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

CA/0875/99 F
DC Rathnapura
1519/L

(Deceased)

1. Ihala Lokuhewage Gnanasundara,
1(a). H.A. Podimanike,
1(b). Ihala Lokuhewage Upali Wickramasinghe,
1(c). Ihala Lokuhewage Rupa Malani,
1(d). Ihala Lokuhewage Saman Wickramaratna,
1(e). Ihala Lokuhewage Mallika Jayaweera,
1(f). Ihala Lokuhewage Nihal Jayaweera,
1(g). Ihala Lokuhewage Anura Bambarakotuwa,
1(h). Ihala Lokuhewage Seetha Jayawickrama,

All of near Dewalaya
Ratnapura.

2. Ihala Lokuhewage Karunaratna,
3. Nanayakkara Kudachchige Rathnasekera,

All of Gurubawilagama,
Balangoda

(Deceased)

4. Nanayakkara Kudachchige Agnus Nanayakkara
4(a). Athukoralage Jayathilaka Yatipahuwa,
Kiriella.
4(b). Ihala Lokuhewage Gnanasundara
(Also the 1st Plaintiff)
4(c). Ihala Lokuhewage Karunaratna
(Also the 2nd Plaintiff)

4(d). Nanayakkara Kudachchige Rathnasekera
(Also the 3rd Plaintiff)
All of near Dewalaya
Ratnapura.

4(e). Nanayakkara Kudachchige Rathnawathi Manike
(Also the 5th Plaintiff)

4(f). Nanayakkara Kudachchige Danawathie Hamine
(Also the 6th Plaintiff)

All of Gurubawilagama,
Balangoda

5. Nanayakkara Kudachchige Rathnawathi Manike
6. Nanayakkara Kudachchige Danawathie Hamine

6(a). A.P. Wijesundara
All of Gurubawilagama,
Balangoda

Plaintiffs

Vs

1. Nanayakkara Kudachchige Sirisena,
2. Nanayakkara Kudachchige Leelarathne
3. Hapurugala Witharamalage Jane Nona

All of Balakotunna,
Gurubawilagama,
Balangoda.

Defendants

And Between

1. Nanayakkara Kudachchige Sirisena,
2. Nanayakkara Kudachchige Leelarathne

3. Hapurugala Witharamalage Jane Nona

All of Balakotunna,
Gurubawilagama,
Balangoda.

Defendant-Appellants

Vs

(Deceased) 1. Ihala Lokuhewage Gnanasundara,
1(a). H.A. Podimanike,
1(b). Ihala Lokuhewage Upali Wickramasinghe,
1(c). Ihala Lokuhewage Rupa Malani,
1(d). Ihala Lokuhewage Saman Wickramaratna,
1(e). Ihala Lokuhewage Mallika Jayaweera,
1(f). Ihala Lokuhewage Nihal Jayaweera,
1(g). Ihala Lokuhewage Anura Bambarakotuwa,
1(h). Ihala Lokuhewage Seetha Jayawickrama,

All of near Dewalaya
Ratnapura.

2. Ihala Lokuhewage Karunaratna,
3. Nanayakkara Kudachchige Rathnasekera,

All of Gurubawilagama,
Balangoda

(Deceased) 4. Nanayakkara Kudachchige Agnus Nanayakkara
4(a). Athukoralage Jayathilaka Yatipahuwa,
Kiriella.

4(b). Ihala Lokuhewage Gnanasundara
(Also the 1st Plaintiff)
4(c). Ihala Lokuhewage Karunaratna
(Also the 2nd Plaintiff)
4(d). Nanayakkara Kudachchige
Rathnasekera
(Also the 3rd Plaintiff)

All of near Dewalaya
Ratnapura.

5. Nanayakkara Kudachchige Rathnawathi Manike
6. Nanayakkara Kudachchige Danawathie Hamine

6(a). A.P. Wijesundara

All of Gurubawilagama,
Balangoda

Plaintiff-Respondents

Before: C.P. Kirtisinghe – J.
Mayadunne Corea – J.

