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

C.A No. 1261/00(F)

D.C.Embilipitiya No. 4758/L

A. Ranjani Kumaranayake
Land No. 555, Kiriebbenara
Embilipitiya
Plaintiff

Vs

Somapala Gamage
Land No. 36, Bogaha Handiya
Kiriebbanara
Defendant

AND NOW BETWEEN

Somapala Gamage
Land No. 36, Bogaha Handiya
Kiriebbanara
Defendant-Appellant

Vs

A. Ranjani Kumaranayake
Land No. 555, Kiriebbenara
Embilipitiya
Plaintiff-Respondent

BEFORE: Deepali Wijesundera J.,
M.M.A. Gaffoor, J.,

COUNSEL Thushari Hirimutugala with H. Wijeratne for the Defendant Appellant
Kapila Sooriyarachchi with Yases Sakalasuriya for the Plaintiff Respondent

ARGUED ON : 15.02.2016

DECIDED ON : 05.05.2016

Gaffoor J.,

This is an appeal preferred by the Defendant Appellant (hereinafter referred to as the "Defendant") to have the judgment dated 23.08.2000 of the learned District Judge of Embilipitiya set aside and to enter judgment in favour of the Defendant.

This is a possessory action filed by the Plaintiff Respondent (hereinafter referred to as the "Plaintiff") against the Defendant. The Plaintiff states in her plaint that since 1970, she has been possessing and cultivating the land in dispute with banana, peanuts, onions etc., and in 1986, this land was surveyed and identified by the Mahaweli Authorities as Lot 769 ½.

On or about 27.10.1992, the Defendant had disturbed the Plaintiff's possession by encroaching on it, and over this dispute there was a case bearing No. 19918 in the Primary court of Embilipitiya under section 66 of the Primary Courts Procedure Act. It is on record that the learned Magistrate had ordered to seize the plantation of the Plaintiff valued at Rs. 20,072/- , which amount is deposited to the credit of the Primary court case. The Defendant had been placed in possession in the Primary Court case. Against this, the Plaintiff has filed this case in the District Court of Embilipitiya by presenting a plaint dated 27.09.1993, praying for judgment in her favour, for possession of the land and for the return of the sum of Rs. 20072/-. deposited in the Primary court case.

IDENTITY OF THE LAND

The Primary contention of the Defendant's Counsel before this court is that the Plaintiff has failed to identify the land in dispute. While the Plainiff has given some boundaries for the land described in the schedule to the Plaint, the Defendant has given some other boundaries in his Answer. Be as it may be, the land is identified as Lot "769 ½" by the Plaintiff, as well as by the Defendant and there is no dispute as to this Lot Number.

Furthermore when the dispute was referred to the Primary Court the Defendant did not raise any dispute as to the identity of the land. The crop was seized by an order of the court and its value of Rs. 20,072/- was deposited in court. When the crop was seized, it was admitted by the Defendant that the land in dispute was the land on which the crop was standing. Although the parties refer to a land by different boundaries yet, unmistakenly the Lot number is admitted by the parties as Lot 769 ½.

In the further written submissions para. 9, Counsel for the Defendant Appellant states this : (a) "though the reference number of the land described in the schedule to the Plaint and the land identified by the representatives of the Mahaweli Authority, who testified on behalf of the Defendant, are identical, the boundaries of the two lands and their respective nature are different from each other." Thus, it is admitted that though the nature is different, the land is identified as the same as the one referred to by Lot No. 769 1/2.

Therefore, the contention that the Plaintiff has failed to identify the land is untenable. In this regard the learned District Judge says in his judgment that the case be determined on the evidence. The land described in the schedule to

the plaint, the land described in the 2nd schedule to the Answer of the Defendant and the land disputed in the Primary court case are one and the same.

It must be noted Section 41 of the Civil Procedure Code refer to an action in respect of a specific portion of land i.e if a specific portion of a (larger) land is in dispute. That specific portion must be described in the plaint by reference to physical metes and bounds or by reference to a specific sketch, map or plan. In the present case, the land in dispute is not a portion but the whole land bearing Lot No. 769 ½, which is morefully described in the schedule to the Plaint.

