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

D.P. Sriyani Chandrika
No. B/135,
Vijayapura,
Chandayanthalawa

Plaintiff

CA 344/99/(F)

Vs.

D.C. Ampara – No. 287/L

W.P. Gunadasa
No. 3/125,
Vijayapura,
Chandayanthalawa

Defendants

AND NOW BETWEEN

W.P. Gunadasa
No. 3/125,
Vijayapura,
Chandayanthalawa

Defendants – Appellant

Vs.

D.P. Sriyani Chandrika
No. B/135,
Vijayapura,
Chandayanthalawa

Plaintiff - Respondent

BEFORE: **M.M.A.GAFFOOR J**
S. DEVIKA DE LIVERA TENNEKOON J

COUNSEL: **J. Jayawickrama with C. Rathnayake and A. Gunasekara for the Defendant – Appellant**

Lasitha Chaminda for the Plaintiff – Respondent

ARGUED ON: **24.10.2016**

WRITTEN SUBMISSIONS – Defendant – Appellant – 07.12.2016

Plaintiff - Respondent – 23.12.2016

DECIDED ON: **07.02.2017**

S. DEVIKA DE LIVERA TENNEKOON J

The Plaintiff- Respondent (hereinafter sometimes referred to as the Plaintiff) instituted action in the District Court of Ampara for *inter alia* a declaration that the Plaintiff is the licence holder of the land morefully described in the Plaint and further for an order ejecting the Defendant – Appellant (hereinafter sometimes referred to as the Defendant) his servants and his agents from the said land.

The Plaintiff in her Plaint dated 27.01.1995 stated that she was issued a permit dated 28.09.1983 under the Land Development Ordinance in respect of the land morefully described in the schedule to the Plaint and that the said land was continuously cultivated by her brother and thereafter by her husband. The Plaintiff contended that upon the demise of her father the possession of the corpus was handed over to the Defendant for the limited cultivation of the said

land during the 1994 'yala' period. The Plaintiff stated that subsequently when the Plaintiff resumed possession of the corpus the Defendant refused to allow the Plaintiff to cultivate the said land and thereafter preferred a complaint against the Plaintiff to the Police which resulted in Magistrate Court proceedings bearing No. 56916 in the Magistrates Court of Ampara against the husband of the Plaintiff. The Plaintiff further states that the Magistrates Court proceedings which were initiated under the provisions of the Primary Courts Ordinance were concluded in favour of the Defendant and possession of the corpus was vested in the Defendant. The Plaintiff in her Plaint reiterates the position that the possession of the corpus was transferred to the Defendant only for the limited purpose of cultivating the said land during the 'yala' period.

The Defendant filed answer in August 1995 and denied the contention of the Plaintiff and insisted that the Defendant has been in undisturbed and uninterrupted possession of the corpus for well over 20 years and that the Plaintiff has never been in possession of same and further that the instant dispute arose when a person named D. P. Akman forcibly tried to enter the corpus which resulted in Magistrate Court proceedings which thereafter vested the possession of the property with the Defendant. The Defendant further denied that the Plaintiff has any licence issued in her name over the corpus and that she has no entitlement to same. The Defendant in answer also claimed prescriptive title over the corpus.

Trial commenced on 05.02.1996 and 4 issues were raised on behalf of the Plaintiff and 3 issues were raised on behalf of the Defendant. The Plaintiff, the Land Officer, the Plaintiff's grandmother gave evidence on behalf of the Plaintiff and marked document P1. The Defendant, one Amarakoon Arachchilage Klirimudiyanse and one Sugathapala gave evidence on behalf of the Defendant.

The learned District Judge of Ampara delivered judgment on 07.02.1999 declaring the Plaintiff to be the permit holder of the corpus and held that the Defendant and his servants and agents were illegally in possession of same and therefore awarded damages to the Plaintiff. Being aggrieved by the said judgment the Defendant preferred the instant appeal.

The Plaintiff's claim is based on document marked as "P1" which is allegedly a permit issued under the provisions of the Land Development Ordinance. The said permit was issued to W. G. Sumanawathie (The Plaintiff's mother) and thereafter the Plaintiff contends that the said W. G. Sumanawathie nominated the Plaintiff as her successor and accordingly the Plaintiff became the permit holder of the corpus upon the demise of her mother the said W. G. Sumanawathie.

The Defendant contends the authenticity of the said document marked P1 and takes up the position that the same has been fabricated by the Plaintiff. The Defendant further contends that the document marked as "P1" has not been duly proved in trial.

In considering whether the said document "P1" was duly proved attention is drawn to page 49 of the appeal brief wherein the said document has been marked as accepted evidence at the close of the case for the Plaintiff. The Counsel for the Plaintiff relies on the case of Sri Lanka Ports Authority and another V. Jugolinija-Boal East 1981(1) SLR 18 in which it was decreed that;

> "if no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the curses curiae of the original civil courts."

Similarly in the recent case of Samarakoon V. Gunasekera and another 2011 (1) SLR 149 in which Amaratunga , J. held *inter alia* that;

"When a document is admitted subject to proof, the party tendering it in evidence is obliged to formally prove it by calling the evidence necessary to prove the document according to law. If such evidence is not called and if no objection is taken to the document it is read in evidence at the time of closing the case of the party who tendered the document it becomes evidence in the case.

On the other hand if the document is objected to at the time when it is read in evidence before closing the case of the party who tendered the document in evidence, the document cannot be used as evidence for the party tendering it."

Considering the above findings this Court finds that the document marked as "P1" has been duly proved at the trail since no objection was raised as to its admissibility at the closing of the Plaintiff's case.

Having considered its admissibility, I shall now consider the effect of the said document. The essence of the said document was corroborated by the Land Officer who gave evidence that the Plaintiff became the permit holder upon the demise of the original permit holder and that the said permit is still in force. The Land Officer refers to a report dated 10.07.1997 which further substantiates the Plaintiff's position. The Land Officer further states in evidence that to his knowledge and as per the aforementioned report that the Plaintiff was in possession of the corpus and that the Plaintiff was obstructed from cultivating the said land.

The evidence of the Plaintiff's grandmother, who incidentally is also the mother of the Defendant, is significant to determine the question of who possessed the corpus. She states in evidence that the Plaintiff cultivated the corpus for four years and that the possession of the corpus was transferred to the Defendant for

the limited cultivation for only one season and that the Defendant failed to revert possession to the Plaintiff. The narration the Plaintiff's grandmother provides the context on which the instant dispute arose and this Court finds that the credibility of the said witness has not been weakened by the Defendant by cogent evidence and as such the learned District Judge has fittingly relied on her evidence.

The learned Trial Judge by his impugned order has given additional weight and reliance to the testimony of the said witness by considering the demeanour of the said witness during trial.

The Counsel for the Plaintiff relies on the case of Alwis Vs. Piyasena Fernando 1993 (1) SLR 119 in which it was held that;

> "The Court of Appeal should not have disturbed the findings of primary facts made by the District Judge, based on credibility of witnesses."

In the case of De Silva & others Vs. Seneviratne & another 1981(2) SLR 7 it was held that;

> "Where the findings on questions of fact are based upon the credibility of witnesses on the footing of the trial judge's perception of such evidence, then such findings are entitled to great weight and the utmost consideration and will be reversed only if it appears to the Appellate Court that the trial judge has failed to make full use of his advantage of seeing and listening to the witnesses and the Appellate Court is convinced by the plainest considerations that it would be justified in doing so;"\

Considering the above precedent this Court finds that the learned Trial Judge was correct in accepting the narration of evidence of the Plaintiff's grandmother and was therefore correctly determined that the Plaintiff was in possession of the corpus upon the demise of the mother and then thereafter that the dispute

arose when the Defendant failed to return possession of the corpus after the same was handed over to the Defendant for the limited cultivation of the said land during the 1994 'yala' period.

The learned Counsel for the Defendant prudently drew the attention of this Court to the additional documents contained in the case record which have not been marked as evidence but are found before and after the document marked as P1. It is clear that the learned District Judge has not relied on the said documents but has solely relied on the strength of P1. I see no reason to suppose that that the learned Trial Judge has considered these additional documents in concluding on his determination and therefore concur with the findings.

The learned Counsel for the Defendant contends the authenticity of document marked as P1 and submits that the said document is riddled with inconstancies. The learned Counsel for the Defendant highlights the inconsistency between the date which appears at the bottom of the said document P1 i.e. 74.08.20 and the Plaintiff's position that she was issued the permit in 1983 as per her Plaint. It is further submitted that schedule 3 of the said document refers to the land being half an acre and not one and a half acres as contended by the Plaintiff. I take the view that the date which appears at the bottom of P1 relates to a subsequent entry made to item (2) of the 1st schedule of P1 by an authorised officer who identified the corpus as being one and a half acres and further described its boundaries. It is pertinent to note that the said description and extent corresponds with the schedule referred to in the Plaint. It is only after a subsequent entry on document marked as P1 that the Plaintiff claims title and the said entry has been counter signed, sealed and dated 28.09.1983.

Although the Counsel for the Defendant relies on a certified copy of the order of the learned Magistrate in case bearing No. 5696 purportedly marked as V1 it must be noted that the document marked as V1 found in the case record is in

fact proceedings in case bearing No. A R 1342. Considering the heavy reliance the Defendant places on the findings of Magistrates Court case bearing No. 5696 the onus was on the Defendant to produce same in trial especially where the Defendant claims prescriptive title over the corpus. This Court finds that the learned Trail Judge has correctly held that the Defendant has not proved prescriptive title to the corpus in the absence of evidence of adverse possession and in any event the question as to prescription does not arise on state land.

For the reasons morefully described above the Appeal is dismissed without costs and considering the lack of evidence on behalf of the Plaintiff to quantify the damages suffered in this regard the award of damages is hereby rescinded.

Appeal dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor J

I Agree.

Judge of the Court of Appeal