

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

Miss. Jeyadevi Arunasalam,  
No. 105, Post Office Road,  
Trincomalee.

**C. A. Appeal No. 1182/99 (F)**  
D. C., Trincomalee Case No. 385

**Plaintiff**

**VS.**

Subramaniam  
Thirunavukarasu  
No. 117, Arunakiri Road,  
Trincomalee.

**Defendant**

**NOW BETWEEN**

Amirthagowry Subramanian  
ne Navaratnam  
No. 117, Arunakiri Road,  
Trincomalee

**Substituted Defendant-  
Appellant**

**VS**

Miss. Jeyadevi Arunasalam,  
No. 105, Post Office Road,  
Trincomalee.

**Plaintiff-Respondent-  
Respondent**

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

COUNSEL : K. V. S. Ganesharajan with Deepiga Yogarajah for the  
Substituted Defendant-Appellant

V. Puvitharan P.C. with A. Sithamparapillai for the  
Plaintiff-Respondent

WRITTEN SUBMISSION

FILED ON : 21.09.2018 (by the Substituted Defendant-Appellant)  
01.10.2018 (by the Plaintiff-Respondent)

DECIDED ON : 21.02.2019

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**M. M. A. Gaffoor, J.**

The Plaintiff-Respondent (hereinafter referred to as the “Respondent”) instituted this action in the District Court of Trincomalee against the original Defendant and prayed for a declaration that she is entitled to the land and premises morefully described in the schedule B to the plaint and for ejectment of the Defendant from the said land and premises.

The Respondent in her plaint pleaded her title to the land in suit and stated that the Defendant has unlawfully, illegally, and by force entered the land in suit in September 1992. Whereas, the Defendant in his answer denied the averments contained in the plaint and prayed the Court for declaration of title for the land morefully described in the schedule B to the answer.

The learned District Judge of Trincomalee fixed the case for trial on 18 issues initially, and while giving evidence also parties raised few issues and totally 27 issues were recorded. On 07.01.1998, while the Defendant was giving evidence, Attorney for the Respondent raised the issues Nos. 23-27; and Attorney for the Defendant had strongly objected those issues. However, the said issues Nos. 23-27 were not allowed by the learned District Judge at the time of the trial (on 07.01.1998) and he allowed them separately on the same day of the judgment prior to pronouncing of the judgment.

The said judgment was delivered in favour of the Respondent. Being aggrieved by the said judgment dated 22.07.1999, this appeal preferred by the Defendant-Appellant to set aside the judgment of the District Court and grant the reliefs prayed for in the answer *or* make an order for re-trial.

When this matter came up for argument on 02.08.2017, Counsel for the Substituted Defendant-Appellant (hereinafter referred to as the "Appellant") raised a Preliminary Objection and stated that the case should be sent back for re-trial, without going into merit of the case, as the learned District Judge allowed the issues Nos. 23-27 on 22.07.1999 and answered the said issues in the judgment delivered on the same day. Thereupon, this Court overruled the said Preliminary Objection and fixed the matter for argument and directed the parties to file their respective written submissions as per their request made on 20.06.2018.

The Respondent's case in the District was that she is the owner of the land morefully described in the schedule B to the plaint which is part of the land described in the schedule A to the plaint by way of paper title and prescription. Her position with regard to the title was that she became entitled to the said land which is described in the schedule B to the plaint by Deed of Gift No. 10 dated 28.08.1989 attested by Ramalingam Notary Public.

The Respondent and four other witnesses gave evidence on behalf of the Respondent and appended documents marked P1-P21.

Having heard both parties, I observed that the case in hand is a *rei vindicatio* action. Therefore, to proceed further, I like to invite the following words of Gooneratne, J. in *Wadduwage Dharmadasa vs. Manthree Vithanage Jinasena* ((2012) B.L.R Vol. XIX, Part II, p 336):

*"in a rei vindicatio action the Plaintiff must prove and establish his title. If the Plaintiff has so established his title the burden of proof is shifted to the defendant to establish his lawful occupation if any. When the plaintiffs' title is accepted by Court, the burden is on the defendant to establish his prescriptive possession."*

Having concentrated the above accustomed approach, a careful perusal of the documents appended by the Respondent show that the original owner of the entire land (schedule A to the plaint) in suit was one Mrs. Maragathammal Mageshan and after 1973, she transferred the property to Pushpadevi Thambaiah by the Deed No. 1568 dated 21.11.1973 attested by R. Sampanthan Notary Public is depicted in Plan No. 322 dated

23.11.1973 made by Veluppillai Licensed Surveyor, then after 1989, the said Pushpadevi Thambaiah transferred a portion (in extent of 10.31 Perches) of the land (morefully described in the schedule B to the plaint) by way of Deed of Gift No. 10 dated 28.08.1989 attested by Ramalingam Notary Public to the Respondent.