The Plaintiff claims that since the land is a high land and she cultivated it with banana plants, peanuts and onions. These are "chena" cultivations which can be done only on a highland. But the Defendant says that it is a paddy land and he also cultivated banana plants. How it can be done in a paddy land is a question tht is not explained by him. The evidence of the Plaintiff was supported by the Grama Nildari who also says that upto 1992, the land was a high land and after 1992 it was made a paddy land. Nevertheless, it is abundantly clear from the evidence led in this case that prior to 1992, the land was possessed by the Plaintiff as a high land and cultivated on it some 'chena' plantation such as bananas, peanuts onions etc., and only in 1992, the Defendant has disturbed Plaintiff's possession on the strength of document marked "V2".

On a perusal of document marked "V2" , it appears that it had been issued on 28.11.1991 or on 07.01.1992. although it says that unauthorized occupation date is 1987, but no evidence is led in the case to prove this position.

It is in evidence that on or about 27.10.1992 the Defendant, with the help of Mahaweli Authorities had gone to the Plaintiff's land and dispossessed her . After this incident only, the Primary Court case had been instituted and thereafter the present civil case has been filed by the Plaintiff in the District Court. The learned District Judge has analysed the evidence of the witnesses given in this case and states that "the Grama Niladari's evidence corroborates the evidence of the Plaintiff that she was in possession prior to 27.10.1992 and the Defendant has failed to contradict this evidence and therefore a cause of action has accrued to the Plaintiff to regain her possession and to recover compensation from the Defendant's" (see page 3 of the Judgment). .

The possessory action is not a rei vindicatio action and therefore the question as to who is the owner is quite irrelevant. It is admitted in this case that the land in dispute belongs to the Mahaweli Authority and is a reservation adjoining lot 555, which is allotted to the Plaintiff. In a possessory action the only matter thtis looked into is whether or not the Plaintiff had possession ut dominus for a year and a day in terms of Section 4 of the Prescription Ordinance. Hence, the Plaintiff need not set out a title as in the case of rei vindicatio action. (see Abdul Aziz vs Abdul Rahim (1909) 12 NLR 330.

It is clear that prior to 27.10.1992, the Plaintiff was in peaceful possession of the land in dispute until she was disturbed

In the case of Perera vs Wijesuriya 59 NLR 529. It was held that the trespass without ouster may, in appropriate circumstances, amount to dispossession within the meaning of Section 4 of the Prescription Ordinance.

In a possessory action like the present case, the Plaintiff has to prove two ingredients (1) she was in possession of the land in dispute and (2) she was dispossessed by the Defendant otherwise than by process of law. In this case, both these elements are well established by the Plaintiff. The Plaintiff. having been in possession of the land for over a year and a day prior to 27.10.1992 is entitled to maintain a possessory action in terms of the law.

I wish to mention here that the Primary Court has made an initial mistake by placing the Defendant in possession of the land on the strength of the document marked "V2". It is not a matter for the Primary Court to decide on title but purely to prevent breach of the peace between the parties over a land dispute. If the Plaintiff had been in possession of the land over several years and especially within two months of the Report filed by the Police, the court should have allowed the party in possession to continue in possession and order the disputing party to file a civil action. The Primary Court instead of ordering the defendant to institute civil action on the document V2 had placed him in possession and directed the Plaintiff to seek civil remedy. This is in violation of the provisions of the Primary Court Procedure Act. The Defendant should have been referred to a civil action to prove his title by the document marked V2 issued to him by the Mahaweli Authorities in 1991.

Considering the facts, the law and the evidence led in this case, the Plaintiff has morefully identified the land in dispute which she possessed since 1970. Her possession had been disturbed on 27.10.1992 only after the Defendant was issued with the document V2 by the Mahaweli Authorities. The Plaintiff has proved that she had been in possession of the land prior to

27.10.1992 and was dispossessed on this date by the Defendant. This case has been filed on 27.09.1993 which is within one year of the dispossession of the Plaintiff. In all respect the Plaintiff has a right to bring this action in terms of Section 4 of the Prescription Ordinance.

For the above said reasons, I am not inclined to interfere with the judgment of the learned Additional District Judge. I affirm the judgment of the District Court and dismiss the appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL