

C.A.1288_99(F)

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

Budurdeen Shahabdeen,
No.560, Anuradhapura Road,
Dambulla.

Plaintiff

C.A.Case No:-1288/99(F)

D.C.Matale Case No:-5175/L

V.

Rangiri Dambulla Corporative Society,
Nissanka Mawatha, Dambulla.

Defendant

AND NOW BETWEEN

Rangiri Dambulla Corporative Society
Nissanka Mawatha, Dambulla.

Defendant-Appellant

V.

Budurdeen Shahabdeen,
No.560, Anuradhapura Road,
Dambulla.

Plaintiff-Respondent

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

Counsel:-Athula Perera with Chathurani de Silva for the Defendant-

Appellant

Ikram Mohamed P.C with Palitha Subasinghe for the

Plaintiff- Respondent

Argued On:-11.06.2014/02.07.2014

Written Submissions:-27.02.2015

Decided On:-16.10.2015

H.N.J.Perera,J.

This was an action filed by the plaintiff-respondent in the District Court of Matale for a declaration of title and ejection of the defendant-appellant from the property described in the schedule two to the plaint and for damages. The case of the plaintiff was that the original owner of the property described in the 1st schedule was one Jayasundera Mudiyanseelage Appuhamy and the plaintiff derived title from him as pleaded in the plaint. The defendant-appellant prayed for a dismissal of the action and for a declaration that the said land belong to the State and that the defendant is the lawful lessee of the State.

After trial the Learned District Judge delivered judgment on 22.10.1999 and held in favour of the plaintiff-respondent. Aggrieved by the said judgment of the learned trial Judge defendant-appellant had preferred this appeal to this court.

The action from which this appeal arises, being a rei vindication action, the onus was clearly on the plaintiff-respondent to prove how he derived title to the land described in the 1st schedule to the plaint.

In *D.A.Wanigaratne V. Juwanis Appuhamy* 65 N.L.R 168, it was held that in an action rei vindication the plaintiff should set out his title on the basis on which he claims a declaration of title to the land and must, in court, prove that title against the defendant in the action. The defendant in rei vindication action need not prove anything, still less, his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established. The plaintiff must prove and establish his title.

The learned trial judge has in his judgment concluded that the plaintiff-respondent had proved his title to the land described in the 1st schedule to the plaint. The main contention of the Counsel for the defendant-appellant was that the plaintiff-respondent had failed to prove that he was the owner of the land described in the 1st schedule to the plaint. It was the contention of the plaintiff that at one stage one Rajaratnam, Gnanaprakasham, Selvaraja and Balachandran became the owners of the entire land in question. It was the position of the plaintiff-respondent that the said Selvaraja referred to above died leaving his widow Pushpalogini as his sole heir and the said Pushpalogini by Deed No.325 dated 28.12.1995 transferred her rights to the plaintiff-respondent. And the other three persons namely Balachandran, Rajaratnam and Gnanaprakasham too had transferred their rights to the plaintiff by deeds and that the plaintiff became the sole owner of the said land described in the 1st schedule to the plaint.

The plaintiff had stated that, Pushpalogini the wife of Selvarajah by deed 325 marked P8 had transferred all Selvarajah's rights to the plaintiff. It was contended on behalf of the defendant-appellant that however, in terms of the Matrimonial Rights and Inheritance Ordinance the said Pushpalogini would be entitled only to a half share of the rights of Selvarajah. It was contended by the Counsel for the defendant-appellant therefore the plaintiff-respondent had failed to prove that he is the sole

owner of the property in suit as pleaded. It was submitted that the plaintiff-respondent is not the owner of the entire land and in the circumstances the plaintiff-respondent is not entitled to obtain reliefs as prayed for in the plaint.

It is to be noted that at the beginning of the argument before this court both parties admitted that this action is a rei vindication action. It was further contended by the Counsel for the defendant-appellant that this action being a rei vindication action the plaintiff-respondent is bound to prove the title as he had pleaded in the plaint. Although a co-owner can institute a declaration of title action, in the rei vindication action the plaintiff-respondent should have full title of the land to institute a rei vindication action. In the circumstances the plaintiff-respondent's action should fail as the plaintiff is not the sole owner of the land in suit.

A court cannot grant any relief to a plaintiff except on which he has pleaded and proved to the satisfaction of court. The first issue raised on behalf of the plaintiff-respondent is that whether the plaintiff became the owner of the land described in the 1st schedule to the plaint as pleaded in paragraphs 3,4 5 and 7 of the plaint. The learned trial Judge had answered the said issue in the affirmative in favour of the plaintiff.

The learned Counsel for the plaintiff-respondent concede the fact that the plaintiff had failed to prove that he is the sole owner of this land but submits that as the plaintiff-respondent is admittedly the owner of a major share of this property, he is entitled to maintain this action for the ejection of a trespasser even though he may have filed action on the basis that he is the sole owner.

In *Loku Menika V. Gunasekera* 1997 (2) S.L.R 281 it was held:-

The plaintiff must set out his title on the basis on which he claims a declaration of title to the land and must prove that title against the defendant.

(1) A court cannot grant any relief to a plaintiff except on what he has pleaded and proved to the satisfaction of court.

(3) A defendant should not be called upon to meet a new case or new position taken by the plaintiff after he has already closed his case.

The plaintiff-respondent had failed to prove that he is the sole owner of the said land. The learned trial Judge has failed to correctly consider and analyse the documentary evidence placed by the plaintiff-respondent to prove his title to the said land. The issue No.1 should have been answered in the negative and the learned trial judge should have accordingly dismissed the plaintiff's action.

Our law recognizes the right of a co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land because the owner of the undivided share has an interest in every part of the entire land. But such was not the case formulated by the plaintiff-respondent. This been a rei vindication action the burden was on the plaintiff to prove and establish his title to the land in suit. The burden is on the plaintiff-respondent to establish his title he pleaded and relied on by him. Admittedly the plaintiff-respondent has failed to prove and establish that he is the sole owner of the land in suit. Therefore the issue No 1 should be answered in the negative. I am of the opinion that the plaintiff-respondent has failed to prove his title to the said land. Consequently, I set aside the findings, judgment and decree of the learned District Judge and answer

issue No.1 in the negative as 'No' and dismiss the plaintiff-respondent's action with costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL