

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

C. A. Appeal No. 925/95 (F)
D. C., Mathugama No. 1071/P

Galhenkandage Don Jemis of
Kapugedara Pelanda.

Plaintiff

VS.

1. U. Athukoralage Don
Bennet of Kapugedara
Pelanda.
2. U. Athukoralage Don
Samarasinghe of
Molkawa Kapugedara.

Defendants

AND NOW BETWEEN

U. Athukoralage Don
Samarasinghe of Molkawa
Kapugedara.

2nd Defendant-Appellant

VS.

Galhenkandage Don Jemis of
Kapugedara Pelanda.

Plaintiff-Respondent

U. Athukoralage Don Bennet of
Kapugedara Pelanda.

1st Defendant-Respondent

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

COUNSEL : Rohan Sahabandu P. C. for the 2nd Defendant-Appellant

: Charitha Jayawickrama with R. Gopallawa for the Plaintiff-Respondent and the 1st Defendant-Respondent

WRITTEN SUBMISSIONS

TENDERED ON : 30.08.2018 (by the 2nd Defendant-Appellant)

: 29.08.2018 (by the Plaintiff-Respondent)

DECIDED ON : **12.02.2019**

M. M. A. Gaffoor, J.

This is an appeal from the judgment of the learned District Judge of Mathugama in respect of a partition action bearing Case Number 1071/P.

The Plaintiff – Respondent (hereinafter referred to as “Plaintiff”) instituted the above action seeking to partition the land called “Pathirage Kumbura Owita” *alias* “Panichanmulle Owita” depicted in Plan Number-946 dated 05.09.1983 prepared by N. Kularatne Licensed Surveyor mentioned as Lot 1 & 2 and marked as “X” at the trial and produced which is in file of record.

The 1st Defendant-Respondent in his Statement of claim admitted the claim of the Plaintiff. The 2nd Defendant-Appellant (hereinafter referred to as 2nd Defendant) in his statement of claim stated that Lot 2 depicted in Plan Number 946 dated 05.09.1983 prepared by N. Kularatne Licensed Surveyor is in extent of 3 Roods and 28 Perches was owned by A. D. Baron by prescriptive

possession after him, his son Ebrahim and after Ebrahim, his son - the 2nd Defendant has possessed the specified land more than 10 years without any interruption and disturbance.

He also claimed for plantation made and looked after by him in the specified land Lot 2 depicted in Plan Number 946 dated 05.09.1983 prepared by N. Kularatne Licensed Surveyor.

After the conclusion of the trial, the learned District Judge delivered judgment in favour of the Plaintiff on 27th July 1995.

Being aggrieved by the said judgment, the 2nd Defendant-Appellant has preferred this appeal to set aside the judgment dated 27th July 1995 and to allow the appeal.

In this appeal, the Plaintiff submitted that the land described in the schedule to the plaint was received by him through paper title and prescriptive title. In the amended plaint of the Plaintiff, it is to be observed that the title starts from 1905 and by way of government permit No. 40953.

It is to be noted that all the paper title and deeds were produced before the Trial Judge and admitted without any objections. And also the evidence of the witnesses on behalf of the Plaintiff were consistent and supports the position of the Plaintiff.

The 2nd Defendant stated in his statement of claim that he had inherited the land from his father Ebrahim after his demise. But during the trial, he had

admitted that his father Ebrahim was alive and their inheritance was continued from their grandfather Baron Appuhamy. Therefore, it is fairly clear that the 2nd Defendant's statement is contradicted and no proper evidence neither witnesses were produced before the Trial Judge.

It is my careful observation that the retired Grama Niladari Mirihana Kankanamge Gunapala who gave evidence on behalf of the 2nd Defendant was unaware of the details and the names of the land and the nature of the facts.

Further, the 2nd Defendant took up a position that he acquired the prescriptive title to the specified land from 1963. However, this Court is in a firm view that a mere statement of prescription cannot be considered as a valid prescriptive title to a property.

In ***Juliana Hamine Vs. Don Thomas*** [59 NLR 546] at page 548.

"...Apart from the use of the word possess, the witness called by the plaintiff did not described the manner of possession."

In ***Alwis Vs. Perera*** [(1919) 21 NLR at page 326] Bertram C. J. stated that,

"I wish very much that District Judges I speak not particularly, but 'I possessed' or we possessed or we took the procedure, would not confine themselves merely to recording the words, but would insist on those words being explained and exemplified".

In ***Sirajudeen Vs. Abbas*** [(1994) 2 SLR 365] the Supreme Court has observed thus:

“As regards to the mode of proof of prescriptive possession, mere general statements of witnesses that the plaintiff possessed the land in dispute for a number of years exceeding the prospective period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription, it is necessary that the witnesses should speak to specific facts and the question of possession has to be decided thereupon by court”

In ***De Silva Vs. Commissioner General of Inland Revenue*** [80 NLR 292] Sharvananda J. clearly and deeply observed that,

“the principle of law is well established that a person who bases his title in adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In order to constitute adverse possession, the possession must be in denial of the title of the true owner. The acts of the person in possession should be irreconcilable with the rights of the true owner; the person in possession must claimed to be so as of right as against the true owner. Where there is no hostility to a denial of the title of the true owner there can be no adverse possession.”

In the circumstances, I am of the view that the learned District judge has well analyzed the facts, evidence, and witnesses of the case and carefully examined the title and correctly held with the Plaintiff.

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

Therefore, I dismiss the appeal without cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL