

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

In the matter of an application under section
754 (1) of the Civil Procedure Code.

A.M. Koralage Gedara Wijerathne
Mamunuwe, Wariyapola.

Plaintiff

C.A. Application No.758/97/F

D.C. Kurunegala 2342/L

Vs

Pingemage Don Premaseeli
Jayalath
Arukgod, Danowita.

Substituted-Defendant

And Between

1A Pingemage Don Premaseeli
Jayalath
Arukgod, Danowita.

Substituted-Appellant

Vs

A.M. Koralage Gedara Wijeratne
Mamunuwe, Wariyapola.

Plaintiff-Respondent

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: Amarasiri Panditharatne for the

Substituted Defendant Appellant

R.M. Thilakeratne for the

Plaintiff-Respondent

ARGUED ON

: 16th February, 2015

DECIDED ON

: 17th July, 2015

Deepali Wijesundera J.

Plaintiff respondent has filed an action in the District Court Kurunegala for a declaration of title to the land called "Malwattahena" described in the schedule to the plaint against the Defendant appellant and also to evict the defendant appellant from the said land. The learned District Judge delivering his judgment on 04/09/1997 has granted relief prayed by the plaintiff respondent. The defendant appellant has filed the instant application against the said judgment.

The original owner of the said land has been the state. In terms of the *Land Settlement Ordinance* Herath Banda has become the owner of the land by P1 dated 04/09/1945. Prior to this Herath Banda by P2 No.

4705 dated 12/05/1944 has transferred the said land to Robosingho who has come to possess the land and by *deed no. 5350* dated 30/03/1980 gifted the land to his brother Jamis who has gifted land to his daughter by *deed no. 21745* dated 19/09/1981 the defendant appellant. The appellant has also claimed prescriptive title.

Original owner Herath Banda after getting the Crown Grant has sold the land to Robosingho by *deed no. 2392* dated 11/12/1980. Robosingho by *deed 2393* dated 11/12/1980 has gifted the land to plaintiff respondent on the same day.

The learned District Judge has held that Herath Banda did not have title to transfer the land to Robosingho in 1944 by **P2** and the said transfer is not a valid transfer therefore the defendant appellant did not get title from the said deed.

The issue this court has to decide is whether the defendant appellant got title from *deed no. 4705* dated 12/05/1944 to the land in issue from Herath Banda. The argument of the learned counsel for the defendant appellant was the application of the principle *exceptio rei venditae et traditae* which means if a vendor sells a property of which

he did not have title but subsequently acquires title, the title he acquires will ensure the title of the purchases and cited the judgments on **Solohami Vs Rapheal (1889) 1 S.C.R. 73, De Silva Vs Sheik Ali (1895) 1 NLR 228, Guruhami Vs Subaseris (1910) 13 NLR 112, Rajapaksa Vs Fernando (1918) 20 NLR 301, Nonohami Vs Appusingho (1915) 1 CLW 80, Kodippili Vs Davith Sinno (1917) 4 CLW 27 and Endoris Vs Adrien (1919) 21 NLR 224.**

Therefore with the acquisition of title by Herath Banda in 1945 in terms of *sec. 5 (5) of the Land Settlement Ordinance* the said title was passed on to Robosingho by *deed no. 4705* on 12/05/1944 the appellants counsel submitted.

The learned counsel for the defendant appellant further submitted that the plaintiff respondent himself has admitted in the District Court that Robosingho was in occupation of the said land therefore the appellant and his predecessors in title was in continuous possession of the land and had prescriptive title to the land. Appellant stated that the findings of the learned District Judge is erroneous and can not stand in law.

The counsel for the plaintiff respondent submitted that he got title to the land from Robosingho by *deeds no. 2393* dated 11/12/1981 and *no. 2392* dated 11/12/1980. These deeds were executed after the said Herath Banda received his Crown Grant.

The plaintiff respondent argued that the appellant has taken up the maxim *exceptio rei venditae et traditae* in the instant case for the first time at the appeal stage and that the appellant had no legal right to do so. Since it is a question of law it could be raised at any stage of the case.

The learned counsel for the plaintiff respondent cited the judgment of *Justice Shiranee Bandaranayake Chief Justice in case 18/2000*.

In the above judgment Bandaranayake Chief Justice held that until the publication of the Gazette notification under the Land Reform Law the author of the deed did not have legal title to the land in question. The counsel for the appellant stated that this judgment refers only to a "donee" which is not correct.

Chief Justice Bandaranayake has very clearly citing a number of authorities has analysed the application of the concept of *exceptio rei*

venditae et traditae and arrived at the conclusion. This is a more recent judgment where as the judgments cited by the defendant appellant are very old judgments.

Herath Banda who was the original owner received the land on **P1** by a Crown grant on 04/09/1945. He has sold the said land to Robosingho by *deed no. 4705* dated 12/05/1944 marked **P2**. He did not have legal title to sell the land to Robosingho on 12/05/1944 he got the Crown Grant only on 04/09/1945. The defendant appellant claims title from this deed which is a deed given prior to getting the Crown Grant. Herath Banda after getting the Crown Grant **P1** has transferred the said land to Robosingho by *deed no. 2392* in 11/12/1980 (**P4**). Robosingho on the same day by **P5** has transferred the land to Wijeratne the plaintiff respondent.

The learned District Judge has very correctly decided that the defendant appellant did not get title from **P2** from Robosingho who did not have title to pass on.

For the afore stated reasons I see no valid reason to interfere with the learned District Judge's judgment. I dismiss the appeal of the appellant with costs fixed at Rs. 10,000/=

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL