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

1. Francis Gajaman alias Madihe Gajamange Karolis alias Madihe Gajaman Francis (deceased),

1A. Dastan Gajaman alias Madihe Gajamange Dastan,

2. Dastan Gajaman,
3. Wijesiri Gajaman,
4. Sandya Gajaman,

All of Polwatta,
Molakapu Patana,
Weerawila,
Tissamaharama.
Defendants-Appellants

CA CASE NO: CA/571/2000/F
DC TISSAMAHARAMA CASE NO: 18/96/L

Vs.

1. Madihe Gajaman Leelawathi alias Leelawathi Gajaman alias Madihe Gajaman Leelawathi de Silva (deceased),
2. Naurunna Guruge Denistan de Silva (deceased),

2A. Madihe Gajaman Leelawathi alias Leelawathi Gajaman alias Madihe Gajaman Leelawathi de Silva (deceased),

All of Polwatta, Molakapu Patana,
Weerawila,
Tissamaharama.

1A. Naurunna Guruge Chelabhaya Dunstan de Silva,

1B. Naurunna Guruge Sriyani de Silva,

1C. Naurunna Guruge Lalitha de Silva,

1D. Naurunna Guruge Methsiri Alexander de Silva,

All of "Mettha",
Gorakana,
Moratuwa.

Substituted Plaintiffs-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: W. Dayaratne, P.C., for the Appellants.

Respondents are absent and unrepresented.

Written Submissions of the Appellants have been filed on 21.10.2013.

Decided on: 20.09.2018

Samayawardhena, J.

The plaintiffs instituted this action in the District Court of Hambantota seeking ejectment of the defendants from the land in suit and damages on the basis that the defendants are licensees of the plaintiffs. The defendants sought dismissal of the action on the basis that the land does not belong to the plaintiffs, but to the State. After trial, the learned District Judge entered the Judgment for the plaintiffs. Hence this appeal by the defendants.

There cannot be any dispute that the 1st defendant who is the brother of the 1st plaintiff came into occupation of the land described in the 1st schedule to the plaint with the leave and licence of the latter. This was *inter alia* admitted by the 1st defendant in P1 which is a letter sent by the 1st defendant to the plaintiffs and P3 which is a complaint made by the 1st defendant to the police. This was also categorically admitted by the 2nd defendant who is the son of the 1st defendant in his evidence. The 2nd defendant also further admitted that at the beginning they occupied the house which was already there and later put up a new house without any permission from the 1st plaintiff and it is because of this new construction the plaintiffs instituted this action.[1] From P2 and P3 it is clear that the new house was put up under protest about one month prior to the institution of the action.

The main defence of the defendants as crystallised in the issues is that the plaintiffs are not the owners of the land and therefore the plaintiffs cannot maintain this action.

During the course of the trial the defendants seem to have modified this defence without raising a specific issue to say that the disputed portion of the land depicted as Lot 1 and 2 in Plan marked X is a canal reservation, and therefore the plaintiffs could not have given that portion to the defendants to occupy as it is a State land.

The new house which the defendants have put up is in Lot 2 of the said Plan, and there is no scintilla of evidence that Lot 2 is a State land or canal reservation (even though one can argue that Lot 1 is a canal reservation).

[1] Pages 90-91 of the Appeal Brief.

By Plan X it is abundantly clear that the whole land separated for convenience in the Plan as Lots 1-3, is one larger block of land with one boundary fence around the whole land and without any distinct boundary lines between the three Lots.

Even assuming without conceding that the disputed portion of the land is a State land and the plaintiffs have no title to the balance portion of the land, still the defendants cannot succeed in their defence so long as it has been proved that the defendants came into possession of the land with the leave and licence of the plaintiffs. If the defendants are desirous of disputing the title of the plaintiffs to the land to which they came into occupation as licensees they must first quit the land and then litigate as to the ownership.

Section 116 of the Evidence Ordinance states that "*no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.*"

In *Reginald Fernando v. Pubilinahamy*[2] the Supreme Court held that: "*Where the plaintiff (licensor) established that the defendant was a licensee, the plaintiff is entitled to take steps for ejectment of the defendant whether or not the plaintiff was the owner of the land.*"

The same conclusion was reached in *Ruberu v. Wijesooriya*[3] where it was held that: "*But whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee (the defendant-respondent) obtaining possession is deemed*

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[2] [2005] 1 Sri LR 31

[3] [1998] 1 Sri LR 58 at 60

to obtain it upon the terms that he will not dispute the title of him, i.e. the plaintiff-appellant without whose permission, he (the defendant-respondent) would not have got it. The effect of the operation of section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must, first, quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-appellant is perforce an admission of the fact that the title resides in the plaintiff."

This principle, which stands to reason, was emphasized in a long line of cases including *Aluar Pallai v. Karuppan*[4], *Pathirana v. Jayasundara*[5], *Bandara v. Piyasena*[6], *Mary Beatrice v. Seneviratne*[7], *Gunasinghe v. Samarasundara*[8], *Wimala Perera v. Kalyani Sriyalatha*[9].

Appeal is dismissed without costs.

Judge of the Court of Appeal

[4] 4 NLR 321

[5] (1955) 58 NLR 169 at 173

[6] (1974) 77 NLR 102

[7] [1991] 1 Sri LR 197 at 202

[8] [2004] 3 Sri LR 28 at 34-35

[9] [2011] 1 Sri LR 182 at 185-186