

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

Mirissage Suraweera,  
Welabeda Watta,  
Mihiripenna,  
Talpe.

**Plaintiff**

Court of Appeal  
Case No. C.A.1309/2000(F)

Vs.

District Court of  
Galle Case No. 13639/L

Lanka Geeganage Dayawathie,  
Rangahawatta alias Palapinwatta,  
Thalpe.

**Defendant.**

**AND**

Mirissage Suraweera,  
Welabeda Watta,  
Mihiripenna,  
Talpe.

**Plaintiff-Appellant.**

Vs.

Lanka Geeganage Dayawathie,  
Rangahawatta alias Palapinwatta,  
Mihiripenna,  
Thalpe.

**Defendant-Respondent.**

BEFORE : E.A.G.R. Amarasasekara, J.

Counsel : Mr. Sunil Cooray for the Plaintiff Appellant.  
Mr. D.M.J. Bandara for the Defendant Respondent.

Decided On : 2018.06.22.

E.A.G.R. Amarasasekara, J

When this matter came up before me for argument on 24.01.2018 both parties agreed to dispose this matter by way of written submissions. Accordingly, both parties have tendered their written submissions.

The Plaintiff Appellant (herein after referred to as the Plaintiff) filed the District Court of Galle case No. 13639/L against the Defendant Respondent praying inter alia;

1. A declaration of title to the land called Palapinwatta alias Rangahawatta of 2 roods more fully described in the paragraph 2 of the plaint,
2. Ejectment of the Defendant and all claimed under her,
3. Damages.

The Plaintiff's position was that he became the owner of the subject matter in the manner described in paragraph 3, 4, 5 and 6 of the plaint and the Defendant came to the land in 1994 under his license. The Plaintiff has further stated that in breach of the undertaking given by the Defendant to the effect that he would leave the subject matter at the end of February 1997, she remained in the subject matter and he sent a letter of termination of the license through his lawyer which receive no response from the Defendant. The Plaintiff has taken up the position that the Defendant is in unlawful possession from 01.04.1997. The Defendant filing his answer dated 05.02.1999 has denied that she is a licensee of the Plaintiff and as per paragraph 7, 8 and 9 of the answer has claimed prescriptive title to the house and soil underneath it. The defendant's stance was that her predecessors were in

adverse possession from 1968 since her mother started to construct a house in 1968 without anyone's permission.

However, the Plaintiff's case presented before the Learned District Judge has following elements;

1. The Plaintiff is the owner of the subject matter.
2. The Plaintiff placed the Defendant as a licensee.
3. The Defendant refused to leave the subject matter when asked and even after the termination of license.
4. Therefore, the defendant became a trespasser in the subject matter.

If the Plaintiff was successful in proving that the Defendant was his licensee, he need not have strictly proved his title to the land as in a vindicatory action due to the effect of section 116 of the Evidence Ordinance. As per the answer given to issue no. 5, the Learned District Judge has come to the conclusion that the Plaintiff failed in proving the licensor-licensee relationship between Plaintiff and the Defendant. The evidence led at the trial indicate that the Defendant's position was that her mother resided in the subject matter from 1956 until she died in 1979. Further she has said that the funeral of her mother, her and her sister's marriages took place in the house within the corpus. The Defendant has further stated under oath, though she left to Wennappuwa after her marriage, her sister stayed in the subject matter till she built a house on a land bought by her and left the corpus. The Defendant's evidence was that she came back to the subject matter after the death of her husband on the rights accrued to her from her mother. Even the Plaintiff while giving evidence had admitted that the mother of Defendant resided in the corpus till 1979. He has admitted that Defendant too was there in the corpus till 1979. In this backdrop the learned District Judge has not believed the Plaintiff's story of licensee - licensor relationship between the Plaintiff and the Defendant from the year 1994 onwards till its purported termination in 1997. There was no documentary proof or independent evidence to support the

plaintiff's version. The findings of the learned District Judge with regard to facts cannot be lightly interfered with by an appellate court unless they are irrational or perverse. {Vide Alwis Vs Piyasena Ferando (1993) (1) SLR. 119, Frad Vs Brown and Company 28 NLR 282, De Silva Vs Senevirathna 1981(2) SLR 8}. I do not have sufficient material before me to say that the findings of the learned District Judge are irrational or perverse. In one occasion the defendant had said that Sugunawathi Gunawardena, one of the predecessors in title of the Plaintiff as per the plaint, possessed a portion of land beyond the railway line but later on the Defendant denied that she had seen said Sugunawathi Gunawardena and any knowledge with regard to her but the learned District Judge who had the opportunity to observe the Defendant giving evidence has not moved due to this answer which appears to be contradictory but relied on the Defendant's evidence. I do not think that this court without having the opportunity of observing the witnesses should interfere with the findings of the learned District Judge owing to this single occasion of seemingly contradictory answer. Perhaps the Defendant would have revealed what she has heard about the portion of land belongs to Sugunawathi, without knowing or ever seeing said Sugunawathi.

It must be noted that the case presented by the plaint as well as the issues of the Plaintiff is a case of over holding licensee even after the termination of license.

When the stance taken by the Plaintiff stating that the Defendant is his licensee from 1994 fails, the Plaintiff case too must fail. The Plaintiff neither in the Plaint nor in evidence has stated that the Defendant's mother was his or his predecessor's licensee. Though he has admitted that the mother of the Defendant was there until 1979, the legal basis for her presence with the family there in the subject matter from 1956 to 1979 was not revealed in evidence. Such a long period of possession of the house within the corpus is indicative of her entitlement to the property when there is no evidence of license or permission given to her by a title holder of the land. For the forgoing reasons, it is my considered view that this appeal should fail. Even if this court treat the District Court case as a re vindicatio action, the Plaintiff to be successful he must strictly prove his title and that the Defendant is a trespasser.

This Court observes that;

1. The Plaintiff failed in proving that he got title to the land in the manner he averred in paragraph 3 of the Plaint. He has not marked and submitted the deed No. 16026 and 2444 referred to in that paragraph.
  
2. The Plaintiff has not submitted any material to prove that Johanis Silva Abesena was the original owner of the balance portion of the land as averred in paragraph 4 of the Plaint and H.S. Abesena is the sole heir of that purported original owner. Furthermore, there is no material to show that Suganawathi Gunawardena is the sole heir to H.S. Abesena.
  
3. Even if this Court consider deed No. 8776 marked as P1 conveys rights of the land, the maximum it conveys is 5 perches out of 2 roods. The other co-owners to the corpus are unknown or not proved. The stance of license given to the Defendant by the Plaintiff was not proved. The Defendant's mother could be a co-owner or a licensee of another co-owner. In such a back drop the Defendant does not fall within the category of trespasser.

For the forgoing reasons I do not intend to interfere with the findings of the learned District Judge. Hence the appeal is dismissed with cost.

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E.A.G.R. Amarasekara, J.  
Judge of the Court of Appeal