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

CA 1186/98 (F)
District Court – Galle Case No: 9289/L

Hikkaduwa Vidanaralalage Nelson Dias of
Vaulagoda, Hikkaduwa.

Substituted Plaintiff-Appellant

Vs.

1. Rexi Mangalika Epaliyana
2. Chandani Mangalika Epaliyana
3. Shriyani Mangalika Epaliyana
4. Yavan Nissanka Epaliyana
5. Pandula Nissanka Epaliyana

All of Vaulagoda, Hikkaduwa.

Substituted Defendants-Respondents

Hikkaduwa Vidanaralalage Nelson Dias
Vaulagoda, Hikkaduwa.

Substituted Plaintiff

Vs.

1. Rexi Mangalika Epaliyana
2. Chandani Mangalika Epaliyana
3. Shriyani Mangalika Epaliyana
4. Yavan Nishshanka Epaliyana
5. Pandula Nishshanka Epaliyana

All of Vaulagoda, Hikkaduwa.

Substituted Defendants

C.A. No. 1186/1998(F) D.C. Galle No. 9289/L

Before : **K.T. CHITRASIRI, J.**

Counsel : Shantha Jayawardane for the Substituted - Plaintiff-Appellant

Shiral Lakthilaka for the Substituted- - Defendant-Respondents

Argued &

Decided on : 31.03.201

K.T.Chitrasiri, J

This is an appeal seeking *inter alia* to set aside the judgment dated 27.02.1998 of the learned District Judge of Galle by which he dismissed the amended plaint dated 22.09.1982 of the plaintiff-appellant. In the said amended plaint, the Plaintiff-Appellant (hereinafter referred to as the Appellant) sought to have a judgment declaring that he is the owner to Lot "R" referred to in the Plan No. 2217 marked P1 and to have the Defendant-Respondent (hereinafter referred to as the Respondent) evicted therefrom.

As mentioned before, the appellant has claimed title to Lot "R" depicted in the said plan 2217. Admittedly, the land referred to as lot "R"

had been subjected to a partition action decided in the District Court of Galle and pursuant to the decree entered in that case namely P.33911 (P4), title to Lot "R" had devolved on to the respondent.

However, the appellant has relied upon prescription referred to in Section 3 of the Prescription Ordinance, in claiming title to the aforesaid Lot "R" since the original plaintiff had no paper title. Accordingly, the issue No.2 has been raised on behalf of the appellant in order to establish prescriptive title to lot "R". Section 3 of the Prescription Ordinance requires a plaintiff to prove undisturbed and uninterrupted possession, adverse to the rights of the owner in respect of the land he claims for a period of ten years or more previous to the bringing of the action.

Learned District Judge probably having kept the said criteria in mind has evaluated the evidence, particularly the evidence as to the adverse possession mentioned in Section 3 of the Prescription Ordinance. He, in his judgment has referred to the evidence in connection with an application made by the appellant to have electricity connection to his premises found in lot "Q" referred to in the same plan 2217. It reads thus:

"ප්‍ර. ඒ විදුලි රැහැන් ඇදපු අවස්ථාවේදී මේ විත්තිකරුවන් ඒ ගොල්ලන්ගේ ඉඩම තුලින් විදුලි රැහැන් ඇදීමට විරුද්ධ වුනා ?

උ. නැහැ. ඒ ගොල්ල විරුද්ධ නැත කියල ලිපියක් දුන්න.

ප්‍ර. ඒ ගොල්ලන්ගේ ඉඩම තුලින් විදුලි කම්බි අදිනවට විරුද්ධ නැත කියල ලිපියක් දුන්න ?

උ. ඔව්.

ප්‍ර. තමාලා විදුලි රැහැන් මේ විත්තිකරුගේ ඉඩම උඩින් අදිනව කියල මේ විත්තිකරුවන්ට දැන්නුවද ?

උ. ඒගොල්ලන්ට ගිහිල්ල දැන්නුව. ඒ ගොල්ල ලියුමක් දුන්න".

(Vide proceedings at Pages 311/225 in the appeal brief)

The said evidence recorded on 30.03.1995 clearly indicate that the appellant has acted acknowledging the rights that the respondent has to the land to which he claims prescriptive rights. It had happened during the year 1978 and it had been prior to the filing of this action. The letter marked V6 also supports this position. (vide at page 413 in the appeal brief) Under those circumstances, no possession adverse to the rights of the respondent could be established.

Moreover, the document marked V2 by which it shows that the original plaintiff has made a statement to the police on 20.06.1978, on the question of ownership to lot "R". (vide at page 407 in the appeal brief) In that statement, the plaintiff has stated that he was prepared to hand over the land to the owner, once the ownership to the land is established.

As mentioned before, the title to the land in question is with the respondent in terms of the decree entered in the case bearing No. 33911 marked as V4. Hence, it is clear that the appellant could not have claimed prescriptive rights to the disputed land when he was not certain that it belonged to the respondent when claiming possession adverse to his rights.

This point too has been considered by the leaned District Judge and his findings in this regard are as follows:

" එසේම වී2 අනුව මෙම නඩුවේ මුල් පැමිණිලිකරුද, ආරවුලට අදාල දේපල පැමිනිලිකරුට අයිති බවට පිළි ගෙන ඇත. ආරවුල සම්බන්ධයෙන් ප්‍රථමයෙන් කටයුතු කර ඇත්තේ, වී01 මත මෙම නඩුවේ මුල් විත්තිකරු බව පිල ගත හැක. ඒ අනුව මහේස්ත්‍රාත් උසාවියේ **29264** දරන නඩුව පැවති බවද, එම නඩුවේදී පාර්ශවකරුවන් එකඟත්වයට පැමින ඇති බවද පිළි ගත හැක. ඒ අනුව වී5 දරන පිඹුර සකස් කලත්, එම පිඹුරට අනුව කටයුතු කිරීමට මෙම නඩුවේ පැමිනිලිකරු පැහැර හැර ඇති බව පෙනේ ".

(Vide proceedings at page 315 in the appeal brief)

In the circumstances, it is clear that the learned District Judge has correctly applied the law referred to in Section 3 of the Prescription Ordinance, having considered the evidence recorded in this case. In the circumstances, I do not see any reason to interfere with the findings of the learned District Judge.

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

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

/mds