

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

Loku Pathirannehelage Karunasekera
of Happitiya, Wathurugama.

PLAINTIFF

C.A. Case No.1248/2000 (F)

D.C. Gampaha Case
No.30821/L

-Vs-

1. K.A.K. Welusingho
2. K.A.K. Pemachandra
Both of Laulupitiya, Wathurugama.
3. G.P. David Wimalasena
4. G.P. Lionel Karunapala
5. E.A. Thilakawathi
All of Happitiya, Wathurugama.

DEFENDANTS

AND NOW

Loku Pathirannehelage Karunasekera (Deceased)

1. Loku Pathirannehelage Ananda
2. Loku Pathirannehelage Chandralatha
Both of Happitiya, Wathurugama.

Substituted-PLAINTIFF-APPELLANTS

-Vs-

1. K.A.K. Welusingho (Deceased)
- 1a & 2. K.A.K. Pemachandra

Laulupitiya, Wathurugama.

Substituted 1(a) & 2 DEFENDANT -
RESPONDENT

3. G.P. David Wimalasena
4. G.P. Lionel Karunapala
5. E.A. Thilakawathi
6. L. Piyasirisena

All of Happitiya, Wathurugama.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Loku Pathirannehelage Karunasekera (Deceased)

1. Loku Pathirannehelage Ananda
2. Loku Pathirannehelage Chandralatha

Both of Happitiya, Wathurugama.

Substituted PLAINTIFF - APPELLANT -
PETITIONERS

-Vs-

1. K.A.K. Welusingho (Deceased)
- 1a & 2. K.A.K. Pemachandra

Laulupitiya, Wathurugama.

Substituted 1(a) & 2 DEFENDANT-
RESPONDENT - RESPONDENT

3. G.P. David Wimalasena
4. G.P. Lionel Karunapala
5. E.A. Thilakawathi
6. L. Piyasirisena

All of Happitiya, Wathurugama.

DEFENDANT-RESPONDENT-RESPONDENTS

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

COUNSEL : Chamantha Weerakoon Unamboowa for the
Substituted Plaintiff-Appellant-Petitioners
S.A.D.S. Suraweera for the Defendant-Respondents

Decided on : 06.08.2019

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

The Plaintiff has filed this action on 25th January, 1988 against the Defendants in the District Court of *Gampaha* for a declaration of title to the land called “*Ank Kumbura*” bearing Lot No.8 in extent A1 R3 P16 $\frac{3}{4}$, which is more fully described in the 2nd Schedule to the plaint.

The Plaintiff’s position, as stated in the plaint, is that the land in dispute is a paddy land, which was originally possessed by his grandfather and after his death his father and thereafter since 1965 the Plaintiff had been possessing the land up to 1981 cultivable season, and in the 1981 season the Defendants forcibly harvested the crops cultivated by him.

He further avers that the Defendants made a complaint to the Assistant Commissioner of Agrarian Service under the provisions of the Agrarian Services Act No.58 of 1979 stating that the Plaintiff was their “*Ande Cultivator*” who had failed to pay the ground rent and

therefore he must be evicted from the said land, but that the Commissioner decided that he had no jurisdiction to inquire into the matter and wanted the Defendants to file a civil action in the District Court, and that the Defendants forcibly ousted him from the land without seeking civil remedy.

Therefore the Plaintiff says that he filed this action against the Defendants praying that he be declared entitled to the said land bearing Lot No.8 and for damages. This statement appears to be a falsehood as the Commissioner never made such an order. The Plaintiff failed to prove this statement.

The Defendants in their answer denying the averments in the plaint except for admitting the subject-matter, which, they say that by the Final Decree that had been entered in the Partition action No.2650/P in the District Court of *Gampaha*, the 1st Defendant Velun Singho and the 2nd Defendant Emage Jayaman were jointly allotted Lot 8 in Plan No. 5176P and later, after the public road was constructed on the northern side of the land, by Plan No.1227 dated 06.11.1982 made by T.A. Ranasighe, Licensed Surveyor, these two Defendants amicably divided the land and thereby Velun became entitled to Lots 1 and 2 and Jayaman became entitled to Lots 3 and 4.

The Defendants further say that the Plaintiff was their tenant cultivator of the said land and that tenancy was terminated by the Commissioner of Agrarian Services in April, 1981 and therefore the Plaintiff had no right to the said land and they moved that the plaint must be dismissed.

On 25.04.1990, when the case was taken up for trial, after recording 3 admissions the Plaintiff raised 1 to 5 issues and the Defendants raised 6 to 13. But subsequently, these issues were abandoned and fresh issues were raised on 31.08.1992. The parties admitted the subject-matter. The Plaintiff's main issues namely Issues No.1 and 2 were about his long possession and his dispossession by the Defendants in 1981 and the 3rd issue related to the decision of the Commissioner of Agrarian Services. This issue had been raised on the purported basis that the Commissioner did not want to inquire into the matter and wanted the parties to go for a civil remedy. As I said above, this issue was without any

foundation and the Plaintiff did not lead any evidence to prove this issue. According to the documents submitted by the Defendants V2 and V3, the Commissioner had in fact held an inquiry and decided to evict the Plaintiff from the said land.

The Defendants' main issues Nos.7 to 11 were regarding their entitlement to the land emanating through the final decree in the partition action in 2650/P and the deeds.

In his evidence the Plaintiff says that there was a Land Case No.21284 filed in the District Court of *Gampaha* in which a settlement was arrived at, according to which the Defendant Pathirannalage Karunasekera (Plaintiff in this case) agreed to give up possession of the said land to the Plaintiff Velun and Jayaman (Defendants in this case). The details of this case are not given. The learned Judge has commented on this case and said that in that case the Plaintiff in the present case had agreed to give up possession of the said land to the Defendants Velun and Jayaman.

Whilst the Plaintiff has claimed long and prescriptive possession, the 2nd and 3rd Defendants claim rights to the said land on a final decree in Partition Case No. 2650/P- (Vide V1). The position of the Defendants is that they are the owners of the said land and the Plaintiff was the tenant cultivator, who had paid them ground rent and a share of the produce. When the Plaintiff failed to pay the rent, in 1981, on a complaint made to the Assistant Commissioner of Agrarian Services, the Plaintiff's tenancy was terminated and the Defendants were declared owners-(Vide V2 and V3).

As claimed by the Plaintiff, if he was the owner of the land, he must have produced any documentary evidence to prove his ownership. But no such deeds were ever produced. Alternatively, if he bases his claim on prescriptive possession, adverse possession must be established by cogent evidence, which too the Plaintiff has failed to do. Assuming that the Plaintiff had possessed the said land for a long period of time exceeding ten years, it was in the capacity of an "*Ande cultivator*" as established by documents V2 and V3.

When perusing the documents V2 and V3, it is clear that the Plaintiff had been an "*Ande cultivator*" and had been paying the Defendants rents out of the produce, i.e., by way of 20 bushels paddy for a season and since he failed to give rent for four seasons amounting to 80

bushels, on a complaint made by the Defendants against the Plaintiff, the Assistant Commissioner of Agrarian Services ordered the Plaintiff to give the owners 80 bushels before 25.01.1981 and if he failed to do so, action would be taken against him under Section 18(2) of the Agrarian Services Act to evict him from the land. This order was notified to the Plaintiff by the Commissioner by his letter dated 01.01.1981 (V2).

Since the Plaintiff had failed to pay the rent (80 bushels of paddy), the Commissioner decided to evict him from the land (Description of the land is given in (V3) as '*Ande cultivator*'). This order of the Commissioner had also been communicated to the Plaintiff by V3 dated 06.04.1981. If the Plaintiff was aggrieved by the order, he should have appealed against it to the Court of Appeal, within thirty days and if the tenant cultivator failed to make any appeal, the decision of the Commissioner shall be final and conclusive (Vide Section 5(6) of the Agrarian Services Act referred to above).

It appears that in terms of Subsection (4) of section 18 of the Agrarian Services Act, the Defendant had taken over possession of the said land. Therefore, the Defendants' entry into the land in 1981 and harvesting of the crop albeit cultivated by the Plaintiff cannot be treated as unlawful in terms of the provisions of the Agrarian Service Act.

As it would appear, the possession of the land by the Defendants after the 1981 cultivable season was not unlawful and the Plaintiff's cultivation of that season, commenced in October 1981 and ended in January 1982. Notwithstanding the letter of the Agrarian Commissioner (V2), the Plaintiff went on to cultivate and as such it was an unauthorized cultivation and therefore the Plaintiff was not entitled to claim any damages therefore.

The learned Additional District Judge has correctly evaluated the evidence given in this case and come to the conclusion that the documents marked V1 to V8 by the Defendants were not objected to by the Plaintiff, and the Plaintiff has not proved uninterrupted and independent possession against the Defendants, and therefore the Plaintiff is not entitled to claim prescriptive possession or ownership to the land.

Section 116 of the Evidence Ordinance is very clear that a person who enters into a land as a tenant shall not deny the ownership of the landlord during the continuance of the

tenancy. The Plaintiff's position that he was never a tenant cultivator is untenable and unsustainable. His failure to appeal against the decision of the Assistant Commissioner of Agrarian Services clearly shows that he did not want to appeal because he would not succeed in his appeal. The Plaintiff is therefore not entitled to the reliefs claimed in this case. The learned Judge has answered the Issues Nos. 1 to 6 raised by the Plaintiff against him and dismissed the Plaintiff's action.

Having regard to the evidence led in this case and the judgment thereon, I do not wish to interfere with the findings of the learned Additional District Judge and I affirm the judgment entered in this case. The Plaintiff is not entitled to any relief as claimed in his plaint.

The Plaintiff's appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL