

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

C.A. 1113/98 (F)

D.C. Homagama Case No: 1283/L

B.A.I. Perera

No: 80,

Niwattidiya,

Piliyandala.

Appellant

- Vs -

Ariyasiri Upananda

Galhena,

No: 607/32,

Pitipana North,

Homagama.

Respondent

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

C.A. 1113/98(F)

D.C. Homagama Case No: 1283/L

Before : K.T. Chitrasiri,J.

Counsel : S.F.A. Coorey with Edward Ahangama for the Plaintiff-Appellant

Substituted Defendent-Respondents are absent and unrepresented.

Argued &

Decided on : 12.02.2014

K.T. Chitrasiri,J.

This is an appeal seeking to set aside the judgment dated 25.08.1998 of the learned District Judge of Homagama. Learned Trial Judge having considered the evidence, dismissed the plaint of the plaintiff-appellant stating that the defendant-respondent is entitled to claim prescriptive title to the land in dispute over the title of the plaintiff. Action of the plaintiff-appellant is on the basis of his title derived from the deed bearing No: 5907 marked P1. The defendant-respondent in his

answer, claimed prescriptive title to the property in suit stating that he commenced possessing the land adverse to the rights of the appellant since the year 1978 acting upon a writing dated 27.05.1978 which was marked as V1 in evidence. Learned District Judge accepted the prescriptive claim of the respondent and then he decided to dismiss the action of the appellant accordingly.

Plaintiff claimed title to the land by virtue of the deed marked P1 in evidence. The plaintiff having purchased this property on 07.05.1975 by the aforesaid deed P1, has subsequently handed over the possession of the land in dispute to the respondent pursuant to the writing marked V1 which came into existence on 27.05.1978 having accepted Rs.1000/- as a part payment for the purpose of selling the property to the respondent. [vide plaintiff's evidence at page 73 in the appeal brief] Even thereafter the respondent has paid money to the appellant in order to complete the purchase price. [document marked V1a] Since the aforesaid writing marked V1 came into place, the respondent had been in possession of the land in question denying the rights of the plaintiff if any. Plaintiff himself has accepted this position while giving evidence. (vide proceedings at pages 73,74 and 79 in the appeal brief) At this stage, it is pertinent to note that even to the questions posed in re-examination, the appellant has clearly stated that the respondent had been in possession adverse to his rights. [vide proceedings at page 79 in the appeal brief]

In the circumstances, it is abundantly clear that the respondent had been in possession of the land claimed by the plaintiff for a period of well over ten years prior to the filing of this action on 03.05.1991, adverse to the rights of the plaintiff which is the criteria applicable to claim prescriptive title in terms of Section 3 of the Prescription Ordinance.

Accordingly, I do not see any reason to interfere with the decision of the learned District Judge in which he accepted the prescriptive claim of the respondent basically relying upon the evidence of the appellant. For the aforesaid reasons, this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Jmr/-