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

C.A.No.662/99 (F)

D.C.Matale No.4467/L.

Abdul Hameed Musthapha

7th Mile Post,

Madipola.

Plaintiff

Vs.

Lakshmi Letishiya Seneviratne

7th Mile Post,

Madipola.

Defendant

And Between

Lakshmi Letishiya Seneviratne

7th Mile Post

Madipola.

Defendant-Appellant

Vs.

Abdul Hameed Musthapha(deceased)

7th Mile Post

Madipola.

Plaintiff-Respondent

Before: A.W.A Salam, J.

Counsel: Athula Perera for the Defendant-Appellant and Shabry Haleemdeen with Uditha Hiripitiya for the Plaintiff –Respondent.

Argued on: 24.01.2012.

Decided on: 31.05.2013.

A.W.A. Salam,,J

The plaintiff- respondent (referred to in the rest of this judgement as the "plaintiff") filed action against the defendant-appellant (referred to in the like manner as the "defendant") seeking *inter alia* a declaration of title to the land described in the schedule to the plaint and for damages. The plaintiff averred that on a clear chain of title he became the owner of the subject matter and the defendant disputed his title without any legal justification. The defendant in his answer pleaded that the 2 allotments of land namely lot No's 325 and 326 referred to in the schedule to the plaint were in the possession of her father from that year 1941.

The father of the defendant is said to have died in the year 1962 and thereafter it had been possessed by his widow until 1991 in which year she too passed away. The defendant further pleaded that in the year 1988 the plaintiff pulled out the fence on the northern boundary of lot 326 and upon a complaint being made to the police proceedings were initiated under chapter VII of the Primary Court Procedure Act and the possession of the said lots were given to the defendant. In short, the defendant pleaded that she had acquired a prescriptive title to the lands in question by reason of her long and prescriptive possession.

The learned district judge after trial dismissed the prescriptive claim of the defendant to the land in question and granted relief to the plaintiff declaring him to be a co-owner of the subject matter of the action. This appeal has been preferred by the defendant against the said judgement.

When the matter was taken up for argument the learned counsel for the defendant confined himself only to the question of the identity of the corpus. As he gave up the claim of prescription, I too propose to confine myself only to the question of the identity of the corpus.

It is trite law that a co-owner of an immovable property is entitled to maintain an action for declaration of title against a trespasser. This principle of law was rightly conceded by the learned counsel for the defendant and therefore it does not become necessary to delve into that question.

In the circumstances, the only question that arises for consideration in this appeal is whether the plaintiff has successfully established the identity of the corpus. Quite remarkably, the defendant did not raise the question of the identity of the corpus in his pleadings. He neither suggested any issues touching upon the identity of the corpus. Further, in the answer the defendant has admitted by necessary implication the identity of the corpus as being the two allotments described in the schedule to the plaint.

In paragraph 4 of the answer the defendant states in no uncertain language that his father was in possession of the lots 325 and 326 in the final village plan. In paragraph 6 of the answer he further states that until the year 1962 his father lived in a house constructed by him on lots 325 and 326. This clearly shows that the defendant has admitted in his pleadings the identity of the corpus.

In a declaration of title or rei vindicatio action, if the subject matter is admitted no further proof of the identity of the corpus is required, for no party is burdened with adducing further proof of an admitted fact. The hearing of an action commences, with the parties stating the question of fact or law to be decided between them in the form of issues, if they are so agreed. However, under section 146(2), if no consensus is reached on that matter, the court records the issues on which the right decision of the case appears to depend. However, the CPC is silent as to whether admissions arising from the pleadings should be recorded at the commencement of the trial or at any other stage as is usually done in the original court. Although the court does not appear to be under a duty to record the admissions arising from the pleadings, the inveterate practice of the courts exercising original civil jurisdiction is to record the admissions at the beginning of the trial or at any time before judgment, as and when such admissions are agreed upon. The purpose of following such a procedure, outside the CPC is to avoid unnecessary repetitions and to facilitate the ascertainment of the facts admitted in the pleadings before the pronouncement of the judgment, in compliance of the requirements of Section 184 (1) of the Civil Procedure Code. It is to be noted that the Civil Procedure Code emphasizes the need to establish only so much of the substantial

part of the case of a party, **which is not admitted in his opponent's pleadings**. Explanation 2 to Section 150 of the CPC is worded as follows...

"The case enunciated must reasonably accord with the party's pleadings, i.e., plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts to be established must in the whole amount to, so much of the material part of his case as is not admitted in his opponent's pleadings".

A perusal of Section 184 reveals that the admissions made in the pleadings are important and useful in the preparation of the judgment whether they are formally recorded or otherwise. Quite significantly, in this case even though an admission regarding the identity of the corpus had not been recorded, yet the admission appearing in the pleadings as regards the identity of the corpus cannot be ignored. As such the doctrine of estoppel and Section 150 are two firm absolute bars which stand in the way of the defendant to challenge the identity of the corpus.

The importance of the admissions made in the pleadings was the subject of emphasis in the case of A V Arnolis Vs Mrs Miriam Lawrence CA (SC) application No 45/80 in which the plaintiff sued the defendant for ejectment based on a contract of tenancy. Dealing with the admissions made by the plaintiff and its impact on the judgment His Lordship Soza, J stated as follows...

Quote

"Section 184 of the Civil Procedure Code requires the court to act on the admissions in the pleadings and on the evidence led before it. It must be borne in mind that the issues are framed on the responsibility of the court only on material questions that are in controversy and regarding which evidence to be led. **Matters that are admitted in the pleadings will not be raised in the issues and no evidence need be led on them**. What a party must seek to establish by evidence is so much of the material part of his case that is not admitted in his opponents pleadings" – *Unquote*

(Emphasis is not that of Soza J)

As far as the plaintiff's case is concerned, the subject matter of the action has been clearly identified in the plaint with the schedule appended to it, giving the metes and bounds. The plaintiff has further referred to the final village plan (FVP). The defendant in his answer in paragraph 4 stated as follows...

වැඩිදුරටත් උත්තර දෙමින් විත්තිකරු කියා සිටින්නේ පැමිණිල්ලේ උපලේඛණයේ දක්වා ඇති ලේනාවල ගමේ ගම් පිඹුරේ අංක 325 සහ 326 දරණ ඉඩම් කොටස් දෙක විත්තිකරුගේ පියා වන ඩී.එම් සෙනෙවිරත්න විසින් 1941 සිට භුක්ති විඳ ඇති බවයි.

The above quoted paragraph clearly shows that the Defendant has not raised the question of identify of the corpus in his answer.

In addition to the above, the plaintiff has further identified the land in question in reference to plan made by the Commissioner. The Commissioner also gave evidence in the case. The evidence of

the Commissioner was much favourable the plaintiff as regards the identity of the corpus.

Emerging from the above, the learned district judge could have without any difficulty arrived at the conclusion that the defendant has admitted the subject matter of the action by necessary implication as being exactly what has been averred in the plaint. Even if there be no such admission on the part of the defendant, yet, on a perusal of the plaintiff's case alone, it is quite evident that the identity of the corpus has been proved on a balance of probability by the plaintiff as referred to above. Hence, the only ground urged by the defendant in this appeal should necessarily fail.

In the circumstances, I am of the view that the appeal preferred by the defendant merits no favourable consideration. As such, this appeal stands dismissed subject to costs.

Judge of the Court of Appeal

Vkg/-