

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

Abdul Samad Sadakathullah,  
of Dippitya,  
Aranayake,  
and Another.  
Plaintiff-Appellants

**CASE NO: CA/DCF/859/1998**  
**DC KEGALLE CASE NO: 813/L**

Vs.

1A. Ummu Sawda,  
of Siyambalwatta,  
Moragammana,  
Aranayake,  
and 9 Others.  
Substituted Defendant-  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: H. Withanachchi with Shantha Karunadhara  
for the Plaintiff-Appellants.  
S. Dheerasekara for the Defendant-  
Respondents.

Argued on: 17.07.2020

Decided on: 07.08.2020

Mahinda Samayawardhena, J.

The Plaintiffs filed this action against the Defendant in the District Court of Kegalle on 10.02.1972, seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the Defendant therefrom and damages. The Defendant filed the answer seeking dismissal of the action. After the trial, the learned District Judge dismissed the action. Hence this appeal by the Plaintiffs.

The land the Plaintiffs claim title to is depicted in the Plan marked X at the trial. According to the superimposition on this Plan, two other lands, which were each the subject matter of two previous cases, have been included in the corpus of this case. The superimposed Plan is marked Y. One portion in the Plan marked Y has been identified as part of Plan No.2831, which is the final partition plan in the District Court of Kegalle Case No. 2126. The other portion has been identified as part of Plan No.279, which is the plan prepared for Case No. 18913 in the same Court.

Learned Counsel for the Plaintiff-Appellants accepts that these two lands cannot form part of the corpus in the instant matter and therefore shall be excluded. Then, what is left is a very small portion of land.

On this ground alone, learned Counsel for the Plaintiffs candidly admits the dismissal of the Plaintiffs' action, which is a *rei vindicatio* action, is correct.

However, learned Counsel says the answers given by the District Judge in favour of the Defendant with regard to the issues relating to prescription are not justifiable, as the Defendant has also been identified as a co-owner of the land along with the Plaintiffs. Hence, Counsel submits the said answers be amended to say the Defendant has not acquired prescriptive rights to the land, in order to enable the Plaintiffs to file a partition action to claim their undivided rights to the land.

The Plaintiffs in paragraph 7 of the plaint (dated 10.02.1972) say the Defendant came to the land as a watcher and, thereafter, from around 15.10.1962 has been in forcible possession of the land. The Defendant does not admit he came to the land as a watcher. Even assuming the Plaintiffs are correct, this means the Defendant has been in prescriptive possession of the land since 15.10.1962.

It is not clear from the plaint or from the evidence led at the trial why the Plaintiffs specify 15.10.1962 as the date on which the Defendant commenced adverse possession. It seems to me the said date was given to ensure that at the time of filing the action the Defendant was a few months short of the requisite 10-year period to claim prescriptive title in terms of section 3 of the Prescription Ordinance.

If I may advert to the evidence of the first witness for the Plaintiffs, this witness himself (at page 206 of the Brief and thereafter) admits that the Defendant has been on the land since at least 1958. The witness first says (at page 185 of the Brief) forcible possession by the Defendant commenced in mid-1962.

Thereafter, the witness says (at page 194 of the Brief) he made a mistake on the previous occasion and in fact forcible possession by the Defendant commenced on 15.10.1962. However, the witness does not offer a reason for specifying such a date. It is interesting to note that if the Defendant had commenced adverse possession on 09.02.1962, for instance, he would have completed the 10-year prescriptive period by the time the action was instituted in Court.

Without offering an explanation for the basis upon which the Plaintiffs say the Defendant commenced adverse possession of the land, the specific date mentioned in the plaint is misleading and intended to thwart any attempt on the part of the Defendant to claim the land on prescriptive possession, which he would have been entitled to do had the date of his commencement of adverse possession been a mere eight and a half months prior to that claimed by the Plaintiffs.

The second witness for the Plaintiffs first says the Defendant has been on the land since 1959 (at page 219 of the Brief) and later changes this to 1957 (at page 229 of the Brief).

In line with paragraph 7 of the plaint, the Plaintiffs had raised issue No.5 to say the Defendant commenced prescriptive possession on 15.10.1962. The District Judge answered this issue in the negative.

The Defendant had raised issue Nos. 26 and 29 to say he has acquired prescriptive rights to the land, having been in adverse possession for well over 10 years. The District Judge answered these two issues in the affirmative.

In the facts and circumstances of this case, I see no compelling reason to disturb this finding of the District Judge.

I dismiss the appeal with costs.

Judge of the Court of Appeal