

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

C.A. No. 1079/96(F)

D.C. Kagalle. 2366/L

Govinnage Kelvin Perera,

Giniwalapitiya,

Bulathkohupitiya.

Defendant-Appellant

Vs.

1. Warnakulasuriya Arachchige Don Anal
Freds,
2. Dona Indrani Muhamdirange
3. Swarnamalie Clara Muhamdirange
4. Gilbert Steven Muhamdirange
5. Ramani A Muhamdirange

All of Bulathkohupitiya

Substituted- plaintiff-Respondents

Before: A.W.A SALAM, J.

Counsel: Lasitha Chaminda for the Substitute Defendant-Appellants and Devasenadhipathi for the Plaintiff-Respondent.

Argued on : 08.02.2011

Decided on : 03.03.2011

A.W. ABDUS SALAM, J.

By plaint dated 8th May 1981 the plaintiff sued the defendant for a declaration of title to the land and premises referred to in the plaint and ejection of the defendant. The position of the plaintiff was that the subject matter had been given to the defendant for his occupation as his servant. In other words, the plaintiff identified the defendant as a permissive user or licensee in respect of the subject matter. As the defendant in partition action No.17586 claimed ownership and thereby disputed title of the plaintiff, this action had to be instituted.

The defendant in his answer denied the title of the plaintiff and took up the position that he commenced his possession of the

subject matter on an independent title and had acquired a prescriptive title by the time the action was filed.

The learned district judge in a well considered judgment held that the evidence of the defendant with regard to his claim was totally unbelievable and for reasons stated therein commented that the evidence of the defendant was also false. The plaintiff has stated that the defendant came into the subject matter as his employee and continued to occupy the same even after his voluntary resignation by document marked P3.

The document P3 was admitted to be correct by the defendant as well. There is no evidence that after the resignation of the defendant from the employment of the plaintiff, the defendant had changed the character of his employment in respect of the subject matter. The learned district judge had given cogent reasons for accepting the evidence of the plaintiff and that of his witnesses.

Undoubtedly, the learned district judge has had the priceless advantage of seeing the witnesses and the manner in which they testified. He has expressed a firm opinion as to the creditability of the witnesses. In the circumstances, this court should not lightly interfere or defer from the findings of the learned district judge based upon oral testimony given before him.

The plaintiff has clearly proved his title to the subject matter and the defendant's claim for prescriptive title had been comparatively weak and unsatisfactory. As such, I am of the opinion that the learned district judge had no alternative but to enter judgment for the plaintiff as prayed for in the plaint.

For reasons stated, I am not inclined to hold that the appeal preferred by the defendant merits any favourable consideration. Appeal dismissed and the judgment of the learned district judge affirmed. The plaintiff is entitled to costs of this appeal.

Judge of the Court of Appeal

Kwk/-