
Dingiribanda
Udagama, Yatagama,
Rambukkana

Plaintiff-Appellants

Vs

01. Tennaramudiyansele
Abeyratne

02. Gangodamudiyansele
Mudalihamy
Udagama, Yatagama,
Rambukkana

Defendants - Respondents

Counsel: L. Liyanage for the

Plaintiff/Appellant

S.A.D.S. Suraweera for the

Defendant/Respondent

Written Submissions: 29-3-2011 (Defendant/Respondent)

7-10-2010 (Plaintiff/Appellant)

Before: Rohini Marasinghe J

Judgment: 20-06-2011.

CA 984-95

The Plaintiff/Respondent filed action seeking a declaration of title to the land more fully described in the plaint, ejectment of the defendant and a claim for damages. The said land is further depicted in the plan bearing 79 dated 20-11-

1970 as lots 6, 7 and 9. The defendants by their answer sought a dismissal of the plaintiff's action and sought a declaration of title in their favour to the said land in issue. The parties raised their issues on that footing. After trial the learned trial judge dismissed the plaintiff's action and held the issues raised by the defendants in their favour. The plaintiff appealed.

The case of the plaintiffs was that the said 3 blocks of lands were originally owned by one Dingiribanda. The said Dingiribanda became the owner of the said lots of land by virtue of a partition decree bearing No 13221/P in the District Court of Kegalle. While the partition case was pending the said Dingiribanda transferred his shares to the plaintiffs by deed no 1121 dated 25-8-1970. The Final Decree was entered on 4-11-1974. The plaintiff in the said partition action was the said Dingiribanda. The Final Decree had been marked as P2 and also as 1V2. The plaintiff in his evidence stated that the defendants forcibly entered into the land in suit, in 1987.

At the trial the first plaintiff had given evidence. He had marked the documents P1 to P3. The Final Decree of case bearing No 13221 had been marked as P1. The plan bearing No 79 in the said partition action had been marked as P2. The deed 1121 had been marked as P3. It is now settled law that in a rei

vindicatio action the plaintiff had to prove two things. The plaintiff must prove that he has the legal title to the property in suit and that the defendant is in forcible possession of it

The first plaintiff had given evidence. The fact that said Dingiribanda was allotted the lots 6,7 and 9 were not disputed. The fact that the plaintiffs had purchased the said lots pending the partition decree was also not disputed. But the question was whether the plaintiffs executed the Final Partition Decree against the defendants was the question. If the plaintiffs failed to establish this fact then the plaintiffs' title becomes questionable. If the defendants establish that they remained in uninterrupted and peaceful possession of the property in suit according to section 3 of the Prescription Ordinance irrespective of the partition decree then the defendants' title is established.

The trial Judge found from the evidence led at the trial that the said Final Decree had not been executed for 10 years. The excerpt of the plaintiff's evidence on this point was as follows;

" 3 ට් අනුච්ඡිත අභ්‍යන්තර බල කොටසට අදාළව
අනුච්ඡිත බල ඇත.
2. අභ්‍යන්තර බල ඇත.
3. අභ්‍යන්තර බල ඇත. අභ්‍යන්තර බල ඇත.
අනු ආයතනික අභ්‍යන්තර බල ඇත
ලබන බල ඇත බල ඇත

2. බදුදා වූ පුත්‍ර පුත්‍රිය

3. පුත්‍රිය කුමරුන්ගේ නම වූයේ එකම නමයි

2. නම.
3. එම නම පුත්‍රිය නමට අනුකූල වී බව වූයේ
එහෙත් එහි පුත්‍රිය නම නොවේ

2. එකම නම.

(vide evidence of the plaintiff on 5-7-1994 at page 13)

Consequently, the trial judge rightly held that the plaintiffs had not had possession of the property. This question has been sufficiently dealt with in the impugned judgment.

The first defendant, the daughter of the second defendant and a person living near the property in suit had given evidence. The trial judge who examined the evidence of the defendants had come to a definite finding that the defendants and their predecessors in title had been in possession of the property in suit and the plantation on this property had been enjoyed exclusively by the defendants and their predecessors in title. The trial judge had held that the plaintiffs had no claim whatsoever to the land in suit as they, (plaintiffs) have failed to execute the Final Decree dated 4-11-1974. As admitted by the plaintiffs the forcible possession of the defendants to the land in suit was in 1987. Consequently, more than 10 years have lapsed after the entering of the Final Decree. The plaintiffs were claiming title through this Final Decree. I affirm the decision of the trial judge and hold that the plaintiff had not

established title to the property in suit. The defendants had established their title to the land in suit.

The appeal is dismissed.

Rohini Marasinghe j

Judge of the Court of Appeal.