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

CA 123/99 (F)

D.C. Galle Case No: 12307/L

1. Don Nissanka Jayawardane,
2. Udugama Koralalage Soma Jayawardane.
No. 27, Lower Dickson Road,
Galle.

Defendant-Appellants.

Vs.

Habaragamuralaage Janaka Wasantha Peiris Goonathilake,
Athapaththu Walawwa,
Lower Dickson Road,
Galle.

Plaintiff-Respondent

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

COUNSEL : S.N. Vijithsingh for the Defendant-Appellants and C.E. de Silva for the Plaintiff-Respondent.

ARGUED ON : 01.10.2012

WRITTEN SUBMISSIONS TENDERED ON: 20.12.2012

DECIDED ON : 21.03.2013.

A.W.A. Salam, J.

The facts relevant to this appeal briefly are as follows. The plaintiff respondent (plaintiff) filed action for a declaration of title to the allotments of land described in paragraph 2 of the plaint, subject to the trust pleaded in paragraph 5. The defendants *inter alia* disputed the title of the plaintiff to the lands in question and pleaded specifically that they have acquired a prescriptive title to the said property. The case proceeded to trial on seven issues. At the trial on behalf of the plaintiff, his wife, the watcher of the lands, licensed surveyor G H G Arthur Alwin Silva gave evidence and the plaintiff's case was closed reading in evidence documents marked P1 to P 30.

In unfolding the defence the 1st defendant gave evidence and thereafter the case of the defendants was closed producing no documents. The learned district judge by judgement dated 18 December 1998 held *inter alia* that the plaintiff is the owner of the subject matter of the action as averred in paragraph 3 to 8 of the plaint subject to the trust pleaded in paragraph 2. He further held that the defendants have entered the property as tenants. The trial judge observed that the claim made by the defendants' was unlawful and cannot be justified in any manner. The present appeal has been preferred by the defendant-appellants (defendants).

The subject matter of the action has been described in paragraphs 2 (a), 2 (b) and 2 (C) of the amended plaint and depicted as lot I, J and lot L in plan No 126 produced at the trial marked as P1. The several allotments of land described in the plain are situated adjacent to each other. On a reading of the pleadings it is clear that the identity of the corpus was not in dispute. In order to identify the land for purpose of the action, a commission was

issued to G H G A S De Silva, licensed surveyor who prepared plan bearing No 1741 dated 2 August 1993 and 29 August 1993. For the purposes of the present case in the said plan the subject matter of the action has been depicted as lots depicted as lots I, J, J1, L, L1, L2 and L3.

The learned counsel of the plaintiff has submitted that at the close of the plaintiff's case, the documents marked as P1 to P 30 were not objected to and the defendants simply moved for an adjournment to present their case. In other words the defendants have waived the necessity to prove the documents of the plaintiff which ever were marked subject to proof. In this respect the learned counsel has drawn my attention to the case of Sri Lanka Port Authority and Another Vs Jugoolinija – Boal East-1981 (1) Sri Lanka Law Report 18 in which the principle was laid down that, if no objection is taken when at the close of a case documents are read in evidence, they are evidence for all purposes. The principle of law thus laid down in that case received the approval of the Supreme Court subsequently in the case of Wanigaratna Vs Wanigaratna 1997 Sri Lanka Law Report 267.

Applying the above principle the defendants' failure to object to the documents at the close of the case when documents were read in evidence by the plaintiff must be taken as a waiver of objection originally raised requiring the proof of certain documents. In the circumstances, the learned district judge was quite correct in accepting the uncontroverted documents produced by the plaintiff marked as P1 to P 30.

When one takes into consideration the evidence adduced in proof of the plaintiffs case, no difficulty could possibly arise as to the paper title to the property and the identity of the corpus. When the plaintiff has established

both the identity of the corpus and his title to the same, then it is the duty of the defendants to negate the effect of such proof. As far as the present case is concerned, the only way in which the defendants could have met the plaintiff's case was to adduce cogent evidence relating to prescriptive title.

It is trite law that where a party to an action for a declaration of title to a land invokes the Provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights. This principle of law was reiterated recently in the case of Sirajudeen Vs Abbas 1994 (2) Sri Lanka Law Report 365. It was emphasised in that case that one of the essential elements of a plea of prescriptive title as provided for in Section 3 of the Prescription Ordinance is proof of possession by a title adverse to or independent of that of a claimant or the plaintiff.

The documents marked as P17 to P19 are demonstrative that the rates in respect of the premises in suit had been paid by the plaintiff up to the year 1992. Further, according to the counterfoils of the rent receipts produced by the plaintiff, the defendants have paid rent in respect of the premises in suit even in that year 1983. In such a circumstance, it is the duty of the defendants to meet the plaintiffs case with clear evidence relating to an "overt act" to establish that the status of the defendants in relation to the land in question as tenants was converted into one of an adverse to and independent possession. The defendants have undoubtedly failed in establishing the said ingredients to constitute a valid prescriptive title to the land in suit and therefore the learned district judge's finding on that account cannot be faulted.

In the circumstances, I regret my inability to subscribe to the view expressed by the learned counsel for the appellants or the defendants that the learned district judge has misdirected himself with regard to the principles of law on the question of plea of prescription setup by the defendants. As such, I have no alternative but to dismiss the appeal subject to costs.

Appeal dismissed.

Judge of the Court of Appeal

NR/-