

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

M.S.Samsul Hidhaya
No.35, Bodhirja Mawatha
Kurunegala.

Petitioner.

C.A.No.820/97 (F)

D.C.Kurunagala No.5070/L.

A.H.Jameela umma (Deceased)

Mohamed Thajudeen Marikkar
(Deceased)

Defendant-Appellant

Vs.

Abdul Razak Mohamed Isaak
No.396, Kandy Road,
Kurunegala.

Plaintiff-Respondent-Respondent

Before : M.A.Gaffor,J. and
S.Devika de L.Tennakoon,J.

Counsel : Tilaka Bandara Waduressa for the
Defendant-Appellant
Vidura Gunaratne for the Plaintiff-
Respondent

Argued on : 11/11/2017

Decided on : 30/01/2017

M.M.A.Gaffoor,J.

This is a rei-vindicatio action filled by the Plaintiff-respondent in the District Court of Kurunagalle against the Defendant-Appellant seeking for following relief inter alia;

- i) A declaration that the Respondent is the owner of

the premises which was described in the schedule to the plaint.

ii) For ejectment of the Appellant and all those holding under her from the said premises.

iii) Damages of Rs.10,000 per month from 30.12.1990 till the respondent receipt of the possession of the same.

In a rei-vindicatio action the cause of action is based on the sole ground of violation of right of ownership to the land. In a rei-vindicatio action the plaintiff claims as the owner of the land he has the dominum and that land is in the unlawful possession of the defendant.

In the case of *Peeris Vs. Savunhamy*- S.C.121-1951- 64 NLR page 207 Dias S.PJ. Held :

“Where in an action for declaration of title to land, the defendant is in possession of the land in dispute the burden is on the plaintiff to prove that he has dominium.

In the case of *D.A.Wanigarathne and Juwanis* 65 N.L.R. 167 stated " in an action rei- vindication the plaintiff must prove and establish his title. He cannot ask for a declaration of tile in his favour merely on the strength that the defendant's title in poor or not establish.

In this matter plaintiff respondent state in his plaint inter alia that the premises was belonged to Thambi Marikkar Hadjiyar Sara Umma, Ibrahim Nina Marikkar Umma, and Ibrahim Naina Markkar Mohamed Casim Marikkar. The said co-owners execute the Deed bearing No.3886 dated 19.05.1960 executed by S.M.Abuthahir NP and thereby exchanged their rights to Iabraham Nina Marikkar Raliya Umma became the sole owner of the said premises. This Raliya Umma by deed No.1981 dated 30.12.1990 attested by Wasantha Amarasakera NP transferred her rights to the respondent and respondent became the lawful owner of the said premises. This was an admitted fact and the plaintiff proved his title which marked as P1. In these circumstances the ownership of the plaintiff as from 30th December 1990 is an admitted fact.

The Plaintiff's action is for the declaration of title alleging that the defendant was disputing his rights as the owner. In such case when the title is admitted the burden is on the defendant to establish the legality of her possession.

In the case of *Gunasekara & another V. Latiff* 1999 1SLR 365 stated " Ordinarily the plaintiff has the right to begin , but where the defendant admits plaintiff's story and contends on some point of law or additional facts to be alleged by him that the plaintiff is not titled to any part of the relief he claims, the defendant has the right to begin.

However the defendant-appellant in this matter has taken up the position that she was not aware that the ownership of the premises was transferred to plaintiff and failed to prove that she is in possession as a tenant.

In the case of *Jayawardena Vs. Wanigasekara & others* 1985 1 SLR page 125, states to prove tenancy the best evidence is the

payment of rent and the rent receipts. But it is clear that the Defendant-Appellant failed to produce any such documents to prove that she is in possession as a tenant.

In these circumstances, I am of the view that the learned District Judge has very carefully and correctly analyzed all the verbal and documentary evidence placed before him come to his conclusion.

For the afore stated reasons, I dismiss the appeal with costs fixed as Rs. 25,000/-.

JUDGE OF THE COURT OF APPEAL.

S.Devika de L.Tennakoon.J.

I agree.

JUDGE OF THE COURT OF APPEAL.