

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

W.M. Anulawathie- widow of
Mawathugoda Koralegedara
Punchibanda alias Jamis Appuhamy
(deceased)
Harispattuwa Udagampaha
Mawathapola
Alawathugoda.

2nd Defendant Appellant

2. K.G. Nandalatha Kumarihamy
Alawathugoda.
3. K.G. Ramyalatha Kumarihamy
Mawathapola
4. K.G. Chandrarathne Mawathapola
5. K.G. Indralatha Kumarihamy
Mawathapola

2nd to 5th Added Defendant
Appellants

C.A. Case No.1296/96(F)

DC Kandy Case No. 8826/P

Vs

W.M.T.B. Wijekoon
Mapangewatte
Alawathugoda.

Plaintiff-Respondent

S. Wijekoon Mudiyansele
Wijeratne Banda
Mawathapola
Alawathugoda.

1st Defendant-Respondent

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Naveen Marappana for the 2nd
Defendant Appellant and 2nd to 5th
added Defendant Appellants.

M. Nizam Kariapper with

M.C.M. Nawaz and

M.I.M. Iynullah and Sanfara

For the Plaintiff Respondents.

ARGUED ON

: 08th July, 2015

DECIDED ON

: 11th December, 2015

Deepali Wijesundera J.

The plaintiff respondent instituted a partition action in the District Court Kandy seeking to partition the land described in the schedule to the plaint against the first defendant and later by amended plaint second to fifth defendant appellants were added. The case was taken up for trial on 19 issues. The learned District Judge has delivered his judgment on 30/08/1996 in favor of the plaintiff respondent. Being aggrieved by the said judgment the defendant appellants preferred this appeal.

The plaintiff respondent's son Tikiri Banda in his evidence has referred to a previous case no. 18049 filed in the District Court of Kandy in 1963 where the second to third defendant appellants were parties. The appellants in their submissions stated that they disputed the plaintiff respondent's title in the said case, and a decree was entered against one Punchi Banda alias Jamis Appuhamy and not against the appellants. The appellants submitted since the date of filing the plaint in the previous case in 1964 the defendant appellants have had adverse possession to the corpus. He stated that the plaintiff respondent has purchased the corpus from the successors in title of the plaintiff in the said previous case bearing no. 18049 which was admitted by the plaintiff respondent's witness at the trial. The appellants stated by the

time the instant application was filed in the District Court of Kandy the defendant appellants had more than ten years of adverse and uninterrupted possession and earned prescriptive title to the corpus.

The appellants citing the judgment in **Silva vs Fernando 15 NLR 499** stated that it was decided "*the rights of the parties to an action have to be ascertained as, at the commencement of the action*". Counsel for the appellants stated that the appellants have clearly proved their prescriptive title to the corpus and that the learned District Judge has erred in holding that the appellants have not proved prescriptive title to the corpus. He further stated that the learned District Judge failed to consider and analyse the aforementioned facts and the legal position clearly established by the defendant appellants.

The learned counsel for the plaintiff respondent stated that the learned District Judge had come to a correct finding considering the evidence led before him and also considering the documents marked and that the appeal should be dismissed with costs.

The respondent's counsel on issue no. 15 being answered in the negative stated citing the judgment in **Mithrapala and others vs Ikonis**

Singho 2005 (1) SLR 206 that where a party invokes the provisions of *Sec. 3 of the Prescriptive Ordinance* in order to defeat the ownership of the adverse claimant to immovable property the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights.

The learned District Judge has carefully analysed the evidence placed before him before coming to the final determination. The District Judge has relied on the previous action bearing no. 18049 in the said action the defendant Punchi Banda alias Jamis Appuhamy filed to claim ownership and ejectment order was issued against him. The second to fifth defendants are his wife and children according to the documents marked **P24 and P25**. The contesting defendants at the trial the second to fifth defendants claimed the property on prescriptive title and in the alternative prayed damages for the improvements done by them.

The plaintiff appellant has proved his pedigree by documents and evidence and it is the duty of the defendants who were seeking prescriptive title to prove the same as correctly stated by the learned District Judge.

For the afore stated reason I see no legal basis to allow the appeal of the defendant appellants. The judgment of the learned District Judge of Kandy dated 30/08/1996 is affirmed. Appeal is dismissed with costs fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL