

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

Leelawathie de Zoysa (deceased),
Athula de Silva,
No. 445/1,
Kepu Ela Handiya,
Randombe,
Ambalangoda.
Substituted Defendant-Appellant

CASE NO: CA/423/2000/F

DC BALAPITIYA CASE NO: 1186/L

Vs.

1. Pettagam Dayawathie de Silva
(deceased),
2. Ruwanpura Chandra Malsri de
Silva,
3. Ruwanpura Janaki Chandrika de
Silva,
4. Ruwanpura Chandima Gayathri
de Silva,
All of Ambalangoda,
Kandegoda.
Substituted Plaintiff-Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Srihan Samaranayake for the Defendant-
Appellant.
Rohan Sahabandu, P.C., for the Plaintiff-
Respondents.
Decided on: 22.01.2019

Samayawardhena, J.

The plaintiff filed this action against the defendant seeking declaration of title to the premises described in the second paragraph to the plaint, ejectment of the defendant therefrom and damages. The defendant sought dismissal of the plaintiff's action on the basis that she has prescribed to the premises. After trial the learned District Judge entered Judgment for the plaintiff. Hence this appeal by the defendant.

By virtue of the Certificate of Sale issued under the hand of the District Judge of Galle marked P10, Tharalis de Silva became the owner of Lot 12 in Plan marked Y together with the building standing thereon, which is the premises in suit. Then Tharalis de Silva has by Deed marked P11 transferred it to Senehelatha Mendis, and Senehelatha Mendis has in turn transferred it to the plaintiff by Deed marked P12. There cannot be any dispute that the plaintiff is the owner of the said premises.

As seen from the Plan marked Y, the building marked 22 is standing on Lot 12 from the time the Certificate of Sale was issued. This building marked 22, has, as seen from the Plan

marked X, been separated into two as 22A and 22B (may be for convenience or clarity). Admittedly, 22A has been given on rent to the co-operative society, and 22B is being occupied by the defendant.

It is the position of the plaintiff, which was accepted by the learned District Judge, that the plaintiff's deceased husband came into possession of 22B with the leave and licence of the plaintiff, and after the death of the husband, the defendant continued in occupation.

As this is a clear-cut case, there is no necessity for me to scrutinize the voluminous of evidence led by the plaintiff at the trial.

The defendant in her evidence clearly admits that she together with her husband and children came into a portion of the building (22B); but says that she does not know who the owner of that building is, who the keys of that building were taken from, who pays the assessment rates to the building etc. Assessment rates are being paid by the plaintiff as seen from Y1-Y17. She tries to pretend that she is unaware of the owner of the premises. She never says that she maintained adverse possession against the plaintiff who is the true owner of the premises. This building was not an abandoned building. However, if I may say so, the cat is out of the bag, when she, by issue No.12, takes up the position that she is entitled to recover a sum of Rs. 40,000/= for improvements made to the premises from the plaintiff.

A person who claims prescriptive title against the rightful owner who has the paper title has a very heavy burden to prove all the requirements prescribed in section 3 of the Prescription Ordinance. Mere possession over ten years is not prescriptive possession. The possession shall be by title adverse to or independent of that of the rightful owner. One cannot establish prescriptive title in the air as the defendant in this case attempts to do. *"A facile story of walking into abandoned premises after the Japanese air raid constitutes material far too slender to found a claim based on prescriptive title."*¹

There is another important point to be stressed. *"Where a party invokes the provisions of section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights."*² This the defendant has failed to do.

There is no necessity further to waste judicial time. There is absolutely no evidence to prove prescriptive title by the defendant. The appeal filed nearly two decades ago is manifestly devoid of merit.

Judgement of the District Court is affirmed and the appeal is dismissed with costs.

¹ Sirajudeen v. Abbas [1994] 2 Sri LR 365 per G.P.S. de Silva C.J.

² Sirajudeen v. Abbas [1994] 2 Sri LR 365 at 370. Vide also Chelliah v. Wijanathan (1951) 54 NLR 337 at 342, Reginald Fernando v. Pabilinahamy [2005] 1 Sri LR 31 at 37, Mitrapala v. Tikonis Singho [2005] 1 Sri LR 206 at 211-212.

Judge of the Court of Appeal