

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

Gunetthi Dilman Nona,
No. 428, Galpotta Road,
Kiriberiya, Panadura.

C.A. No 1322 / 2000 F

Plaintiff

D.C. Panadura No. 931/L

Vs.

1. Muthuwahendi Akmon Silva
(deceased)
- 1a.Muthuwahendi Rosalin Silva,
- 1b.Deyaguge Somaratne Silva,
2. Muthuwahendi Punchi Nona Silva,
3. Muthuwahendi Matin Silva,
(deceased)
- 3a.Labugamaralage Somawathie Peiris,
- 3b.Muthuwahendi Samanthi Silva,
- 3c.Muthuwahendi Rohana Silva,
- 3d.Muthuwahendi Kanthi Silva,
4. Muthuwahendi Adlin Silva alias
Karunawathie Silva, by her legal
Attorney Muthuwahendi Piyasena
Silva,
all of No. 424A, Kiriberiya, Panadura,
5. Muthuwahendi Joslin Silva,
No. 244/1, Batalanda, Hirana,
Panadura,
6. Muthuwahendi Moylin Silva alias
Wayalat Nona,

Sea Beach Road, Angulana,
Moratuwa.

7. Muthuwahendi Roslin Nona,
8. Muthuwahendi Caralein Silva,
both of Pettamukanda Janapadaya,
Haltota.

Defendants

And Now Between

2. Muthuwahendi Punchi Nona Silva,
3. Muthuwahendi Matin Silva,
(deceased)
- 3a. Labugamaralage Somawathie Peiris,
- 3b. Muthuwahendi Samanthi Silva,
- 3c. Muthuwahendi Rohana Silva,
- 3d. Muthuwahendi Kanthi Silva,
4. Muthuwahendi Adlin Silva alias
Karunawathie Silva, by her legal
Attorney Muthuwahendi Piyasena
Silva,
all of No. 424A, Kiriberiya, Panadura,
5. Muthuwahendi Joslin Silva,
No. 244/1, Batalanda, Hirana,
Panadura,
6. Muthuwahendi Moylin Silva alias
Wayalat Nona,

Defendant-Appellants

Vs

Gunetthi Dilman Nona,
No. 428, Galpotta Road,
Kiriberiya, Panadura.

Plaintiff -Respondent

1. Muthuwahendi Akmon Silva
(deceased)
- 1a. Muthuwahendi Rosalin Silva,
- 1b. Deyaguge Somaratne Silva,
7. Muthuwahendi Roslin Nona,
8. Muthuwahendi Caralein Silva,
both of Pettamukanda Janapadaya,
Haltota.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Rasika Dissanayake for the 2nd to 6th Defendant
Appellants.

Erusha Kalidasa for the Plaintiff Respondent

ARGUED ON : 18.09.2013

DECIDED ON : 21.11.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st to 8th Defendants seeking a declaration of title to the land described in the 2nd schedule to the plaint.

The 1st to 6th Defendants filed answer denying the averments contained in the plaint and praying for a dismissal of the Respondent's action.

The case proceeded to trial upon 13 issues. After trial the learned District Judge has delivered a judgment in favour of the Respondent. Being aggrieved by the said judgment dated 12.12.2000 the 2nd to 6th Defendant Appellants (hereinafter referred to as the Appellants) have preferred the instant appeal to this court.

The Respondent's case was that she has acquired prescriptive title to the land described in the 2nd schedule to the plaint. It is well settled law that in an action for declaration of title the plaintiff must prove that he is the owner of the land. A plaintiff cannot rely on the weaknesses of the Defendant's case without proving his case.

In the present case the Respondent in her evidence has admitted that the owner of the land in suit was one Jayanthie Karunaratne. She has further stated that when she came in to occupation of the house situated in the said land in 1966 her mother in law, Adlin Silva, Careline Silva, Roslin Silva and her husband were living in that house. She has further stated that the parents of her husband with their family members have been in occupation of the said house as caretakers of the said land under the previous owner Jayanthie Karunaratna. Even the Respondent's witness Mahinda Jayasiri has testified that the respondent and the Appellants were in occupation of the said house. Said evidence clearly shows that the husband of the Respondent and his family members were in occupation of the land in suit with leave and license of Jayanthie Karunaratne.

On the said evidence it is crystallised that the Respondent cannot commence a prescriptive title against the Appellants unless she get rid of the character of leave and licence. In this regard the Respondent in her evidence has stated that said Mrs. Karunaratne, the owner of the land had promised her

husband's parents to give a plot of land. But prior to the fulfilment of said promise parents of her husband had died. Thereafter said Mrs. Karunaratne had promised to offer the said plot of land to her husband and prepared a survey plan. The Respondent has produced a survey plan no. 33 marked P 1. She has further stated that Lot No 4 depicted in P 1 was allocated to her and accordingly she was in possession of the said Lot 4 since 1977.

Said Mrs Karunaratne in her evidence has stated that Baby Silva, the father of the Respondent's husband was the watcher of her land called Delgahawatta and he was in occupation of a hut situated at said Delgahawatta with his family. When the said hut was destroyed they requested a piece of land to put up a hut and thereafter they put up a new hut in lot 4 and all of them were in occupation of the new hut.

It is apparent from the said evidence that the Respondent and her husband with the other family members of Baby Silva were in possession of the land in suit belonged to said Mrs. Karunaratne. Even the Respondent in her evidence has admitted that they have constructed a house in the land in suit with a hope that it would be given to them by said Karunaratne. She further testified that she made a request to the owners to transfer the said land to them.

In the light of the said evidence I am of the view that the Respondent has failed to prove a title adverse to or independent of that of the Appellants. Therefore the Respondent is not entitled to a judgment as prayed for in the plaint. Hence I set aside the said judgment of the learned Additional District Judge dated 12.12.2000 and allow the appeal of the Appellants with costs.

Appeal allowed.

Judge of the Court of Appeal