

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

**C. A. Appeal No. 99/97 (F)**

D. C. Horana, Case No. 5687/L

R. M. Gunapala  
No. 4.7, Seelaratne Mawatha,  
Horana.

**PLAINTIFF**

**VS.**

1. K. L. Nandana Padmasiri,  
No. 198, Dikhena Pura ,  
Munagama, Horana.

2. Land Reform Commission,  
82, Gregory Road,  
Colombo 07

**DEFENDANT**

**AND NOW BETWEEN**

R. M. Gunapala  
No. 4/7, Seelaratne Mawatha,  
Horana.

**PLAINTIFF-APPELLANT**

**VS.**

1. K. L. Nandana Padmasiri,  
No. 198, Dikhena Pura,  
Munagama, Horana.

2. Land Reform Commission,  
82, Gregory Road,  
Colombo 07

**DEFENDANT-RESPONDENT**

**BEFORE** : **M. M. A. GAFFOOR, J.**

**COUNSEL** : S. Gurugalgoda for the Plaintiff-Appellant

H. Withanachchi for the 1<sup>st</sup> Defendant-Respondent

Vijaya Gamage with U. Wickramathunge for the 2<sup>nd</sup> Defendant-Respondent

**WRITTEN SUBMISSIONS**

**TENDERED ON** : 22.05.2018 (by the Plaintiff-Appellant and 1<sup>st</sup> Defendant - Respondent)  
01.06.2018 (by the 2<sup>nd</sup> Defendant-Respondent)

**DECIDED ON** : **15.10.2018**

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**M. M. A. GAFFOOR, J.**

This is an appeal from the judgment of the Learned District Judge of Horana in respect of a land action bearing case Number 5687/L. The Plaintiff-Appellant (hereinafter referred to as the 'Appellant') instituted this action against the 1<sup>st</sup> Defendant-Respondent (hereinafter referred to as the '1<sup>st</sup> Respondent') claiming:

- I. A declaration in favour of the Appellant stating that the land more fully described in the schedule belongs to the Appellant,
- II. Eject the 1<sup>st</sup> Respondent and his Agents, Licensees from the land described in the schedule to the plaint,
- III. An enjoining order against the 1<sup>st</sup> Respondent restricting him from damaging and making any changes to the property mentioned in the schedule of the plaint.

According to the Appellant he was continuously in possession of this property from the year 1976 until the year 1994; and he had made improvements on the land and had built a house on it. Subsequently on 8<sup>th</sup> November 1989 he was granted with a Lease Agreement by the Land Reform Commission (hereinafter referred to as the 'LRC')

The Appellant further stated that while he was away from the property, the 1<sup>st</sup> Respondent had entered the property by force without conferring any notice on the Appellant. The 1<sup>st</sup> Respondent in his answer dated 26<sup>th</sup> July 1995, took up the position, inter alia that,

- I. The disputed property belongs to the LRC,
- II. The Lease that had been granted to the Appellant has been invalidated from non-payment of rental,
- III. Since the LRC is the owner of the disputed land the same should be made a party.

Thereafter, the LRC was added as a party to the District Court matter as the 2<sup>nd</sup> Defendant-Respondent (hereinafter referred to as the '2<sup>nd</sup> Respondent'). The 2<sup>nd</sup> Respondent in its answer dated 23<sup>rd</sup> November 1995 stated that,

- I. The 2<sup>nd</sup> Respondent is the legal owner of the property.
- II. That the disputed land was given to the Appellant on an Annual Lease. However, the said lease was not extended after a period of one year due to non-payment of lease rental.
- III. That the periodical inspection carried out by the 2<sup>nd</sup> Respondent, LRC revealed that the Appellant was not in occupation of the disputed land.
- IV. A cause of action has not accrued to the Appellant and the Appellant's action is not properly constituted.

Further, the 2<sup>nd</sup> Respondent prayed that,

- a) A declaration that 2<sup>nd</sup> Respondent is the lawful owner of the disputed land, and
- b) Ejectment of the Appellant, and the 1<sup>st</sup> Respondent and their agents from the disputed property.

At the commencement of the District Court Trial the admissions were recorded. As far as the settling is concerned, leaving out redundant information, the following admissions would be useful to decide the merit of the Petition of the Appeal. They are:-

1. That the original owner of the disputed property was the State.
2. There was an Agreement dated 09<sup>th</sup> November 1989 between the Appellant and the 2<sup>nd</sup> Respondent.

After conclusion of the trial, the Learned District Judge delivered his judgment dated 28<sup>th</sup> January 1997 dismissing the action of the Appellant.

Being aggrieved by the said judgment this appeal was filed by the Appellant praying inter alia to set aside the judgment of the Learned District Judge dated 28<sup>th</sup> January 1997.

In this appeal, the Appellant's position is that the Lease Agreement (marked as P1) is not terminated when the 1<sup>st</sup> Respondent forcibly entered in to the property. To support his stand the Appellant called an official agent on behalf of the Divisional Secretary as a witness at the trial. And the witness testified as that the Appellant was in possession of the property, that he possesses title to the said property and further testified that the Lease Agreement had not been executed only for a period of one year and that it had not been terminated. In addition to this witness Grama Niladhari of the area also had affirmed the fact that the Appellant had been present in the property from 1987 to 1994 and that his name had been registered in the electoral lists.

But, the 2<sup>nd</sup> Respondent's position is that the said Lease Agreement submitted in evidence has been expired after a period of one year. Therefore, they argued that the Appellant has to show at least a valid Lease Agreement for his averment.

Therefore, it's clear that it has no validity and does not convey any valid deed and legal right to the Appellant to be in possession of the disputed land. I further observed that the Appellant has failed to establish that the Lease Agreement was extended and the Lease rentals were paid after said one year or there was a valid subsisting Lease Agreement after 08<sup>th</sup> November 1990.

Furthermore, considering the evidence presented at the trial there was no payment after expiration of one year and the Appellant has failed to submit any evidence to establish that the 2<sup>nd</sup> Respondent refused to accept any payment of rentals after one year. Also the 2<sup>nd</sup> Respondent further argued that the witness called from the Divisional Secretariat in his evidence admitted that he proceeded only on the Lease Agreement and there was no deed or any other valid instrument of disposition from the 2<sup>nd</sup> Respondent. Therefore, at this juncture I do not think that the Appellant's claim can be sustained.

In the above circumstances, I wish to deal another question that whether the Appellant can acquire prescriptive title to the disputed land. In the District Court, the Appellant had admitted that the ownership of the disputed property belongs to the State at the beginning of the trial; the prescriptive title cannot be maintained as no prescription runs against the State. Therefore, the Appellant's claim cannot be entertained.

The appellant further argued that with the capacity of Lessee he has a right to bring a *vindicatory* action to eject the Respondent. It's settle law that the *rei vindicatio* action is available to an owner against any person in whose possession his property found. *Rei vindicatio* action requires proof that:

1. The Plaintiff is the owner of the land.
2. The land is in the possession of the Defendant.

This leads to the following consequences,

- a. The burden of establishing title falls on the Plaintiff
- b. Once the Plaintiff establishes his title the burden shifts to the Defendant to prove that he has acquired title to the land.

In ***R. W. Pathirana vs. R. E. De. S. Jayasundara*** 58 NLR 169, Gratiaen, J. stated that:

*...In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. "The Plaintiffs ownership of the thing is of the very essence of the action" (Maasdorp's Institutes (7<sup>th</sup> Ed.) Vol. 2, 96) (page at 173)*

Now the question is that a lessee under a Lease Agreement claims that he is entitled to bring a *vindicatio* action if he is evicted from the land?

A lessee is *dominus* for the purpose and for the period of his lease. The lease is considered to be a *protanto* alienation and the lessee has rights as an owner and possessor. He has *jura in rem* rights against the world.

The gist of the decision in ***Pathirana vs. Jayasundera*** says that, If the lessee is disturbed by the lessor himself the action will not be a *rei vindicatio* but an action on the breach of Agreement.

In ***Wimala Perera vs. Kalyani Sriyalatha*** (S.C. Appeal No. 51/2010, decided on 18.07.2011), Tilakawardane, J. emphasized that,

*It is, indeed, settled law in Sri Lanka that a lessee is not entitled to dispute his landlord's title by refusing to give up possession of the property at the termination of his lease on the ground that he acquired*

*certain rights to the property subsequent to him becoming the lessee and during the period of tenancy.*

However, if he (the lessee) is evicted by a third person, he may bring a vindicatory action, because he is deemed owner for the period of the lease. But in the instant case the Appellant has failed to prove that the questioned Lease Agreement was not terminated.

Therefore, considering the above legal authorities, I abundantly reaffirm that in a *rei vindicatio* action of this nature the Appellant is obliged to establish his title.

For the foregoing reasons, I see no reason to interfere with the judgment of the Learned District Judge. Therefore, appeal dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**