

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

M. Ragavan,
No.48/8,
Sri Siddhartha Path,
Kirulapone,
Colombo 5.
Plaintiff-Appellant

CA CASE NO: CA/814/2000/F
DC COLOMBO CASE NO: 15886/L

Vs.

Subramanium Deva,
Sandanam Pichche,
Both No. 30/5,
Station Road,
D.S. Colombage Mawatha,
Kirullapone,
Colombo 5.
Defendant-Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Rohan Sahabandu, P.C., for the Appellant.
A.K. Chandrakantha for the Respondent.
Decided on: 14.11.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action against the two defendants seeking declaration of title to the land described in the schedule to the plaint, ejectment of the defendants therefrom, and damages. The second defendant did not contest the case. The first defendant filed the answer seeking dismissal of the plaintiff's action and damages. After trial, the learned District Judge dismissed the plaintiff's action with costs. This appeal by the plaintiff is against the said Judgment.

In the Judgment the learned District Judge came to the strong conclusions that: (a) the plaintiff is the rightful owner of the land in suit; (b) the defendant has not proved prescriptive title to the land; (c) the defendant has not proved damages.

The defendant does not challenge these findings of the learned District Judge.

However, the learned District Judge dismissed the plaintiff's action on the basis that the plaintiff has failed to prove the identification of the land. In other words, if I understand correctly, the plaintiff has failed to prove that the defendant is in possession of the land described in the schedule to the plaint.

The land in suit is Lot 1204 in Final Partition Plan No.793 marked P1 at the trial. The plaintiff's mother became entitled to that Lot by the Final Decree entered in Partition Case No.14030/P marked P2. The mother has gifted that property to the plaintiff by deed marked P3.

It is the position of the plaintiff that due to communal disturbances in July 1983 he fled the area and returned after

about three years to find that the defendant is in possession of the land. The defendant admitted in evidence that the plaintiff's houses were burnt during that turbulent period¹ (not by him), and he (the defendant) served a jail sentence of nearly 5 years for burning houses which belonged to Tamil people during those riots.²

I cannot understand why the learned District Judge, first having come to the conclusion that the plaintiff is the owner of Lot 1204 in Final Partition Plan No.793 marked P1, dismissed the plaintiff's action on failure to identify the land, when the defendant himself in evidence has clearly admitted that he lives on the land which is the subject matter of this case³, and also the counsel for the defendant has cross examined the plaintiff on the basis that the defendant lives on the land in suit.⁴

It is my considered view that the learned District Judge has misdirected himself on that point.

In the facts and circumstances of this case, the plaintiff has proved that the defendant is in possession of the land in suit. This is further made clear when one considers the defence of the defendant. His defence was that he has acquired prescriptive title to the land, which the learned District Judge held not to have been proved.

For the aforesaid reasons, I set aside the Judgment of the District Court and enter Judgment as prayed for in the prayer to the plaint except damages.

¹ Vide page 119 of the brief.

² Vide pages 124-125 of the brief.

³ Vide pages 119 of the brief.

⁴ Vide page 86 of the brief.

Appeal is allowed with costs.

Judge of the Court of Appeal