

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

**LANKA**

Wedamulla Madinage Mendis Appu,  
Makandugoda,  
Thalpe.

**Plaintiff (Deceased)**

Wedamulla Madinage Namadasa,  
Makandugoda,  
Thalpe.

**Substituted Plaintiff**

Court of Appeal Case No:  
**DCF 1114/2000**

District Court of Galle Case No:  
11653/L

**Vs.**

Polwatta Gallage Premathilake,  
Makandugoda, Heenatigala South,  
Thalpe.

**Defendant**

**AND NOW BETWEEN**

Polwatta Gallage Premathilake,  
Makandugoda, Heenatigala South,  
Thalpe.

**Defendant-Appellant (Deceased)**

Polwatta Gallage Sandya,  
Premathilake,  
Makandugodawatta,  
Thalpe.

**Substituted Defendant-Appellant**

**Vs.**

Wedamulla Madinage Namadasa,  
Makandugoda,  
Thalpe.

**Substituted Plaintiff-Respondent  
(Deceased)**

**Before:** Prasantha De Silva, J.

K.K.A.V. Swarnadhipathi, J.

Counsel : Sanath Weerasinghe with Sahan Weerasinghe instructed by Jayalath Hissalla for the Substituted-Defendant-Appellant.  
Substituted Plaintiff Respondent is absent and unrepresented.

Written Submissions : 22.01.2020 by the Defendant-Appellant and 05.04.2022  
Tendered on by the Substituted Defendant-Appellant.  
09.07.2012 and 20.12.2013 by the Plaintiff-Respondent.

Decided on : 08.12.2022

**Prasantha De Silva, J.**

### **Judgment**

The Plaintiff instituted action bearing No.11653/L in the District Court of Galle, against the Defendant inter alia seeking the following reliefs;

- A declaration of title to the land and premises called Makandugoda Kurunduwatta more fully described in the schedule to the plaint
- To eject the Defendant from the said land and premises.
- For damages and other costs.

The Plaintiff had stated in the plaint that he is the owner of the subject matter of the instant action and further stated that the Defendant had come to possession of the subject matter with the consent and the approval of the previous owners, the predecessors in title. The Defendant had taken up the position in his answer that he was in possession of the land in dispute for more than 10 years and pleaded a prescriptive title over the subject matter. At the conclusion of the trial, the learned District Judge of Galle pronounced the Judgment in favour of the Plaintiff.

Being aggrieved by the said Judgment, the Defendant-Appellant had preferred this Appeal seeking to have the said Judgment set aside and sought a declaration that he is entitled to a prescriptive title over the subject matter.

Since the instant action is an action for *Rei Vindicatio*, the burden of proof squarely and fairly rests upon the Plaintiff to prove his title to the subject matter of the action. It was the contention of the Defendant-Appellant that the Plaintiff-Respondent had failed to prove his title and properly identify the corpus. Thus, sought a dismissal of the action.

It is evident that Plaintiff had purchased the impugned subject matter by Deed of Transfer bearing No.3554 dated 20.05.1981 marked as “P3” from Leelawathie Weerasena and Chandrawathie Weerasena. They had derived title to the subject matter Lot 7 and 8 from the final partition decree (P1) of partition action bearing No. P/1335. Furthermore, the predecessors of the Plaintiff had enjoyed the fruits and benefits of the premises in dispute and the Defendant-Appellant was merely permitted to look after the premises in dispute as a licensee.

In view of the Final Partition Decree (P1) in partition action bearing No. P/1335 and the Deed of Transfer bearing No.3554 dated 20.05.1981, Plaintiff has clearly established his title to the subject matter of the instant action.

Therefore, it is the burden of the Defendant-Appellant to prove that he had acquired a prescriptive title to the subject land in terms of Section 03 of the Prescription Ordinance. Section 03 of the Prescription Ordinance states that any Defendant to plead prescription should have proof of undisturbed and uninterrupted possession by a title adverse to or independent of the Plaintiff for ten years prior to the institution of the action. In terms of Section 03 of the Prescription Ordinance, if any one accepts that the subject matter of the action is someone else’s and he is in possession with permission and/or approval (leave and licensee) of the owners, the title of the subject matter won’t be adverse.

In this respect, Court observes the cross examination of the Defendant-Appellant in the instant case. In cross examination, the Defendant-Appellant states;

ප්‍රශ්නය - චන්ද්‍රදාස වීරසිංහ ලීලාවතී වීරසිංහගේ සහෝදරයෙක්ද ?  
උත්තරය - එහෙමයි

ප්‍රශ්නය - තමන් කිව්වා එය භුක්ති විඳින්න පටන් ගත්තේ මේ අය තමන්ට විකුනනවා කිව්ව පොරොන්දුව පිට ?  
උත්තරය - උත්තරයක් නැත.

ප්‍රශ්නය - ඒ කියන්නේ සහෝදර සහෝදරයන්ට දේපල අයිති වෙලා තිබුණා කියාද?  
උත්තරය - ඒ අය ගමේ සිටියේ නෑ පිටපලාත් වල සිටියේ.

ප්‍රශ්නය - ඒ අයට අයිති බව තමන් දන්නවද?  
උත්තරය - ඒක මම දන්නවා.

ප්‍රශ්නය - තමන් කිව්වා ලීලාවතී වීරසිංහ තමන්ට අයිතිවාසිකම් දෙනවා කිව්වා කියා?  
උත්තරය - ඒ අය අවිල්ලා මට කිව්වා එයාලගේ අයිතිය දෙනවා කියා.

ප්‍රශ්නය - 18.08.1981 තමන් මේ දේපලට ඇතුළු වුණා කියා කියන්නේ?  
උත්තරය - පිළිගන්නවා.”

According to the said evidence, the Defendant-Appellant was in possession of the subject land with consent and approval of the previous owners, the predecessors in title of the

Plaintiff-Respondent namely Leelawathie Weerasena and Chandrawathie Weerasena with the mere expectation of getting the subject land and premises in issue.

In the case *Navaratne Vs. Jayatunge 44 NLR 51*, Howard, CJ. expressed that the Defendant entered into possession of the land in dispute with the consent and permission of the owner. Being a licensee, she cannot get rid of this character unless she does some overt act showing an intention to possess adversely.

It is apparent that in the instant case, the Defendant-Appellant was a mere licensee and was in possession of the subject land with leave and license of the predecessors in title of the Plaintiff-Respondent. Thus, possession of the Defendant-Appellant, however much exclusive or long continued, will not amount to an adverse possession.

As such, in terms of Section 03 of the Prescription Ordinance, the Defendant-Appellant had not proved his adverse possession of the land and premises in suit. It is worthy to note that according to the evidence placed before Court, Defendant-Appellant had failed to prove the undisturbed and uninterrupted possession of the subject matter for more than ten years adversely.

Thus, it is observable that the Defendant-Appellant had not proved the necessary ingredients in terms of Section 03 of the Prescription Ordinance to acquire prescriptive title over the subject matter of the instant action.

However, the Plaintiff-Respondent had proved his title to the subject land. Thus, it is seen that the learned District Judge has come to the correct findings of fact and law and decided the instant case in favour of the Plaintiff-Respondent and dismissed the prescriptive claim of the Defendant-Appellant.

Hence, the Judgment of the learned District Judge is well founded. Thus, we see no reason to interfere with the same.

As such, the appeal is dismissed with cost.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**K.K.A.V. Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**