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

C. A. Appeal No. 292/1999 (F)

D. C., Matale Case No. 4065/L

In the matter of an appeal under Section 754(1) of the Civil Procedure Code.

Amidu Lebbe fareed,
Paragahawela
Ukkuwela.

PLAINTIFF

VS.

1. O. L. M. Idroos
2. O. L. M. Idroos Lebbe's Wife
   Rahuma Beebi,
   Paragahawela,
   Ukuwela.

DEFENDANTS

AND NOW

Amidu Lebbe Fareed
Paragahawela,
Ukkuwela.

PLAINTIFF-APPELLANT

VS.

1. O. L. M. Idroos *(Deceased)*
2. O. L. M. Idroos Lebbe's Wife
   Rahuma Beebi *(Deceased),*
   Both Paragahawela,
   Ukuwela

DEFENDANT-RESPONDENTS

1a. Rumal Athu Beebi
1b. Mohammadhu Raseeq
1c. Mohammedu Rafeeq
1d. Zahira Beebi
1e. Idroos Lebbe Nawferdeen

2a. Ahaza Beebi
2b. Idroos Lebbe Ajmeer
2c. Siththi Rizana
2d. Idroos Lebbe Zasina
All of Paragahawela,
Ukuwela

SUBSTITUTED DEFENDANT-RESPONDENTS

Before : **M. M. A. Gaffoor, J.**

Counsel : Shymal A. Collure AAL for the for the Plaintiff-Appellant

Hasitha Udugamakorala AAL for the Defendant-Respondents

Written Submission tendered on : 11.12.2017 (by the Plaintiff-Appellant)
01.11.2018 (by the Defendant-Respondents)

Decided on : **05.04.2019**

*****

M. M. A. GAFFOOR, J.

The Plaintiff-Appellant (Appellant) instituted the above styled action in the District Court of Matale, seeking *inter alia,* for a declaration of title for the land described in the schedule to the plaint and ejectment of the Defendant-Respondents (Respondents) and their agents therefrom.

The Respondents filed their answer preferring a claim in reconvention and denying the claim of the Appellant. Accordingly, the Respondents sought for a declaration that the 2nd Defendant-Respondent is the owner of the land described in the schedule to the plaint.

The trial commenced on 2 admissions and 19 issues. Out of the issues, 1-14 are recorded by the Appellant and 15-19 were recorded by the Respondents. After conclusion of the trial, the learned District delivered the judgment on 29.01.1999 in favour of the Respondents and dismissed the case of the Appellant.

Being aggrieved by the said judgment, the Appellant preferred this appeal, to set aside the judgment and grant relief sought to the amended plaint.

When elucidate the purported basis of his case, the Appellant stated that, his Brother-in-law namely, S. M. Arsheen was the owner of the lot A2 of Plan 1685A and that he sold the said land to the 2nd Defendant by way of Deed No. 3243 (P3) and placed his possession in lot B2. Thereafter the said Arsheen had sold the said B2 to the Appellant by Deed bearing Nos. 3363 and 3363 dated 19.09.1987 and 12.09.1989 respectively. Therefore, it was the position of the Appellant that while, the Respondents placed in possession only in lot A2, they had entered the said lot B2 illegally.

Therefore, it was the position of the Appellant that what the said Arsheen sold to the 2nd Defendant-Respondent is not B2 but it is lot A2 and the Notary has made a mistake and the said Arsheen did not know of the said mistake.

In contrast, in the amended answer (at page 54 of the appeal brief) the Respondents' position was that the said Arsheen having sold to the 2nd Defendant-Respondent, lot B, the land in dispute by deed P3.

In the trial, on behalf of the Appellant, a prime witness, the said Arsheen, who is the Brother-in-law of the Appellant and the predecessor in title to the property, gave evidence. In his evidence (at page 71) he stated that he did not sign the Deed P3, by which he sold the property in question to the 2nd Defendant-Respondent. But, the said Arsheen, in his evidence, while admitting the said deed P3 (at page 159) by which he sold the said property to the 2nd Defendant-Respondent, stated that what was sold to him was lot A2 but inadvertently it has been referred to as lot B2 in the said Deed.

However, a careful perusal of the said deed P3 shows very clearly that what was sold and what intended to be sold was lot B2 which was been correctly described according to the Partition Plan marked as P1. The boundaries, the extent, and all other details given in the schedule to the said deed, correctly apply to lot B2 and not lot A2. The plan marked P1 also witness that lot B2 is on the East of the main road while lot A2 is on the West of the main road, therefore, I think that there could not have been any confusion or discrepancy as to which lot was sold to the 2nd Defendant-Respondent.

It is seen from the Trial proceedings that, the Appellant (at page 103) insists that he alone possessed the said land after he purchased it from his brother-in-law. When confronted with a document, in the same page he speaks of one land, one house in which he lives with his brother-in-law and therefore both of them possessed the said land.

Further, at (page 99) the said proceedings he denied having filed the case No. 4025/L but when confronted with the plaint marked V4, he admitted having filed it. Therefore, it is quite clear that both the Plaintiff and his brother-in-law Arshaeen are not credible witnesses and had given contradictory evidence at the trial. In regard to this, this Court observes that in the case of ***DE SILVA & OTHERS VS. SENAVIRATNA AND ANOTHER*** [(1981) 2 SLR page at 07]- when an appellate court is invited to review the findings of the trial judge on the question of facts, the principles that should be guided is as follows:-

a. *where the finding on questions of fact are based upon the credibility of witnesses on the footing that the trial judge's perception on such evidence, then such findings are entitled to great weight and the utmost consideration and will be reversed only if appears to the appellate court that the trail judge has failed to make full use of his advantage of seeing and listening to the witnesses and the appellate court is convinced by the plainest considerations that would be justified in doing so.*

b. *that however where the of fact are based upon the trail judge's evaluation of facts, the appellate court is then in in as good a position as the trail judge to evaluate such facts and no sanctity attaches to such findings of fact of a trial judge.*

c. *where it appears to an appellate court that on either of the grounds the findings of fact by a trial judge should be reversed then the appellate court "ought not to shrink from that task"*

Furthermore, a careful perusal of the pleadings, issues, and the entire evidence as the final findings of the learned District Judge clearly reveals that the only matter raised by the Appellant in the instant case is as to whether what was sold to the 2nd Defendant-Respondent. Therefore, I am of the view that the learned District Judge correctly assessed the credibility of the evidence especially, Appellant and the said Arsheen.

In this regard, it is to be noted that the observation of the Hon. G. P. S. De Silva, C. J. in ***ALWIS VS. PIYASENA FERNANDO*** [(1993) 1 SLR 119] when he emphasized that:

> *"..it is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."*

In ***ARIYADASA VS. ATTORNEY GENERAL*** [(2012) 1 SLR 84] the Court observed as follows:

> *"Court of Appeal will not lightly disturb a finding of a Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the trial Judge has taken such a decision after*

observing the demeanor and the deportment of a witness..."

In the circumstances, I hold that the Appellant's case is without any merit and therefore is liable to dismissed.

Accordingly, the appeal is dismissed with cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL