

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

Andrew Emmanuel,  
Murugan Kovilady,  
Linganagar,  
Trincomalee.

Defendant-Appellant

**C.A. Appeal No. 429/99(F)**

**D.C. Trincomalee Case No. 568/96**

Vs.

Sellathurai Yogarasa  
Murugan Kovilady,  
Linganagar,  
Trincomalee.

Plaintiff-Respondent

**BEFORE** : M.M.A. GAFOOR, J.

**COUNSEL** : Rudana Zahir for the Defendant-Appellant  
Hiran de Alwis for the Plaintiff-Respondent.

**WRITTEN SUBMISSIONS**

**TENDERED ON:** 19-02-2018

**DECIDED ON** : 11<sup>th</sup> July, 2018

**M.M.A.GAFOOR, J.**

In this case, the learned District Judge of Trincomalee has delivered the order on 29.04.1999 in favour of the Plaintiff-Respondent (hereinafter sometimes referred to as the "Plaintiff"). Being aggrieved by the said order the Defendant-Appellant (hereinafter sometimes referred to as the "Defendant") filed this appeal.

The Plaintiff-Respondent states that the questioned land is a State Land situated in Linganagar, 2 miles away from Trincomalee. The Plaintiff-Respondent cleared the said land and built a cottage and lived in there since 1987. The Plaintiff testified that he was granted a permit bearing No.TG/LN/244D/05 to occupy the said land of the State by the Assistant Land Commissioner of Trincomalee. It was issued on 03.08.1989 and marked as P1. Due to the violence/unrest in Trincomalee in 1990 the Plaintiff fled to India and returned to Sri Lanka on 21<sup>st</sup> March, 1995. To prove that he was in India as a refugee, he produced the Camp Leaving Certificate which was issued by the Government Agent, marked as P2 (at page 94 and 95 of the original brief). In his evidence it was revealed that, after returning to Sri Lanka, he went to his land and he identified that the cottage erected by him was not there. Instead of that there was a Olai leaf cottage and the Defendant was living there. The Plaintiff was debarred from entering to the said land by the Defendant. Therefore, the Plaintiff

lodged a complaint to the police on 19.04.1995 (marked as P4 at pg.98 of the brief).

Thereafter, the Plaintiff instituted an action in the District Court of Trincomalee bearing case No.568/96 on 09<sup>th</sup> January 1996 seeking a declaration that the plaintiff is entitled to possess the questioned land and an order against the defendant for ejection from the said land and damages assessed at the rate of Rs.200/= per mensem from 1995 till the Plaintiff be placed in the possession of the said land.

According to the Defendant, the permit holder of the said land is his mother namely, Micheal Agnes. The case for the Defendant commenced with the evidence of his mother. Micheal Agnes (mother of the defendant) testified that she obtained a permit marked as D1 (at page 102 of the brief) on 31<sup>st</sup> December 1971 and lived in the said land with her son. She further stated that during the unrest period her family stayed in Palaiyuttu Church in 1986 or 1987 and returned.

The Court has to examine the validity of the questioned permits of "P1" and "D1".

Referring to the document marked as "P1", the Land Officer stated in his evidence that he could not trace the questioned permit but he has

brought the ledger. After comparison between the permit and the ledger, witness confirmed that there are ledger entries pertaining to "P1". The number of he said permit is TG/LM/244D/05. The name of the permit holder referred to as Sellathurai Yoganathan (Plaintiff). The date of grant is 3<sup>rd</sup> March 1989. Witness also testified that there is no remarks in the ledger whether the permit is valid or not, but he says that it was a valid permit for a year. Witness further stated that an annual permit issued to one who is displaced due to riots will not be cancelled. But if the annual permit is not renewed after one year it will be expired automatically. At page 11 of the brief he states as follows :-

Q: When a person displaced due to riots, if trespassed by another person will you consider the fact that he was displaced due to riots?

A: Yes, we have got instructions regarding it, we will not cancel such permits.

According to the permit, the land is situated in Nadarajan Street, Linganagar. This is a 20 perch extent land. The boundaries are not mentioned in the permit. Boundaries should have marked in the permit but did not. He also stated that he cannot say, for which land the permit was issued. The permit was issued by Deed Officer Thangarasan. A rubber stamp is placed on the permit "P1" and the permit has not renewed since 1989. According to the Plaintiff that the Land Officer showed him the

boundaries of the said land after the permission was granted. The boundaries are as follows:-

East- Kalimuthy  
North- Velayuthan  
West- was a road  
South- was a road.

Referring to document marked as "D1", Land Officer stated that "D1" is an annual permit. He also stated that this is an alternate land which was given for an encroacher of Plantain Point. That permit was issued by the District Land Officer and it was issued on 9<sup>th</sup> November 1971 and that permit has no number. There is no rubber stamp on the permit "D1". At page 18, it is stated,

Q: By comparing "P1" and "D1" can you tell which permit clearly indicates where the land is situated?

A: In "P1" it has been clearly mentioned as Nadarajan Street.

The Land Officer testified that there was a fire took place in the Land Registry in 1979 and several documents were burnt. He further added that before issuing a permit they collect information from those who are living in the neighbourhood. According to the Defendant, the boundaries of the land is as follows:-

West- Joseph

South- a lane

North- main road

His land is 10 feet from sea.

The next point is whether the Defendant has a right to possess the said land. According to the evidence of the Defendant, he has failed to prove that he and his family lived in the questioned land since 1971. The identity card of the Defendant indicates a different address. The Defendant obtained his identity card in 1972 and his address was mentioned as No.5, Orr's Hill, Trincomalee.(at page 33 of the brief). The Defendant stated that his voters card used to come to Linganagar but, his voting place is Trincomalee Town. He has failed to submit it to Court.

The credibility of the evidence of the mother of the Defendant (the permit holder of D1) has failed, because she contradicted her own evidence. At page 23 witness stated that a neighbour named Manohara is the elder brother of Soori ( Plaintiff) and they lived next to her land. But at page 27 she denied that and stated, she does not know whether they have a relationship or not. Witness also stated that she signed the permit "D1" but when it was shown to her at the trial, she stated that she couldn't see the document due to weak eye site. Witness stated that she couldn't explain the boundaries of the land and her evidence indicates that she

doesn't know about her neighbours. According to the aforementioned evidence Court is of the opinion, that the witness is not a credible witness and it is unsafe to act upon her evidence.

Having considered the evidence of the Defendant and the mother of the Defendant, Court is also of the view, that they have failed to prove, they hold a valid permit to possess the said land and that they occupied in the said land since 1971.

Therefore, I see no reason to interfere with the judgment of the learned District Judge. For the foregoing reasons, I dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

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