

1077/99(F)

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

Vitharana Pandithage Sabini

Gulgahawatte,

Kohomiporuwa, Gangulandeniya.

**2<sup>nd</sup> Defendant-Appellant**

**C.A. Case No:- 1077/99(F)**

**D.C. Walasmulla Case No:- 127/L**

**V.**

Vitharana Pandithage Siyadoris

Kohomiporuwa, Gangulandeniya.

**Plaintiff-Respondent**

Badahelage Danie Gulgahawatte,

Kohomiporuwa, Gangulandeniya.

**1<sup>st</sup> Defendant-Respondent**

Pilikumbure Sadina (deceased)

Thalpawila Pansala Asala,

Kumbalgama, Matara.

**3<sup>rd</sup> Defendant-Respondent**

Badahelage Sirisena,

Katukossawatta, Puwakdandawa,

Beliatta.

### **3A Substituted-Defendant-Respondent**

Badahelage Asolina,  
Karambagalawatta, Kohomiporuwa  
Gangulandeniya.

### **3B Substituted-Defendant-Respondent**

Badahelage Danie,  
Karambagalawatta, Kohomiporuwa  
Gangulandeniya.

### **3C Substituted-Defendant-Respondent**

Badahelage Jinadasa,  
Karambagalawatta, Kohomiporuwa  
Gangulandeniya.

### **3D Substituted-Defendant-Respondent**

**Before:- H.N.J.Perera, J.**

**Counsel:-Jagath Abeynayake for the 2<sup>nd</sup> Defendant-Appellant**

**J.C.Boange for the Plaintiff-Respondent**

**Argued On:-28.03.2014/06.05.2014**

**Written Submissions:-09.06.2014/08.07.2014**

**Decided On:-02.07.2015**

**H.N.J.Perera, J.**

The plaintiff-respondent instituted action in the District Court of Walasmulla praying for a declaration of title to the land described in the schedule to the plaint, for ejectment of the 1<sup>st</sup> defendant-respondent, 2<sup>nd</sup> defendant-appellant and the 3<sup>rd</sup> defendant-respondents and for damages. The 2<sup>nd</sup> defendant-appellant filed answer and disputed the identity of the corpus and set up prescriptive title to the said property.

After trial the learned District Judge delivered judgment in favour of the plaintiff-respondent as prayed for in prayer 1 and 2 of the plaint and damages as stated therein. Aggrieved by the said judgment of the learned District Judge of Walasmulla the 2<sup>nd</sup> defendant-appellant had preferred this appeal to this court.

The main contention of the 2<sup>nd</sup> defendant-appellant was that the land described in the schedule to the plaint has not been identified. The learned trial Judge has considered the question of identity of the corpus and has come to a clear finding that the said land had been properly identified by the plaintiff-respondent. The plaintiff-respondent has led the evidence of the Surveyor N.Meegama to prove the identity of the corpus. In cross examination the Surveyor has admitted that the Eastern and Southern boundaries were different to the boundaries in the commission but has proceeded to state that boundaries could change in the course of time. The learned trial Judge too has held that the boundaries in the course of time could undergo change as testified by the Surveyor. The 2<sup>nd</sup> defendant has been present at the time of survey. But the 2<sup>nd</sup> defendant has not disputed the identity of the land before the Surveyor. Further the learned trial Judge had considered and compared the said boundaries as stated in the deeds and the commission and has come to a clear conclusion as to the identity of the said corpus.

At the trial the plaintiff-respondent gave evidence and produced deeds and other documents marked P1 to P6 to prove his title to the land and also summoned the Surveyor who executed the commission to give evidence. The learned District Judge has in his judgment concluded that the plaintiff-respondent has proved his title to the land described in the schedule to the plaint. In his judgment the learned trial Judge has very clearly held that by deeds marked P1 and P2 the plaintiff-respondent has proved that the said premises in question was owned by one Vitharana Pandithage Deesan and that the 3<sup>rd</sup> defendant-respondent has become the owner of the said land by virtue of deed marked P1 and that the said 3<sup>rd</sup> defendant-respondent has thereafter transferred her rights to the plaintiff-respondent by deed marked P2. The plaintiff-respondent has produced deeds marked P1 and P2 to which no objection was taken at the close of the plaintiff-respondent's case. The *cursus curiae* of the original civil court followed for more than three decades in this country is that the failure to object to documents, when read at the closure of the case of a particular party would render them as evidence for all purposes of the law.

After the close of the plaintiff-respondent's case the 1<sup>st</sup> defendant gave evidence and stated that the said land belonged to his mother, the 3<sup>rd</sup> defendant-respondent. The 2<sup>nd</sup> defendant-appellant has denied that she came into the land with the permission of her mother-in-law the 3<sup>rd</sup> defendant-respondent and claimed prescriptive title to the said land.

In *Leisa and another V. Simon and another* [2002] S.L.R.148, the plaintiff-appellants instituted action seeking declaration of title and ejection of the defendants from the premises in question. The defendants claimed prescriptive rights. It was held that:-

- (1) The contest between the right of dominium of the plaintiffs and the declaration of adverse possession amounting to prescription by the defendants.
- (2) The moment title is proved the right to possess it, is presumed.
- (3) For the court to have come to its decision as to whether the plaintiff had dominium, the proving of paper title is sufficient.
- (4) Once paper title became undisputed the burden shifted to the defendants to show that they had independent rights in the form of prescription as claimed by them.

The moment title to the corpus in dispute is proved, like in this case, the right to possess is presumed. The burden is thus cast on the 2<sup>nd</sup> defendant-respondent to prove that by virtue of an adverse possession she had obtained a title adverse to and independent of the paper title of the plaintiff-respondent.

The learned trial Judge has very clearly held in his judgment that the 2<sup>nd</sup> defendant-appellant has failed to prove prescriptive title.

In *Sirajudeen and others V. Abbas* [1994] 2 Sri L.R 365, it was held that:-

“Where a party invokes the provisions of section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive title.”

As regards mode of proof of prescriptive possession, mere general statements of witnesses that the plaintiff possessed the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is necessary that the witnesses should speak to specific facts and the question of possession has to be decided thereupon by court.

One of the essential elements of the plea of prescriptive title as provided for in section 3 of the Prescription Ordinance is proof of possession by title adverse to or independent of that of the claimant or plaintiff. The occupation of the premises must be such character as is incompatible with the title of the owner.

In my view in the present case there is significant absence of clear and specific evidence on such acts of possession as would entitle the 2<sup>nd</sup> defendant-appellant to a decree in favour in terms of section 3 of the Prescription Ordinance. The findings of fact by the learned District Judge are mainly based on the trial judge's evaluation of facts. I have considered the entire judgment and see no reason to interfere and the trial Judge has given cogent reasons, Trial Judge has arrived at a correct conclusion. Appellate Court should not without cogent reasons interfere with primary facts.

In M.P.Munasinghe V. C'P.Vidanage 69 N.L.R 98, it was held that the jurisdiction of an appellate court to review the record of the evidence in order to determine whether the conclusion reached by the trial Judge upon evidence should stand has to be exercised with caution.

For the above reasons I see no reason to disturb the judgment of the learned District Judge. Accordingly the appeal of the 2<sup>nd</sup> defendant-appellant is dismissed with costs.

**Appeal dismissed.**

  
**JUDGE OF THE COURT OF APPEAL**