

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

C.A. Case No. 1150/99(F)

Dunukewalayage Dharmadasa,

D.C. (Kegalle)

Oddara,

Case No. 2189/L

Yatagama,

Rambukkana.

Substituted 1D Defendant – Appellant

Vs.

Menik Pedige William Marasinghe,

Olagankanda,

Kegalle.

Substituted 1A Plaintiff Respondent

And 11 others.

BEFORE

: P.W.D.C. JAYATHILAKE, J

COUNSEL

: Gamini Hettiarachchi for the
Substituted 1D Defendant
Appellant.

Upali Lokumarakkala for the
Plaintiff Respondent.

ARGUED ON

: 26.01.2015

DECIDED ON

: 23.07.2015

P.W.D.C. Jayathilake, J

The portion A of 'Kotuwe Kumburewatta Goda Mada Idama' situated in Oddare, a land 1 acre 3 roods 1 perch in extent was taken on lease by Sophiya and Peiris Singho for a period of 8 years on the deed of lease bearing No. 10981 dated 26.04.1967 from Amina Amma and Muwina Umma. Said Sophiya, by deed of transfer bearing No. 5078 dated 07.07.1970, purchased the same property from Muina Umma during the period of the said lease. Sophiya the original Plaintiff of this case has instituted this action against Peiris Singho praying for declaration

of title to the land and for the ejectment of said Peiris Singho, the original Defendant. The substituted 1 D Defendant Appellant and 5 to 12 Defendant Respondents had been replaced as substituted Defendants after the death of the original Defendant. The 1 to 4 Plaintiff Respondents have been substituted as 1 A to 1 D substituted Plaintiffs after the death of the original Plaintiff.

The original Defendant, in his answer, has pleaded that he had developed this land by putting up a house and planting coconut, aricanut, bread fruit, jak, mango, lime and pepper. He has further stated that he had cultivated the paddy land of 13 lahas in extent. He has claimed the prescriptive title to the subject matter on the basis that he had been in undisturbed and uninterrupted possession against the Plaintiff and others for a period of more than 35 years.

The main obstacle raised against the claim of prescriptive title of Peiris Singho was the lease agreement that he had entered into with the predecessor in title of the Plaintiff.

The explanation of Peiris Singho in regard to the said question was that he had signed the deed of lease not as a lessee but as a witness. The learned District Judge in adjudicating this question had considered the evidence of the witness who had signed the deed in question as an attesting witness and also the fact that Peiris Singho had been an attesting witness to P 5, the deed of transfer by which the Plaintiff had purchased the subject matter. In the circumstances, the

learned District Judge had rejected the Defendant's version that he had signed the deed of lease not as a lessee, but as a witness. Moreover, the learned trial judge had rejected the claim of the Defendant to the ownership of the land on prescription as the Defendant had failed to adduce any evidence to prove his adverse position.

As such, this court can find no reason to interfere with the judgment of the learned trial judge and therefore dismisses the appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL