

In the Court of Appeal of the Democratic  
Socialist Republic of Sri Lanka

CA 923//96 F  
DC Badulla 108/86 L

Odiris Pathirana,  
"Anoma",  
Kuttiyagolla  
**plaintiff -appellant**

Vs

1. W James,  
2. K P Alis  
Katakele,  
Kuttiyagolla  
**defendant- respondents**

Before: A W A Salam, J

Counsel: Mrs A Cooray for the plaintiff-appellant and Jagath Liyanage and R S  
W Seneviratna for the defendant –respondents.

Argued on : 2.6.2010

Written submissions tendered on: 6.9.2010.

Decided on: 02 May 2011.

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A W Abdus Salam, J

This is an appeal preferred against the judgment of the learned district judge dismissing the action filed by the plaintiff and declaring that the defendants to be the lawful owners of the allotment of land depicted as lot 1 in plan No 2772 prepared by M K C Premachandra, L.S. The facts briefly are that the plaintiff filed action against the defendants for a declaration of title and ejectment on the premise that he is the lawful owner of the subject matter. The plaintiff has set out his title to the subject matter in paragraph 13 of the plaint. The plaintiff's position was that the defendants having come into unlawful possession of the subject matter in 1973 neither resided on the land nor did they raise any plantations on it. Hence, the plaintiff maintained that the defendants came into the land and left the same on and off and therefore not entitled to claim prescription.

On the other hand the defendants maintained that they came into possession of the aforesaid lot 1 in the year 1950. It is

common ground that the plaintiff had instituted an action against the defendant for ejectment in the year 1973 and that it was later withdrawn reserving the right to file a fresh action. The plaintiff was stated that six months after the withdrawal of the earlier action the defendants left the land. However, the 1<sup>st</sup> defendant did not concede that he ever left the land. His position was that from that year 1950, he was in possession of the land although he did not resided on it. The manner of possession of the defendant was explained by him in his evidence and also through the evidence of Somiya.

The learned district judge having analyzed the evidence adduced by both parties came to the finding that the version of the defendants is more probable than that of the plaintiff and held that the plaintiff has failed to prove his title and the defendants have prescribed to the subject matter. This being a finding based on the credibility of the witnesses I do not propose to interfere with the same. The plaintiff-appellant has not been able to establish that the finding of the learned district judge had ended up in a miscarriage of Justice. For reasons stated above it is my opinion that the appeal preferred by the appellant merits no favourable consideration. As such this appeal stands dismissed.

Judge of the Court of Appeal