

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

In the matter of an appeal from the final
judgment in the District Court of Balapitiya
in Case No. 362/L.

Kalanasuriya Arachchige Henry
Addarawatte,
Gulankanda,
Ambegama.

Plaintiff

CA/DCF/926/97

DC/Balapitiya Case No. 362/L

Vs.

1. Kariyawasam Kankanthirige Devide
Appuhamy,
Helagedarawatte,
Manampitiya,
Meethiyagoda.

Defendant

2. The Attorney General,
Attorney General's Department,
Colombo 12.

Added Defendant

AND NOW

The Attorney General,
Attorney General's Department,
Colombo 12.

Added Defendant-Appellant

Vs.

Kalanasuriya Arachchige Henry
Addarawatte,
Gulankanda,
Ambegama.

Plaintiff-Respondent (Deceased)

Kalanasuriya Arachchige Chandralatha
No. 6, Vishva Kala Housing Complex,
Mampe,
Piliyandala.

Substituted Plaintiff-Respondent

- 1A. Weeragoda Gamage Rathu Nona
- 1B. Kariyawasam Kankanam Thanthrige
Lawrance
- 1C. Kariyawasam Kankanam Thanthrige
Thilakaratne
- 1D. Kariyawasam Kankanam Thanthrige
Gamini
- 1E. Kariyawasam Kankanam Thanthrige
Upali
- 1F. Kariyawasam Kankanam Thanthrige
Karunawathi
- 1G. Kariyawasam Kankanam Thanthrige
Gunawathi
- 1H. Kariyawasam Kankanam Thanthrige
Pathmawathie

**1A-1H Substituted Defendant-
Respondents**

Before: **M. T. Mohammed Laffar, J. and
S. U. B. Karalliyadde, J.**

Counsel: **Nayomi Kahawitta, S.C. for the Added Defendant-Appellant.**

H. Withanachchi with Shantha Karunradhara for the
Substituted Plaintiff-Respondent.

Shayamal Rathnayake and Piyumi Kumari for the 1B
Substituted Defendant-Respondent.

Written Submissions on: 07.08.2012 (by the Added Defendant-
Appellant).

26.11.2019 (by the Substituted Plaintiff
Respondent).

19.08.2019 (by the 1B Substituted Defendant-
Respondent).

Decided on: 07.02.2022

Mohammed Laffar, J.

This is an appeal preferred by the Added Defendant-Appellant (hereinafter referred to as the “Added Defendant”) from the judgment of the learned District Judge of Balapitiya dated 24.10.1997.

The facts, briefly, in this case are as follows. The Plaintiff-Respondent (hereinafter referred to as the “Plaintiff”) instituted action against the Defendant-Respondent (hereinafter referred to as the “Defendant”) seeking reliefs, *inter alia*, for a declaration of title to the premises morefully described in the schedule to the plaint and the ejection of the Defendant therefrom.

The Defendant in his answer, moved for a dismissal of the Plaintiff’s action on the basis that the subject matter is a State land. Accordingly, the Attorney General was added as the Added Defendant to the action. The Added Defendant, having filed the answer, moved for a dismissal of the Plaintiff’s action and sought for an order to eject the persons those who are in

unauthorised occupation of the purported State land which is the corpus in this case.

After trial, the learned District Judge delivered the impugned Judgment in favour of the Plaintiff, as prayed for in the prayers to the plaint. Being aggrieved by the judgment, the instant appeal has been preferred by the Added Defendant.

The Corpus

The land called ASSALAGALA UDUMULLA which is morefully described in the schedule to the plaint is the subject matter in this case. The corpus is properly identified as Lot-A in the title plan bearing No. 211B dated 09.07.1961 made by W.A. William Silva, Licensed Surveyor, which is marked as Y. Accordingly, the extent of the subject matter is A1-R2-P39. For the purpose of this case, Mr. D.G. Mendis, Licensed Surveyor has made the plan bearing No. 980 dated 24.05.1981 which is produced as X.

It is to be noted that there is no dispute as to the identity of the subject matter. The only question had to be determined in this case was as to *whether the subject matter is a private land owned by the Plaintiff or the State land as claimed by the Added Defendant*. The determination of the learned District Judge was that this is a private land owned by the Plaintiff.

The title of the Plaintiff to the Corpus

It is settled law that, in *rei vindicatio* actions the onus of proof of title to the subject matter is always with the plaintiff. In the event of failure on the part of the plaintiff to establish his title, his action is liable to be dismissed.

In the case of *Dharmadasa v. Jayasena* [1997] 3 Sri LR 327, it was observed that *“in a rei vindicatio action the burden is on the plaintiff to establish the title pleaded and relied on by him. The defendant need not prove anything.”*

According to the evidence adduced by the Plaintiff, the original owner of the subject matter was one Don Andiris De Silva Jayasekeera who conveyed

his right to Odiris Appuhamy by deed No. 29220 dated 09.05.1923 (marked P3). The said Odiris Appuhamy by deed bearing No. 9128 dated 29.01.1950 (marked P4) transferred his right to Karalin Gurusinghe who conveyed that right to Lokugamage Henry by deed bearing No. 1243 dated 21.07.1961 (marked P5). The said Locugamage Henry transferred his right to the Plaintiff by deed No. 36196 dated 31.08.1978 (marked P6).

Mr. D.G. Mendis, Licensed Surveyor has superimposed his plan marked X upon the title plan marked Y, and accordingly, the subject matter has been identified as lots A1 and A2 in the superimposed plan. According to the evidence given by the Surveyor, the Plaintiff is in possession of A1 and the Defendant is in unauthorised possession of A2. At the trial, the Counsel for the Added Defendant has opted not to cross examine this witness.

Besides, Karalin Gurusingha, predecessor in title of the Plaintiff had filed an action in the District Court of Balapitiya in 1959 (Case No. L-834) against the Defendant in the instant case. Later, on 17.10.1960, this action was settled. Accordingly, the said Karalin Gurusingha had given four perches from the land in dispute to the Defendant. It is to be noted that, in that case the Defendant had not taken up the position that, this is a State land (vide document marked P7).

The evidence adduced by the Plaintiff stating that he has been in possession of the subject matter by cultivating Rubber plantation is substantiated with the documents issued by the Office of the Rubber Controller (marked P10 and P11). The said documents have been proved by the oral evidence of Justin Hettiarachchi, Officer of the Rubber Control Board.

Moreover, G.V. Sirisena, Grama Niladhari of the area, in his evidence categorically stated that this is not a State land, whereas the Counsel for the Added Defendant has opted not to cross-examine this witness as well.

Hence, in terms of the oral evidence adduced and the title deeds marked as P3-P6, the title of the Plaintiff towards the subject matter is well established.

The title of the Added Defendant to the Corpus

In *rei vindicatio* actions, once the paper title of the plaintiff is established, the onus of proof shifts to the defendant to establish his legal entitlement to be in possession of the subject matter. In the event of failure on the part of the defendant to prove his legal entitlement, there is no option for the trial Judge, but to enter a judgment in favour of the plaintiff as prayed for in the prayers to the plaint.

In *Don Namaratne v. Don David* (SC/Appeal No. 54/2002, SC Minutes of 17.02.2003), S.N. Silva, C.J. (agreeing with Bandaranayake and Yapa JJ.) held that,

“The learned President’s Counsel for the Defendant submits that the plaint is defective since the date on which wrongful possession on the part of the Defendant commenced is not set out. We cannot agree with this submission. The owner is entitled to possession of his property at all times. The rights of others are subject to the right of ownership. Once the title of the Plaintiff is admitted or proved, the burden shifts to the Defendant to prove his right to possess the property. If the Defendant fails to prove the right [Tenancy, licensee superior title] judgment to be entered in favour of the Plaintiff. In the rei vindicatio action, if the title of the Plaintiff is admitted by the Defendant, the Defendant should begin the case.”

In *Sirinivasam Prasanth v. Nadaraja Devaraja* (SC Appeal No. 163/2019, SC Minutes of 22.03.2021), recently the Supreme Court echoed the above position as follows:

Per Mahinda Samayawardena, J.

“In a vindicatory action, the initial burden is on the Plaintiff to prove title to the property. If he fails to prove title, the Plaintiff’s action shall fail, no matter how weak the case of the Defendant is. However, once the paper title to the property is accepted by the Defendant or proved

by the Plaintiff, the burden shifts to the Defendant to prove on what right he is in possession of the property.”

In this case, the Added Defendant claims that the subject matter is a State land. Hence, the burden is on the Added Defendant to establish the same with strong and cogent evidence.

U.A. Somapala, Subject clerk of Ambalangoda Divisional Secretariat and V. Kamalaseena, Assistant Surveyor General gave evidence to buttress the contention of the Added Defendant. On behalf of the Added Defendant, the Surveyor General has submitted a plan marked 2V46 which has been superimposed on the plans marked X and Y. It is to be noted that the plan 2V46 is not made in accordance with any title plan, and the same has not been superimposed on any title plan of the Surveyor General as well.

Having considered the totality of the evidence of U.A. Somapala, it is clear that, he has no personal knowledge as to the fact that this is a State land. He admitted the fact that there are no documents before 05.07.1981 pertaining to the land in dispute, at the Divisional Secretariat of Ambalangoda (vide page 244 of the Appeal brief).

Furthermore, the title plan relied by the Added Defendant is produced as 2V47. It is pertinent to be noted that 2V47 has not been superimposed on the Surveyor General's plan marked 2V46. It has been rightly observed by the learned trial Judge that the land in dispute, namely ASSALAGALA UDUMULLA is not shown in plan 2V47. V. Kamalaseena, Assistant Surveyor General, in cross-examination categorically stated that the land in suit is not shown in plan 2V47 (vide Appeal brief Vol-I, page 286). It has been transpired from the evidence of said V. Kamalaseena that lot FSPP35/242 is the land in dispute which has been shown as a northern boundary of the State land which is depicted in plan 2V47. In this respect, it is abundantly clear that the subject matter in this case is not a State land.

It was contended on behalf of the Added Defendant that the land in dispute was acquired by the State as per the Gazette Notification marked 2V50. It is manifestly clear that the corpus in this case is not mentioned in 2V50. The learned District Judge has correctly observed the fact that the subject matter (lot-242) has not originally been depicted in the plan 2V50, and subsequently the same has surreptitiously been interpolated into the said plan which is shown in red in colour (vide Appeal brief Vol-II page 139). The witness U.A. Somapala has asserted that he was unaware of that interpolation.

It is also evident that the original owner of this land was the State and Don Andiris De Silva Jayasekera had purchased the same from the state. This fact is well established by the document marked P13 which was issued by the Government Agent of Galle on 02.07.1920. It is pertinent to be noted that the said document P13 (receipt No. P06333) has been mentioned in the schedule of the title deed marked P3 as well. The witnesses of the Added Defendant while giving evidence in Court have not disputed the document marked P13. The learned trial Judge was mindful of the fact that further proof of P13 is not necessary as the same was thirty years old (vide section 90 of the Evidence Ordinance, No. 14 of 1895).

Hence, it is well established by oral and documentary evidence that the Plaintiff and his predecessors in title have been in exclusive possession of the subject matter from 1920. Furthermore, it appears to this Court that the subject matter is not shown in the title plans produced by the Added Defendant.

In these circumstances, I am of the view that the finding of the learned District Judge is according to law and not erroneous.

Therefore, I dismiss the appeal with costs, fixed at Rs. 30,000/- and affirm the impugned judgment of the learned District Judge of Balapitiya.

The learned District Judge is directed to enter a decree according to the impugned judgment.

The Registrar is directed to dispatch this judgement along with the original case record to the District Court of Balapitiya.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL