

In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka

Page
1

CA APPEAL NO: 905/96F

DC Balapitiya: 1423/P

Pituwala Kankamge Gunawathie,
Talagawala
Wattahena
8th Defendant Appellant

Vs
Uberis Blok,
Talagawala
Wattahena
Plaintiff-Respondent

Lalith Premala Blok Guruge,
Talagawala,
Wattahena and 6 others
Defendant Respondent

Before: A W A Salam J

Counsel:

Jacob Joseph for the 8th defendant-appellant and S Karunathilaka for
the plaintiff-respondent.

Argued on:

15.12.2010

Written submissions tendered on: 04.03.2011.

Decided on:

14.03.2011

A W Abdus Salam, J

Page

2

This appeal arises from the interlocutory decree entered in a partition action to partition the corpus amongst the co-owners. The appellant is not a co-owner of the subject matter but claimed prescriptive title to a specific portion of the corpus.

The only question that arises for determination is whether the person who has a right of possession until compensation is paid can prescribe to the land in respect of which compensation is to be paid.

In the case of *De Silava Vs Sangadasa* 40 NLR 162 it was held that where in a partition action compensation for improvements due to a bona fide possessor is determined, he has the right to retain possession but it is until the compensation due to him is paid and that it is not necessary to expressly reserve the *jus retentionis* in the decree.

Similarly in the case of *Sediris Vs Dingirimanika* 51 NLR 6 it was held that possession under a *jus retentionis* is not adverse possession and cannot found a title by prescription nor the right to tender compensation for the improvements be barred by limitation.

In the light of the above authorities, the judgment of the learned district judge and interlocutory decree entered are affirmed. The appeal is dismissed subject to costs.

Judge of the Court of Appeal