Counsel: Dushantha Kularathna instructed by I. Bandara for the Defendant-Appellants.
S. Liyanage Instructed by Ms. A. Singh for the 6th Plaintiff-Respondent.
B.O.P. Jayawardene with Oshada Rodrigo for 2(f), 3(a)(a) and 4(a)(a) Plaintiff-Respondents

Argued on: 12.01.2023

Decided On: 14.03.2023

C. P. Kirtisinghe – J.

The Defendants-Appellants have preferred this appeal from the judgement of the learned District Judge of Rathnapura dated 31.08.1999. The learned District Judge has entered judgment for the Plaintiffs. The Plaintiffs-Respondents had instituted this action against the 1st, 2nd and 3rd Defendants praying for a declaration to the effect that the Plaintiffs are the lawful owners of the land called "Nayakadewatta" which is more fully described in the schedule to the amended plaint and the buildings standing thereon, to eject the Defendants from the corpus in this case and to recover damages.

According to the devolution of title set out by the Plaintiffs in the amended plaint, the original owner of the land was one Punchi Rala and his rights had devolved on his only daughter Lama Ethana who is the mother of the six Plaintiffs. Lama Ethana had gifted her rights to the property, in 1954, to the Plaintiffs by the deed no. 3043 marked ඉ2. At the trial issues No. 1, 2 and 3 had been raised on behalf of the Plaintiffs on that basis.

In their amended answer the Defendants had taken up the position that the corpus in this case is known as "Annasigalahena" which is more fully described in the schedule to the amended answer. One Hinni Appuhamy who was the father of the 1st and 2nd Defendants and the husband of the 3rd Defendant was the owner of the land by long and continued possession and the aforesaid Hinni Appuhamy had gifted his rights to the property to the 1st and 2nd Defendants and to their brother Ananda Maheepala who died unmarried and issueless, subject to the life interest of their mother, the 3rd Defendant by the deed of gift No. 38680 marked වි2. While praying for a dismissal of the Plaintiffs' action the Defendants had prayed for a declaration to the effect that they are the owners of the land and the buildings standing thereon. They had prayed for a sum of Rs.400,000/- as compensation for the improvements they had effected in the corpus in the event the judgement is entered in favour of the Plaintiffs and also for a right of *jus retentionis* until the compensation is paid. At the trial the issues No. 8, 9, 10 and 11 had been raised on behalf of the Defendants on that basis.

The Commissioner in this case, M.W. Ratnayake Licensed Surveyor had surveyed the corpus in dispute and depicted it as lots 1, 2, 3 and 4 in plan No. 1898 which was marked as ඉ1 at the trial. The Plaintiffs' position is that the land shown in the plan is called "Nayakadewatta" and the Defendants' position is that it is

called “Annasigalahena”. There is no doubt that the land which is referred to as “Nayakadewatta” by the Plaintiffs and the land which is referred to as “Annasigalahena” by the Defendants is one and the same land depicted in that plan.

