

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

**C.A. Appeal No. 1252/00 (F)**

**D.C. Matugama No. 1721/L**

1. Walakulu Arachchige Gunasena,
2. Walakulu Arachchige Welin,  
(Deceased)
- 2a. Walakulu Arachchige Gunasena,  
(Substituted 2<sup>nd</sup> Defendant/Appellant)
3. Habarakande Gamage Dhies.  
(Deceased)
- 3a. Hewage Elis Nona,  
(Substituted 3<sup>rd</sup> Defendant/Appellant)  
All of Igurudaluwa, Suduwelipatha,  
Hedigalla Janapadaya,  
Baduraliya.

**Defendants/Appellants**

V.

1. Don Kalenis Wickramarachchi  
Igurudaluwa, Suduwelipatha,  
Hedigalla Janapadaya,  
Baduraliya.  
(Deceased)

2. Wickramaarachchi Colombage Don  
Sepala,  
Hedigalla Janapadaya,  
Baduraliya.  
(Substituted Plaintiff/Respondent)

Plaintiff/Respondent

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

**COUNSEL** : Daya Guruge with M. Somasundaram for  
the 1<sup>st</sup> and 2<sup>nd</sup> Defendants-Appellants  
Rohana Deshapriya with C. Liyanage for the  
Substituted Plaintiff-Respondent

**ARGUED ON** : 29.03.2019

**WRITTEN SUBMISSIONS**

**FILED ON** : 04.04.2018 by the Defendants-Appellants  
10.05.2018 by the Substituted Plaintiff-  
Respondent

**JUDGMENT ON** : 10.07.2019

**K. PRIYANTHA FERNANDO, J.**

01. Plaintiff Respondent (Respondent) instituted this action in the District Court of Mathugama against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants Appellants (Appellants), seeking inter alia, declaration of title to the land more fully described in the plaint, ejectment of the Appellants from the land, restoration of possession and damages.
02. Appellants filing their answer prayed for dismissal of the plaint and 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants prayed for prescriptive title to lots 02, 01, and 03 respectively.
03. After trial the learned District Judge delivered the judgment in favour of the Plaintiff and only the 1<sup>st</sup> Appellant was granted the house he was occupying with 40 perches of appurtenant land. Claims of 2<sup>nd</sup> and 3<sup>rd</sup> Appellants were dismissed. Being aggrieved by the above judgment, the Appellants lodged the instant appeal.
04. It is submitted on behalf of the Appellants that the evidence of the Court commissioner in regard to the exclusive possession of the Appellants was not considered by the learned District Judge. The respective lots being possessed by the Appellants are separated from the lot 07 that is being possessed by the Respondent by permanent boundaries.
05. It was also submitted that there was no basis for the learned District Judge to give an extent of 40 perches of land appurtenant to the house of the 1<sup>st</sup> Appellant. When deciding on the prescription, the learned District Judge has failed to take the age of the plantations. The learned District Judge has erred when he rejected the claim of prescriptive possession by the 2<sup>nd</sup> Appellant on

lack of corroborative evidence when in fact his son has corroborated his evidence, it is submitted.

06. Contention of the counsel for the Respondent is that the plea of prescription is bad in law as per section 161 of the Land Development Ordinance. It is submitted further that the Appellants have failed to prove that they possessed the respective blocks of land adverse to the rights of the Respondent. Being in mere possession for a number of years exceeding the prescriptive period can not be considered as evidence of uninterrupted and adverse possession.
07. It is unchallenged evidence that the corpus is depicted in plan No. 780 of licensed surveyor marked P3 and that the Respondent gained title to the corpus as per the averments 02 and 03 of the plaint. It is also not disputed that the Respondent was in possession of lot 07 at the time of the survey.
08. As submitted by the counsel for the Respondent, it is trite law that the burden is on the party claiming prescription to prove that he possessed the land adversely to the rights of the owner over a prescriptive period.
09. Once paper title of the Plaintiff is undisputed, his possession is presumed. The burden is shifted to the Defendant to show that he had independent and adverse possession in the form of prescription claimed by him. (*Leisa and another V. Simon and another [2002] 1 Sri L.R.148.*)
10. In case of *Chelliah V. Wijenathan 54 N.L.R. 337 at 342* as per Gratiaen J.

*“Where a party invokes the provisions of section 03 of the Prescription Ordinance in order to defeat the ownership of a adverse claimant to immovable property the burden rests fairly and squarely on him to establish the starting point of his or her acquisition of prescriptive rights. ...”*

11. The party claims prescriptive title has to prove that his possession was adverse and independent to the Plaintiff. His occupation of the land has to be with a manifest intention to hold the land against the claim of all others and the possession has to be hostile or adverse to the rights of the true owner.
12. In the instant case the learned Trial Judge has clearly reasoned out as to why he came to the conclusion that the Appellants have failed to prove their prescriptive rights. Although there is evidence that the Appellants were in possession of the respective lots, in evidence they have failed to establish a starting point where they started possessing the land, hostile to the Plaintiff. Mere possession for a prescriptive period will not suffice.
13. In his judgment the learned Trial Judge has separately considered the evidence on prescriptive possession adduced on behalf of the Appellants 1, 2 and 3. The learned District Judge also has considered the age of the plantations in considering the judgment.
14. Learned District Judge also has given good and sufficient reasons for rejecting the evidence of the 1<sup>st</sup> Appellant on prescriptive title on lot No. 02 of the plan P3, and the basis he decided to grant an extent of 40 perches of land appurtenant to the house of the 1<sup>st</sup> Appellant. He had said at page 10 (Page 199 of the brief) of his judgment, that although he found that the 1<sup>st</sup> appellant could not prove prescriptive title to the whole lot No. 2, that the 1<sup>st</sup> Appellant had occupied the house there in since year 1981. Therefore, the learned District Judge had reasonably decided to grant the 1<sup>st</sup> Appellant an extent of 40 perches of land appurtenant to the house. I see no reason to interfere with the decision of the learned District Judge.

In the above premise I find that the instant appeal is without merit.

Appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**