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

Vithanage Romanis
Elowita
Horana.
Deceased 15th Defendant

Vithanage Thilakapala
Elowita
Horana
Substituted 15a Defendant-Appellant. And Others

Substituted Defendant-Appellants

C.A.NO.306/98 (F)
D.C.HORANA CASE NO.1221/P

Vs

Mahawattage Don Sirisena
Udawatta
Horana
Deceased Plaintiff-Respondent

Mahawattage Don Mitrasena
No.53/10, Udawatta
Horana
Substituted Plaintiff-Respondent. And others

Substituted-Plaintiff-Respondents

Horana Sumangala Thero
Horana Raja Maha Viharaya
Horana
Deceased 1st Defendant

Arthur Mannaperuma
Ratnapura Road, Horana

Substituted 1a Defendant-Respondent. And Others

Defendant-Respondents

BEFORE	:	**K.T.CHITRASIRI, J.**
COUNSEL	:	S.N.Wijithsing for the 15th-20th Defendant- Appellants
		J.H.Wimalasena for the 1st to 3rd Substituted-Plaintiff-Respondents
		Prabashawara Premaratne for the 38th- 41st Defendant-Respondents
ARGUED ON	:	05.05.2014
WRITTEN SUBMISSIONS	:	09.06.2014 by the Substituted-Plaintiff-Respondents
FILED ON	:	17.06.2014 by the 15(a), 16-20th Defendant-Appellants
DECIDED ON	:	10TH JULY 2014

CHITRASIRI, J.

15(a) and 16th to 20th defendant-appellants filed this appeal seeking to set aside the judgment dated 18.12.1997 of the learned District Judge of Horana. In the petition of appeal, the appellants also have sought for a declaration declaring that they are entitled to Lot 7 in the Preliminary Plan No.871 marked "X" in evidence, on the basis of prescription. Accordingly, this appeal is basically to examine the correctness of the findings of the learned trial judge, on the question of prescription claimed by the appellants to lot 7 in plan 871. Admittedly, it is a part of the larger land depicted in plan 871 marked "X".

Learned Counsel for the appellants, in support of their prescriptive claim to lot 7, has referred to two cases. Those are namely **Danton Obeyesekere v. Endoris [66 N.L.R. at 457]** and **Angela Fernando v. Devadeepthi Fernando and others. [2006 (2) SLR at 188]** Having referred to those two decisions, he has contended that if a person had exclusive possession for a long period of time to a block of land which is separated from a larger land, then it is not necessary for that person to establish the elements of "adverse possession" against the other co-owners, in order to claim prescriptive title to such a land, separated from the larger land.

In **Danton Obeyesekere v. W.Endoris** (supra), it was held that:

> *"the lot so separated off ceased, with the lapse of time and exclusive possession, to be held in common with the rest of the land. Those who possessed it were entitled to claim that they acquired prescriptive title to it."*

In the case of **Angela Fernando v. Devadeepthi Fernando and others [2006 (2) SLR at 188]**, it was held thus:

> *"Ouster does not necessarily involve the actual application of force. The presumption of ouster is drawn in certain circumstances where exclusive possession n has been so long continue that it is not reasonable to call upon the party who relies on it to adduce evidence that at a specific point of time in the distant part there was in fact a denial of the rights of the other co-owners".*

Before dealing with the matter contended by the learned Counsel for the appellants it is necessary to note that; it is trite law that the onus of the person who claims prescriptive title, to prove the necessary requisites referred to in Section 3 of the Prescription Ordinance as a threshold requirement. The manner in which such requisites are to be established had been discussed in the cases including that of:

- **D.R.Kiriamma v. J.A.Podi Banda and others [2005 BLR at page 09]**
- **Sirajudeen and two others v. Abbas [1994 2 S.L.R. at 365]**
- **Rasiah v. Somapala [2008 B.L.R. at 226]**
- **Sumanawathie v Sirisena (C.A.Minutes dated 10.03.2014 in C.A.830/98/F D.C.Balapitiya Case No.1273/L].**

In this instance, preponderance of evidence is forthcoming to establish that the appellants have been in possession of Lot 7 in Plan "X" for a very long period of time which counts over 50 years. (vide proceedings at pages 251-253, 267-268 and 279-282 in the appeal brief) However, it must be noted that the authorities referred to above seem to have insisted upon establishing identity of a distinct lot with clear and unambiguous evidence to show that it is a land clearly separated from the larger land when claiming prescriptive rights to such a separated block of land.

In this instance, the boundary between Lots 1 and 7 in plan 871 was not certain. The Surveyor has reported that it is an uncertain boundary. Even the

boundary between Lots 7 and 8 in that plan has not been clearly identified. Moreover, the evidence of the 1st defendant namely, Vithanage Thilakapala does not refer to specific boundaries of Lot 7, though he has merely claimed Lot 7. Upon examining the plan 871, it is seen that if not for the eastern boundary of lot 8, both the lots 7 and 8 are to be considered as one land. Therefore, I am of the opinion that the appellants are not in a position to claim prescriptive rights to lot 7 as they have failed to establish that it is a land distinctively separated from the larger land depicted in plan 871 marked "X".

Also, it must be noted that the learned District Judge in his findings has concluded that he is not inclined to accept the prescriptive claim, made over lot 7 by the appellants since they have not insisted upon such a claim in the submissions they have filed upon the conclusion of the trial. In the aforesaid submissions of the appellants, they have claimed only the plantations and the improvements found in Lot 7. They have not claimed any prescriptive rights over the said lot 7. It is evident by the last paragraph of the submissions filed on behalf of the 15 -20th and 47th defendants. It reads thus:

> **"එමනිසා මෙම විත්තිකරුවන් වෙනුවෙන් ගරු අධිකරණයෙන් අයැද සිටින්නේ මුලික පිඹුරු අංක 871 හි දැක්වෙන අංක 7 දරන බිම් කොටස හා X1 වාර්තාවේ දැක්වෙන පරීදි අංක 7 දරන කැබෙල්ලේ වගාවන් හා වැඩිදියුනු කිරීම් මෙම 15, 16, 17, 18, 19, 20, 47 විත්තිකරුවන්ට ලැබෙන ලෙසට 1951 දරන ඔප්පුවෙන් හිමිවන අක්කර 1, 1/2**

කින් 1/2 ක කොටස මෙම විත්තිකරුවන්ට ලබාදෙන ලෙසට නියෝගයක් ලබාදෙන ලෙසත්ය."

[Vide at page 202 in the appeal brief]

When the claim is only for the improvements and for the plantations found in lot 7, without claiming prescriptive rights to the same then it is not possible for a trial Judge to disregard such a matter particularly when it is found in the submissions that they have filed after the conclusion of the trial. Finding on those lines cannot be interfered with even though there is evidence of long standing possession by the claimants to that particular lot.

Hence, I am not inclined to interfere with the findings and with the reasoning thereto, of the learned District Judge as to the prescriptive claim of the appellants.

For the aforesaid reasons, this appeal is dismissed. Parties are to bear their own costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL