

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

C.A.No. 592/97(F)

D.M.Mudiyanse (Decd)

C.Polonnaruwa 2554/L

Kirimetiya, Gallamuna

Defendant Appellant

D.M.R.Wasantha Kumara

Substituted Defendant-Appellant

Vs

Y.Appuhamy (Decd)

Plaintiff Respondent

Y. S. Bandara

Substituted Plaintiff Respondent

**BEFORE : Deepali Wijesunderra J and
M/M.A. Gaffoor J.,**

**COUNSEL : B.O.P. Jayawardena for the Defendant Appellant
Kumar Dssanayake for the Substituted Plaintiff Respondent**

ARGUED ON : 27.02.2015

DECIDED ON : 16.07.2015

Gaffoor J

The Plaintiff –Respondents filed the above mentioned case in the District Court of Polonnaruwa against the Defendant Appellant seeking a declaration of title ,and ejectment of the Defendant, his heirs and representatives from the land described in the schedule of the plaint and claiming Rs.119,991/= as damages. Costs and such other relief.

We have heard the submissions of both parties and carefully studied the Written Submissions of both counsel. It is the contention of the Defendant Appellant that :

01. The Plaintiff –Respondents has failed to prove his title which is a sine qua non for an action of this nature;
02. The Defendant Appellant claims that he was in possession in the said land from the year 1958, which had been confirmed by the order of Primary Court case No15879;
03. The permit marked P1 had been issued without a proper investigation, without following the proper procedure and while the Defendant Appellant was in possession. This means without a proper land Katchcheri as claimed by the Plaintiff –Respondents
04. Moreover, the Plaintiff –Respondent has not renewed the said permit pending the said action.
05. Therefore, this Plaintiff –Respondent was without a proper title.

Now I avert to answer these grounds as follows.

01. The Plaintiff –Pespondents had a permit P1 at the time of filing of DC action. According to the Judgment cited by the learned counsel for the Plaintiff – Respondents it sufficient evidence to prove his title in the inception of DC proceedings. [D.P.Piyasena Vs. K.K.D.Perera 56 NLR 407]. Therefore, I hold that

the_Plaintiff –Respondents had a legal title from the inception of the DC proceedings.

02. Defendant Appellant claims that he was in possession of the said land from 1958. However, he has never disputed the fact that the land in question was a crown land. As long as that fact is not challenged I have to hold that the land in question used to be a crown land. Therefore in terms of Sec 161 of Land Development Ordinance No 19 of 1935 any claim for prescriptive rights from the Defendant Appellant should fail.
03. To consider whether P1 is a valid legal document, I have to consider the evidence of the Colony Officer Wannī Arachchilage Thilak Shanta. He has given evidence that P1 had been issued from his office and a copy of the same was available. It was not during his time; therefore he did not have personnel knowledge about the manner in which P1 was issued. Therefore, I have to be mindful of the rationale of Sec 91 of the Evidence Ordinance as well as the presumption [d] of Sec 114 of the Evidence ordinance. As a result I hold that there is a burden thrown upon the Defendant Appellant, when he challenges the legality of P1. During the trial he has not discharged it. Therefore, I hold that P1 is a valid legal document.
04. Now the Final question is whether the Plaintiff –Respondent had continued to have the permit throughout the District Court case? In this regard I proceed to refer to the evidence of the Plaintiff –Respondent and the Colony Officer Wannī Arachchilage Thilak Shanta. Both have given evidence that permit was not renewed due to the District Court case. Apart from that there is no material to show steps under Sec 106 onwards of Land Development Ordinance No. 19 of 1935 have been taken against the Plaintiff –Respondent .Therefore, I have to conclude it in Plaintiff –Respondent’s favor that crown has

not interfered with his title purely because the Plaintiff –Respondent is the lawful owner to the property in question.

Hence I affirm the judgment and the order of the District Judge of Polonnaruwa dated 11.06.1997 and dismiss the appeal with costs fixed at Rs. 15,000/-.

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL