

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

C.A. 871/99 (F)

D.C. Monaragala, Case No.
1542/L

Wanasinghe Mudiyansele
Dharmasena,
Thampalawela,
Namaloya,
Dhambagolla.

PLAINTIFF

Vs.

D. M. Punchimenika *alias*
Sumithra,
Mellagama,
Medagama.

DEFENDANT

AND NOW BETWEEN

D. M. Punchimenika *alias*
Sumithra,
Mellagama,
Medagama.

DEFENDANT-APPELLANT

Vs.

Wanasinghe Mudiyansele
Dharmasena
Thampalawela,
Namaloya,
Dhambagolla.

PLAINTIFF-RESPONDENT

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

COUNSEL : Daya Guruge with Rohitha
Wimalaweera for the Defendant-
Appellant

N.T.S Kularatne with S. A.
Kulasooriya for the Plaintiff-
Respondent

WRITTEN SUBMISSION

FILED ON : 30.06.2018 (by the Plaintiff-
Respondent
02.07.2018 (by the Defendant-
Appellant)

ARGUED ON : 13.06.2018

DECIDED ON : **04.10.2018**

M. M. A. GAFOOR, J.

The Plaintiff-Respondent (hereinafter referred to as the 'Respondent') instituted the instant action in the District Court of Monaragela seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the Defendant-Appellant (hereinafter referred to as the 'Appellant') and all persons claiming under the Appellant from the said land and damages in a sum Rs. 10,000 per annum till the Plaintiff-Respondent is restored to possession thereof.

The Position taken up by the Respondent was that he is the lawful owner of the land in question; Wanasinghe Mudiyansele Balawardena ('Balawardena') who transferred the said land to him by deed No. 648 dated 01.06.1993. Documents marked by the Respondent show that Balawardena owned that property under a Swarnabhoomi Deed.

The Respondent further stated that since June 1993, he began cultivation in the property which is approximately 2 Acres. And the Appellant entered in to the said land by force and has been in occupation thereof without any rights.

The position taken by the Appellant was little different, she has submitted a chain of facts and issues that:

- She along with her children was living with the aforesaid predecessor, Balawardena as husband and wife (*during the cross-examination Balawardena admitted that she was his mistress - page at 43*) for a period of 23 years and has possessed the said land.
- Balawardena was admitted that he paid maintenance for his children, and also that there was a maintenance case bearing No. 19293 in Bibile Magistrate's Court.
- Therefore, Balawardena (already admitted that) gave an assurance to the Divisional Secretary that his children will not be destitute in consequence of the transfer of that *Swarnabhoomi* - land.
- Balawardena did not inform the Divisional Secretary that he was having depending children, thereby Appellant take a position that Balawardena obtained the aforesaid permission by fraudulently. And the Divisional Secretary also failed to inquire from him whether he has any dependents.

Therefore, the Appellant further stated that Balawardena transferred the property to the Respondent in breach of the rules and regulations pertaining to transfer of properties coming under the Swarnabhoomi scheme and thereby the Divisional Secretary and Grama Sevaka were acting illegally in respect to the said Deed of Transfer. She further submitted that she was in possession of the property for about 20 years.

At the trial both parties admitted that one Balawardena was the original owner of the land in suit and the said land is described in the schedule to the plaint. Parties raised 16 issues between them and at the conclusion of the trail, the learned District Judge by his judgment dated 07.07.1999 held

in favour of the Respondent. It is from the said judgment; the Appellant has preferred this appeal.

At the hearing of this appeal, the main argument revolved around deed No. 648 dated 01.06.1993 marked as පෑ 2 as to whether it was a valid deed or not. Appellant stated that as mentioned above the Divisional Secretary of Medagama without holding any inquiry had acted arbitrarily and illegally in granting permission to transfer the said land to the Respondent. But, to answer this issue (issue No. 12 and 13) the learned District Judge hold that the letter dated 01.12.1992 (*marked as P-2a*) issued by the Medagama Additional Government Agent has proved the fact that the transfer of the property by Deed No. 648 of 01.06.1993 is valid (*vide page 71 in the appeal brief*). After considering the facts and the relevant document P-2a, the learned District Judge has delivered his judgement in favour of the Respondent.

The instant case instituted for praying a declaration of title for a property (*action rei vindicatio*). Therefore, the following issues are noteworthy:

1. Issue No. 02

...බලවර්ධන යන අයට මෙම බලපත්‍රය මත ලැබුණු මෙම ඉඩම වර්ෂ 1993.06.01 වන දින පිරිසිද්ධ නොතාරිස් රෝහණ හේරත් මහතා විසින් ලියා සහතික කරන ලද අංක 648 දරණ ඔප්පුවෙන් මෙම නඩුවේ පැමිණිලිකරුට ලබා දී ඇත්ද ?

Answer – Yes

2. Issue No. 03

එසේ පැමිණිලිකරු අයිතිය ලැබුණු ඉඩමේ හත්තිය ලබාගෙන එහි සංවර්ධන කටයුතු ආරම්භ කිරීමට සුදානම් අවස්ථාවේදී, නීතිමය පදනමක් නැතිව විත්තිකාරිය එයට අවහිර කරනු ලැබුවේද ?

Answer – Yes

3. Issue No. 04

.....මෙම ආරවුලට අදාල ඉඩමේ නීත්‍යානුකූල අයිතිකරු පැමිණිලිකරු බවට ප්‍රකාශ කොට තීන්දුවක් ලබා ගැනීමට අයිතියක් ඇත්ද ?

Answer - Yes

4. Issue No. 05

එසේම මෙම ආරවුලට අදාල ඉඩමේ අයිතිකරු පැමිණිලිකරු යයි තීන්දුවක් ලැබුණහොත්, ආරවුලට අදාල ඉඩමේ වින්තිකාරිය සහ ඇය යටතේ සිටින සේවකයන් සහ සියලුම නියෝජිතයින් ඉවත් කරවා ගැනීමට නියෝජයක් ලබාගැනීමට පැමිණිලිකරුට අයිතියක් ඇත්ද ?

Answer - Yes

According to these issues and answers, it's crystal clear that the learned District judge was evaluated the entire facts on the basis that whether the Respondent has a right to bring a *rei vindicatio* action against Defendant.

If a party bring a vindicatory action two main requisites need to consider. The action consists of proof:

- a) that the party (plaintiff) is an owner of the property;
- b) that the property is in the possession of the defendant

The burden of establishing title devolves on the plaintiff. The significance of this requirement is that, where the plaintiff fails to prove title himself, judgment in the vindicatory action will be given in favour of the defendant, even though the latter has also not been able to establish title.

In a long line of cases our courts have consistently held the above requisites.

In *De Silva vs. Gunatillake* 32 N.L.R. 217 Macdonell, C. J. citing authorities on Roman Dutch Law referred to principles applicable to *rei vindicatio* action in the following manner:-

“There is abundant authority that a party claiming a declaration of title must have title himself. The authorities unite in holding that the plaintiff must show title to the corpus in dispute and that, if he cannot, the action will not lie.”

In *Wanigarathne vs. Juwanis Appuhamy* 65 N.L.R. 167 Herath, J. stated that,

“The defendant in a rei vindicatio action need not prove anything, still less his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant’s title is poor or not established. The plaintiff must prove and establish his title”

In the case of *Dharmadasa vs. Jayasena* 1997 3 S.L.R. 327 (SC) G.P.S. de Silva, C. J. at page 330 quoted with approval the aforementioned statement of Macdonall CJ in *De Silva vs. Gunathileke* and the statement of Herath J in *Wanigarathne vs. Juwanis Appuhamy*. Thus it is settled law that in a *rei vindicatio* action the plaintiff must prove his title. In establishing his title the plaintiff cannot rely on the weakness of the defendant’s title. In this appeal I have to consider whether the plaintiff established his title or not.

In *Kathiramathamby vs. Arumugam* 38 C.L.W. 27 Basnayake, J. expressly held that, in an action for declaration of title and for restoration to possession of land from which the plaintiff alleges he has been forcibly ousted; the burden of proving ouster is on the plaintiff. It was declared, moreover, that where the plaintiff fails to prove ouster, the defendant’s possession must be assumed to be lawful, and that the defendant is entitled to rely in this event on the presumption created by section 110 of the Evidence Ordinance.

In this instant case, I am of the view that the Respondent has proved his own plea in the District Court; he proved his own title with a valid deed No. 648 dated 01.06.1993.

Even though, the Appellant specifically averred and subtly took a position that she and her children were living with the aforesaid predecessor, Balawardena as husband and wife for a period of 23 years and possessing the said land which clearly established their possession even before the formal State Grant dated 18.06.1987.

The Counsel for Respondent brought an important fact to this court's perusal that in the trial, the Appellant admitted that in 1993 she was not living in the property but at Mellagama and that Balawardena left her on 18.12.1992 whilst they were at Mellagama. Hence it's clear that she came into the property after the Respondent purchased it, thus the plaintiff-Respondent argue that she is a trespasser and has no right in law to make any claim.

Likewise, the learned judge also has highlighted a clear contradiction that the Appellant claimed in her evidence in-chief that she and the children were in the said land **at the time of the transfer** to the Respondent but in the cross-examination she admitted that until 1995 she was at Mellegama and in the re-examination she said that until Balawardena left her in 1993 she was at Mellagama. But the said land in question is at Thimbiriya. The learned judge was mindful of these contradictions. (*Vide page 74 in the appeal brief*)

Further, the Appellant claimed that she had done few improvements on the land; thereby she argued that she has a right to claim compensation. But the learned District Judge in his judgement came to a conclusion that she has failed to prove clearly and precisely the value of the improvements. This court also has the same opinion. Further, the appellant has no right to claim compensation and the original owner of the land was Balawardena; not the Appellant. Therefore, I hold that the -Appellant is not entitled to any compensation.

For the aforementioned reasons, I see no reason to interfere with the judgment of the learned District Judge.

Therefore, I affirm the judgment dated 07.07.1999. And dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL