(4)

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

Case No. CA 477/2000(F)

DC Case No. L 193

Nuwara Eliya District Court

Chandrani Jayasundara,
6th Mile Post,
Kandapola.

Plaintiff

Vs

01. Amarasiri Jayasundara,
Court Lodge Junction,
Kandapola. (deceased)

02. Rajarathna Jayasundara,
6th Mile Post,
Kandapola. (deceased)

Defendants

AND

01. Amarasiri Jayasundara,
Court Lodge Junction,
Kandapola. (deceased)

01.(a) Kotuwe Gedara Kamalawathie,
No. 49/17, Sri Wisuddharama Mawatha,
Gal Palama, Kandapola.

02. Rajarathna Jayasundara,
6th Mile Post,
Kandapola. (deceased)

02.(a) Wijekoon Mudiyanselage Thilakasiri

02.(b) Prasanna Manjula

02.(c) Indika Manjula Jayasundara

**Defendant - Appellants**

**Vs**

Chandrani Jayasundara,

6th Mile Post,

Kandapola.

**Plaintiff -Respondent**

C.A. 477/2000 (F) D.C. Nuwaraeliya 193/L

**Before** : A. H. M. D. Nawaz, J. &

E. A. G. R. Amarasekara, J.

**Counsel** : Priyantha Deniyaya for the 1(a) Defendant-Appellant.

Manohara de Silva, PC with Hirosha Munasinghe for the Plaintiff-Respondent.

**Argued &**

**Decided on** : 12.09.2017

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

The original Defendant-Appellants appealed against the judgment of the learned District Judge of Nuwaraeliya dated 28.03.2000 in which he allowed the reliefs prayed for in the plaint dated 15.05.1990. By way of the plaint the Plaintiff-Respondent had prayed for a declaration of title to the land morefully described in the schedule to the plaint and ejectment of the Defendants, their agents and all those claiming under them from the said land and the Plaintiff-Respondent had also prayed for possession to be given to her among other reliefs prayed for in the plaint. Both Defendants filed their answer praying for a dismissal of the plaintiff's action among other reliefs that they had sought in the said answer.

The cause of action that had been pleaded by the Plaintiff is based on a deed of transfer marked **P2** that had been executed on 17.01.1990 in favour of the Plaintiff. By way of this deed bearing No. 1426, one Don Gabriel Gunasekara Jayasundera, (the father of the parties to the case) and the original grantee of the land depicted in the schedule to this deed, had transferred the land to his daughter-the Plaintiff Chandrani Jayasundara for a consideration of Rupees One

Hundred Thousand (Rs 100,000). Prior to the execution of this deed on 17.01.1990, the transferor, Don Gabriel Gunesekara Jayasundera, the father of the parties to the case, had obtained permission from the relevant competent authority in terms of the Mahaweli Authority Act. This permission has been marked as **P2(a)**. The permission had been granted on 13.01.1990. It is by virtue of these two documents (**P2** and **P2 (a)**) that the Plaintiff came to Court seeking a declaration of title in her favour.

The learned Counsel for the Defendant-Appellants impugned the document marked **P2(a)** on the ground that this document was not valid because there had not been a prior request for the transfer of this land.

Learned President's Counsel who appears for the Plaintiff-Respondent relies on the presumption contained in Section 114(d) of the Evidence Ordinance which enacts that *"judicial and official acts have been regularly performed"* It is apposite to look at the presumption of regularity of judicial and official acts as contained in Section 114 of the Evidence Ordinance.

**PRESUMPTION WHICH THE COURT MAY DRAW**

Section 114 of the Evidence Ordinance enacts:

> *"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case."*

**Illustration (d) - Judicial and official acts**

**The Court may presume that judicial and official acts have been regularly performed.**

The rule embodied in this illustration flows from the maxim *omnia proesumuntur rite et solemniter esse acta,* i.e., all acts are presumed to have been rightly and

regularly done. The rebuttable character and nature of the presumption in Section 114(d) of the Evidence Ordinance have been emphasized.

> *"Although there is a presumption that official acts have been regularly performed, and that they have been performed in accordance with rules and regulations bearing on the subject, yet this is a rebuttable presumption. In fact, it is left to the Court to raise that presumption or not, having regard to the peculiar facts and circumstances of each case".*[1]
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> *"A presumption that an act was regularly done arises only on proof that the act was in fact done, as the presumption is limited to the regularity of the act done and does not extend to the doing of the Act itself".*[2]
>
> *"In other words, the presumption that may be raised is that the act if proved to have been done was done in a regular manner. There is no presumption that an act was done, of which there is no evidence and the proof of which is essential to the case raised".*[3]

In ***Dharmatilake vs. Brampy Singho*** 40 N.L.R. 497 at page 501, Keuneman J citing the Section 114(d) of the Evidence Ordinance stated that the maxim means that if an official act is proved to have been done, it will be presumed to have been regularly done. It does not raise any presumption that an act was done of which there is no evidence and the proof of which is essential to a case.

The adduction in evidence of the document **P2(a)** establishes the fact that the official act of granting permission to transfer the state land was performed. Was it regularly performed after a request was made? On the strength of the above principles it is crystal clear that the item of evidence **P2(a)** is sufficient to raise the presumption of the regularity of the grant of permission. The onus would then

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[1]Woodroffe and Ameer Ali, *Law of Evidence, 13th ed. Vol. 3, page 2602*
[2]Monir, *Principles and Digest of the Law of Evidence, 4th ed. Vol. 2, page 676.*
[3]Monir *Principles and Digest of the Law of Evidence, 4th ed. Vol. 2, page 676, at footnote 24.*

devolve on the Defendants to rebut this presumption. It would appear that evidence in rebuttal of the presumption was not led by the Defendants.

**Evidentiary Proof**

Moreover, in addition to the presumption that **P2(a)** raised as to the regularity of consent, this Court finds that there is also evidence led to prove in the District Court as to the grant of consent of the transfer consequent to a prior request and the evidence is to the effect that a prior request to permit the transfer had in fact been made.

The grantor of the permission himself has given evidence testifying to the request made – vide page 89 of the brief. Thus this Court takes the view that evidence of a prior request has been established and such evidentiary proof and the rebuttable presumption of regularity of the official act have not been rebutted and therefore this Court holds that the permission to transfer the state land has been properly and regularly given.

Thus the transfer deed, bearing No. 1426 and dated 17.01.1990 **(P2)** cannot be impugned. In any event when the Plaintiff closed his case on 03.11.1999, the deed of transfer marked **P2** was not objected to by the Defendants at the conclusion of the case. This Court bears in mind the salutary principle adumbrated in cases such as ***Sri Lanka Ports Authority And Another vs. Jugolinija Boat Authority*** (1981) 1 Sri.LR 18 and ***Balapitiya Gunanandana Thero vs. Talalle Mettananda Thero*** 1997 2 Sri.LR 101, both of which emphasise the principle that if a document is admitted subject to proof but is not objected to when tendered in evidence at the close of the case, it becomes evidence in the case. We would adopt this principle *in toto* as far as the documents namely **P2(a) (grant of permission)** and **P2 (the deed of transfer by the father of the parties to the case in favour of the plaintiff)** are concerned.

The *cursus curiae* established by the precedents of ***Sri Lanka Ports Authority*** and ***Balapitiya Gunanandana Thero*** has to be taken into account when this Court takes note of the fact that absolute title to the property devolved on the Plaintiff as far back 17.01.1999 when her father conveyed the subject-matter of the action to the Plaintiff by **P2**.

Even the Notary had been summoned to prove the due execution of the deed and the Notary Tilaka Herath's evidence has not been dented or impugned in any manner whatsoever.

In the circumstance this Court sees no reason to disturb the finding of the learned District Judge of Nuwaraeliya as to the declaration of title granted in favour of the Plaintiff-Respondent.

The other matter that was urged before this Court on behalf of the Defendant-Appellants is the long possession that the Defendant-Appellants allegedly had. This Court finds items of the evidence emanating from the 1st Defendant that he had only *permissive possession*, as the title to the property was in his father Don Gabriel Gunesekara Jayasundera who was also the father of the Plaintiff and we observe that his possession was also accompanied by payment of income made to the father-see evidence to this effect at page 112 of the appeal brief. It goes without saying that the 1st Defendant has admitted the title of the father. In the circumstances it would not lie in his mouth to plead prescription against the father having regard to the fact that he had been let on the land with the leave and licence of the father-**see Section 116 of the Evidence Ordinance.**

This Court has held in ***R.R. Somawathie vs. Don Harold Stassen Jayawardena*** **CA 36/2000 (F) (CA minutes of 30.11.2016)** that if entry into possession is on a dependant title, the acknowledged principle in law is that possession is presumed to continue in that capacity. There must be a manifest change in *causa* to possess on an independent and adverse title.

Considering the totality of the evidence led in the case and upon a perusal of the judgment dated 23.08.2000, this Court sees no reason to disturb the conclusion reached by the learned District Judge of Nuwaraeliya and affirms the judgment. Thus we proceed to dismiss the appeal.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

**E. A. G. R. Amarasekara, J.**

I agree

JUDGE OF THE COURT OF APPEAL