

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

Leelaratne Illesinghe,

Kolonna.

Plaintiff.

Appeal No. 1010/96 (F)

D.C. Embilipitiya Case No.3902/L

Vs.

1. Ranketi Durage Solostina,
2. Namminnage Babasingho (deceased)
3. Namminnage Karunawathie,
Udahena Idama,
Kolonna.

Defendants

AND

1. Ranketi Durage Solostina,
2. Namminnage Karunawathie,
Udahena Idama,
Kolonna.

Defendants – Appellants

Vs.

Leelaratne Illesinghe,

Kolonna (now deceased)

Shanthi Sirima Illesinghe,
No. 62, Kumbuka West,
Gonapala Junction,
Horana.

Substituted Plaintiff – Appellant

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : Athuia Perera with Chathurani De Silva for Appellant.

: Anuruddha Dharmarathne for Respondent.

Argued on : 20.03.2015

Decided on: 16.10.2015

CASE- NO- CA. 1010/96/F- JUDGMENT- 16.10.2015

P.R.Walgama, J

The Defendant- Appellants (herein after sometimes called and referred to as the Defendants) had lodged the instant appeal seeking to set aside the Judgment of the Learned District Judge of Embilipitiya in the case bearing No. 3902/L, in the District Court of Embilipitiya, dated 25.06.1996, by which judgment and decree has been entered

in favor of the Plaintiff- Respondent.(herein after sometimes called and referred to as the Plaintiff.)

The Plaintiff instituted the above styled action, inter alia;

For a declaration of title to the land more fully described in the schedule to the plaint,

For an order, ejecting the Defendants from the land in suit and place the Plaintiff in peaceful possession of the said disputed property.

The factual matrix in relation to the Plaintiff's case are as follows;

The original owner of the land in issue was one Abraham Elesinghe, by virtue of the judgment and decree in the case bearing No.1815 in the Court of Request Ratnapura. The said Elesinghe died intestate without having an estate to be administered, and his son the Plaintiff became entitled to the land in issue, and had been in possession more than ten years. In the year 1988.04.17 said Elesinghe had entrusted one Lineris to look after the said land. On 1990.11.12 the Defendants had entered the said land, cut the produce of the land. On 1990.11.12 the Defendants had forcibly entered the temporary house in the said land. The Plaintiff has complained to the police and the Defendants had admitted the fact that they did in fact entered the land in issue.

As a comprehensive response to the above claim the Defendants had stated the following;

That the original owner of the land described in the schedule to the Answer, was one Mahadura Witharanalage Salonchi and after his

demise one Labuna became entitled to the land, and after his demise the Defendants became entitled to the land in issue.

The parties formulated the contested issues based on the above pleadings and proceeded to trial. The Learned District Judge considering the facts surfaced at the trial, entered judgment and decree in favour of the Plaintiff.

The plaintiff in adducing evidence in the above trial had marked a document as P5, which is the judgment in the case bearing No. 1815, by which judgment the plaintiff's father became entitled to the land in the schedule suit property. Subsequently by virtue of the deed marked P1 the plaintiff became entitled to the said property, as the other owners to the land had given their share to the Plaintiff by the afore said deed.

By the document marked P3, the plaintiff has made a complaint to the police regarding the forcible entrance to the disputed land, by P4 the complaint made by the person who was looking after the land in issue, was considered by the Learned District Judge and was of the view that the Plaintiff has proved title with stark evidence, and on the contrary the Defendants has failed to prove any title to the land in suit.

Further as per documents marked P7,P8,P9, and P10 it is established that the Defendants were residing at a different place and not in the land in issue. Therefore the Learned District Judge was of the view that the evidence adduced by the 1st Defendant is not trustworthy. In addition the statement made by the 1st Defendant was marked as

P11, according to which, the house situated in the land was rented out. But her evidence in court was that she was in occupation of this house and was in possession of the said land.

In the written submissions tendered by the counsel for the Appellants contended that the Plaintiff has not taken a commission to prepare a plan for the purpose of identifying the land in issue. But it is the position of the Plaintiff that as per Decree entered on 10.02.1944, in the case No. 1815 the Plaintiff's predecessor, the said Abraham Illesinghe was declared entitled to the land in schedule called Lunulandadehena situated at Kolonna. The Plaintiff adverted court to the fact that the East, South, and the Western boundaries and extent mentioned in the decree and the schedule to the plaint are similar. Further it is said the said boundaries are similar to the boundaries in the schedule to the title deed marked P1. Therefore the Plaintiff asserts that he has a clear title to the land in suit. Thus it is abundantly clear that the disputed land is identified as the land possessed by the plaintiff, and as such is entitled to the same.

It is pertinent to note that the 2nd Defendant in the above case is the father of the 1st Defendant in the present action, and it is stated by the plaintiff that the Defendant cannot deny the title of the Plaintiff.

The Appellants further assailed the title of the Plaintiff by stating that the Plaintiff's predecessor has not taken the possession of the land in suit. It is further noted that after entering the Decree in case No.1815, in favour of the Plaintiff, to recover damages awarded to the Plaintiff, the Defendants lands were sold in execution of the

decree and the Plaintiff himself has purchased the lots 1 to 11 given in the Sale Report dated 19/3/1945.

In the above context the Defendants appeal to set aside, the impugned judgment of Learned District Judge is devoid of merits, and should stand rejected.

Accordingly appeal is dismissed cost fixed at Rs.5000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree.

JUDGE OF THE COURT OF APPEAL