

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

C.A. Case No. 750/2000 (F)
D.C. Avissawella Case No.
18170/P

1. Hendeson Wijesinghe
No. 170, Paraswella,
Yatiantota.
 2. Gode Kankanamge Karnolis
No. 170, Paraswella,
Yatiantota.
- PLAINTIFFS

-Vs-

1. P.D.S. Piyadasa
No. 55, Ginigaththena,
Yatiantota,
 2. Dissanayake Mudiyanseelage Gunapala
Dissanayake
No. 55, Ginigaththena,
Yatiantota,
 3. Mohanmed Jalaldeen Mohamed Rifai
No. 55, Ginigaththena,
Yatiantota,
 4. P.G. Sirisena
No. 101, Ginigaththena,
Yatiantota,
- DEFENDANTS

AND NOW BETWEEN

P.D.S. Piyadharshani

No. 55, Ginigaththena,

Yatiantota,

1st Substituted DEFENDANT-APPELLANT

-Vs-

IA. Akuretiye Gamage Asoka Wijesinghe

IB. Akuretiye Gamage Thanuja Roshini Wijesinghe

IC. Akuretiye Gamage Nadeeka Chandanee
Wijesinghe

ID. Akuretiye Gamage Hirani Disna Wijesinghe

IE. Akuretiye Gamage Sandun Priyankara
Wijesinghe

All of No. 567, Arachchimulla,

Bentota.

1st Substituted PLAINTIFF-RESPONDENTS

2A. Gode Kankanamge Rasika Rishantha

No. 170, Magammana Stores,

Nandarama Temple Mawatha,

Yatiantota.

2nd Substituted PLAINTIFF-RESPONDENT

3. Dissanayake Mudiyanseelage Gunapala
Dissanayake

No. 55, Ginigaththena,

Yatiantota,

4. Mohanmed Jalaldeen Mohamed Rifai

No. 55, Ginigaththena,

Yatiantota,

5. P.G. Sirisena

No. 101, Ginigaththena,

Yatiantota,

3rd, 4th and 5th DEFENDANT-RESPONDENTS

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

COUNSEL : Rohan Sahabandu, PC for the 1st Defendant-Appellant
A.M.E.B. Atapattu for the 1A to 1E Substituted Plaintiff-Respondents and 2nd Substituted Plaintiff-Respondent

Decided on : 06.05.2019

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

The Plaintiff-Respondent sought to partition the land by the plaint dated 24.06.1992 amongst the 1st Defendant-Appellant and the 2nd Defendant-Appellant.

The preliminary survey Plan is No.216/14/14/10/1994.

The land surveyor in his report observed that the Plaintiff-Respondent was not able to identify the corpus and it was the 1st Defendant-Appellant who showed the boundaries.

The 1st Defendant-Appellant claimed rights on prescription and moved for the dismissal of the action and further moved that they be declared the owners of the land in question. However, in his amended statement of claim the 1st Defendant-Appellant stated that he is entitled to 2/3 share and the balance 1/3 share was owned by one Wanigaratne.

At the trial the 1st Plaintiff-Respondent and one official gave evidence (from the Pradeshiya Sabhawa) in support of the Plaintiff.

The property in suit business premises and the main contest between the parties was centered on P1 Deed No.2/12/7/1979.

The original owners of the corpus Perera and Raja Karuna died leaving 16 heirs and all of them signed Deed No.8 by that Deed the Plaintiffs along with the Defendant-Appellant got 2/3 share and the balance 1/3 had been given to one Wanigaratne.

The Plaintiff's position was that at the time of execution of the deed PI consideration in a sum of Rs.33,000/- was paid out of the said consideration Rs.11,000/- was paid by Wanigaratne and the balance Rs.22000/- was paid out of the money of the business called Wijaya Stores which was carried out by the Plaintiff-Respondent and the Appellant during the said period.

The Appellant's position was that the Plaintiff-Respondent did not pay any part of the consideration towards the purchase and the entire consideration was paid by the Appellant and Wanigaratne.

The Appellant's further position was that he and Wanigaratne divided the property in the ratio of 1/3 and 2/3 and possessed those areas.

After the trial learned District Judge held with the Plaintiff-Respondent as prayed for in the amended plaint.

It was contended that an examination of the documents filed reveal that possession of the disputed portion of the building had been with the 1st Defendant and before purchasing the property he had been a tenant since 1979. It is in evidence that it was the 1st Defendant who as a tenant had negotiated the purchase of the property ID3-ID4. This has not engaged the attention of the learned District Judge.

It has been established that the 1st Defendant was in sole and exclusive possession of the 2/3 share possessed as a distinct and separate unit while the balance 1/3 was possessed by Wanigaratne and the 2nd Defendant. The Plaintiff did not enjoy the beneficial interest of this property this the learned District Judge failed to appreciate.

The learned District Judge has failed to examine in the correct perspective documents ID7, ID8, ID9, ID15, ID18-ID50 which shows that the 1st Defendant was using the premises as his own this the learned District Judge failed to appreciate.

Documents ID5, ID6, ID1-ID32A provide proof of the use and possession of premises by the 1st Defendant this the learned District Judge failed to appreciate.

The learned District Judge failed to address his mind to the evidence which showed that the 1st Defendant had been dealing with this property since 1979 because, the Plaintiffs were aware that they had no right to interfere with him because they did not pay for the purchase of the property.

There was absolutely no proof of the fact of the Plaintiff providing the consideration for the purchase.

The evidence of the 1st Defendant has not been dented at all.

The learned District Judge failed to address his mind to the evidence led in the case in the correct perspective and not considered evidence that was favourable to the 1st Defendant especially when there was evidence of possession by the 1st Defendant which was not controverted by the Plaintiff. The learned District Judge has placed reliance on a plan P4 and not on the evidenced led. The learned District Judge has not considered the principles involved in "Ouster" and adverse possession where case law lays down that 10 years undisturbed and uninterrupted possession will displace the rights of ownership relied on by a person on paper title. The Defendant relied on this provision of the Prescription Ordinance.

The learned District Judge did not appreciate this principle and the evidence led and had not considered the evidence of prescription by the 1st Defendant and Wanigaratne in the correct perspective, but acted on surmise and conjecture.

In the circumstances, I would allow the appeal of the 1st Defendant and set aside the judgment of the learned District Judge.

JUDGE OF THE COURT OF APPEAL