

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

C.A. No 385/ 1996 F

D.C. Badulla No. 11638/L

1. Rajasinghege Sarath Samaraweera
 alis Kammale Watte Gedara Andirisa,
 (deceased)

1A. Mary Weerasinghe,

2. Rajasinghe Dewayalage Podisingho,
 (deceased)

2A. Rajapaksha Dewayalage Elisahamy,
 All of Kammalwattegedara, Uduwara,
 Hali Ela.

Plaintiff

Vs.

1. R.D. Rathna (Deceased),

1a.R.D. Sophiya alias Podi Nona,
 Mudunpita Kumbura, Baddewela,
 Gawarawela, Demodara.

1b.R.P. Podihamine, Kotuwekada,
 Wewaliyadda, Gawarawela,
 Demodara.

1c.R.D. Gnanawathie alias Rani,
 Pallegedara Kade, Udunuwara,
 Uduwara, Hali Ela.

1d.R.D. Mallika alias Seetha,
 Pallegedara Kade, Udunuwara,
 Uduwara, Hali Ela.

2. R. D. Danoris,

3. R. D. Andiris,
 Both of Pallegedara Watta,
 Uduwara, Hali Ela.

Defendants

And Now Between

1. R.D. Rathna (Deceased),
 - 1a.R.D. Sophiya alias Podi Nona,
Mudunpita Kumbura, Baddewela,
Gawarawela, Demodara.
 - 1b.R.P. Podihamine, Kotuwekada,
Wewaliyadda, Gawarawela,
Demodara.
 - 1c.R.D. Gnanawathie alias Rani,
Pallegedara Kade, Udunuwara,
Uduwara, Hali Ela.
 - 1d.R.D. Mallika alias Seetha,
Pallegedara Kade, Udunuwara,
Uduwara, Hali Ela.
2. R. D. Danoris,
3. R. D. Andiris,
Both of Pallegedara Watta,
Uduwara, Hali Ela.

Defendant-Appellants

Vs

1. Rajasinghe Sarath Samaraweera
alis Kammale Watte Gedara Andirisa,
(deceased)
- 1A. Mary Weerasinghe,
2. Rajasinghe Dewyalage Podisingho,
(deceased)
- 2A.Rajapaksha Dewyalage Elisahamy,
All of Kammalwattegedara, Uduwara,
Hali Ela.

Plaintiff -Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Srinath Perera PC with Miss. Damayanthie
Bandara and Hasini Chandrapala for the
substituted Defendant Appellants.
Sanath Jayatilake for the 1st Plaintiff
Respondents

ARGUED ON : 16.07.2012

DECIDED ON : 16.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondents (hereinafter referred to as the Respondents) instituted the said action against the Defendant Appellants (hereinafter referred to as the Appellants) seeking inter alia a declaration of title to the land described in the schedule 'B' to the plaint and to eject the Appellants from the said land and to handover the possession thereof.

The Respondent filed answer denying the averment in the plaint and claimed prescriptive title to the land described in the schedule to the answer.

After trial the learned District Judge has delivered a judgment in favour of the Respondent and has dismissed the Respondent's claim for a declaration of title on prescription. Being aggrieved by the said judgment dated 10.05.1996 the Appellants have preferred the instant appeal to this court.

The Respondent's case was that after the death of Menika who was the original owner of the land described in schedule 'A' to the plaint, his rights was devolved on his 05 children namely Dewaya, Ukkuwa, Rahuwa, Rankonda and Nasondi. Said 05 children had amicably partitioned the said land and thereafter said Rankonda became the owner of the land described in schedule 'B' to the Plaint. Said Rankonda by deed of transfers bearing No 329 dated 21.04.1942 and No 330 dated 21.04.1942 (P 1 and P 2) had sold the said land to the 1st and 2nd Plaintiff Respondents and thereby they became co-owners of the land in suit. Thereafter the Respondents were in peaceful possession of the land in suit. In 1952 the Respondents had constructed an upstairs building in the said land. In the meantime the 1st Defendant Appellant came in to the land with leave and licence of the Respondents and occupied in an old house situated in the said land and on or about 29.05.1983 the 1st Defendant Appellant started disturbing the possession of the Respondents.

The Appellant's position was that they had been in possession of the said land for more than 50 years and thereby they have acquired a prescriptive title to the land in suit. At the trial the Appellants have produced a birth certificate marked V 1, a school certificate marked V 2 and a letter issued by Grama Niladhari marked V 3.

I have carefully considered the said documents of the Appellants. None of the said documents establish the prescriptive title of the Appellants. The contention of the Appellants was that the Judgment is against the weight of evidence. The Appellants further contended that the Respondents have not proved their title deeds.

It should be noted that P 1 and P 2 were very old deeds which had been executed in 1942. At the trial the Appellants have not raised any objections to the production of these two deeds. Hence P 1 and P 2 can be safely admitted as unchallenged documentary evidence of the case. Therefore I reject the contention of the Appellants that the Respondents have failed to prove their title to the land in suit.

It appears from the impugned judgment that the learned District Judge has carefully considered the said evidence in arriving at a right conclusion. Therefore I see no reason to interfere with the judgment of the learned District Judge dated 10.05.1996. Hence I dismiss the appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal