

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

D.N.S. Weerasooriya
of Walawwa, Mahahella,
Beliatta.

PLAINTIFF

C.A. Case No.1263/2000 (F)
D.C. Embilipitiya Case No.
4082/L

-Vs-

H.R. Saranelis *alias* Saranelis Ranasuriya
of Kiralawal Katuwa, Embilipitiya.

DEFENDANT

AND NOW BETWEEN

H.R. Saranelis *alias* Saranelis Ranasuriya
(Deceased)

Sarath Ranasuriya

of Kiralawal Katuwa, Embilipitiya.

Substituted DEFENDANT-APPELLANT

-Vs-

D.N.S. Weerasooriya (Deceased)

Indrani Samarasekara Weerasooriya,

No.24/1, Araliya Uyana,

Depanama, Pannipitiya.

Substituted PLAINTIFF-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : N.W. De Silva for substituted Defendant-Appellant
Uditha Malalasekera with Nelum Ranatunga for
substituted Plaintiff-Respondent

Decided on : 01.08.2019

A.H.M.D. Nawaz, J.

The original Defendant-Appellant (hereinafter sometimes referred to as “the Defendant”) Hewa Radhage Dasa *alias* Ranasooriyadasa has preferred this appeal to this Court against the judgment of the Additional District Judge of *Embilipitiya* dated 21.09.2000 which had allowed the reliefs prayed for by the Plaintiff-Respondent in this case. By a plaint dated 09.09.1991, the Plaintiff-Respondent (hereinafter sometimes referred to as “the Plaintiff”) instituted this action against the original Defendant praying for a declaration of title and ejection of the Defendant and his agent/employee from the land more fully referred to in the schedule to the plaint.

The cause of action set out against the Defendant in the plaint is on the basis that the Plaintiff had long become the owner of the land described in the schedule to the Plaint by virtue of a deed of transfer bearing No.1714 and executed in his favor on 23rd May 1974. The Plaintiff, after a narrative of how he had been in possession and subsequently acquired *seisin* of the land, states in the plaint that he allowed the Defendant to occupy the house on the land temporarily and left for a place called *Mahahilla* in 1985. He received a letter dated 29.05.1986 from the Mahaweli Authority saying that his land would no longer be required for acquisition and he was free to do what he would like to do with his land. The Plaintiff alleged further in his plaint that for the purpose of undertaking cultivation on the land the Plaintiff served a notice to quit on the Defendant but the Defendant continued to stay on the land and repudiated all attempts of the Plaintiff to regain possession of the house and the land depicted in the schedule to the plaint. Moreover the plaint averred that the

Defendant had been in forcible possession of the land and by his continuous dispossession he had been suffering damages in a sum of Rs.2,000/- per annum. So in the premises the Plaintiff prayed for a declaration of title to the land depicted in the schedule to the plaint and ejection of the Defendant therefrom.

The land was depicted in the schedule to the plaint as a portion of a land called "Kiralawelkatuwa" and the boundaries of the land were described as follows:-

- North : The land on which a Rice Mill belonging to one H.W. Siridiyas is situated.
East : A portion of a land called 'Kiralawelkatuwa'.
South : A land on which stands a 'Hunu Kotuwa'
West : *Hambantota-Ratnapura* main road.

As opposed to this plaint, the original Defendant filed his answer dated 1st July 1992 denying the averments that pertained to the title of the Plaintiff in relation to the land depicted in the plaint and that would mean that all averments of the Plaintiff that he permitted the Defendant to occupy the house on the land would remain denied. The Defendant further averred in his answer that he had been occupying the land depicted in schedule to his answer since 1966 and in subsequent averments he staked a declaration of title to the land which he had depicted in the schedule to the answer. The subsequent averments in the answer focus on the Defendant's chain of title to the land described in the Schedule to the answer and describe as to how he derives title to his property. The answer further states that the Defendant has acquired prescriptive title to the said land quite independently of the rights of the Plaintiff.

A perusal of the schedule to the answer shows different boundaries which are distinct and different from those described in the Schedule to the Plaint. It has to be noted that the land that was depicted in the schedule to the plaint has the following boundaries:

- North : Anura Rice Mill, Cart Road and the Land belonging to Galhatumba Kalu Mahaththaya.
South : The land belonging to S.H. Gunadasa.
East : The land belonging to G.M. James.

West : Ratnapura-Homagama main road.

A comparison of both the boundaries given to the lands depicted in the plaint and answer quite clearly brings out the fact that the Plaintiff and the Defendant have claimed ownership of two different lands.

If at all, only the western boundaries of both lands would tally because the western boundaries of both lands appear to be identical.

At one stage, the land on which the Plaintiff had been in possession was due to be acquired by the state and in fact the Plaintiff had been informed about the acquisition by 'P1'. Though the land was eventually acquired, the acquisition was subsequently abandoned and the divesting of the land had been communicated to the Plaintiff by the letter dated 29.05.1986 (P3). P2 is the deed of transfer bearing No.1714 by which the Plaintiff had acquired title to the property.

The notice under Section 4 of the Land Acquisition Act had been marked as P4 at the trial and in terms of this notice, Lot D of *Kiralawelkatuwa* has been identified as the land of the Plaintiff. P4 refers to an advanced tracing prepared by the Surveyor General wherein the Plaintiff's land had been depicted as Lot D of the said advanced tracing. The learned Counsel for the Plaintiff-Respondent contended that Section 83 of the Evidence Ordinance applies to this advanced tracing as Section 83 states the following:-

"The Court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor General or officer acting on his behalf were duly made by his authority and are accurate: but maps, plans, or surveys not so signed must be proved to be accurate."

Section 36 of the Evidence Ordinance makes statements in maps or plans under the authority of Government relevant. Whilst Section 36 deals with relevancy, Section 83 creates a presumption as the document being duly made and being accurate. The presumption of accuracy arises only in respect of those maps or plans which are made for a public purpose and by the Surveyor General. It does not apply to private maps-see *Shib Charan Dey v. Mahato* 17 C.L.J 542.

Survey maps prepared under the authority of Government are evidence of possession, and, therefore, also of evidence of title-see 10 W.R. 343 (344).

In a case involving a boundary dispute, a survey map, if not conclusive evidence, is evidence of an important character which ought to be looked into and considered-see 15 W.R. 3; 20 W.R. 243.

In the circumstances, one has to presume the accuracy of the Plan until the contrary is established.

There was one Seelavathi Komasaru who gave evidence on behalf of the Mahaweli Authority testified having regard to the Section 4 notice and the advanced tracing. Her testimony was to the effect that the state recognized the Plaintiff as the owner of the subject-matter. She also stated in evidence that a notification had been sent to the Plaintiff stating that the land of the Plaintiff would not be needed for acquisition. All this testimony goes to prove that the Plaintiff had sufficient title to file a *rei vindicatio* action. So much for the evidence given on behalf of the Plaintiff.

This Court also draws its attention to the testimony offered by the Defendant. He was specifically asked whether he was seeking a declaration to Lots 46, 47, 48, 49 and 50. Having answered this question in the affirmative, the Defendant also admitted that the Plaintiff was seeking relief in regard to Lot No.210. This shows that both the Plaintiff and the Defendant were seeking relief to two different lands.

In the circumstances, I take the view that the learned District Judge came to the right decision in holding that the Plaintiff had established his case and I see no reason to disturb the findings of the learned Additional District Judge of *Embilipitiya*. The documentary evidence produced by the Defendant-Appellant has in anyway dented the case of the Plaintiff-Respondent and I affirm the judgment dated 21.09.2000. Accordingly I proceed to dismiss the appeal of the Defendant-Appellant.

JUDGE OF THE COURT OF APPEAL