

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

Mallika Gunathilaka,
No.127, Magamma,
Homagama.

Plaintiff

C.A.No. 478/96(F)
D.C. Homagama Case No.973/L

- Vs. -

W.R. Arthur,
No. 140, Brahammanagama,
Pannipitiya.

Defendant

And now Between

W.R. Arthur,
No. 140, Brahammanagama,
Pannipitiya.

Defendant-Appellant

- Vs. -

Mallika Gunathilaka,
No.127, Magamma,
Homagama.

Plaintiff-Respondent

Counsel: Ajith Muansinghe with Anoja Uduwella

For the Defendant/Appellant.

Ranjan Suwadaratne for the Plaintiff/Respondent

Written Submissions: 9-2-2010 (Plaintiff/Respondent)

15-3-2010(Defendant/Appellant)

Before: Rohini Marasinghe J

Judgment: 29-01-2011

CA 478-96

The Plaintiff/Respondent instituted a vindicatory action in the District Court seeking a declaration of title to the property more fully described in the schedule to the plaint. The Defendant/Appellant claimed prescriptive title to the said property. After trial of the said action the judgment was entered on behalf of the plaintiff. This appeal is against that judgment.

The case of the plaintiff was briefly as follows;

The original owner of this land in issue was one Pubilis. The said Pubilis was the father of the husband of the plaintiff. The said Pubilis and the family of the plaintiff had lived on this land for long years. After the death of her husband the plaintiff who was the widow and his 4 children became the intestate heirs. Consequently, the plaintiff became the owner of 1/2 share and the children became entitled to 1/8 share in the said property. This action is only with regard to the half share of the plaintiff. There is no dispute that the defendant/appellant was the ande cultivator of this land. The plaintiff had marked in evidence to prove that fact as well. The dispute had arisen when the defendant attempted to construct a house on this land. The complaint to the police of this fact had been marked as P8.

However, the contention of the defendant was that he was the ande cultivator of the plaintiff. But the defendant's position was that the land in issue was not in relation to that particular land of which he was the ande cultivator. The defendant claimed that the land described in the plaint was a high land, which was in his possession for more than 15 years. He marked in evidence some receipts to prove that he had obtained a permit to cultivate on this land. He also marked in evidence receipts to prove that he purchased fertilizer for cultivations on this land.

It is settled law that in vindicatory actions the claimant needs to prove two things. Namely, that he is the owner of the property and that the property is in the possession of the defendant. The defendant need not prove anything. The

weakness of the defendant's claim to the property does not strengthen the plaintiff's case. The sole burden is on the plaintiff to prove his title to the property in suit.

The plaintiff one David Singho and one Hemapala who was the Grama Sewaka of the area had given evidence on behalf of the plaintiff. According to their evidence the dispute was not with regard to the high land as alleged by the defendant. They testified to confirm that the land in issue was the land in which the defendant was cultivating as an ande cultivator. According to the evidence led on behalf of the plaintiff it was established that the defendant was living on this land in a small house as the ande cultivator of the plaintiff. The witnesses have been cross examined on this point and their consistent position was that the defendant was only the ande cultivator of this land. They did not specify any other land other than the land that was described by the plaintiff as the land in issue.

The Defendant had given evidence at the trial. A witness by the name of Samarasiri who was the Land Officer attached to that area had given evidence. The documents V2 to V3 have been marked through the said land officer. . The document V2 had been issue in 1989. And the name of the land is one ' " The document V3 is dated 29-6-1982. The name of the land is not decipherable. The witness was not asked whether these documents are connected to the land that the defendant t was claiming as his land, on the basis of prescription.

The documents of the defendant had not been supportive to his claim. The plaintiff had been able to establish the identity of the corpus. The learned trial

judge had dealt with this point in her judgment. These types of actions are based mainly on the credibility of the witnesses. The trial judge who heard and saw the witnesses had chosen to accept the evidence of the plaintiff and reject the evidence of the defendant. Notwithstanding the observation of the trial judge this court also had examined the evidence on record. The plaintiff had satisfactorily on a scale of balance of probability established that she was the owner of the land described in the schedule to the plaint. I am of the view that the trial judge had correctly evaluated the evidence of the plaintiff. Therefore, I dismiss the appeal.

The appeal is dismissed.

Rohini Marasinghe J

Judge of the Court of Appeal.