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

CA Appeal No: 426/99(F)

DC Matale Case No: 4942/L

R. Shiromani Sellappan,

44/2, Mattawa Road,

Warakamura, Ukuwela.

Defendant-Appellant.

vs.

W.A.K. Sena

39, Nagolla Road, Matale.

Plaintiff-Respondent.

BEFORE : A.W.A. Salam, J.

COUNSEL : Sarath Jayawardane for the Defendant-Appellant and Thushari K. Hirimuthugodage for the Plaintiff-Respondent.

ARGUED ON: 19.09.2012

WRITTEN SUBMISSIONS FILED ON : 16.01.2013

DECIDED ON: 27.02.2013

A W A Salam, J.

The impugned judgment relevant to this appeal pertains to an action filed by the plaintiff-respondent, against the defendant-appellant seeking *inter alia* a declaration of title to the subject matter of the action and ejectment. The said action is based on a deed of transfer executed in favour of the plaintiff-respondent by the Land Reform Commission. The Land Reform Commission in turn is said to have become the owner of the subject matter of the action by operation of Law, when the land vested in the said Commission by operation of the Land Reform Commission Law.

The defendant-appellant in her answer took up the position that her father and his predecessors were labourers attached to an estate called Warakanda Estate and from the year 1918 they were resident on a portion of the said estate from and out of which a block of land in extent of 45 perches was given to the defendant-appellant. The defendant-appellant claimed that in the year 1980 she constructed a house on that portion of the land and resided in it since then. Consequently, she claimed that she acquired a prescriptive title to the said land more fully set out in the answer.

The defendant-appellant, prayed for a declaration of title to the subject matter of the action on the strength of her

prescriptive possession or in the alternative compensation for improvement. The learned district judge, after trial held *inter alia* that the plaintiff-respondent has established his title to the subject matter of the action and the defendant-appellant's claim should fail as she had not established the acquisition of prescriptive rights. Being aggrieved by the said findings, judgment and decree the defendant-appellant has preferred this appeal.

At the commencement of the trial the only admission recorded was the jurisdiction of court to hear and conclude the action. The following were the issues framed at the instance of the plaintiff-respondent.

1. Was the Land Reform Commission the original owner of the land and premises more fully set out in the schedule to the plaint?
2. Did the Land Reform Commission on 1.2.1995 sell the same to the plaintiff?
3. Did the defendant obstruct the handing over possession of the said land to the plaintiff by the Land Reform Commission on 11.4.1994?
4. As a result of the said act of the defendant has the plaintiff suffered loss at the rate of Rs.500/-per month?
5. If the above issues are answered in the affirmative, is the plaintiff entitled to judgment as prayed for in the plaint?

At the instance of the defendant following were the issues raised.

6. Has the defendant having constructed a house in the year 1977 remained in possession of the subject matter of the action?
7. Has the defendant improved the subject matter of the action?
8. If the above issues are answered in the affirmative what is the quantum of compensation the plaintiff is entitled to?

The documents marked at the trial by the plaintiff-appellant are as follows.

1. The certificate of non-settlement of the dispute.
2. The deed of transfer No 5290 dated 1.2.1995 executed by the Land Reform Commission in favour of the plaintiff.
3. Proceedings of the Magistrate's Court in case No 24959 initiated for and on behalf of the State to eject the defendant-appellant from the subject matter of the action in terms of the Recovery of State Land Act.

The learned counsel for the defendant has contended that since the present action is to vindicate the title of the plaintiff-respondent and to obtain possession of the land, it is the duty of the plaintiff-respondent to establish the identity of the corpus together with the title. He submitted that upon the failure of the plaintiff-respondent to establish the said ingredients with cogent evidence the action must fail. He also relies on the principle that the weakness of the defendant's version will not strengthen the plaintiff's case. No doubt the learned counsel has submitted the law as it is, as to the requirements of a *rei vindicatio* action.

