

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

Anulawathie Gunathilake(deceased)
"Guna Walauwa", Hapugala,
Wakwella.

Plaintiff

CA No. 529/96 (F)

D.C. Galle 10851/L

Vs

K.C. Piyasena Dias (deceased)
Gunasekera Mawatha,
Hapugala, Wakwella.

1st Defendant

Reginald Dias (deceased)
Gunasekera Mawatha,
Hapugala, Wakwella.

2nd Defendant

Kusum Dias,
Waruni Dilipa Dias
Nandana Dammika Dias
Ranjith Suranga Dias
Geeth Tharanga Dias
All of

"Village Headman's House"
Gunasekara Mawatha,
Hapugala, Wackwella.

**2A to 2E Substituted-
Defendants**

AND NOW BETWEEN

Anulawathie Gunathilake(deceased)
"Guna Walauwa", Hapugala,
Wakwella.

Plaintiff – Appellant

Eugene Gerald Abeykoon
"Guna Walauwa", Hapugala
Wackwella.

Substituted - Plaintiff - Appellant

VS

K.C. Piyasena Dias (deceased)
Gunasekera Mawatha,
Hapugala, Wakwella.

1st Defendant – Respondent

N.W.K.L.Indrajith Mohan Dias
Senavi Wickrama
Hapugala, Wackwella.

**Substituted 1st Defendant –
Respondent**

Reginald Dias (deceased)
Gunasekera Mawatha,
Hapugala, Wackwella.

2ND Defendant

Kusum Dias,
Waruni Dilipa Dias
Nandana Dammika Dias
Ranjith Suranga Dias
Geeth Tharanga Dias
All of

"Village Headman's House"
Gunasekara Mawatha,
Hapugala, Wackwella.
2A to 2E Substituted –
Defendants – Respondents

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

COUNSEL : Rohan Sahabandu PC with
S.D. Withanage for the Appellant
Aravinda R.I. Athurupana with
Kamal Kolambage for the
Substituted Defendant Respondent

ARGUED ON : 12th November, 2015

DEDICED ON : 13th May, 2016

Deepali Wijesundera

The plaintiff appellant instituted action in the District Court of Galle seeking a declaration of title to lots 2A and 2B the land shown in plan no. 1055, which the plaintiff alleged the defendant forcibly encroached and is in possession cutting down trees. The defendant respondent averred long and undisputed possession. The trial was taken up on 13 issues the main issue

being whether the defendants have prescribed to lots 2A and 2B. At the trial the plaintiff and the surveyor of plan no. 1055 have given evidence on behalf of the plaintiff marking documents **P1 to P5**. For the defense the defendant has given evidence marking documents **1D1 and 1D2**. After trial the learned District Judge has answered the issue infavour of the defendant.

The learned counsel for the appellant submitted that the plaintiff proved his title and the defendant who claimed prescriptive title to lots 2A and 2B who had no paper title had to prove his prescriptive title. The District Judge in his judgment has stated that the plaintiff is a co owner of lot 2 and that his title to lot 2 was not contested by the defendant. The defendant only claimed lots 2A and 2B on prescriptive rights.

The appellants stated that when the plaintiff claims the entire land and the court finds he owns only a share and the defendant is a trespasser the plaintiff is entitle to a declaration that he is entitle to a share of the land and the eviction of the defendant from the corpus. The judgments in **Bernard vs Fernando 16 NLR 438**, **Harriet vs Padmawathie 91 (1) SLR 358** and **Attanayake vs Karunawathie 2003 (1) SLR 401** were cited. The argument of the appellant was that since the District Court found that the plaintiff was entitled to a share of the corpus it was for the defendant to prove his possession and prescriptive title to a part of the land.

The appellant further submitted that on behalf of the defendant only the defendant's evidence was given and no evidence was given to support his evidence on possession. The appellant stated that the learned District Judge has ignored the fact that the case was a rei vindicatio action and not a definition of boundaries case. The appellant submitted that the defendant had not satisfied the requirements of section 3 of the Prescription Ordinance by proving adverse possession of lots 2A and 2B, and that the mere statement of possession is not enough and cited the judgments in **Juliana Hamine vs Don Thomas 59 NLR 546** and **Alwis vs Perera 21 NLR 326** and **Karunasekera vs Abdul Hameed 68 NLR 352**.

The appellant stated that the learned District Judge failed to address his mind to physical possession of lots 2A and 2B by the defendant and has granted a declaration of title to the defendant when it has not been prayed for by the defendant. The appellant stated that there has been no evaluation of facts on possession.

The learned counsel for the defendant respondent submitted that the defendant's position in the District Court was that even if the plaintiff and her co owners and their predecessors in title may have had paper title to lots 2A and 2B that title had been extinguished by prescription thereof by the defendants and their predecessors in title.

The respondents stated that the District Judge's finding that the plaintiff was only a co owner of the said lot 2 was based on the plaintiff's own documents P1 and the plaintiff's evidence.

The respondent stated that no where in the District judge's judgment a declaration of title granted to the defendant, but only a finding to that effect which does not amount to granting of a declaration to that effect.

The respondent stated that the claim of prescriptive possession by the defendant was proved by the evidence regarding the boundary dispute in 1976 where it was found that the row of boundary trees was 20 years old and that the District Court action was filed in 1986.

The respondent on adverse possession stated that the plaintiff's attempt to oust him in 1976 and the defendant holding possession despite attempts to oust him makes it certain that he had held adversely to those who disputed with him. The respondent further submitted that the defendants were not agents or co owners of the plaintiff and the possession by the defendant did not amount to a possession by a co owner. The respondent possession on their own is for their own benefit. The respondent stated that there is no requirement to corroborate the evidence given on prescription since the plaintiff's evidence itself corroborated the defendant's evidence on possession.

The surveyor's report to plan no 1055 dated 04/07/1988 and the surveyors evidence at the District Court trial reveals that lots 2A and 2B are parts of lots 2 in the original plan in 1956 and that the defendants are in possession of the said lots. A wire fence was found on part of the boundary enclosing 19 trees, which the defendant and plaintiff both had claimed in the District Court.

The defendant respondents have claimed only prescriptive title to lot 2A and 2B which the learned District Judge has granted after trial. The plaintiff herself has admitted in evidence that the defendants are in possession of the said lots and have been in possession since 1976. The defendants have not disputed the plaintiff's title to lot 2 of the said plan. The learned District Judge after evaluation of evidence and documents have decided that the defendants are in possession of lots 2A and 2B and have prescribed to the said land. Which I find is correct on perusal of the evidence place before the District Court.

The appellant stated that the learned District Judge has given a declaration of title on lots 2A and 2B to the defendants without them asking for it. On perusal of issue no. 10 which was the main issue in the said trial and the answer given I find that the learned District Judge has merely answered the issue in question and not made any declaration of title. It is the finding of the learned District Judge.

For the afore stated reasons I am not inclined to set aside a well considered judgment on facts and law. The 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