The case of the Plaintiffs is that the land in dispute was inherited by their mother Lamahamy by paternal inheritance. The case of the Defendants is that the land in dispute was owned by their father Hinni Appuhamy by long and continued possession. The evidence reveal that Hinni Appuhamy was a native of Galle which is far away from the village where the corpus is situated and therefore could not have inherited land in this area. It is not the case of the Defendants that Hinni Appuhamy purchased this land. Their case is that he became the owner of this land by long and continued possession. On the other hand, Lama Ethana was a native of this village and she had the opportunity of inheriting land in the area. Although it had been wrongly suggested to the 3rd Plaintiff Rathnasekera in cross examination that the deed marked ඇ2 does not refer to the inheritance of Lamahamy, ඇ2 refers to the paternal inheritance of Lamahamy. In the schedule to that deed, it is specifically mentioned that the subject matter of that deed “Nayakadewatta” is a land which Lamahamy had inherited through paternal inheritance. The witness Rathnasekera had stated in his evidence that Lamahamy inherited this land from her father Punchirala. As Lamahamy is a native of that village there is a strong probability for such an inheritance. On the other hand, the case of the Defendants is that the land in dispute was owned by their father Hinni Appuhamy by long and continued possession. The 1st Defendant Sirisena has stated in his evidence that the land shown as lots 1, 2, 3 in the plan marked ඇ1 is a portion of land which belonged to the estate known as “Alupola State Plantation”. By saying so the 1st Defendant had attempted to show that the land in dispute was not a land which belong to Lama Ethana’s father Punchirala and Lama Ethana could not have inherited same. In the same time, he has attempted to show that Hinni Appuhamy had prescribed to this portion of land which belong to Alupola State Plantation by long and continued possession. As the learned District judge has correctly observed the 1st Defendant had not mentioned the fact that a portion of the land (lots 1, 2, 3) belonged to Alupola State Plantation, in his amended statement of objections. Although the 1st Defendant has stated in cross examination that the corpus in dispute falls within the plan of the Alupotha estate and further stated that the Gramasewaka of the area had that plan the Defendants had not taken any steps to produce such a plan in evidence to show

that the corpus in this case belonged to Alupola State Plantation. The learned District judge had very correctly refused to accept this evidence. By answering the issues No. 1 and 2 raised by the Plaintiffs, the learned District judge has come to the conclusion that the land in dispute originally belonged to Punchirala and Lamahamy had inherited those rights. For the aforesaid reasons, on a balance of probability of evidence, the learned District judge was justified in coming to that conclusion.

By the deed of gift No. 3043 marked ළ2 Lama Ethana had gifted her rights to the property to her children from the two marriages. At the trial it had been erroneously suggested to the 3rd Plaintiff by the learned Counsel for the Defendants that the donees of that deed had not accepted the gift by signing the deed. Some of the donees had signed the deed and some had not. The 2nd and the 3rd Plaintiffs and the son in the name of Luvinis Appuhamy who had died unmarried and issueless subsequently had signed the deed and accepted the gift. The other donees had not signed the deed. The learned Counsel for the Defendants-Appellants submitted that since the donees had not accepted the gift by signing the deed no title will pass to the Plaintiffs on that deed. He further submitted that the deed of gift No. 38680 marked වී2 upon which Hinni Appuhamy gifted the property to the Defendants had been accepted by the donees and on behalf of the donees by signing the deed. The learned District Judge has come to the conclusion that it is not an essential requirement in law that a deed of gift should be accepted by signing the deed. In the case of **Senanayake Vs Dissanayake 12 NLR 1**, it was held that it is not essential that the acceptance of deed of gift should appear on the face of it, but such acceptance may be inferred from circumstances and that possession by the donee of the property gifted leads to the inevitable inference that the deed of gift was accepted. In the case of **Bindu Vs Untty 13 NLR 259** it was held that acceptance may be manifested in any way in which ascent may be given or indicated and that the question of acceptance is a question of fact and each case has to be determined according to its own circumstances. In the case of **Nagarathnam Vs Kandiah 44 NLR 350** it was held that, where the deed contained a statement to the effect that the donor delivered possession of the property to the minors, it has been held that acceptance may be presumed. In the case of **Yapa Vs Dissanayake Sedara 1989 (1) SLR 361**, it was held that it is not essential that acceptance of a donation on a deed of gift should appear on the face of the instrument. Such acceptance may be inferred from circumstances. Where there

is no acceptance on the face of the deed and there was no evidence of delivery of the deed nor of possession of the property acceptance cannot be inferred.

In the deed of gift marked ඒ2 some of the donees had accepted the gift by signing the deed and there is an acceptance on the face of the deed. There is evidence to show that some of the donees had been in possession of the subject matter of the deed after it was executed. There is evidence to show that the 6th Plaintiff Dhanawathi Hamine was residing in this land after the execution of the deed. There is evidence to show that the 2nd Defendant had a boutique and a house in this land and he had been in possession after the execution of the deed. There is also evidence to show that the 3rd Plaintiff was working as a baker in the land after the execution of the deed which shows that the delivery of possession of the property had taken place after the execution of the deed and the donees of the deed had accepted the deed by their conduct. The original copy of the deed of gift marked P2 was in the custody of the Plaintiffs and it was produced in evidence from the custody of the plaintiffs which is indicative of the fact that the deed of gift marked ඒ2 was delivered to the Plaintiffs after the execution of the deed. This is clear evidence of delivery of the deed and a circumstance out of which one can draw the inevitable inference that the donation was accepted by the donees of the deed. Therefore, one can come to the conclusion that the rights of Lama Ethana had devolved on the Plaintiffs on the deed and the learned District Judge has come to a correct conclusion regarding that matter. As the Defendants had failed to establish that Hinni Appuhamy had acquired a prescriptive right to the corpus which was a portion of Alupola Estate, no title will pass to the Defendants on the deed marked ඩ2.

The next question that has to be taken into consideration is whether the Defendants and their predecessor in title Hinni Appuhamy had prescribed to this land which was owned by Lamahamy and later by her children. At the trial the issue No.11 had been raised on behalf of the Defendants on the basis that the Defendants and their predecessors in title had prescribed to this land.

It is common ground that Lama Ethana was married to a person in the name of Babichan Appuhamy prior to her marriage to Hinni Appuhamy and Lama Ethana had three children from her 1st marriage. The 1st and the 2nd Plaintiffs are the children of Lama Ethana from her 1st marriage. Thereafter, Lama Ethana had married Hinni Appuhamy out of whom she had four children, the 3rd, 4th, 5th and 6th Plaintiffs. The learned District Judge has come to the conclusion that Hinni Appuhamy had lived with Lama Ethana and her children in a house which was

situated in the land in dispute and on a balance of probability of evidence one can come to that conclusion. Therefore, Hinni Appuhamy could not have had adverse possession against his wife Lama Ethana while living together in this land. The learned District Judge has correctly observed that while residing in the corpus together with his wife Lama Ethana, Hinni Appuhamy had possessed the corpus on behalf of his wife. Therefore, the possession of Hinni Appuhamy amounts to a possession of a licensee and one can come to the conclusion that Hinni Appuhamy was in possession with leave and license and consent of his wife Lama Ethana.

In the famous case of **Maduwanwala vs. Eknaligoda 3 NLR 213** Bonser CJ. held as follows,

"A person who is let into occupation of property as a tenant or as a licensee must be deemed to continue to occupy on the footing on which he was admitted, until by some overt act he mainfests his intention of occupying in another capacity. No secret act will avail to change the nature of his occupation."

Therefore, Hinni Appuhamy who came into occupation of this property as a licensee of his wife Lama Ethana must be deemed to occupy the property on the same footing until by some overt act he manifests his intentions of occupying in another capacity. However, in this case there is no evidence to show some overt act of Hinni Appuhamy which manifests his intentions of occupying the property in another capacity. There is no evidence of any overt act of Hinni Appuhamy which shows that he had got rid of himself in his capacity of a licensee and his possession had become adverse to his wife Lama Ethana and her children some of whom were his own children.

After sometime while living together with his wife Lama Ethana, Hinni Appuhamy had brought another woman in the name of Jane Nona to the same house and after that Lama Ethana and her children had left that house and gone to reside elsewhere in the close vicinity. 1st and the 2nd Defendants and another child were born to Jane Nona by Hinni Appuhamy and after the death of Lama Ethana, Hinni Appuhamy had married Jane Nona.

The learned Counsel for the Defendant Appellants submitted that the act of Lama Ethana leaving the matrimonial home with her children and going to reside elsewhere amounted to an overt act of Hinni Apphuhamy which manifest that his character of possession had changed. We are unable to agree with that submission. That is an act of Lama Ethana and her children and not an act of

Hinni Appuhamy. There is no evidence to show that Hinni Appuhamy chased away Lama Ethana from matrimonial home and Lama Ethana was forced to leave matrimonial home due to the acts of Hinni Appuhamy. On the other hand, the balance of probability of evidence show that Lama Ethana had gone to reside in a house situated in a land which belong to Hinni Appuhamy which is situated in the close vicinity. The 3rd Plaintiff had stated in his evidence that Lama Ethana and the children went to reside in a land called "Annasigalawatta" which is situated below (යටි පැත්ත) the land which is in dispute. This land was owned by Lama Ethana and thereafter it was transferred to Hinni Appuhamy. Hinni Appuhamy built the house which was standing thereon. Lama Ethana and the children came to reside in that house. This evidence is corroborated by the contents of the deed marked පැ3 which shows that Lama Ethana had owned a land in the name of "Annasigalawatta" and later she had transferred the same to Hinni Appuhamy. According to the 3rd Plaintiff it is to this land that Lama Ethana had come to reside and she had occupied the house built by Hinni Appuhamy. This act of Lama Ethana shows in no uncertain terms that the relationship between Lama Ethana and Hinni Appuhamy had not come to an end although it was not cordial. Lama Ethana must have left the matrimonial home with a displeasure as she was not willing to share the matrimonial home with another woman who was her husband's mistress but her conduct shows that her relationship with her husband never seized. Otherwise, she would not have gone to occupy a house which belong to her husband and Hinni Appuhamy had never made any attempt to drive her away from that house. Under those circumstances Hinni Appuhamy could not have commenced adverse possession against Lama Ethana even after she had left the matrimonial home. In any event Hinni Appuhamy could not have had adverse possession against 3rd to 6th Plaintiffs who were his own children. Evidence show that the 6th Plaintiff was residing in the corpus for a long period even after the death of Lama Ethana. It is also evident that the 2nd Plaintiff had a house within the corpus. The 1st Defendant had admitted that the 3rd Plaintiff was working in the bakery of Hinni Appuhamy which was situated in the corpus. I have dealt with those evidence under a different heading. The evidence show that the 6th, 2nd and 3rd Plaintiffs were in possession of the corpus after Lama Ethana had left her matrimonial home and they were in possession for a long period thereafter. There is no evidence to show that Hinni Appuhamy had objected to their possession and taken any step to eject them. That shows that a cordial relationship existed between the Plaintiffs and Hinni Appuhamy even after Lama Ethana had left the

matrimonial home and after Hinni Appuhamy's marriage to Jane Nona. Under those circumstances Hinni Appuhamy could never had commenced adverse possession against the Plaintiffs. The fact that Hinni Appuhamy had leased a boutique standing on the corpus to one Vaithilingam Pillai will not make any difference.

Section 3 of the Prescription Ordinance No 22 of 1871 (as amended) reads as follows,

"3. Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgement of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs."

In the case of **Wanigaratne Vs Juwanis Appuhamy 65 NLR 167** the Supreme Court of Ceylon accepted the principle that in an action *Rei vindicatio* the Plaintiff must prove and establish his title. In the Case of **Peeris Vs Savunhamy 54 NLR 207** Dias J. held that the initial burden of proof rests upon the Plaintiffs to prove his title including the identification of the boundaries. In **De Silva Vs Gunathilake 32 NLR 217** Macdonell CJ. observed as follows;

"There is abundant authority that a party claiming a declaration of title must have title himself. The authorities unite in holding that the Plaintiff must show title to the *corpus* in dispute and that, if he cannot, the action will not lie."

In the case of **Dharmadasa Vs Jayasena (1997) 3 SLR 327**, cited by the learned Counsel for the Defendants-Appellants G.P.S. De Silva CJ. held that in a *Rei Vindicatio* action the burden is on the Plaintiff to establish the tittle pleaded and relied on by him. The Defendant need not prove anything.

Therefore, the requisites of a vindicatory action consist of proof,

a) that the Plaintiff is the owner of the property
b) that the property is in the possession of the Defendant.

The Plaintiffs in this case have proved their paper title to the corpus. There is no dispute that the Defendants are in possession of the corpus. Therefore, the burden of proof shifts to the Defendants to prove their prescriptive claim to the

property in dispute. The burden is on the Defendants to prove their prescriptive claim on a balance of probability of evidence.

One of the requisites of a prescriptive claim is to prove adverse possession. Therefore, the Defendants must prove that they and their predecessors in tittle were in adverse possession. That the Defendants and their predecessors in title have possessed the corpus by a title adverse to or independent of that of the Plaintiffs.

In the case of **Fernando Vs Wijesooriya 48 NLR 320** Canekeratne J. explained the concept of adverse possession as follows;

"There must be a corporeal occupation of land attended with a manifest intention to hold and continue it and, when the intent plainly is to hold the land against the claim of all other persons, the possession is hostile or adverse to the rights of the true owner. It is the intention to claim the title which makes the possession of the holder of the land adverse; if it be clear that there is no such intention there can be no pretence of an adverse possession."

In the case of **Naguda Marrikkar Vs Mohamadu 7 NLR 91** cited by the learned Counsel for the Defendants-Appellants the Judicial Committee of the Privy Council held that, in the absence of any evidence to show that the possessor got rid of his character of agent he was not entitled to the benefit of section 3 of Ordinance No. 22 of 1871.

For the reasons I have stated earlier Hinni Appuhamy could never have commenced adverse possession against Lama Ethana and the Plaintiffs who were his wife, children, stepsons and stepdaughters and there is no positive evidence of an overt act which demonstrate that Hinni Appuhamy got rid of the character of a licensee. Therefore, the prescriptive claim of the Defendants must necessarily fail on that ground alone.

Another requisite of a prescriptive claim is to prove undisturbed possession. Prescriptive possession is statutorily required to be undisturbed. In the case of **Simmon Appu Vs Chriatian Appu (1895) 1 NLR 228** Withers J. commented on the concept of undisturbed possession as follows;

"Possession is disturbed either by an action intended to remove the possessor from the land or by acts which prevent the possessor from enjoying the free and full use of the land of which he is in the course of acquiring the dominion, and which convert his continuous into a disconnected and **divided user**."

In the same case Lawrie ACJ. Observed as follows;

“A disturbance is something less than an interruption; it is a disturbance if, for a time, someone succeeds in getting partial possession, not to the entire exclusion of the former possessor, but jointly with him.”

The evidence of this case show that the possession of Hinni Appuhamy was not exclusive. It was divided between him and some of the Plaintiffs. The balance of probability of the evidence show that some of the Plaintiffs were possessing the corpus jointly with Hinni Appuhamy.

There is evidence to show that the 6th Plaintiff Danawathie Hamine had lived in the land in dispute for a very long period of time. In the schedule of the deed of gift marked පැ2 it is stated as follows;

“එකී ඉඩමේ ධනවතී හාමිනේ විසින් සාදා තිබෙන ටකරන් සෙවිලි කඩගෙය ඇයට අත්හැර ඉතිරි උළු සෙවිලි කඩගෙයද යන දේපල...”

That shows that the 6th plaintiff had built a house coupled with a boutique in the land and she was living there as far back as 1954 when the deed was written and that collaborates the evidence of the 3rd Plaintiff to the effect that Danawathie was living in the corpus. In the surveyor’s report marked පැ1 (අ), the surveyor had stated that the 6th Plaintiff had claimed the building shown as ‘A’ in the plan and informed that she was residing there. She had further informed the surveyor that as the roof of the building is leaking that she was living elsewhere until the roof was repaired. That shows that Danawathie Hamine was living in the corpus until somewhere close to 1977 when the survey was done. There can be no doubt that she was living in the corpus when this case was instituted in 1973. Otherwise, the house which she claimed before the surveyor would not have been in that condition in 1977.

