

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

No. C.A. 1334/99 (F)

D.C. Kandy No. L/15013

Value: Rs. 2500

W.P. Jayathilake
No. 307, Attaragama,
Medawala,
Harispattuwa. (Deceased)

PLAINTIFF

Vs.

D.G. Manike
No. 307, Attaragama,
Medawala,
Harispattuwa. (**Deceased**)

DEFENDANT

AND BETWEEN

D.G. Manike
No. 307, Attaragama,
Medawala,
Harispattuwa. (**Deceased**)

DEFENDANT – APPELLANT

1. Jayasinghe Linde Gedera
Piyarathna

No. 320, Attaragama, Medawala,
Harispattuwa.

2. Jayasinghe Linde Gedera
Sugathapala
No. 320, Attaragama, Medawala,
Harispattuwa.

3. Jayasinghe Linde Gedera
Wimalawathie
No. 174, Palkumbura, Medawala,
Harispattuwa.

4. Jayasinghe Linde Gedera
Ariyarathna
No. 182/4, Palkumbura,
Medawala, Harispattuwa.

5. Jayasinghe Linde Gedera
Gunarathna
No. 11, Atanakadawala, Elahaera.

6. Jayasinghe Linde Gedera
Premarathna
No. 108/37, Newlin Nilwatta,
Pilapitiya, Muruthalawa.

7. Jayasinghe Linde Gedera
Kusumalatha
No. 77/1, Attaragama,
Pattiyawatta.

**A to G Substituted Defendants –
Appellants**

Vs.

W.P. Jayathilake
No. 307, Attaragama, Medawala,
Harispattuwa. (Deceased)

PLAINTIFF – RESPONDENT

1. Swarna Hemalatha Jayathileke
2. Shriyani Chandralatha
3. Pathma Weerasinghe
4. Nishanka Jayathileke
5. Warnasuriya Jayathileke
6. Wasantha Kumara

All of No. 320, Attaragama,
Madawala, Harispattuwa.

**A to F Substituted Plaintiffs –
Respondents**

PLAINTIFFS – RESPONDENTS

Before : P.R. Walgama, J

Council : Upul Ranjan Hewage for the Appellant.

**: Lasitha Chaminda for the Substituted – Plaintiff
– Respondents.**

Argued on : 20.07.2016

Decided on : 25.11.2016

CASE-NO- CA- 1334/ 99 /(F)- JUDGMENT- 25.11.2016

P.R. Walgama, J

The Plaintiff – Respondent (more fully referred to as the Respondent) instituted action in the District Court of Kandy in the case bearing No. 15013/L, and moved for the relief inter alia;

For a declaration of title of the Plaintiff- Respondent

AND

For an order of ejectment of the Defendant – Appellant, and everybody holding under him.

At the conclusion of the trial the Learned District Judge by her judgment dated 15/10/1999, entered a judgement and a decree in favour of the Plaintiff- Respondent.

Being aggrieved by the said judgment the Defendant - Appellant appealed to this court for an annulment or to vacate the said judgment.

In an action of this nature it is incumbent on the Plaintiff to prove the title to the subject land, appellate review the it is duty of this court to consider whether the Learned District Judge has given adequate attention to the same.

It is apparent from the pleadings of the Amended Plaintiff that the Plaintiff has gained title to the disputed land through the valid legal documents, viz the title deeds produced at the trial.

As per pleadings in the afore said Amended Plaintiff, one W.G.Punchi Naide was the original owner of the land more fully described in the schedule to the Amended Plaintiff.

The said Punchi Naide in 1892 by deed bearing No. 5173, has conveyed his title to Dingiri Amma, and said Dingiri Amma in 1924.07.28 by Deed bearing No. 438 conveyed her title to Attaragama Piyaratana Thero and said Thero conveyed the title to Mudiyansele Punchi Banda Ratnayake on 1938-05-30 bearing Deed No. 11279, and the said Punchi Banda Ratnayake in 1953 .07.14 has conveyed his rights to Ramon Kudatittawela by bearing Deed No. 1136, and Tittawella on 13 .12.1980 by Deed bearing No. 13132 has conveyed his rights to the Plaintiff accordingly.

