

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

Hatharasinghe Vidanelage Baden
Sherinton Ratnavira
Ambatale Estate,
Ambatale.

Plaintiff

CA 807/97(F)

D.C. Colombo Case No. 14774/L

Vs.

K. D. Nimal Ariyaratne
Anura P.V.C. Factory,
Ambatale,
Angoda.

Defendant

AND BETWEEN

Hatharasinghe Vidanelage Baden
Sherinton Ratnavira
Ambatale Estate,
Ambatale.

Plaintiff – Appellant

Vs.

K. D. Nimal Ariyaratne
Anura P.V.C. Factory,
Ambatale,
Angoda.

Defendant – Respondent

BEFORE: M.M.A. Gaffoor J.

S. Devika De Livera Tennekoon J.

COUNSEL: H.Withanachchi for the Plaintiff- Appellant

**Harsha Soza P.C. with A.Munasingha instructed by
P.H.Keerthinanda for the Defendant - Respondent**

ARGUED ON: 20.02.2017

WRITTEN SUBMISSIONS : Filed by both parties

DECIDED ON: 29.06.2017

S. DEVIKA DE LIVERA TENNEKOON J

The Plaintiff – Appellant (hereinafter referred to as the Plaintiff) instituted action in the District Court of Colombo by plaint dated 30.11.1988 praying *inter alia* for a declaration of title in respect of an allotment of land which at present was allegedly unlawfully occupied by the Defendant – Respondent (hereinafter referred to as the Defendant) and damages of Rs. 10,000/- *per mensem* till vacant possession thereof was delivered to the Plaintiff.

The corpus was identified further to a commission issued by Court as Lot. 01 in plan bearing No. DC/C/5-91 dated 15.03.1992 prepared by Licensed Surveyor I. G. W. Fernando.

The case in brief for the Plaintiff is that the original owner of lot 4 in Plan No. 349A dated 26.06.1955 containing in extent 8 acres and 20 perches by virtue of Deed bearing No. 4808 dated 17.07.1955 was the Plaintiff's father one H.V. Punchisingho Satharasinghe.

The said land was thereafter allegedly vested in the Land Reform Commission with the enactment of the Land Reform Law No. 01 of 1972 under the provisions of Section 14(2) and that the land described in the 2nd Schedule to the Plaint was given to the Plaintiff and that by letter dated 17.06.1988 that the Commission instructed the Plaintiff to execute Deed in his name for the said portion of land and as such that Deed bearing No. 1773 dated 17.06.1998 was executed in favour of the Plaintiff.

The Contention of the Plaintiff is that although the ownership of the property morefully described in the 1st schedule to the Plaint vested with the Commission as aforementioned the Defendant had come to possess the aforesaid Lot 1 which forms a part of the land morefully described in the 1st schedule to the Plaint by virtue of Deeds bearing No. 2527 dated 14.03.1980, Deed No. 2838 dated 25.05.1981 and Deed No. 2895 dated 07.09.1981.

The Plaintiff contends that the said Deeds are void and that by letter dated 17.10.1988 sent on behalf of the Plaintiff by his Attorney-at-Law the Plaintiff requested the Defendant to vacate the corpus aforesaid but that the Defendant continued to occupy the corpus unlawfully.

The case for the Defendant in brief as pleaded in Answer dated 31.03.1993 is that the Plaintiff's father, the said H.V. Punchisingho Satharasinghe was the original owner of the larger extent of land as averred by the Plaintiff but however that the said land was not subject to the Land Reform Commission since it was not agricultural land and the land was used to obtain clay for the manufacture of tiles and bricks and that there were large pits on the land from where the clay was removed. The Defendant contends that after the demise of the said H.V.

Punchisingho Satharasinghe the title of the larger extent of land devolved on the lawful issues of the said H.V. Punchisingho Satharasinghe in equal shares of 1/8 (including the Plaintiff) and that thereafter the Plaintiff and three other children of the said H.V. Punchisingho Satharasinghe had by the said Deeds bearing No. 2527 dated 14.03.1980, Deed No. 2838 dated 25.05.1981 and Deed No. 2895 dated 07.09.1981 respectively transferred their rights to the Defendant.

The position that the Defendant is in possession of the said land on the strength of the aforesaid Deeds is not disputed by the Plaintiff but however maintains that the said Deeds are void.

The Defendant's position is that on an application of the principle "exception rei vindication et traditae" the title of the corpus should vest on the Defendant since the Plaintiff had conveyed all his rights to the Defendant by virtue of said Deed bearing No. 2838 and effectively the rights and entitlements of the Plaintiff under Deed bearing No. 1773 dated 17.06.1998 would ensure to the benefit of the Defendant.

The Defendant further preferred a counter claim against the Plaintiff for a compensation award of Rs. 5,000,000/- for the buildings constructed by the Defendant for his industry further for a declaration that the Defendant remains possession of the Corpus until the said sum is paid by the Plaintiff.

The Plaintiff filed replication dated 28.04.1993 denying the claim of the Defendant for compensation on the grounds that the said improvements were made by the Defendant were *mala fide* and that by the said Deed No. 2838 it was only agreed to convey what would devolve on the Plaintiff by the Land

Reform Commission and that the Defendant had fraudulently caused a transfer of rights to himself.

Trial commenced on 29.09.1993 and the parties recorded two admissions i.e. that the larger extent of land was owned by the said H.V. Punchisingho Satharasinghe and further admitted deeds bearing No. 2527 dated 14.03.1980, Deed No. 2838 dated 25.05.1981 and Deed No. 2895 dated 07.09.1981. The Plaintiff thereafter raised issues 1 – 5 and the Defendant raised issues 6 – 16.

The Plaintiff gave evidence on his behalf and marked documents P1 – P3 and closed his case. The Defendant gave evidence on his behalf and marked documents V1 – V4 and closed his case.

The learned District Judge by order 10.10.1997 dismissed the case of the Plaintiff on the basis *inter alia*;

- a) No witness has been called by the Land Reform Commission to establish that deed bearing no No. 1773 dated 17.06.1998 marked as P2 was prepared on the basis of a determination under Section 14(2) of the Land Reform Law,
- b) The position that the Plaintiff didn't know he was signing the Deed of transfer No. 2838 dated 25.05.1981 (V1) could not be accepted,
- c) The Plaintiff has failed to produce copies of the application under Section 14(1) of the Land Reform Law,
- d) The Plaintiff has failed to prove that the land was in fact vested in the Land Reform Commission.

Being aggrieved by the said judgment the Plaintiff preferred this instant appeal on the grounds morefully described in the Petition of Appeal dated 19.12.1997.

This Court shall now consider whether the Plaintiff has proved his case on a balance of convenience. At the outset the salient weakness of the Plaintiff's case must be noted, *inter alia*;

- a) The Plaintiff admits that the Plaintiff's father the said H.V. Punchisigho Satharasinghe had not made a declaration to the Land Reform Commission as required by law,
- b) The Plaintiff in his evidence states that he willingly signed Deed bearing No. 2838 dated 25.05.1981 but however that he merely intended the said Deed as an agreement to sell and not a deed of transfer although the title and the wording of the said deed clearly indicate that it was in fact a Deed of Transfer,
- c) Although the Plaintiff makes reference to letters and decisions of the Land Reform Commission same has not been tendered to Court and as such remains unproven,
- d) No officers from the Land Reform Commission were called in support of the Plaintiff's contention.

It is for these reasons *inter alia* that the learned Additional District Court Judge found that the Plaintiff has failed to prove his case and therefore dismissed the case.

This Court takes the view that the Plaintiff has failed to prove *inter alia* that he had obtained the corpus from the Land Reform Commission and therefore that

the learned Trial Judge has correctly analysed the evidence presented in Court and arrived at the correct findings.

As such I see no reason to interfere with the findings of the learned Additional District Judge and therefore affirm the said judgment dated 10.10.1997 and dismiss the instant appeal.

Appeal dismissed.

Judge of the Court of Appeal

M.M.A. GAFFOOR J

I Agree.

Judge of the Court of Appeal