It had been suggested to the 1st Defendant that the 2nd Plaintiff Karunarathne was residing in the corpus. The document marked පැ4 shows that a license had been issued to the 2nd Plaintiff Karunarathne to erect a damaged house which was situated in the corpus. The document marked පැ5 shows that the aforesaid permit was registered at the land registry. This permit had been issued in 1958. The name of the land is mentioned as “Nayakabiwatta” situated in the village of Balakotunna. Southern boundary of the land is the high road and the northern and eastern boundaries are tea estates. It is obvious that the name “Nayakadewatta” had been misspelled “Nayakabiwatta”. The 1st Defendant had not denied that document. It had been suggested to him that it is a document

issued in the name of 2nd Plaintiff to erect a building and without denying that suggestion the 1st Defendant had answered as "වෙන්න පුලුවන්". The contents of that document show that the 2nd Plaintiff had obtained that permit to re-erect a building which was standing in the corpus which was damaged. That shows that the 2nd Plaintiff was in possession of the corpus.

The documents marked වි5, වි6 shows that Hinni Appuhamy had obtained licenses to run a bakery in the land and the documents marked වි10, වි12 and වි13 show that Hinni Appuhamy had obtained licenses to run a Tea Kiosk in the land. The fact that Hinni Appuhamy was running a bakery and a tea kiosk in the land does not alter the nature of his permissive possession which was not adverse to the Plaintiff. The 1st Defendant admitted the fact that the 3rd Plaintiff Ratnasekera was working in Hinni Appuhami's bakery. That shows that the relationship between the 3rd Plaintiff and his father Hinni Appuhamy was cordial and Hinni Appuhamy could not have had adverse possession against the 3rd Plaintiff. That also shows that the 3rd Plaintiff was in possession of the corpus. Although he was working for Hinni Appuhamy his possession could be referable to his own co-ownership to the land. Therefore, on the balance of probability of evidence one can come to the conclusion that Hinni Appuhamy never had exclusive possession to the corpus and he had possessed the corpus jointly together with some of the Plaintiffs.

The learned Counsel for the Defendants-Appellants has cited several authorities in support of his appeal. The case of **Rajapaksha and others Vs Hendirik Singho and others 61 NLR 32** is a partition action where the issue was prescription among co-owners. This case is not between co-owners. In the case of **Jane Nona Vs Gunawardena 49 NLR 522** it was held that, a judgement debtor who continues in adverse possession after a sale of execution can acquire title by prescription. In the case of **Government Agent Western Province Vs Fedric Perera 11 NLR 337** it was held that a *usufructuary* mortgagee had acquired tittle by prescription to a land, inasmuch as after their purchase at the fiscal's sale the character of their possession changed, and thereafter they must be regarded to have possessed *ut dominus* and not qua mortgagees.

Those judgements layout the general principles applicable in a case of prescription and those judgements cannot salvage the Appellants case.

For the aforementioned reasons, on a balance of probability of evidence the Defendants-Appellants had failed to prove that their predecessor in tittle Hinni Appuhamy had acquired a prescriptive right to the corpus in this case and the

learned District judge have come to a correct finding in respect of that matter. Therefore, the possession of the Defendants becomes unlawful and a cause of action had accrued to the Plaintiffs to eject the Defendants from the corpus and recover possession and also to recover damages.

The learned District judge have come to a correct finding in this case and we see no reason to interfere with that finding. Therefore, we affirm the judgement of the learned District judge dated 31.08.1999 and dismiss the appeal with costs fixed at Rupees 31,500/-.

Judge of Court of Appeal

Mayadunne Corea – J.

I Agree

Judge of Court of Appeal