

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

M. K. Sahardeen  
D/1F/04  
Dias Place (NSH)  
Colombo 12.

**Substituted-Defendant-Appellant**

**C.A.NO.780/98 (F)**  
**D.C.COLOMBO CASE NO.5048/ZL**

Vs.

Weerakkody Arachchige Marynona  
No.761, Kanthi Mawatha,  
Hunupitiya, Wattala.

**Plaintiff-Respondent**

**BEFORE** : **K.T.CHITRASIRI, J.**

**COUNSEL** : Nizam Kariappar with M.I.M.Iynullah, Attorneys-at-Law  
for the Substituted-Defendant-Appellant  
Shamith Fernando Attorney-at-Law for the Plaintiff -  
Respondent

**ARGUED ON** : 21<sup>ST</sup> MARCH 2013

**WRITTEN SUBMISSIONS**  
**FILED ON** : 09<sup>th</sup> April 2013 by the Plaintiff-Respondent

**DECIDED ON** : 07<sup>th</sup> MAY 2013

**CHITRASIRI, J.**

This is an appeal seeking to set aside the judgment dated 21.10.1998 of the learned District Judge of Colombo. In that judgment learned Trial Judge held that the plaintiff-respondent (hereinafter referred to as the plaintiff) is entitled to have the case decided in her favour as she has succeeded in proving her longstanding possession to the

land in dispute adverse to the rights of the defendant-appellant. (hereinafter referred to as the defendant) Accordingly, the decision of the learned District Judge is against the defendant who claimed rights through the deeds marked V10, V11 and V12. Being aggrieved by the said decision of the learned District Judge the defendant has come to this Court seeking to set aside the aforesaid judgment dated 21.10.1998.

Having answered the issue No.2 affirmatively which was raised on the basis of prescriptive rights of the plaintiff, learned District Judge decided the case relying upon Section 3 of the Prescription Ordinance. The said Section 3 entitles either a defendant or a plaintiff in an action to a decree in his/her favour with costs upon proving undisturbed and uninterrupted possession of lands or immovable property, by a title adverse to or independent of that of the claimant for ten years previous to the bringing of such action provided the possession referred to above is unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person. This position in law is supported by many authorities.

**Maasdorp's Institutes (7<sup>th</sup> Edition Vol 2 at 96)**

**Wigneswaran J in Leisa and another V Simon and Another [2002 (1) SLR 148]**

**Pathirana V Jayasundera [58 NLR 169]**

**Dona Cecilia V Cecilia Perera and others [1987 (1) SLR 235]**

**Wijesundara and others v Constantine Dasa and another [1987 (2) SLR 66]**

I will now turn to consider whether the learned District Judge correctly evaluated the evidence and applied the law relevant thereto when he accepted the prescriptive rights

of the plaintiff rejecting the defence taken up by the defendant. In coming to his findings, learned District Judge has considered and accepted the evidence of the plaintiff's husband. In his evidence Wilson Kannangara has stated that the land in dispute had been known to him since 1949 and had commenced possession of the land in the year 1950. Thereafter, he made an application to Dalugama Municipality to construct a house on the said land. The plan made for the said purpose had been marked as P1. Thereafter, having built a house there, he has been in uninterrupted occupation of the same throughout. He had been living on this land continuously since the year 1950 and all his 08 children were born while occupying the said house.

He also has stated that there was an attempt to evict him from the land pursuant to filing an action in the year 1981. Despite the filing of this action he has been in continued possession of the same resisting even the execution of the decree entered in that action. The evidence led in respect of the continuous possession of the land on behalf of the plaintiff and his family members since the year 1950 had not been controverted at all. The possession adverse to the rights of the defendant also is established by refusing to leave the premises by the plaintiff's husband despite the attempts to evict him particularly in the year 1981. Even though three title deeds have been produced in evidence marked as V10, V11 and V12 by the defendant, the plaintiff had not permitted him to exercise his rights derived from those three deeds. In other words, the plaintiff along with her husband Wilson Kannangara had been in possession of the land adverse to the rights of the defendant well over ten years before filing this action. Having considered those facts presented in evidence, learned District Judge has concluded that the plaintiff is entitled to claim prescriptive title to the land in dispute whilst rejecting the rights claimed by the

defendant. I do not see any error on the part of the learned trial judge when he came to this conclusion. Therefore, I do not see any merit in this appeal.

Moreover, it must be noted that no particular question of law has been raised as a ground of appeal in this instance except for the delay in delivering the judgment. This issue of delay in pronouncing judgment was not pursued by the learned Counsel for the defendant at the argument stage. The defendant in this appeal has basically questioned the manner in which the learned District Judge has evaluated the evidence as to the facts of the case. As mentioned hereinbefore, the learned District Judge has carefully considered the evidence in relation to the facts of the case and had correctly upheld the prescriptive rights of the plaintiff. However, trial Judge being the best person to decide as to the given facts, I am reluctant to interfere with the decision arrived at by the learned District Judge upon considering the facts of the case. This view had been expressed in many decisions including that of **Wickremasuriya V Samarasuriya**. [68 N.L.R. (1965) at page 349]

For the aforesaid reasons, I am not inclined to interfere with the decision of the learned District Judge.

Accordingly, this appeal is dismissed with costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL