

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

Abdul Cader Umma Habeeba

C.A.No. 499/99 (F)

D.C.Anuradhapura No.15197/L.

Theliyawa, Wijithapura,

Kalawewa

Substituted –Plaintiff-Appellant

Vs.

1. Habeeb Mohamed Cassim

Alias, Farook

2. J.Laila Ummah

Both of

Amunuwettiya

Wijithapura

Defendant-Respondents.

C.A.No.449/99 (F)

D.C.Anuradhapura No.13197/L.

Before : M.M.A.Gaffoor,J. &
S.Devika de L.Teenekoon,J.

Counsel : N,M.Shaheed for the Plaintiff-Appellant

Rohan Sahabandu P.C. with Diloka Perera
for the Defendant-Respondent

Argued on : 25/01/2017

Written Submissions of the Appellant on : 03/05/2017

Written submissions of the Respondents on : 04/05/2017

Decided on : 03/07/2017

M.M.A.Gaffoor,J.

This is a Rei - Vindicatio action filed by the Plaintiff-Appellant in the District Court of Anuradhapura against the Defendants -Respondent seeking the following reliefs inter alia;

1. A declaration that the Appellant is the owner of the premises which was described in the third schedule to the Plaint.
2. for ejectment of the Respondents and all those holding under them from the said premises.

In a Rei -Vindicatio action the cause of action is based on the sole ground of violation of right of ownership to the land. In a Rei- Vindicatio action the plaintiff claims as the owner of the land he has the dominum and that land is in the unlawful possession of the defendant.

In this matter plaintiff-respondent stated his complaints inter alia that the land was belonged to 11 persons granted by crown and they had divided it amicably and were in possession to the said lots and that the second schedule belonged to one Uduma Aiysa, who was the plaintiff-appellant's

Grandfather. The said Uduma Aiysa transferred ½ share of the land described in the second schedule to Mohammedu Lebbe by deed No.96 dated 11.12.1996. The said Uduma Aiysa died without leaving a last will for the balance half shares. By paternal inheritance the appellant's father Omardeen possessed the same, on behalf of him and his co-owner siblings. Omardeen died and his rights devolved on his only heir the plaintiff-appellant who possessed and prescribed to it.

In this matter it is important to consider whether plaintiff-appellant proved he has the dominum over the land morefully described in the schedule of the plaint.

In this case of *Gnaneswaryans others Vs. Kanapathipillai Thamu and other BASL NEWS* (5/5/2004 C.A. Appeal No.642/86 (F)) decided by Shiranee Thilakawardena ,J. (P/CA) and P.Wijeyaratne,J. allowing appeal held “ In the case of *Muathusamy Vs. Seneviratne 321 CLW 91* it has been specifically stated that in action for declaration of title it is for the plaintiff to establish his tile to the land he claims and not for the defendant to show that the plaintiff has no title. This was followed in the case of *Peiris Vs.*

Savunhamy 54 NLR page.207 where it had been held in an action for declaration of title to land where the defendant is in possession of the land in dispute, the burden is on the plaintiff to prove that he has the dominum.

However in this matter of *Rei -Vendicatio* action the plaintiff-appellant failed to prove that the land was possessed by the 11 persons and according to the shares they had for over 10 years prescription. And also he failed to prove that the plaintiff-appellant's grandfather originally possessed his share for over 10 years. Therefore it is very clear plaintiff-appellant failed to prove his title.

But the plaintiff's action is for a declaration of title alleging that the defendant was disputing his rights as the owner. In such case when the title is admitted the burden is on the defendant to establish the legality of her possession.

Here defendant – respondents led in evidence by two deeds which were subsequently produced marked as V2 and V3 at the trial. This was a

new stance taken by the respondents after the closed plaintiff appellant's case was closed. Which is somewhat materially different from that what was alleged by them in answer. And also Defendant's failed to prove V2 and V3 that the deeds have not been registered at the Land Registry. And also it should be noted the interpretation of the term "Registered" according to the Interpretation Ordinance is that "Registered used with the reference to a document shall mean registered under the provisions of the law for the time being applicable to the registration of such documents". Because of the non-registration both deeds cannot claim legal binding.

In a Rei-Vindicatio action the plaintiff must proof and establish his title. He cannot ask for a declaration of title in his favour merely on the weakness of the Defendant's title. All these cases have been followed by the case of *Luwis Singho Vs. Ponnemperuma 1996 2 SRI L.R. Page 320*. Therefore plaintiff- appellant cannot ask for declaration on the strength of the defendant's title which was not established.

In these circumstances I am of the view that the learned District Judge has very carefully and correctly arrived at his determination with correct

perspective and analyzed the entire verbal and documentary evidences place before him to come to his conclusion.

Therefore the appeal is dismissed with costs fix at Rs. 25,000/-.

JUDGE OF THE COURT OF APPEAL

S.Devika de L. Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL