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

Rajapakse Mudiyanselage Dharmadasa
of Pailigama, Mahawa.
PLAINTIFF

C.A. Case No.20/2000 F

D.C. Mahawa Case No.2353/L

-Vs-

1. R.M.K. Suddahamy,
2. R.M.S. Wimalawathie,
3. R.M.S. Herath Banda
   All of Pailigama, Mahawa.
   DEFENDANTS

AND NOW BETWEEN

Rajapakse Mudiyanselage Dharmadasa
of Pailigama, Mahawa.
PLAINTIFF-APPELLANT

-Vs-

1. R.M.K. Suddahamy,
2. R.M.S. Wimalawathie,
3. R.M.S. Herath Banda
   All of Pailigama, Mahawa.
   DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Daya Guruge for the Plaintiff-Appellant
Decided on	:	08.01.2018

A.H.M.D. NAWAZ, J.

The Plaintiff-Appellant (hereinafter referred to as "the Plaintiff") instituted this action against the 1st to 3rd Defendant-Respondents, (hereinafter referred to as "the Defendants") on 13.01.1986 praying for a declaration that he is the owner of the land morefully described in the schedule to the plaint, ejectment of the Defendants therefrom and for damages and costs.

The Defendants filed their answer on 01.12.1986 stating that the Plaintiffs have no right to the land described in the schedule to the plaint.

On these averments, the court issued a commission to surveyor B.G. Banduthilaka, whose Plan No.476/90 and Report are filed of record, marked 'X' and 'Y' respectively.

Thereafter the Plaintiff filed an amended plaint which was followed by an amended answer by the Defendants. In paragraph 3 of the amended answer the Defendants state that they do not claim any right to Lots 1 and 2 depicted in the said Plan No.476/90 which are part of the land described in the 1st schedule to the plaint.

The Plaintiff traces his title to the land described in the 1st schedule to the plaint from one Rajapakse Mudiyanselage *alias* Liyanaralalage Appuhamy who became entitled to it by a Crown Grant marked **P1**. In the same manner, he states that the land described in the 2nd schedule to the plaint, which belonged to the Crown, was allotted to Liyanaralalage *alias* Rajapakse Mudiyanselage Kavirala and Appuhamy by **P2**. The plaintiff's position is that after the death of these persons their rights

devolved on Kirimenika, who was the plaintiff's mother, and after her death the Plaintiff became entitled to the said lands.

The defendants' position is that the Plaintiff is not entitled to the land described in the 2nd schedule to the plaint, and they are entitled to it. They also state that the person referred to as Kavirala in paragraph 5 of the plaint is a different person and Kavirala who is referred to in the answer is the father of the 1st Defendant.

The Defendants also state in their amended answer that they do not claim rights only to Lots 1 and 2 depicted in plan No.476/90 but Lot 3 in the said plan has been possessed by them for over 60 years and thereby they have prescriptive title to the same. They further state that Lots 3 and 4 have been possessed by the 1st Defendant for over 60 years and he by Deed No.5827 had gifted it to the 2nd Defendant who thus became entitled to the said Lots.

When the case was taken up for trial on 24.08.1996, one admission was recorded - namely the Defendants do not claim any right to Lots 1 and 2 in Plan No.476/90 made by B.G. Baduthilaka and filed in this case. Thereafter issues 1 to 12 were raised on behalf of the Plaintiff and issues 13 to 28 were raised on behalf of the Defendants.

The Plaintiff claims that his lands described in 1st and 2nd schedules were depicted in T.P. 360020 and T.P. 354328 and the extent of them is A1. 0R. P.25 (1st schedule) and A0. R1. P29 (2nd Schedule), i.e. A1. R2. P14. According to Plan **X**, the extent of Lots 1 and 2 is A1.R0. P 05. and the extent of Lots 3 and 4 is A0. R2. P.09. The Defendants claim their land as depicted in T.P. 354328.

The surveyor states in his report that Lot 1 which is part of T.P. 360020 and in extent R.2 P.30, is possessed by the Plaintiff. Lot 2 is a part of T.P. 360020 and the Plaintiff should be entitled to it but the Defendants are in possession. It is in extent A0. R1.P.15

The Plaintiff has given evidence producing **P1**, **P2** and **P3**. The crux of the dispute is that while the Plaintiff claims title to all the four lots depicted in Plan No.476/90, the Defendants claim rights only to Lots 3 and 4 and disclaim rights to Lots 1 and 2.

As regards Lots 3 and 4, the surveyor states that Lot 3 is claimed by the Plaintiff but it is in the possession of the Defendant. The report does not state to which T.P. this lot belongs, whereas it is said that Lot 4 belongs to T.P. 354328, and claimed by the Plaintiff but is encroached upon by the Defendants.

According to the Report 'Y' it is clear that Lots 1 and 2 in Plan No.476/90 are parts of T.P. 360020. Since Lot 3 is not clearly stated as to whether it belongs to T.P. 360020 or T.P. 354328 and therefore it must be a separate lot and Lot 4 is a part of T.P. 354328, which is claimed by both the Plaintiff and the Defendants.

It must be noted that the Defendants have produced a certified copy of the Kurunegala Magistrate Court order (2D4) made under Section 66 of the Primary Court Procedure Act in case No.14930/C. The parties to that case were the Plaintiff and the 1st Defendant in this case. According to this order the 1st Defendant Suddahamy had been in possession of the land in extent 1 Rood and 29 Perches since 19.03.1965, and he has been placed in possession thereof by the Magistrate's Court. The Plaintiff was directed to file a civil action and that is the present action. This position is accepted by the Plaintiff in his evidence. (See proceedings of 04.11.1996). From this evidence it is clear that there was a dispute between the Plaintiff and the 1st Defendant in respect of the land described in the 2nd schedule to the plaint, and the 1st Defendant was admitted to be in possession thereof. If this be so, the statement of the Plaintiff that the Defendants on or about 26.10.1985 forcibly entered into the said land cannot be accepted.

It is also proved by the documents marked **2D5**, **2D6** and **2D7** that the 1st Defendant was in possession of the land called "Meegahakotuwa". It is also established that along with Lot 4, the Defendants have been in possession of Lot 3 also as one land. Since the surveyor has not clearly stated as to which Title Plan Lot 3 belongs, the Plaintiff cannot claim this lot as part of his land, and it is stated to be a part of Village Plan 7-1.

This is a *rei vindicatio* action, and as such when the title is disputed and the land is in possession of the Defendants, it is the duty of the Plaintiff to prove his title. The basic principle of a *rei vindicatio* action is that the Plaintiff must have title to the land in dispute. Without a proper title, he cannot ask for a declaration. It is, therefore, to be borne in mind that the burden is on the party who claims title to a property to adduce evidence to prove his title to the satisfaction of the Court. If he has no title, the Court cannot declare him entitled to the property. Our Courts have always emphasized that the Plaintiff who institutes a vindicatory action must prove title- See ***Wanigaratne v. Juwanis Appuhamy*** 65 N.L.R. 67.

As against the possession of the Defendants in respect of Lots 3 and 4 in plan No.476/90, the Plaintiff has failed to prove his title. Mere Crown Grant will not confer title without clear proof of devolution of title flowing from it. In this case, the Plaintiff has failed to establish his title to the said lands, though he has mentioned the Crown Grants issued to his predecessors.

In ***Saibo v. Andris et al*** (3 N.L.R.218) it was held that, "A sale of land by the Crown and the issue of a Crown grant to the purchaser do not themselves raise a presumption that the land was one over which the Crown had disposing power. Lawrie J. (Bonser C.J. agreeing) expressed the view that "As to the presumption arising from the nature of the land, a swamp, waste, or uncultivated land, which is within the limits of or adjacent to cultivated land belonging to a private owner, will not be presumed to be the property of the Crown".

I have gone into the judgment of the learned Additional District Judge made in this case. The Trial Judge has carefully analyzed the oral evidence and the documents produced by both parties. According to his findings, the person who received the Crown Grant by **P1** and the person who received the Crown Grant by **P2** are one and the same person. This has been elicited from the evidence of the plaintiff. Rajapakse Mudiyanselage *alias* Liyanaralalage Appuhamy who received the land by

P1 and the recipient by **P1** Liyanaralalage Appuhamy cannot be two persons and the plaintiff's pedigree flows from one person.

Considering the totality of the evidence led in this case, the learned Additional District Judge has come to the conclusion that the Plaintiff has failed to establish his title to Lots 3 and 4. That means the Plaintiff has failed to establish title to Lots 3 and 4 in Plan No.476/90. As the Defendants did not claim any right to Lots 1 and 2, in Plan No.476/90, the Plaintiff is declared entitled to those lots, 1 and 2 only, which are described in the 1st schedule to the plaint.

Subject to this variation, the judgment entered in this case is modified and the appeal is allowed accordingly.

JUDGE OF THE COURT OF APPEAL