

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

CA 329/99F

DC CHILAW 23817/L

Edmund Dissanayake,
Siyambalagaswela, Kakkapalliya.

Plaintiff

vs.

1. W.R. Anictus Thamel
2. W.K.D. Benedict Appuhamy
Pambala, Kakkapalliya.

Defendants

AND NOW BETWEEN

W.K.D. Benedict Appuhamy
Pambala, Kakkapalliya.

2nd Defendant-Appellant.

vs.

Edmund Dissanayake,
Siyambalagaswela, Kakkapalliya.

Plaintiff-Respondent.

Sriyalatha Malini Weerakoon,
Siyambalagaswela, Kakkapalliya.

Substituted Plaintiff-Respondent.

COUNSEL : Lahiru Dawakella with Seewali Delgoda for the 2nd defendant-appellant and Sudharshanie Cooray for the plaintiff-respondent.

ARGUED ON : 15.02.2013

WRITTEN SUBMISSIONS TENDERED ON : 01.02.2013.

DECIDED ON : 06.05.2013

A.W.A.Salam,J.

The plaintiff-respondent filed action against the 1st defendant-respondent and 2nd defendant-appellant seeking a declaration that he possessed the subject matter of the action until 31.05.2013 described in schedule A to the plaint and that he was ousted from the said land, by virtue an order of the primary court in case No 27001 (produced at the trial marked as P 5) by the 1st and 2nd defendants. The answer filed by the defendants revealed a claim that the 2nd defendant had acquired ownership of the land in question. The learned district judge after trial granted relief to the plaintiff as prayed for in the plaint and this appeal has been preferred by the 2nd defendant-appellant.

As has been submitted by the learned counsel for the appellant, on a reading of the plaint it is quite clear that the plaintiff has filed action seeking a possessory remedy and it does not disclose that the action is for a declaration of title or *rei vindicatio*. The positions of the plaintiff

as borne out by the plaint and the evidence adduced at the trial point to the fact that he had been dispossessed on an order made by the learned primary court judge in the relevant proceedings under chapter VII of the PRIMARY COURT PROCEDURE ACT.

In terms of section 4 of the Prescription Ordinance of No 22 of 1871, it shall be lawful for any person who should have been dispossessed of any immovable property otherwise than by process of law, to institute proceedings against the person dispossessing him at any time within one year of such dispossession and on proof of such dispossession within one year before the action is brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without any proof of title.

A possessory action in terms of section 4 of the Prescription Ordinance is permitted only when the dispossession takes place otherwise than by due process of law. In this matter admittedly the dispossession had occurred by virtue of an order made by a Court of Law and therefore the plaintiff is not entitled to maintain a possessory action in respect of such dispossession. In the circumstances, it appears that the learned district judge has misconstrued the entire basis of the plaintiff's action

and consequently a serious injustice has occurred by reason of the learned district judge holding in favour of the plaintiff.

In the circumstances, I set aside the judgment of the learned district judge and direct that judgment be entered dismissing the plaintiff's action for want of proper cause of action to maintain a possessory action on the alleged complaint of the plaintiff revealed in the plaint.

Hence, this appeal is allowed subject to costs.

A W A Salam, J

Judge of the Court of Appeal

Sunil Rajapaksa, J

I agree

Judge of the Court of Appeal

NR/-