I fully subscribe to the view of the learned District Judge that the Respondent established her chain of title and deeds which were appended to the plaint and marked without objections at the trial.

The learned District Judge was mindful of the fact that the Appellant while cross-examining admitted that the **Respondent obtained the land in suit from said Pushpadevi Thambaiah** who is a predecessor in the title:

கேள்வி: புஷ்பாதேவி தம்பையாவுக்கு அந்த உறுதி கொடுக்கப்பட்ட நேரத்தில் அதாவது 82 ஆம் ஆண்டு சொந்தமாக வந்திருக்கிறது?

பதில்: ஆம்

கேள்வி: அந்த புஷ்பாதேவி தம்பையாவிடமிருந்து தான் இந்த வழக்கின் வழக்காளி இந்த வழக்கில் சம்பந்தப்பட்ட காணியை நன்கொடையாகப் பெற்றிருக்கிறார்?

பதில்: ஆம்

***மன்றி:***

கேள்வி: எந்தக் காணியை நன்கொடையாகப் பெற்று இருக்கின்றார்?

பதில்: 'வ-5' எனும் உறுதியின் ஆதன அட்டவணையில் குறிப்பிடப்பட்டுள்ள காணியைத்தான் புஷ்பாதேவி வழக்காளிக்கு நன்கொடையாகக் கொடுத்து இருக்கிறார்.

(Page 223-224 of the appeal brief)

கேள்வி: வழக்காளியினால் குறிப்பிடப்பட்ட தங்களுக்குரித்தான Lot-2 தொடர்பாக புஷ்பாதேவிக்குச் சொந்தம் என்று கூறினீர்கள் அல்லவா? என்ன கருத்தில் சொன்னீர்கள்?

பதில்: உறுதியின் படி, அதாவது 1568 என்ற உறுதியின் படி சொந்தமானது

(வ-1 (P1) எதிராளியிடம் காண்பிக்கப்படுகிறது)

கேள்வி: இந்த உறுதியின் படி சொந்தம் என்று கூறினீர்கள்?

பதில்: ஆம்

(Page 231 of the appeal brief)

Therefore, Counsel for the Respondent submitted that, in the above circumstances, without doubt, it is an admitted fact by the Appellant that the Respondent is the owner of the land referred to in schedule B of the plaint.

In my view, this circumstance is corresponding with Section 58 of the Evidence Ordinance, which states:

*"No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit any writing under their hands, or*

*which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*

*Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."*

Thus, in my view, according to the above provision, the admission of a fact may perhaps take place at three stages-to wit- (1) at the hearing or trial, (2) before the hearing or trial, or (3) by rule of pleading. Therefore, the said admission of this case which I have alluded above is at the stage of hearing of trial.

In the case of *K. G. Jayanath Kulasiriwardena vs. J. A. Ranjanie Jayasinghe and 3 others* [SC/Appeal/146/12, (Supreme Court Minutes dated: 17.02.2016)] Aluwihare P. C., J. observed that:

*"Admissions recorded by the parties in any proceeding, are not the same as Admissions contemplated in section 17 of the Evidence Ordinance, but are "admitted facts" within the meaning of Section 58 of the Evidence Ordinance. Section 17 of the Evidence ordinance defines Admissions and Confessions and is a provision governing relevancy. Section 17 (1) read with Section 21 of the Evidence Ordinance merely permits a "statement" to be admitted as evidence if that "statement" falls within the definition of an Admission in terms of section 17 of the Evidence Ordinance. That is to say the trial judge is required to evaluate the item of evidence so adduced under section 21 and consider the probative value that should be attached to it. It is entirely at the discretion of the judge to decide*

*whether or not to act upon the Admission as an item of evidence, having given due consideration to the statement.*

*On the other hand, admissions recorded by contesting parties to any proceeding fall within the ambit of Section 58 of the Evidence Ordinance, a provision governing proof and has no bearing on the issue of relevancy.*

*Section 58 of the Evidence Ordinance says, “no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing...” Thus, there is no duty cast on the court to consider either the credibility or the probative value of such facts but is required to treat such facts as “proved facts”.*

Further, on the question of admission during a trial, it is relevant to reiterate the observation of A. H. M. D. Nawaz, J., in *Abdul Wakeel and 3 others vs. Hewage Sirisena and 6 others* [CA Case No. 1218/1996 (F), (Court of Appeal Minutes dated: 27.09.2016)]:

*“Let me digress at this stage on the question of admissions. We come across “admissions” for the first time only in Section 17 of the Evidence Ordinance because the first exception to the hearsay rule in the Evidence Ordinance begins from Section 17. Section 17(1) of the Evidence Ordinance defines an admission as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact. Section 17(1) of the Evidence Ordinance deals with informal admissions, whereas Section 58 deals with formal admissions. Whichever category that an admission belongs to, it has*



*to be remembered that Section 21 of the Evidence Ordinance renders an admission admissible against the maker of the admission...."*

*(Page at 10)*

So, it is quite clear that the Appellant admitted certain important facts regarding the predecessor in title and the attendant facts of land in suit which belongs to the Respondent.

During the trial, the Respondent had called several witnesses to establish that she and her predecessor in title have been in possession of the land in suit till September 1992 - until the Respondent entered into the land. Pushpadevi Thambaiyah, Thambaiyah Kumarasundaram (father-in-law of the Respondent) and Kandavanam Sinnathamby – an officer of the Urban Council of Trincomalee are credible witnesses on behalf of the Respondent (vide pages 275-279 in appeal brief).

However, in the appeal, the Appellant submitted that his predecessors in title became the owners of the subject land under and by virtue of the decree entered in the District Court of Trincomalee Case bearing No. 111 dated 13.11.1903 and accordingly one Mailvaganam Mudaliyar Subramaniyam became the owner of the subject land. He further submitted that thereafter the said Mailvaganam Mudaliyar Subramaiyam gifted the subject land to Mrs. Alagasundaram wife of Mailvaganam Mudaliyar Subramaniyam under and by virtue of Deed No. 12017 dated 03.03.1930 attested by Nadesapillai Notary Public. Thereafter, in 1972, the said Mrs. Alagasundaram donated the said land to Alagumalarsodhi wife of the Appellant by Deed No. 1423 dated 23.08.1972

attested by R. Sambandham Notary Public. And thereafter, the said Alagumalarsodhi died and her estate was administrated in District Court of Jaffna Case No. T/4356. The heirs of the said Alagumalarsodhi were her husband the Appellant and 3 minor children.

He further submitted that, it was in those circumstances, the Deed of Partition bearing No. 5105 (D13) dated 15.11.1992 attested by S. A. Hameed Notary Public was executed among the Appellant and other 3 heirs of the said Alagumalarsodhi and accordingly the Appellant became the owner of the property morefully described in the schedule B to the answer.

At this juncture, it is important to note that issue Nos. 23-27 have been raised on 02.01.1998 by the Respondent on the basis that there were no details given in the Deed of Partition D13 with regard to the Power of Attorney in the attestation the said deed states that S. Thirunavukarasu, *T. Ramesh Shankar by his Attorney S. Thirunavukarasu* and T. Vathsala signed the said Deed of Partition. In this regard, the Appellant submitted that the said Deed bearing No. 5105 D13 was produced in Court 06.01.1998 and it was not objected by the Respondent.

However, I am of the view that the above contention of the Appellant cannot be sustained. The said D13 had produced on 06.01.1998 and the Respondent was given an opportunity to raise questions on the said D13 only 07.01.1998 during the cross-examination; at that time only the Respondent raised the issue No. 23-27. Accordingly, the

learned District Judge also had answered the issues 23-27 in favour of the Respondent. I see no errors in this regard from the learned District Judge.

Further, it is settled law that according to Section 146 and 149 of the Civil Procedure Code a trial Court may at any time before passing a decree, amended any issue or frame additional issues on such terms as it thinks fit (vide *Hameed vs. Cassim* 1996 2 SLR 30; *Arudaiappan vs. Indian Overseas Bank* 1995 2 SLR 131). These same questions (preliminary objection raised by the Appellant) were already answered and settled by the judgment dated 05.12.2017.

Furthermore, I am of the view that the learned trial Judge has considered the entire evidence led at trial and dismissed Appellant's case. This Court being an Apex Court does not wish to interfere with several factual positions dealt with by the Original Court. Unless perverse orders are made by the lower Courts it would not be in order for a Superior Court to interfere with factual matters.

Having found that the Respondent has established her title to the land in dispute, I can reach a conclusion that the Appellant has not established his lawful possession or other title.

The answers given by the learned District Judge of Trincomalee to issues No. 23-27 are correct.

In the circumstances, the learned District Judge's judgment dated 22.07.1999 should be affirmed.

Therefore, I proceed to dismiss the appeal without costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**