

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

C.A. Appeal No. 1392/2000(F)

D.C. Pugoda No. 84/L

Mahahunuge Sunimal,
No.11, Pahala Dompe,
Dompe.

Substituted 2nd Defendant
Appellant

V.

R.D. Piyasena, (Deceased)
R.D. Dheenawathie,
Pahala Dompe,
Dompe.

Substituted Plaintiff
Respondent

BEFORE

: **JANAK DE SILVA, J
K.PRIYANTHA FERNANDO, J**

COUNSEL

: Devika Panagoda for the Substituted 2nd
Defendant Appellant.

H.Withanachchi for the Substituted Plaintiff
Respondent

ARGUED ON

: 25.03.2019

WRITTEN SUBMISSIONS

FILED ON : 10.09.2018 and 25.04.2019 -
by the 2nd Defendant Appellant

25.03.2019 -
by the Substituted Plaintiff Respondent

JUDGMENT ON : 17.06.2019

K. PRIYANTHA FERNANDO, J.

01. The Plaintiff Respondent (Plaintiff) instituted the above styled action in the District Court Gampaha, (later it was heard in District Court Pugoda) seeking a declaration of title and ejection of the 1st Defendant. Later the 2nd Defendant Appellant (Appellant) intervened. 1st and 2nd Defendants in their answers prayed for dismissal of the plaint. After trial the learned District Judge answered the issues in favour of the Plaintiff and ordered that the Plaintiff be restored in possession of the land in question.
02. Being aggrieved by the said judgment, the Appellant appealed against the said judgment to this court. In his petition of appeal, he said that the learned District Judge did not consider the deeds submitted by the Appellant. Further it is submitted that the boundaries mentioned by the Plaintiff are different to the boundaries mentioned in the submitted plan no. 3181 and that fact was not considered by the learned Trial Judge.

03. We considered the pleadings and evidence adduced in the District Court, Judgment of the learned District Judge and submissions made by counsel for both Appellant and the Respondent.
04. It is the contention of the counsel for the Appellant that the Plaintiff has failed to identify the corpus. The learned District Judge in pages 06 and 07 of her judgment has discussed about the issue of identity of the corpus based on the evidence placed before her. When the surveyor went to survey the land Plaintiff as well as the 1st Defendant has been there and the Plaintiff has clearly identified the land in question. Accordingly, surveyor had prepared the plan 3181 dated 20.03.1985, based on the commission issued to him by court. According to paragraphs 06 and 07 of the report by the surveyor, Plaintiff has claimed the said land as his and according to Paragraph 08, 1st Defendant has claimed the same land as his. On the evidence placed before her, the learned District Judge has given good and sufficient reasons as to why she concluded that the issue on the identity of the corpus (issue No 11) was answered in favour of the Plaintiff.
05. Counsel for the Appellant also submitted that the Appellant has failed to prove his title to the land. It is settled law that in a declaration of title action, the burden is on the Plaintiff to establish that he has the title.
06. It is submitted by the counsel for the Respondent that where the Plaintiff enjoyed prior peaceful possession of the property and alleges that he was ousted by the Defendant, there is a rebuttable presumption of title in favour of the Plaintiff. Counsel has brought to the notice of the Court, decided case law to substantiate his position.

07. On the evidence adduced in the District Court, it was clear that the Plaintiff had been in possession of the land in dispute and that the Appellant had taken possession by unlawful force. Although the Plaintiff did not produce any title deeds, as the learned District Judge rightly found that the Plaintiff had been in possession of the land until he was unlawfully dispossessed in 1978 by the Appellant. It is evident that there had been a case in the Primary Court on that issue. The learned District Judge has also found for the reasons given in her judgment, that the schedule in deeds produced by the Appellant did not tally with the boundaries of plan No. 3181.
08. As submitted by the counsel for the Respondent, in case of *Mudalihamy V. Appuhamy [1891] 1 CLR 67*, Burnside C.J said;

“The Plaintiff was in the bona fide possession of the chena in question and had cleared it for sowing when the Defendant entered upon it sowed it and put the Plaintiff out. Now Prima facie, the Plaintiff having been in possession, he was entitled to keep it against all the world but the rightful owner, and if the Defendant claimed to be the owner, the burden of proving his title rested on him, and Plaintiff might have contended himself with proving his de facie possession at the time of the ouster...”

This principle was also followed in case of *Luwis Singho V. Ponnamparuma [1996] 2 Sri L.R. page 320*.

09. As mentioned in paragraph 07 of this judgment it was evident that the Plaintiff was in possession until he was unlawfully dispossessed by the Appellant. Also, the Appellant has failed to prove his title as mentioned by the learned District Judge in her Judgment. Hence the learned District Judge

has come to the correct finding in her judgment, that this Court has no reason to interfere. Therefore, we find that this appeal has no merit and should fail.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL