

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

C.A 47/98 (F)

D.C. Colombo Case No: 5816/ZL

Suriya Arachchige Karunawathie,
No.16/15, Athula Place,
Kirillapone,
Colombo 15.

Presently at

No.4/62A, Thalakotuwa Watte,
4th Lane, Polhengoda,
Colombo 04.

Defendant-Appellant-Petitioner

Vs.

01. Ananda Gamini Gardiye Punchihewa,
No.504, Rajagiriya Road,
Rajagiriya.
02. Ruwan Charitha Gardiye Punchihewa,
No.504, Rajagiriya Road,
Rajagiriya.

And Now

No.5660, Algonquin Way,
Sanjose, California,
95138, USA.

Respondent (Proposed Parties)

C.A 47/98 (F)**D.C. Colombo Case No: 5816/ZL****BEFORE : K.T. CHITRASIRI, J**

COUNSEL : Athula Perera with Ranjith Perera and
Chathurani De Silva for the Defendant-Appellant

M.U.M. Ali Sabry P.C with Lasantha Thiranagama
For the Plaintiff -Respondents

ARGUED &**DECIDED ON : 01.11.2013****K.T.CHITRASIRI,J.**

Heard learned counsel for the Appellant in support of this appeal. This is an appeal seeking to set aside the judgment of the learned District Judge of Colombo delivered on 06.01.1998. By that judgment, learned District Judge decided that the Plaintiff is entitled to the reliefs prayed for in the prayer to the amended plaint dated 22.11.1989. Learned Counsel for the Appellant submitted that it is wrong to have rejected the claim of the Defendant – Appellant (hereinafter referred to as the Defendant) made on the basis of prescription having decided the case in favour of the plaintiff. Refusal to accept the claim of prescription seems to have been the contradictory nature of the evidence of the Defendant in relation to her possession to the land in question.

The Defendant in her evidence has stated that the 2nd Plaintiff obstructed taking her lorry into the disputed land on 12.05.1981. Consequently, there had been an application made under Section 66 of the Primary Courts Procedure Act, filed in the Magistrate Court in Colombo shortly thereafter seeking for an

order as to the possession of the disputed land. [vide proceedings at pages 386,437,462 and 468 in the appeal brief]. The case filed in the Magistrate's Courts bears the number 16112/3/81 and in that action an order had been made on the 08.07.1981 directing the 2nd Plaintiff in this case who is the 1st Defendant-Respondent in that case, to file a civil action. Accordingly, the learned Magistrate had directed the parties to maintain the peace thereafter. (Vide at page 562 of the Appeal Brief). Furthermore, the Plaintiffs have dug a well within the land in question in the year 1988. This action had been filed immediately after the digging of the well.

The above circumstances show that there had been a dispute between the parties as to the possession of the land in question since the year 1981. Therefore, it is clear that there had been disturbances taken place as far as the possession claimed by the Defendant is concerned even if she was in possession of the particular land. She should have established undisturbed and uninterrupted possession of the land, independent of the Plaintiffs, for a period of 10 years previously to the bringing of this action, for her to have prescriptive title to the land. [Section 3 of the Prescription Ordinance]

This action has been instituted on 21.06.1988. Admittedly, as mentioned before there had been disturbances created by the plaintiffs to the possession, alleged to have claimed by the Defendant, during the year 1981. Therefore, it is clear that the possession claimed by the Defendant had been physically disturbed within a period of 10 years prior to the filing of this action. Accordingly, the Defendant is not entitled to claim prescriptive title in terms of Section 3 of the Prescriptive Ordinance to the land in dispute.

Moreover, it must be noted that there is hardly any evidence as to the manner in which the Defendant had her possession in relation to the land in suit. No evidence is forthcoming as to any plantation or any construction made by the Defendant on this land though it is situated in close proximity to the place where the Defendant lives. It is only a bare land.

In the circumstances, it is clear that the Defendant has failed to establish prescriptive rights as required in terms of the provisions contained in the Prescriptive Ordinance. Therefore, the learned District Judge is correct when she rejected the claim of the Defendant made on the basis of prescription. Hence, I am not inclined to interfere with the decision of the learned District Judge.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Vkg/-