

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

C.A. No. 788/97(F)

D.C. Avissawella No. 17092/L

Kudasinghege Waidyaratne

Maniyangama, Avissawella

Plaintiff

Vs

P.R.L. Jemis Jayasinghe

Maniyangama, Avissawella

Defendant

AND BETWEEN

K. Waidyaratne (Decd)

U. Allen Ratnayake

Presently known as

Ukwatte Kankanamalage

Jayantha Ratnayake, 331/2

Peragasmandiyawatte,

Maniyangama, Avissawella

Substituted Plaintiff Appellant

Vs

P.R.L. Jamis Jayasinghe (decd)

P.R.L.C. Geethani Jayasinghe

A353, Maniyangama, Avissawella

1A Defendant-Respondent

P.R.L.Dharmasiri Jayasinghe

Malawangoda, Dharga town

1B Defendant-Respondent

P.R.L.A.Indumathie Jayasinghe

A353 Maniangama, Avissawella

1C Defendant Respondent

Subtd. Defendant Respondents

**BEFORE** : Deepali Wijesundera J.,  
M.M.A. Gaffoor J.,

**COUNSEL** : Ranjan Suwandaradne with Ranjith D.Perera for the  
Substituted Plaintiff Appellant  
Vidura Gunaratne with R.J.Upali de Almeida for the  
Substituted Defendant Respondent

**ARUED ON:** 28.09.2015

**DECIDED ON** 26.02.2016

M.M.A. Gaffoor, J.,

The Plaintiff has filed this case against the Defendant on 29.03.1983 stating that he is entitled to the land morefully described in the schedule to the Plaint and asking for ejectment of the Defendant therefrom and

damages and costs. Later, the Plaintiff has filed an amended plaint on 16.01.1990. The Plaintiff states that one Galabalanalage Noisa was allotted Lots D and E by a decree entered in partition case No. 5638 in the District Court of Avissawella, who by deed No. 26635 dated 22.02.1959 sold the said lots D and E to the Plaintiff. The Plaintiff thereafter, by deed No. 20803 dated 17.09.1982 sold the said lots to Allen Ratnayake, who by deed No. 557 dated 22.02.1983 sold it back to the Plaintiff.

The Plaintiff's position is that he and his predecessors in title were in undisturbed and uninterrupted possession of the said lots (which adjoin each other as one land) for over 10 years and the Defendant who is the owner of the adjoining lot F had entered into the Plaintiff's land in April 1981 and since then he is in unlawful possession thereof.

The Defendant has filed his answer on 16.12.1983 and the amended answer in November 1988, denying the averments in the Plaint and he states that he was allotted Lot F in the partition action No. 5638 and that he is in undisturbed and uninterrupted possession of the land described in the schedule to the plaint and that he has prescriptive title to the said land, and in his amended answer he further states that he is entitled to the land described in the Plaint and that he be declared entitled to the said land and to dismiss the Plaintiff's action.

On 12.12.1990 when the trial commenced, the Plaintiffs raised 1-4 Issues and the Defendant raised 5-9 Issues. On behalf of the Plaintiff, he and three others have given evidence. Plaintiffs has produced deed No. 20803 and deed No. 557 which are marked as P4 and P5 respectively.

The Defendant has produced documents marked V1 to V4, and he and two others, one is Piyasena and the other is a Police Constable named Senaratne, has given evidence for the Defendant.

Apart from the Issues framed in the case, the learned Additional District Judge himself raised the following points in his judgment as material points to the judgment (pages 4-5 of the appeal brief).

- i. Does the Plaintiff have paper title to the lots as described in the amended Plaintiff?
- ii. In addition to the paper title, does the Plaintiff and his predecessors have prescriptive title?
- iii. If not, despite the Plaintiff's paper title, does the Defendant have possessed the land since the date of allotment in the partition action against the Plaintiff and his predecessors by prescription?
- iv. If not, did the Defendant entered into the land in April 1981 by force and got possession by dispossessing the Plaintiff?

With regard to point No. 1 above, the learned additional District Judge was of the opinion that, as stated in the amended Plaintiff the Plaintiff has title to the two lots and documents P4 and P5 are proved in terms of section 68 of the Evidence Ordinance. As such the Plaintiff has satisfactorily proved that he has title to the land morefully described in the schedule to the Plaintiff. But with regard to the possession of the Plaintiff and his predecessors as stated in Point (2) above, the learned

additional District Judge has misdirected himself on the matter and held against the Plaintiff.

As the facts of this case reveal, the Plaintiff alleges that in April 1981, the Defendant has unlawfully entered into his land and is in possession of the same, and asking for relief from Court to eject him. The Plaintiff this action is filed on 29.03.1983. When the court finds that the Plaintiff has proved his title, then the court must look into the matter whether the Defendant's possession is lawful or unlawful.

The Defendant has taken up the position that he is in possession of the land over 10 years and thus he has prescriptive title to the said land. In this regard the Defendant has stated that the Plaintiff is not a person of the area where the land is situated. It is not material whether the Plaintiff is a resident where the land is situated. It is not a requirement of the law that the Plaintiff should live on the land or live in the area where the land is situated. If there is evidence that the land is possessed by the predecessors of the Plaintiff from the time the land was allotted to Noisa and after her by his successors, it is a matter the court must look into. The Plaintiff states that by P3 (deed No. 26635) Noisa sold lots D and E to him and he by deed No. 20803(P4) sold the same to Allen Ratnayake and the latter by deed No. 557 (P5) sold the land to the Plaintiff. The evidence of the Plaintiff was that since 1959 his predecessors were in possession.

P5 had been executed on 1983.02.22. By the time P5 was executed, the Defendant was in possession of this land since April 1981. As against the evidence of the Plaintiff about his and his predecessors possession,

the Defendant has not adduced any evidence to prove that he has been in continuous possession over 10 years. Though the Plaintiff had not looked after the land, he had given it on lease to one Babanis and after his death to Andiris. As such, it is not material that the Plaintiff did not give satisfactory evidence as to the number of the trees standing on the land.

Considering the documents V3 and V4 and the evidence of the officer from the Pradeshiya sabawa, the learned addl. District Judge states that it cannot be certain that these documents relate to which land and whether the defendant was in possession of this land in 1972, and therefore these documents do not support possession of the defendant (page 237 of the brief).

V1 is a complaint made by Arnolis against the Defendant to the Police stating that the defendant had by force entered into the land. This Arnolis is a person to whom the Plaintiff has leased this land. Arnolis has stated in his evidence that on the complaint to the Police, a case was filed by the Police in the Magistrate's court.

Considering these evidence, it is not clear, whether the defendant has possessed this land continuously without any interruption over 10 years. Therefore, on this non-clear evidence as to possession, the court cannot decide that the defendant has acquired prescriptive right to the lots mentioned in the Plaintiff.

The Plaintiff on the other hand, claims not only title but also prescriptive rights. When title to the land is proved, right to possess automatically can be presumed.

In the case of Leisa vs Simon 2002 (2) Sri Lanka Law Reports p 148, it was held:

- (1) The moment title is proved, the right to possess is presumed;
- (2) The mere fact that the Plaintiff claimed both of deeds as well as by long possession did not entitle the Plaintiffs to prove prescriptive title thereto. Their possession was presumed on proving paper title. The averment of prescription in the Plaint did not cast any burden upon the Plaintiff to prove a separate title by prescription in addition to paper title;
- (3) Once paper title became undisputed the burden shifted to the defendants to show that they had independent rights in the form of prescription as claimed by them

A similar decision was also taken by the Privy Council in Siyaneris vs Jayasinghe Udenis de Silva - 52 NLR 289, where it was held that, "*In an action for declaration of title to property where the legal title is in the Plaintiff but the property is in the possession of the defendant, the burden of proof is on the defendant.*"

In this case, the Plaintiff's paper title is overwhelmingly admitted by court and satisfactorily proved. But the defendant has failed to discharge the burden of proving his possession.

We, therefore, allow the appeal. We set aside the judgment dated 01.10.1997 of the addl. District Judge and enter judgment for Plaintiff-appellant as prayed for in the Plaint. As to the damages claimed is

reasonable, we allow the damages claimed together with taxed costs in both courts.

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL