

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

S. Somapala,
Bogahawatta Bazaar,
Pathana.
Plaintiff

C.A. No. 726 / 97 F

Vs.

D.C. Nuwaraelliya No. 66 / DE

1. S. K. Punchinona,
2. Wasantha Liyanage,
3. P. Chaminda,
All of Bogahawatta Bazaar,
Pathana.
4. Officer in Charge,
Police Station, Pathana.

Defendants

And Now Between

1. S. K. Punchinona,
2. Wasantha Liyanage,
3. P. Chaminda,
All of Bogahawatta Bazaar,
Pathana.

Defendant-Appellants

Vs

S. Somapala,

Bogahawatta Bazaar,

Pathana.

Plaintiff-Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Sunil Abeyrathne for the Defendant
Appellants
P. Peramunagama for the Plaintiff
Respondent
ARGUED ON : 06.07.2012
DECIDED ON : 14.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellants (hereinafter referred to as the Appellants) seeking a judgment that he was entitled to the right of possession of the land described in the schedule to the plaint. The Appellants filed answer denying the averments in the plaint and prayed for a dismissal of the Respondent's action. The Appellants averred that the Respondent came in to possession with leave and licence of the Appellants. The case proceeded to trial on 08 issues. After trial the learned Additional District Judge delivered judgment in favour of the Respondent. Being aggrieved by the said judgement dated 12.08.1997 the Appellants have preferred the present appeal to this court.

Both parties have admitted that the subject matter was a state land. It was common ground that the Respondent was in possession of the land in dispute and he was carrying on a business called "S.K. Te Pan Salawa" in the said premises.

Although the Appellants had claimed title to the land in dispute, in their evidence they have admitted that they did not have a title deed or a land permit to establish their ownership. At the trial the Appellants have produced a land permit issued under Section 19 (4) of the Land Development Ordinance marked V 1. According to the said permit, Lot No. 18 depicted in Plan No P.P. Nu. 804 situated at Bogahawtta village have been granted to the Appellants. The Respondent has instituted this action in respect of Lot No. 13 situated at Bogahawtta bazaar. Hence the said permit V 1 has no relevance to the land described in the schedule to the plaint.

On the other hand although the Appellants have averred that the Respondent came in to possession with leave and licence they have failed to prove that the Respondent came in to possession of the said land with leave and licence of the Appellants.

Therefore in the light of the said evidence I am of the view that the learned District Judge has come to a right conclusion. Hence I see no reason to interfere with the said judgement of the learned District Judge dated 12.08.1997. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal