

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

Weligamage Nandaseeli Warnasooriya,  
No. 29, Government Quarters Road,  
Hambantota.

C.A. No. 50 / 97 (F)

Plaintiff

**Vs.**

D.C. Tangalle No. 2071 / L

Piyaratne Wijeweera,  
Dickwella Road,  
Beliatta.

Defendant

**And Now Between**

Weligamage Nandaseeli Warnasooriya,  
No. 29, Government Quarters Road,  
Hambantota.

Plaintiff-Appellant

**Vs**

Piyaratne Wijeweera,  
Dickwella Road,  
Beliatta.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Ms. Aparajitha Ariyadasa for the  
Plaintiff Appellant  
Nimal Muthukumarana for the  
Defendant Respondent

ARGUED ON : 20.06.2012

DECIDED ON : 20.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Tangalle seeking for a judgment ejecting the Respondent from the land described in the 2<sup>nd</sup> paragraph of the Plaint. The Appellant has averred that by a deed of transfer bearing No 3026 dated 21.01.1964 he became the owner of the land in suit and thereafter by lease agreement bearing No.18893 dated 04.09.1976 leased the land in suit to the Respondent for a period of 03 years commencing from 02.09.1975 and after the expiration of said lease period on 02.09.1978 the Respondent was in wrongful and unlawful occupation of the said land.

The Respondent has admitted the said lease agreement. He has further averred that after the expiration of the lease period he vacated the said premises and handed over the vacant possession thereof to the Appellant. The Respondent's position was that thereafter he bought certain rights of the land in suit by deed of transfer bearing No 3432 dated 10.01.1983 and he became a co-owner of 2/3

portion of the land of which the subject matter of the action form part of and in fact his possession was in respect of said portion of a larger land.

At the trial the Respondent has produced his title deeds marked V 4, V 5, V 6 and V 7. The Appellant has not challenged the said title deeds of the Respondent and the same has been admitted as evidence of the case.

On the other hand if the Respondent was in unlawful occupation of the land in suit after the expiration of the said lease agreement on 02.09.1978 an action should have been instituted to eject the Respondent from the land in suit. But the Appellant has not done so. He has instituted the present action against the Respondent on 01<sup>st</sup> of December 1983 more than 05 years after the expiration of the said lease agreement. By that time the Respondent had acquired an undivided title of the land in suit. The delay in filing the present action clearly shows that the Respondent was not in possession of the land in suit after the expiration of the said lease agreement and the Appellant has instituted the said action after the acquisition of rights of the land in suit by the Respondent by deed of transfer bearing No 3432 dated 10.01.1983. Hence the Appellant now cannot have and maintained an action against the Respondent upon a dead lease agreement to recover the possession of the land in suit.

It must be noted that the learned District Judge in his judgment has come to a conclusion that the appellant's action has prescribed in law. He has come to the said conclusion on the basis that the Appellant has failed to institute the action within 03 years after the expiration of the lease agreement. It seems that the learned District Judge was of the view that the provisions contained in Section 10 of the Prescription Ordinance were applicable to said position. This conclusion of

the trial judge is not tenable in law. The Appellant has not sued the respondent upon the lease agreement. At the time of the institution of the action there had been no valid lease agreement between the Appellant and the Respondent since it had been expired on the due date. The Appellant has instituted the said action against the Respondent on the basis that the Respondent was in unlawful possession of the land in suit. Therefore provisions contained in Section 10 have no relevance to such a situation. Hence the learned District Judge's conclusion that the Appellant's action was prescribed in law is bad in law.

When I consider the evidence of the case I am of the view that the Appellant has failed to prove his case on a balance of probability. Hence I see no reason to interfere with the dismissal of the Appellant's action by the judgement of the learned District Judge dated 28.01.1997. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal