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

Weerapurage Babynona
No. 118-A, Padiliyatuduwa Road,
Hunupitiya,
Wattala

PLAINTIFF

D.C. Colombo No. 14724/L

Vs.

1. H. Vinsena Rajapakse,
2. Algreat Rajapakse
Both of No. 214,
Bandaranayake Mawatha,
Hunupitiya, Wattala

CA No. 210/96(F)

DEFENDANTS

AND BETWEEN

Weerapurage Babynona
No. 118-A, Padiliyatuduwa Road,
Hunupitiya,
Wattala

PLAINTIFF APPELLANT

Vs.

1. H. Vinsena Rajapakse,
2. Algreat Rajapakse
Both of No. 214,
Bandaranayake Mawatha,
Hunupitiya, Wattala

DEFENDANT RESPONDENTS

Counsel: P. Nanayakkara with T. Alahakone for the
Plaintiff/Appellant.

Ranjan Suwadaratne with Mahinda Nanaykkara for the
1st Defendant/Respondent.

Written Submissions: 16-2-2009, 10-5-2010(Defendant/Respondent)
30-4-2009, 28-7-2010 (Plaintiff/Appellant)

Before: Rohini Marasinghe J

Judgment: 30-5-2011

CA 210-96

This action was filed on 29th April 1988 by the plaintiff/appellant seeking inter alia for a declaration of title to the land called “Millagahawatte” more fully described in the schedule to the plaint.

The 1st Defendant/Respondent filed answer seeking inter alia for dismissal of the plaint and for a declaration of title in his favour as a claim of reconvention.

After trial the plaintiff’s action was dismissed. This appeal is against that dismissal.

At the trial following “admissions” were recorded.

1. The original owner of the property in issue was one Diyonis Peiris
2. Diyonis Peiris had executed the deed of transfer bearing number 38945.
3. Diyonis Peiris failed to comply with the conditions contained in the aforesaid deed of transfer.
4. Diyonis Peiris died on 2-11-1979
5. The letters dated 13-12-1982 and 17-2-1983 were received by the relevant parties.

This is a *rei vindicatio* action. The burden was on the plaintiff to prove her title. The plaintiff had given evidence. Her evidence disclosed the following;

The plaintiff is the widow of said Diyonis. Diyonis executed the deed of transfer in 1967. She (plaintiff) had to look after her sick father who was living in the Kegalle district. But she used to visit Diyonis twice a month at this property in issue. Diyonis lived on this property in issue until his death. She came to live in this house permanently in 1980. And she had also given part of the house on rent. She had also marked two extracts from the electoral register for the periods of 1974 and 1976 to prove that Diyonis was on this property. Diyonis had executed the deed of conditional transfer in favour of one Thomas Fernando for a period of five years commencing from 2nd July 1966 until July 1971 July. Diyonis failed to comply with the conditions in the said deed of transfer marked as P2.

On the other hand said Thomas Fernando gave evidence on behalf of the defendant. The 1st defendant had purchased the property in suit from Thomas by deed bearing No 90 dated 22-6-1980. The said deed was marked as V10. The consistent position of Thomas was that Diyonis had left the premises in

suit and was living in a hut opposite this property since executing the aforementioned conditional transfer. Thomas further testified that during the relevant period he had given this house on rent and one of the parties who had paid rent to Thomas in 1973 had given evidence at the trial.

The plaintiff based her title through the title of her husband Diyonis. Therefore, the central or the fundamental issue in this action was;

(1) Did Diyonis have independent and adverse title to this property as mentioned in section 3 of the Prescription Ordinance?

All the other issues are secondary to this issue. I observe that most of the evidence of the plaintiff had been to establish the fact that Diyonis was on this property since 1972. The fact that Diyonis had been on this land continuously since 1972 would not give a title to Diyonis. The plaintiff must prove the ingredients of prescriptive possession as contained in section 3 of the Prescription Ordinance. In the sense the plaintiff must prove that Diyonis had possessed this property independently and adversely to the title of Thomas Fernando. In a *rei vindicatio* action the defendant has nothing to prove. The burden will shift to the defendant only in cases where the legal title of the plaintiff had been recognized by the defendant. In such instance the onus is on the defendant to prove the nature of his possession. Notwithstanding that in this case the defendant had called many witnesses to prove his title.

The learned trial judge had correctly held that the plaintiff had not proved her title to the property in issue. I do not intend to interfere with the

learned trial judge's finding on primary facts unless I am of the view that the trial judge had demonstrably misjudged the position.

I am of the view that the appeal should be dismissed for the reasons mentioned above.

The appeal dismissed.

Rohini Marasinghe j

Judge of the Court of Appeal