

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

2A. Wahalkada Arachchilage Jayarathne
Banda,
Bulugamma,
Aranayake.
And 4 Others
Substituted Plaintiff-Appellants

CASE NO: CA/695/1999/F

DC KEGALLE CASE NO: 1239/L

Vs.

1A. Ratnayake Mudiyanseelage Jayasena,
Randiligama,
Aranayake.
And 5 Others
Substituted Defendant-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Cooray for the Appellants.

Respondents are absent and unrepresented.

Decided on: 23.10.2019

Mahinda Samayawardhena, J.

The two plaintiffs filed this action against the two defendants seeking declaration of title to the land described in the schedule to the plaint, ejectment of the defendants therefrom, and damages. The defendants, father and son respectively, filed a joint answer seeking dismissal of the action. After the trial, the learned District Judge dismissed the plaintiffs' action. Hence this appeal by the plaintiffs.

The plaintiffs claim was based on deeds marked at the trial. However, the District Judge has not convinced that the transferors of those deeds had title to transfer such rights based on inheritance.

Conversely, the claim of the defendants was based on prescriptive possession. The issues raised by the defendants at the trial were based on prescription. I cannot accept the argument of the learned counsel for the plaintiffs that "*Since the 1st defendant not claimed the prescriptive title by his answer dated 01.10.1975 and the 2nd defendant not relied by the deed of transfer 2508/1974, defendant's claim to prescriptive title failed.*" It is trite law that, once the issues are raised, pleadings recede to the background. By way of issues, both the defendants claimed prescriptive title to the land in suit.

The plaintiffs in paragraph 10 of the plaint dated 03.07.1975 expressly state that the defendants are in unlawful possession of the land, which belongs to them since 1967. The 3rd issue raised by the plaintiffs is also to that effect. That means, the plaintiffs categorically admit the defendants' (prescriptive) possession since 1967. Why 1967? That is

because the plaintiffs' deed marked P8 was executed in 1967 (and the other deed marked P10 was executed in 1971). It is on that basis, the plaintiffs in the plaint, in my view, state that the defendants are in unlawful possession of the land from 1967. However, the 1st plaintiff in evidence has admitted that that even before 1967, the defendants were in possession of the land.¹

On the one hand the plaintiffs have failed to prove paper title to the land as the right of inheritance has not been established to the satisfaction of the learned District Judge. On the other hand, the defendants have established prescriptive title to the land.

Hence I am not inclined to interfere with the conclusion of the learned District Judge.

Appeal is dismissed without costs.

Judge of the Court of Appeal

¹ Vide page 147 of the brief.