

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

1. Juwandarage Heras Perera
2. (Mrs.) K. Somawathie Perera  
Both of No. 33, Cornelis Mawatha  
Udahamulla, Nugegoda.

**Plaintiffs**

**C.A. No. 213/97(F)**

**DC Mt. Lavinia Case No. 1850/L**

**Vs**

Mrs. P. Murine Kusumawathie  
Of No. 15/2, Udumulla Passage  
Pagoda, Nugegoda.

**Defendant**

**AND**

1. Juwandarage Heras Perera (dead)
2. (Mrs.) K. Somawathie Perera  
Both of No. 33, Cornelis Mawatha  
Udahamulla, Nugegoda.

**Plaintiff-Appellants**

1A Juwandarage Dharmasiri Perera  
Of No. 38, Cornelis Mawatha  
Udahamulla, Nugegoda.

2A Juwandarage Dharmasiri Perera  
Of No. 38, Cornelis Mawatha  
Udahamulla, Nugegoda.

**Substituted Plaintiff-Appellant**

Vs

Mrs. P. Murine Kusumawathie  
Of No. 15/2, Udumulla Passage  
Pagoda, Nugegoda. (dead)

**Defendant-Respondent**

Ahangamage Vajira Wijayanthi  
Fernando, No. 24, Subadra Mawatha  
Thalawathugoda Road  
Pitakotte. (Substituted in place of the  
Defendant-Respondent)

**Substituted Defendant-Respondent**

**BEFORE**

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

**COUNSEL**

: Gamini Jayasinghe with

Jaliya De Silva and Purani

De Silva for the Substituted

Plaintiff Appellant.

P. Liyanage for the Substituted

Defendant Respondent.

**ARGUED ON**

: 12<sup>th</sup> March, 2015

**DECIDED ON**

: 06<sup>th</sup> November, 2015

Deepali Wijesundera J.

The plaintiff appellant has filed a case against the defendant respondent in the District Court for a declaration of title and for ejectment from the land described in the schedule to the plaint. After trial the learned District Judge on 27/02/1997 has dismissed the plaintiff's case. The plaintiff appellant has filed this application to set aside the said judgment of the District Court.

The learned counsel for the plaintiff appellants submitted *lot H* in *plan no. 145* was acquired entirely by the first and second plaintiff appellants as pleaded in the plaint filed in the District Court. Wilson Perera brother of the second plaintiff who was allowed to occupy premises no. 15/2 by the plaintiffs has given the said premises to the defendant's husband on a lease and later transferred it to the defendant on a deed in 1986. The defendant has claimed title to the said land on this deed. Wilson Perera has died in December 1987 after the property was transferred to the defendant's husband. The counsel for the plaintiff appellant submitted that Wilson Perera had no title to transfer to the defendant's husband, that he only occupied the said premises on the permission given by the plaintiff appellants.

The plaintiff appellants stated that there is a definite finding in the issues that the division pleaded by the plaintiff took place upon *plan no. 145* in the year 1949 and *lot H* was allocated to the second plaintiff and some other co-owners which were later acquired by the first and second plaintiffs. He further stated that there is also the finding that Wilson Perera became a co-owner of *lot G* with David Perera. Appellant stated hence in the year 1986 Wilson Perera could not have conveyed any share from *lot H* which according to the District Judge's findings and since the plaintiffs had exclusive title. Appellants stated the defendant respondent did not have paper title to *lot H*. The claim for prescriptive title, by the defendant can not stand since the defendant had agreed that they came into occupation as a tenant until 1986 when the transfer deed was given. The District Court case has been filed in 1988 therefore it is impossible to claim prescriptive rights.

The appellant citing the judgment in **Podihamy vs Elaris and others 1988 2 SLR 129** and **Sirajudeen and two others vs Abbas 1994 2 SLR 365** and stated that there is no evidence of adverse possession by Wilson Perera as stated in the above judgments and that there is no evidence in this regard.

The defendant respondent submitted that the second plaintiff and Wilson Perera were children of David Perera and Wilson Perera resided in the land and premises bearing *no. 2/15* which is the subject matter of this action. The house bearing *no. 2/15* was rented out to the husband of the defendant by Wilson Perera and later transferred to him by *deed no. 314* in 1986. After Wilson Perera's death in 1987 the plaintiff has instituted action in the District Court to eject the defendant. The respondent stated that the first plaintiff appellant admitted the ownership of Wilson Perera in the District Court while giving evidence. He further submitted that on the basis of the admission of the first plaintiff appellant the learned District Judge has arrived at a fair conclusion in his judgment.

The issue to be decided in the instant case is did Wilson Perera have title to *lot H* to transfer premises in suit. On the first plaintiff appellant's own admission while giving evidence in the District Court it has been proved that Wilson Perera had title to premises *2/15*. If the plaintiff appellant got the entirety of *lot H* in *plan no. 145* Wilson Perera could not have conveyed *no. 2/15* to the defendant's husband which is in *lot H*.

The learned District Judge had considered and evaluated the evidence placed before him and come to the conclusion that Wilson Perera had title to transfer the premises *no. 2/15*. It is the duty of the trial judge to evaluate the evidence placed before him and come to the correct conclusion. The appellate court will not interfere in such findings unless there is a grave misdirection by the District Judge.

On perusal of the judgment and the evidence placed before the District Court I see nothing wrong with the learned District Judge's findings. The learned District Judge has carefully analyzed the evidence placed before him.

For the afore stated reasons I decided to affirm the learned District Judge's judgment dated 27/02/1997 and dismiss the appeal with costs fixed at Rs. 10,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**