

967/99(F)

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

L.R.Ramyakumari,

Mawanella, Wadamaldeniya.

Defendant-Appellant

C.A.Case No:-967/99(F)

D.C.Kegalle Case No:-4555/L

V.

P.V.Heenmenike,

Mawanella, Wadamaldeniya.

Plaintiff-Respondent

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

Counsel:-S.N.Vijithsingh for the Defendant-Appellant

Jacob Joseph with S.Madurawala for the Plaintiff-Respondent

Argued On:-04.09.2013/19.11.2013

Written Submissions:-17.01.2014

Decided On:-03.07.2015

H.N.J.Perera, J.

The plaintiff-respondent instituted action in the District Court of Kegalle against the defendant-appellant seeking a declaration of title to the land depicted as Lot 3 in Plan 1816 and 1817 dated 30.01.1964 made by Licensed Surveyor L.B.Beddewala and for the ejection of the defendant-appellant therefrom and for damages.

The plaintiff's position is that she became the owner of the said land described in the schedule to the plaint by Deed No.4866 marked P4 at the trial and was in possession of the same since 21.07.1990. The defendant-appellant on 13.08.1990 forcibly entered the land and the dispute arose.

The defendant-appellant has taken up the position that the plaintiff-respondent has purchased the said land from her husband who has deserted the defendant-appellant and the children, and this land being part and parcel of the "Matrimonial House", the defendant-appellant and the children have a right to support themselves from the said land and cannot be ejected.

The plaintiff-respondent relied on the Deed bearing No.4866 marked P4 by which the husband of the defendant-appellant conveyed title to the plaintiff-respondent, for valuable consideration.

The learned trial Judge after trial delivered judgment in favour of the plaintiff-respondent and held that the "Matrimonial House" of the defendant-appellant is not in the land in suit and the law does not prohibit the sale of another land belonging to the husband of the defendant-appellant who is the vendor in Deed marked P4.

The plaintiff-respondent has in this case clear evidence to prove that she is the owner of the land described in the schedule to the plaint. Plaintiff-respondent has summoned the Notary Premachandra Ranatunga who executed the said deed and also of the evidence of the brother of the vendor one Vijitha Kusum Kumara Arabegedera who signed as a witness to the said deed.

The plaintiff-respondent has further led the evidence of the Surveyor who surveyed the said land and prepared the Plan No. 5496 marked P1 to establish the fact that the Matrimonial House of the defendant-

appellant is situated in the adjoining land called Siyabala gahamula watta. The Surveyor in his evidence has clearly stated that the defendant-appellant was residing in the adjoining land called Siyabala Gahamula Watta and that there was a live fence on the ground to separate the two lands.

Further the surveyor had stated that although the defendant-appellant have claimed that she had used the well in the plaintiff-respondent's land there was no evidence to show how she has entered through the plaintiff-respondent's land for that purpose. The brother of the vendor too had given evidence and testified that the defendant-appellant lived in the Matrimonial House in the land called Siyabala Gahamula watta. The defendant-appellant had clearly failed to lead evidence and prove that the land in suit was possessed as a apart of the land called Siyabala gahamula Watta. Plaintiff-respondent has lead documentary and oral evidence to prove her title to the said land. These documents had been tendered to court without any objection from the defendant-appellant.

The learned District Judge has in his judgment concluded that the plaintiff-respondent had proved her title to the land described in the schedule to the plaint. In his judgment the learned trial Judge has very clearly held that by deed marked P6 the plaintiff has proved that the said premises in question was originally owned by one Punchiappuhamy and he had transferred the said rights to his wife Dingiri Amma and five children(P7). The said Dingiri Amma and five children of Punchi Appuhamy thereafter had transferred their rights to the husband of the defendant-appellant in 1986 by the deed marked P5 and the plaintiff-respondent became the owner of the said land in 1990 by deed marked P4. The plaintiff-respondent had produced deeds and the other documents marked P1 t0 P7 to which no objection was taken at the close of the plaintiff'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 law.

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 defendant-appellant 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.

Wille in his book "Principles in South African Law" (3rd edition) at page 190 discussing the right to possession, states:-

"The absolute owner of a thing is entitled to claim the possession of it; or, if he has the possession he may retain it. If he is illegally deprived of his possession, he may by means of vindication or reclaim recover the possession from any person in whose possession the thing is found. In a vindicatory action the claimant need merely prove two facts, namely, that he is the owner of the thing and that the thing is in possession of the defendant."

In the instant case the defendant-appellant has taken up the position that the plaintiff-respondent has purchased the said land from the defendant-appellant's husband who has deserted the defendant-appellant and the children, and this land being a part and parcel of the "Matrimonial House" she and the children have a right to support themselves from the said land and cannot be ejected.

The learned trial Judge, after trial held that the deed marked P4 validly executed and that the plaintiff-respondent is the owner of the said land described in the schedule to the plaint. The learned trial Judge has further held that the plaintiff-respondent was in possession of the land and on 13.08.1990 the defendant-appellant has forcibly entered the land. It was also held that the defendant-appellant is residing in the

adjoining land where the matrimonial house was situated and that the law does not prohibit the sale of another land belonging to the husband of the defendant-appellant who is the vendor in deed marked P4. Accordingly the learned trial Judge has answered the issues raised by the defendant-appellant in the negative and has entered judgment in favour of the plaintiff-respondent.

The District Judge has correctly analyzed the evidence before him and has come to the conclusion that the plaintiff-respondent is the lawful owner of the land in suit and that the said land is not a part and parcel of the land which has the matrimonial house of the defendant-appellant. The learned trial Judge has arrived at certain factual matters or decided on primary facts. I have considered the entire judgment and see no reason to interfere and the trial Judge has given cogent reasons. I do not wish to interfere with the primary facts of this case. Trial Judge has arrived at a correct conclusion. An 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 the conclusion reached by the trial Judge upon evidence should stand has to be exercised with caution.

Further in *Gunawardene V. Cabral and others* (1980) 2 Sri L.R 220, it was held that the appellate court will set aside inferences drawn by the trial Judge only if they amount to findings of fact based on:-

- (a) Inadmissible evidence; or
- (b) After rejecting admissible and relevant evidence; or
- (c) If the inferences are unsupported by evidence; or
- (d) If the inferences or conclusions are not rationally possible or

Perverse.

In the case before me I do not see that the findings of the learned trial Judge and the inferences drawn by him are vitiated by any of these considerations. In my view there is no justification for interfering with the conclusions reached by the learned trial Judge which I perceive are warranted by the evidence before him.

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

Appeal dismissed.

~~JUDGE OF THE COURT OF APPEAL~~