It is to be noted that the only document produced by the plaintiff in support of his title was the deed of transfer; he has obtained from the Land Reform Commission. Even though the plaintiff-respondent maintained that the Land Reform Commission was the owner of the property in question by operation of the Land Reform Law, no gazette notification or any other documents relating to the vesting has been produced at the trial. The learned counsel for the defendant-appellant adverted me to the possible consequences resulting from the failure to produce such documents in support of the claim that the Land Reform Commission was the owner of the subject matter, immediately prior to the plaintiff obtaining a deed of transfer in his favour. The failure to adduce evidence as to the ownership of the Land Reform Commission is a serious omission made by the plaintiff-respondent and the learned district judge could not have declared the plaintiff-respondent as the owner of the subject matter in the absence of any positive proof that The Land Reform Commission was the owner of the property in question at all times material to the action.

The burden of proof in a *rei vindicatio* action is on the party who asserts ownership and where, in an action for declaration of title to land, the defendant is in possession of the land, the burden is on the plaintiff to prove that he has dominium. The learned district judge in his judgement seems to have relied heavily on the claim made by the defendant that he also got the land in question from the Land Reform Commission.

As has been rightly observed by the learned district judge the defendant-appellant had not produced any documentary proof as to the ownership of Land Reform Commission. The learned district judge had observed that the defendant-appellant had not seriously controverted the averment of ownership attributed to the Land Reform Commission or denied that the Land Reform Commission at one point of time was the owner of the land in question. In other words the learned district judge has relied heavily on the failure of the defendant to deny the title of the Land Reform Commission. In this context, he has failed to appreciate the total absence of any admissions categorically made by the defendant-appellant as to the ownership attributed to the Land Reform Commission. As a matter of fact the failure on the part of the defendant-appellant to produce any receipts to demonstrate that he had permission from the Land Reform Commission to occupy the land in question was considered by the learned district judge against the claim in reconvention preferred by the defendant-appellant.

In the case of Peiris Vs Sarunhamy 54 NLR 207 it was laid down that the initial burden of proof in a *rei vindicatio* action is on the plaintiff to prove his title and the identification of the corpus.

It seems that in a case where the learned Judge ab initio has made a cardinal error by placing the onus on the wrong party or having misapplied the law to the prejudice of one party, it would not be just or right for a Court exercising appellate jurisdiction to try and ascertain

whether, had the trial Judge placed the onus on the proper party, the result would be different.

Had the learned district judge appreciated the principle that it is the duty of the plaintiff in a *rei vindicatio* action to establish the title on which she relies on a balance of probability and that the unsatisfactory nature of the defence is no justification to grant the plaintiff the relief asked for, he would not have entered judgement in favour of the plaintiff-respondent.

In the case of Wanigaratna Vs Juwanis Appuhamy 65 NLR 165 it was held that in an action *rei vindicatio* the plaintiff must prove and establish his title. He cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established.

The position is totally different in a case where a landlord sues his tenant who may later have turned out to be a trespasser for a declaration of title or the owner of a land who sues the licensee for the similar declaration after the termination of the licence. They cannot be strictly categorised as *rei vindicatio* actions. In such cases strict proof of ownership as contemplated in a *rei vindicatio* action may not be necessary. But in this case, it is incumbent upon the plaintiff respondent to have established with cogent evidence that the Land Reform Commission was the owner of the subject matter of the action, for him to claim a declaration of title in his favour.

According to the evidence of the officer from the Land Reform Commission itself, the identity of the corpus was in doubt and whether the Land Reform Commission was the

owner of the particular allotment of land was uncertain. In the circumstances, I am of the opinion that the learned district judge has failed to address his mind to the basic ingredients of a *rei vindicatio* action. As such, a serious miscarriage of Justice had occurred in declaring the plaintiff-respondent the owner of the subject matter of the action in the absence of any positive proof of chain of title. For this reason, justice demands that the impugned judgement is set aside.

Consequently, I set aside the judgement and decree and direct the learned district judge to enter judgement dismissing the plaintiff's action for want of proof of title. There shall be no costs.

Judge of the Court of Appeal

NR/-