Besides it is the position of the Plaintiff- Respondent that he and his predecessors in title had possessed the subject land over ten years and as such has prescribed to the disputed land.

But it is seen from the pedigree that the Defendant-Appellant is relying on is quite different to that of the Plaintiff. Nevertheless it apparent from the Defendant pedigree that she has admitted that afore said Dingirimanikas title and her rights had been conveyed to W.P. Manikethana.

It is contended by the Defendant-Appellant that at one stage the disputed land belonged to one Sethuwa who was the father of the Defendant-Appellant and he had built a house in the said land and after his demise the title has devolved on the Defendant-Appellant.

It is the categorical position of the Defendant – Appellant that she and her predecessors in title had possessed this land and had prescribed to the same.

Further it is contended by the Defendant-Appellant that she built the house depicted in plan No. 576 in lot No.1 made by B.P.Rupasinghe L.S dated 28th December 1987, and she is a co-owner of the land in issue. As such disputes the Plaintiff's title and prescriptive title to the subject land.

The land in issue is known as 'PETHIGE PITIYA HENA' more fully described in the schedule to the amended plaint. The said land is depicted in the plan stated above and was marked in the course of the trial without any objection of the Defendant-Appellant.

Further it is contended by the Plaintiff-Respondent that it is common ground, and had admitted specifically by the Defendant - Appellant that the Plaintiff's predecessors in title namely Jamis Kuda Thithawela and K.B .Ratnayake permitted the Defendant to occupy the land in issue. In addition it was admitted in evidence that K.B.Ratnayake's name is registered as the owner of this land in the Agricultural Land Register. The extract from the said Register has been marked as P9, and as per said document the owner of subject land has been the father of Kuda Thitawela and the Lessee cultivator was P.G.Ranmanika the Defendant in the present action. Hence it is abundantly clear that the Defendant-Appellant cannot claim prescriptive title over this land, as the pedigree shown by the Plaintiff-Respondent has been established at the trial in the original court. Therefore I am of the view that the Learned Trial Judge has correctly accepted the Plaintiff's pedigree and rejected the Defendant's as the Defendant - Appellant has admitted the Plaintiff's predecessors title to the land in issue.

It is established by the Plaintiff-Respondent that said Kuda Thitawela by Deed marked as P2, transferred his title to the Plaintiff-Appellant and the Plaintiff became the right full owner of the disputed land accordingly.

Therefore it was the categorical position of the Plaintiff- Respondent that the Defendant- Appellant has no right to challenge his title and prescriptive title to the disputed land.

The Defendant- Appellant has raised the following issues in the appeal, in that it is stated that the plaintiff has not formulated issues in accordance with the amended plaint. It is viewed from the original plaint the Plaintiff has stated P.B.Ratnayake as the original owner who conveyed the title to his son Kuda Tittawela who had conveyed the title to the Plaintiff-Respondent by virtue of deed No. 13132 dated 13.12.1980.

By the Amended Plaint the Plaintiff endeavoured to established his title by giving details of his predecessors in title beyond P.B. Ratnayake.

Further it is salient to note that Plaintiff- Respondent has categorically stated that pedigree in which the Defendant- Appellant is relying on are his ancestors viz a viz Manik Ethana is his great grand father and dingiri Ethana is his maternal grand mother and Heen Appu is his mothers father. Therefore it is asserted by the Plaintiff that his non of the afore

said ancestors had conveyed their title to the Defendant - Appellant.

In the afore said back drop even as per pedigree the Defendant- Appellant cannot claim any title and the issues framed by the Plaintiff- Respondent has confined only to the original plaint. By doing so no material prejudice has been caused to the Defendant—Appellant. Therefore the said argument of the Defendant- Appellant is devoid of merits and should stand rejected.

In addition to the afore said the Plaintiff- Respondent has stated that after he purchased the land in 1980 he possessed the same.

Hence in the above exposition of the facts and law I am persuaded to affirm the impugned judgment and dismiss the appeal.

Accordingly appeal is dismissed subject to a costs of Rs. 5000.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL