

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

Ekanayake Mudiyanseelage Ukku Banda,
Siyambalewa, Dullegoda,
Nikaweratiya.

PLAINTIFF

CA Appeal No. 189 / 2000 (F)

-Vs-

DC Maho Case No. 3872 / L

Adikari Mudiyanseelage Herath Banda,
Siyambalewa, Dullegoda,
Nikaweratiya.

DEFENDANT

AND

Adikari Mudiyanseelage Herath Banda,
Siyambalewa, Dullegoda,
Nikaweratiya.

DEFENDANT - APPELLANT

-Vs-

Ekanayake Mudiyanseelage Ukku Banda,
Siyambalewa, Dullegoda,
Nikaweratiya.

PLAINTIFF - RESPONDENT

BEFORE : A.H.M.D. Nawaz, J,

COUNSEL : Defendant-Appellant absent and unrepresented
P. Peramunagama with Pushpika Peiris for
the Plaintiff-Respondent .

Decided on : 24.03.2016

A.H.M.D. Nawaz, J.

The Plaintiff-Respondent (hereinafter sometimes referred to as “the Plaintiff”) instituted this action on 18.03.1994 against the Defendant-Appellant (hereinafter sometimes referred to as “the Defendant”) for a declaration of title to the land which is morefully described in the schedule to the plaint, for ejectment of the Defendant, his agent and all those who claim under him, and for damages and costs.

Denying all averments stated by the Plaintiff, the Defendant filed his answer on 29.08.1994 and stated that since 1973 he had been in possession of the land in dispute and he secured the right to be in possession of the said land from one Punchirala, who had obtained from him a sum of Rs.5,000/- on the promise that he would get a permit from the Government in defendant’s name. He further said in his answer that though Punchirala is now dead, the Defendant has been in possession of the land over 20 years and he has obtained prescriptive title to the said land.

When the case was taken up for trial on 10.02.1997, the Plaintiff raised Nos. 1 to 11 issues and the Defendant raised 12 to 20 issues. A consequential issue No. 21 was also raised by the Plaintiff on the defendant’s predecessor Punchirale’s title. When the trial commenced, the Plaintiff and one Dingiri Banda testified on behalf of the Plaintiff and on behalf of the Defendant, the Defendant and one Herath Banda gave

evidence. Thereafter the parties closed their cases. The learned Additional District judge delivered his Judgment on 07.04.2000 in favour of the Plaintiff.

This appeal is filed by the Defendant against the judgment entered in this case. After filing of the petition of appeal, the Defendant has not taken any steps to prosecute the appeal.

This is a *rei vindicatio* action filed by the Plaintiff against the Defendant, who was in possession of the land in dispute. In an action like this, it is the responsibility of the Plaintiff to prove his title to the satisfaction of the Court. Incidentally, it must be noted that the Defendant had been placed in possession of the land, consequent to a Magistrate Court's case in Nikaweratiya namely Case No. 27406, and the Plaintiff was directed to file a civil action to prove his title to the said land.

According to the evidence of the Plaintiff, originally the land belonged to the State and by a Crown Grant (the date thereof does not seem to be clear) P1, one Ran Menika became the Grantee of the land, who by Deed of Transfer No. 15188 dated 13.09.1957 marked P2 transferred the land to one Ukku Bandage Punchirala. After his death, his children Somawathie, Dingiri Banda and Ukku Banda became entitled to the said land. These three persons by Deed No. 1678 dated 16.12.1993 marked P3 sold and transferred the said land to the Plaintiff, who thus became entitled to the same. Thus the plaintiff's title goes back to the crown grant which is admittedly over several years.

According to paragraph 8 of the plaint, the dispute had arisen only on 03.01.1994 when the Defendant forcibly entered into the land by cutting the barbed wire fence, which averment the Defendant denies. His position is that since 1973, he has been in possession of the land and has been cultivating vegetables and the said Punchirala received Rs.5,000/- from him to transfer all his rights to the Defendant. But the Defendant has failed to prove his possession and prescriptive title over ten years.

Although the Defendant stated in his answer and raised issue to the effect that since 1973 he had been cultivating vegetables in the land in dispute, yet in his evidence he

has shifted his position and given unsatisfactory evidence. The learned Trial Judge has commented on this in his judgment at pages 6 and 7. In short, it is clear that the Defendant has not given cogent evidence to prove his possession of the land.

The learned Additional District Judge at page 5 of his judgment states that he was satisfied that the Plaintiff has proved his legal title without any contradiction, and at page 6 he further says that the Defendant was not entitled to prescriptive title. One of the persons who sold the land to the Plaintiff is Dingiri Banda, who in his evidence states that when they sold the land in 1993 to the Plaintiff there was no one living on the land and the Defendant was living on a land closer to the land in dispute and the Defendant had never possessed this land.

In *Siyaneris v. De Silva* 52 N.L.R. 289, it was held that in an action for declaration of title to property, where the legal title is in the Plaintiff but the property is in the possession of the Defendant, the burden of proof is on the Defendant. If a person goes into possession of a land as agent of another, the Privy Council held that prescription does not begin to run until he has made it manifest that he is holding adversely to his principal.

The learned Trial Judge has analyzed the evidence given on behalf of the Plaintiff and the Defendant (oral and documentary) and come to a correct conclusion that defendant's prescriptive possession has not been proved and that the Plaintiff has proved his title to the land morefully described in schedule to the plaint, and therefore the Plaintiff is entitled to an order for ejectment of the Defendant and his agents and servants therefrom and to get vacant possession of the said land. I am of the considered view that this conclusion is correct and I am of the view that I would not disturb the judgment of the learned District Judge.

Once a Trial Judge comes to a finding on the facts relating to the rights of the parties the case must be decided in accordance with such finding. In the instant case, therefore, when the learned Trial Judge came to the conclusion that Defendant was

not in possession of the land in 1993 and that he has disbelieved the Defendant on the question of prescriptive possession, that conclusion must be allowed to stand.

In the circumstances, I see no reason to interfere with the judgment and decree entered in this case. I accordingly dismiss the appeal without costs.

JUDGE OF THE COURT OF APPEAL