

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

**C.A. 53/2000 (F)**

D.C. Colombo Case No. 17039/L

1. R.A. Samson,  
'Sampath', No, 375/27,  
Shanthi Mawatha, Makumbura,  
Pannipitiya.

**PLAINTIFF-APPELLANT**

Vs.

1. Terrence Ranjith de Soysa,  
No. 394/1, Galle Road,  
Collupitiya, Colombo 3.

**DEFENDANT-RESPONDENT**

Before: **PRASANTHA DE SILVA, J. &**  
**K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Manohara De Silva (P.C.) with Anusha Perusinghe,  
(for the Plaintiff-Appellant)  
Kushan De Silva (P.C.) with Chamath Fernando and Sanjeeva Kodiththuwakku,  
(for the Defendant-Respondent)

Argument: By Written Submission

Decided on: 08.11.2021

**K.K.A.V. SWARNADHIPATHI, J**

## JUDGMENT

The Plaintiff-Appellant had filed this Appeal to set aside judgment entered in case No 17039/L on 10. 02. 2000 of the District Court of Colombo.

Plaintiff filed the case in District Court seeking ejectment of the Defendant and all holding under him from the premises described in the schedule and other reliefs. Defendant, in his Answer, pleaded that he had acquired prescriptive title and sought dismissal of Plaintiff's case. However, he had not pleaded for a judgment to declare him as the owner. Issues were raised and proceeded to trial. After the trial, judgment was pronounced on 10.02. 2000. The learned District Judge answered all the issues and held against the Plaintiff. Aggrieved by the said judgment, the Appellant pleads to set aside the judgment. Both parties agreed to abide by a judgment on the written submissions filed. Plaintiff contended that the learned District Judge had failed to consider Plaintiff's evidence and witnesses and had not adequately evaluated Plaintiff's evidence and his witness Nanadawathi.

When considering the evidence and the Plaintiff, it is clear that Defendant had entered the premises in this lawsuit with the leave and licence of the husband of Nandawathi. Plaintiff is the brother of Nandawathi. Both parties agreed on this point. Defendant clearly states that he was an employee of the late husband of Nandawathi and on his leave and licence that Defendant entered the premises.

The learned District Judge had on this point rejected the stand taken by Defendant that he had acquired on prescription. He had also rejected the version of Plaintiff. That Plaintiff had given leave for Defendant to continue occupation in the premises. Plaintiff had given evidence that he was resident in two addresses, one in Pannipitiya and the other premises, which is the subject matter. The learned District Judge had considered that a person could not hold residence in two places simultaneously. For many reasons, this can be done, but every citizen of this country can have his name in one electoral register only.

When evaluating the evidence, the learned Judge must consider the credibility of a witness when Plaintiff gives evidence that he had violated the law of the land by inserting his name in two electoral registers. What is the weight a Judge can give to his evidence? Again, he had stated that he did so because he wanted to admit his children to Royal College. How can the Judge evaluate evidence of a witness who says that he cheated for the gain of his children?

One can argue that the witness had spoken the truth; therefore, he should be considered as a truthful person.

The Court considers that the witness cannot be punished for unlawful acts confessed in his evidence, but nothing can stop a Judge from forming an idea of the person's character. His demeanour can only be evaluated by the Judge before whom he gave evidence.

The learned District Judge had considered that the State owns the premises described in the schedule to the Plaint. Plaintiff had not divulged this fact. He had not pleaded for a declaration of ownership. His plea is only to oust the Defendant and for peaceful possession. The National Housing Development Authority witness had given evidence to prove that the premises belong to the State. The witness Nandawatha also, in her evidence, had accepted that the premises belong to National Housing Development Authority.

I consider that Nandawathi had stated that his father failed to obtain a Deed before his death. However, Nandawathi had stated that her brother had a Deed to the premises. On the strength of that evidence, the conclusion of the learned District Judge cannot be set aside. Nandawathi had admitted the existent of a Deed in her cross-examination.

Even though Plaintiff states that the learned District Judge had not considered the documentary evidence, Plaintiff fails to show this Court how that would help his case. Plaintiff tries to show that Defendant came into occupation of the premises only in 1981 on the strength of electoral registers. In evidence, he stated that Defendant's name was in the electoral register marked as [P10]. According to [P9], there was no registration to the premises from 1978 to 1980. When perusing the judgment in respect of this argument, the learned District Judge had considered entering somebody's name into the electoral register. One will have to live on the premises before the relevant year. The year mentioned in the judgment is 1980. Learned Judge had pointed out that to enter the name; he should have lived in the place prior to 1980. If we consider that Defendant's name appears in the registry in 1981 as depicted in [P10]. The learned District Judge was trying to derive at the time census were taken to prepare the register. He had observed that it was not done in the same year the registry was published but before that.

However, that was not the main point on which the learned District Judge rejected Plaintiff's evidence. When considering the whole judgment, the learned District Judge had considered that Plaintiff is not a credible witness. He had violated the elections Law of Sri Lanka. He had tried to admit his children to Royal college on false documents. Now Plaintiff is trying to obtain what belongs to the National Housing Development Authority wrongfully. In evidence, it had come to light that the premises in question belong to the National Housing Development Authority.

The No. 17 of 1979 National Housing Development Authority Act has stipulated conditions on how a person may come into the occupation of a house governed under the Act. Even though the learned District Judge had not considered all these factors, once it has revealed that the property is a property of State Judge can do nothing but reject the plea of the Plaintiff. The Judge cannot make an illegal order. The learned District Judge had enough reasons when he decided not to give credit to Plaintiff. The learned District Judge had rejected the version of Plaintiff and that of Defendant giving reasons. By the judgment, the learned District Judge had not held in anyone's favour.

I see no reason to disturb the judgment of the learned District Judge, as Plaintiff had failed to come with clean hands.

I make no order for cost. I dismiss the Appeal and direct the Registrar of this Court to remit the case record back to the District Court of Colombo with a copy of this judgment.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**