

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

C.A. Case No. 468/1999 (F)

D.C. Kuliypitiya Case No.
7954/L

1. Lansakara Mudiyansele Babynona
of Mattegama, Bopitiya.
2. Lansakara Mudiyansele Marthahamy
of Labbala Puwakgolla, Bopitiya.
3. Lansakara Mudiyansele Jordinona
of Labbala Puwakgolla, Bopitiya.
4. Lansakara Mudiyansele Podinona
of Labbala Puwakgolla, Bopitiya.

PLAINTIFFS

-Vs-

1. Lansakara Mudiyansele Thilakawathie
of Labbala, Bopitiya.
2. Lansakara Mudiyansele Dharmasena
of Labbala, Bopitiya.
3. Lansakara Mudiyansele Ranjith
of Labbala, Bopitiya.
4. Lansakara Mudiyansele Wimaladasa
of Labbala, Bopitiya.
5. Kuragama Achchillage Podihamy (Deceased)
of Labbala, Bopitiya.
- 5a. Lansakara Mudiyansele Leelawathie
of Labbala, Bopitiya.

DEFENDANTS

AND

1. Lansakara Mudiyanseilage Thilakawathie
(Deceased) of Labbala, Bopitiya.

1st DEFENDANT-APPELLANT

- 1a. Lansakara Mudiyanseilage Dharmasena
of Labbala, Bopitiya.

Substituted DEFENDANT-APPELLANT

-Vs-

1. Lansakara Mudiyanseilage Babynona
of Mattegama, Bopitiya.
2. Lansakara Mudiyanseilage Marthahamy
(Deceased) of Labbala Puwakgolla, Bopitiya.
- 2a. Lansakara Mudiyanseilage Babynona
of Mattegama, Bopitiya.
3. Lansakara Mudiyanseilage Jordinona
(Deceased) of Labbala Puwakgolla, Bopitiya.
- 3a. Lansakara Mudiyanseilage Babynona
of Mattegama, Bopitiya.
4. Lansakara Mudiyanseilage Podinona
(Deceased)
of Labbala Puwakgolla, Bopitiya.
- 4a. Mahindasiri Rajathilaka
of Labbala Puwakgolla, Bopitiya.
- 4b. Dhammika Kumari Rajathilake
of Labbala Puwakgolla, Bopitiya.

PLAINTIFFS-RESPONDENTS

2. Lansakara Mudiyansele Dhamasena
of Labbala, Bopitiya.
3. Lansakara Mudiyansele Ranjith
of Labbala, Bopitiya.
4. Lansakara Mudiyansele Wimaladasa
of Labbala, Bopitiya.
5. Kuragama Achchillage Podihamy (Deceased)
of Labbala, Bopitiya.
- 5a. Lansakara Mudiyansele Leelawathie
of Labbala, Bopitiya.

2 to 5A DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	M.C. Jayaratne with M.D.J. Bandara for the 1A Defendant-Appellant Ms Sudharshani Coorey with N. Nayanakanthi for the Plaintiff-Respondent
Decided on	:	22.06.2018

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

The 1st, 2nd 3rd and 4th Plaintiff-Respondents (hereinafter sometimes referred to as “the Plaintiffs”) instituted this action against the original five Defendants on 13.11.1985, seeking *inter alia* that they be declared entitled to a paddy field called “Ambagahamula Asswedduwa” *alias* “Ambagahamula Kumbura” which was in an extent of about two *pelas* paddy sowing area and morefully described in the schedule to the plaint and that the Defendants be evicted and all those holding under them.

The Plaintiffs had also prayed for an interim injunction preventing the Defendants from interfering with their possession and this relief had been granted against the Defendants by an order dated 14.11.1985.

The 1st Defendant-Appellant (hereinafter sometime referred to as “the 1st Defendant”) filed her answer on 27.11.1986 and it was thereafter amended on 25.11.1991 and in the said amended answer, the 1st Defendant-Appellant specifically admitted that the Plaintiffs were the lawful owners of the four paddy fields in question. She further averred that her late father L.M. Gunasekera, who was the husband of the 5th Defendant was the “Ande Cultivator” of the four paddy fields in question until June 1985, during which month, L.M. Gunasekera passed away-see paragraphs 3 and 9 of the said amended answer. The Plaintiffs unlawfully entered the paddy fields in question, while the Defendants were preparing the paddy fields for the next season and destroyed the paddy that had already been cultivated by the Defendants. The damage to the *corpus* has been assessed at Rs. 10,000/-. It was asserted in the said answer that the 1st Defendant-Appellant was the daughter of the said L.M. Gunasekera and the 5th Defendant who had passed away during the pendency of this action.

In the circumstances, the 1st Defendant prayed *inter alia* that she be declared the lawful “Ande Cultivator” of the paddy fields in question, the plaintiffs be ejected and the possession of the paddy field be handed over. During the season of 1980/1986 damages in sum of Rs. 10,000/- were also claimed as compensation, in addition to a further claim of Rs. 10,000/- per season to be recovered from the Plaintiffs till the possession was restored.

When the adjourned trial commenced on 24.06.1992 no admissions were recorded and issues were raised i.e Issues Nos. 1-5 by the Plaintiffs and Issues No. 6-4 on behalf of the 1st Defendant-Appellant. Upon a perusal of the issues it would appear that the principal issue in this action was whether L.M. Gunasekera was or was not the tenant cultivator of the paddy field in question.

PLAINTIFF'S CASE

The Plaintiffs summoned an officer from the Department of Agrarian services who marked and produced a document P13 dated 13.11.1985. This was a letter that had been addressed to Thilakawathie -another daughter of L.M. Gunasekera- by the Agrarian Services Commissioner to the effect that the "Ande Cultivator" of "*Ambagahamula Kumbura*" which was in extent of 1 acre and 32 perches, was L.M. Gunasekera and it was only after an inquiry that it could be decided whether Thilakawathie was or was not the next "Ande Cultivator" of the said "*Ambagahamula Kumbura*". The letter further notified Thilakawathie that until then she could not be considered the lawful tenant cultivator.

This document "P3" dated 13.11.1985 and issued by the Assistant Commissioner of Agrarian Services, *Kurunegala* just 5 months after the death of L.M. Gunasekera described the said L.M. Gunasekera as the registered "tenant cultivator" of *Ambagahamula Kumbura* in extent of 1 acres and 32 perches. It has to be noted that P3 which was marked by the Plaintiffs themselves established quite clearly that L.M. Gunasekera the father of the 1st Defendant-Appellant was indeed the tenant cultivator of the land called *Ambagahamula Kumbura*. Thus the tenancy of L.M. Gunasekera had been established by the documentary evidence which was on the own showing of the Plaintiffs. Apart from the documentary evidence of the Plaintiffs, the 4th Plaintiff himself testified that L.M. Gunasekera worked in the disputed paddy field namely "*Ambagahamula Kumbura*" *alias* by force. The 4th Plaintiff produced a Deed of Gift bearing No. 14733 that had been executed on 03.08.1968.

It was in this deed of gift that the two lands called "*Ambagahamula Kumbura*" and "*Ambagahawula Asseduwa*" are described as two distinct lands.

Although the two lands are described separately, the 4th Plaintiff testified that both are one and the same land. He also testified that L.M. Gunasekera father of the 1st Defendant-Appellant cultivated this composite land, albeit by force. Even the schedule to the plaint describes the land as *Ambagahamula Asseduma Kumbura alias Ambahagahamula*

Kumbura. It is only in the Deed of Gift of 1968 that the two lands are described separately. But the evidence of the 4th Plaintiff and the schedule of the plaint describe them as one and the same land. This leads one to the irresistible conclusion that L. M. Gunasekera the deceased father of the 1st Defendant-Appellant had been cultivating on the ground one composite land. In other words although the deed of gift described two distinct lands, on the ground it had been cultivated as one land. Otherwise why should the schedule to the plaint refer to one and the same land? Why should the 4th Plaintiff testify that “Ambagahamula Kumbura” and Ambahagahamula Kumbura are one and the same land?

No doubt the Plaintiff produced a document marked as P4, which was an order of an inquiry officer called Dissanayake of the Office of the Agrarian Services, Kurunegala. Upon a complaint made by a daughter of L.M. Gunasekera namely Thilakawathie, this inquiry had been initiated and the Plaintiffs were cited as the Respondents at that inquiry.

Thilakawathie produced documents V2 to V6 to establish her tenancy rights but at the conclusion of the inquiry the Inquiry Officer concluded that all these documents point to a different land. But there is nothing to suggest that the inquiry officer made a visit to the corpus to satisfy himself as to whether they constituted one land or two lands.

On a perusal of this evidence that had been led, I take the view that there was sufficient evidence before the learned District Judge that the 1st Defendant was a tenant cultivator of this land. Even the prima facie evidence led in the case remains unrebutted. In the circumstances I take the view the appeal of the appellant must be allowed and I set aside the judgment and allow the appeal.

Evidentiary value of the documentary evidence V2.

V2 an entry in the agricultural lands register has also been produced at the trial. Section 45(3) of the Agrarian Services Act provides that any entry in the register of agricultural lands shall be admissible in evidence and shall be *prima facie evidence* of the facts stated therein.

Prima Facie Evidence

In civil cases, where the lower standard of proof on a balance of probabilities prevails, a party may satisfy his burden by a *prima facie* case, if the other party fails to disprove it - see the English Court of Appeal decision of *Abrath v. North Eastern Railway Co.*¹ Our Courts have followed the above principle in a number of cases. F.N.D. Jayasuriya J sets out in detail the long line of precedents that have interpreted the words, "*prima facie evidence*." - see *Wicremasuriya v. Dedoleena and Others (substituted)*.² I would set down the cases which F.N.D. Jayasuriya J has cited in his illuminating judgment.

a) Drieberg, J's dictum in *Velupillai v. Sidemtram*³

"*Prima facie proof*" in effect means nothing more than sufficient - proof - proof which should be accepted if there is nothing established to the contrary; but it must be what the law recognizes as proof, that is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon - S.3, Evidence Ordinance".

b) Neville Samarakoon C.J in *Undugoda Jinawansa Thero v. Yatawara Piyaratne Thera* S.C. Appln. 46181, S.C.M. 5.4.82

"It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal...If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as *prima facie* evidence is rebutted and is no longer of any value. *Evidence in rebuttal may be either oral or documentary or both.... The Register is not the only evidence*".

Samarakoon C.J is quite illustrative. Once *prima facie* evidence is produced by one party, the onus is on the other to rebut it by contrary evidence. The opposing evidence can erase

¹ (1883) 11 Q.B.D 440 - this decision was affirmed by the House of Lords in (1886) 11 App. Cases 247.

² (1996) 2 Sri.LR 95 at pp 101, 102 and 103.

³ 31 N.L.R 99

the effect of the *prima facie* evidence evenly or it is so cogent that the case could tilt in favour of the party who tenders the opposing and contrary evidence. This evidence need not necessarily take the form of oral testimony. It could be documentary evidence alone. In my view both *prima facie* evidence and contrary evidence in rebuttal can be oral or documentary or both. What matters in the end is how cogent the evidence is in order to establish the fact in issue in the case. The list of authorities on *prima facie* evidence is exhaustive.

c) S.B. Goonewardene J in *Herath v. Peter*⁴ - another case which expressed similar views in regard to the construction of the words “*prima facie* evidence” in relation to Agricultural Lands Register entries.

d) Parinda Ranasinghe J (as he then was) in *Dolawatte v. Gamage*.⁵ - as stated before in this judgment, Justice S.B. Goonewardene J followed in *Herath v. Peter* the views expressed by Parinda Ranasinghe J (as he then was) in *Dolawatte v. Gamage*.

F.N.D. Jayasuriya J in his judgment in *Wicremasuriya v. Dedoleena and Others (substituted)*⁶ also cites comparative jurisprudence.

e) *Smithwick v. National Coal Board*⁷ (Denning L.J)

f) *Rex v Jacobson and Levy*⁸ (Stratford J.A)

g) *Burdens and Presumptions* by Nigel Bridge (later Lord Bridge) 12 Modern Law Review 273 at 277.

In fact the dictum of Stratford J.A. in the South African case of *Rex v. Jacobson and Levy*⁹ on *prima facie* proof is worth recapitulation-

⁴ (1989) 2 Sri.LR 325 at 326.

⁵ S.C.Appeal No. 45/83-SC Minutes of 27.09.85.

⁶ 1931 AD 466 AD at 478-479

⁷ 1950 2 KB 335 at 352

⁸ 1931 AD 466 at 478.

⁹ *Supra*

“Prima facie” evidence in its more usual sense, is used to mean prima facie proof of an issue the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus.

Additionally let me also cite *A.T. Denning (Lord Denning)* on *Presumptions and Burdens* in 61 Law Quarterly Review 379 (1945), *Presumptions, standards and burdens-managing the cost of error* 13 Law, Probability & Risk (2014) 13 at 221-242 and *Evidential Presumptions* (2002) New Law Journal 152 at 217-218.

The Agricultural Lands Register entry V1, being an entry for the duration of the years between 1980 and 1985 shows L.M. Gunasekera to be the tenant cultivator of the paddy land known as Ambagaha Kumbura.

The *prima facie* evidence thus led remains uncontradicted. There were no objections raised to the admission of the document when it was marked-see page 135 of the appeal brief. If the entry in the Agricultural Lands Register is false, it must have been established to be so by contrary evidence. The Agricultural Lands Register (ALR or PLR as it was known before) describes the land as Ambagaha Kumbura though. The rejection of V2 by the learned District Judge is thus erroneous for the reasons set out above as the burden of rebutting *prima facie* evidence on the Plaintiff and this has not been borne in mind by the learned District Judge. If V2 does not give the metes and bounds the provision of that information cannot be cast upon the Defendants.

It has to be noted that when the tenancy was created, the owner did not subject it to a survey plan and there is no evidence of identification that Ambagahamulla Assedduma, and Ambagaha Kumbura are two distinct lands. The fact that physically they constitute one land has not been taken away or whittled down by positive evidence. In this regard I do not wish to attach much weight to the inquiry notes produced at the trial for the reason that there was no mention of a visit made by the officer to the corpus.

There were other documents that were marked namely V3, V4, V5 and V6. Two of them were receipts issued by the Cultivation Committee and the Others were receipts for acreage taxes. These documents had been issued in favour of L.M.Gonasekera and it is apparent that these documents too were not objected to when they were marked in evidence.

On a perusal of this evidence that had been led, I take the view that there was sufficient evidence before the learned District Judge that L.M.Gunasekera was the tenant cultivator but the learned District Judge misdirected himself on the fact and law. Accordingly I proceed to allow the appeal and set aside the judgment dated 25.05.1999.

JUDGE OF THE COURT OF APPEAL