

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

S.C. Appeal No. 78/2013
SC/HC(CA) LA No. 75/2012
WP/HCCA/AV No. 698/2000(F)
D.C. Pugoda No. 221/L

In the matter of an Application for Leave to Appeal from the Judgment of the High Court of Civil Appeal of Western Province dated 23.01.2012 in terms of High Court of Provinces (Special Provisions) Act No. 54 of 2006 (as amended)

1. Hettiarachchi Wellaburage
Madurawathie Jayasundara
2. Alagiyawanna Mohotti Appuhamilage
Pradeep Kumara
appearing by his next
Friend Alagiyawanna Mohotti
Appuhamilage Chandradasa,

Both of Walpolawatte,
Narangaspitiya,
Kirindiwela.

PLAINTIFFS

Vs.

1. Hettiarachchi Welliamburage
Chandrawathie Jayasundera
2. Hapuarachchige Rupasinghe **(Deceased)**
- 2a. Hettiarachchige Weliamburage
Chandrawathie Jayasundara of

Medawalawita,
Meddagama,
Kirindiwela.

DEFENDANTS

AND

1. Hettiarachchi Wellaburage
Madurawathie Jayasundara
2. Alagiyawanna Mohotti Appuhamilage
Pradeep Kumara

appearing by his next
Friend Alagiyawanna Mohotti
Appuhamilage Chandradasa,

Both of Walpolawatte,
Narangaspitiya,
Kirindiwela.

PLAINTIFFS-APPELLANTS

Vs.

3. Hettiarachchi Welliamburage
Chandrawathie Jayasundera
4. Hapuarachchige Rupasinghe **(Deceased)**
- 2a. Hettiarachchige Weliamburage
Chandrawathie Jayasundara of

Medawalawita ,
Meddagama,
Kirindiwela.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

1. Hettiarachchi Wellaburage
Madurawathie Jayasundara
2. Alagiyawanna Mohotti Appuhamilage
Pradeep Kumara **(Deceased)**
- 2a. Alagiyawanna Mohotti
Appuhamilage Chandradasa
- 2b. Alagiyawanna Mohotti
Appuhamilage Cisna Kumari

Both of Walpolawatte,
Narangaspitiya,
Kirindiwela.

PLAINTIFFS-APPELLANTS-PETITIONERS

Vs.

1. Hettiarachchi Welliamburage
Chandrawathie Jayasundera
2. Hapuarachchige Rupasinghe **(Deceased)**
- 2a. Hettiarachchige Weliamburage
Chandrawathie Jayasundara of

Medawalawita ,
Meddagama,
Kirindiwela.

**DEFENDANTS-RESPONDENTS-
RESPONDENTS**

BEFORE:

S.E. Wanasundera P.C., J.
Upaly Abeyrathne J. &
Anil Gooneratne J.

COUNSEL: D. N. Vijithsing for the Plaintiffs-Appellants-Petitioners

Romesh Samarakkody with Priyanthi Ganegoda
instructed by Ms. A.D.M. Samarakkody
for Defendant-Respondent-Respondents

ARGUED ON: 09.09.2016

DECIDED ON: 27.10.2016

GOONERANTE J.

This was an action filed in the District Court of Pugoda for a declaration of title to the land described in schedule 3 of the amended Plaint and eviction/damages against the Defendant-Respondents from the said lands. The learned District Judge dismissed the Plaintiff-Appellant-Petitioner's suit filed in the District Court, Pugoda and Plaintiff-Appellant-Petitioners having appealed to the relevant High Court against the Judgment of the learned District Judge, the High Court affirmed the Judgment of the District Court and dismissed the appeal. The Supreme Court on or about 31.05.2013 granted leave as per paragraphs 12(i) and 12(ii) of the petition dated 29.02.2012. The said questions reads thus:

12. (i) Did learned High Court Judges of Civil Appeal High Court err in law by coming to the conclusion that the 3rd schedule morefully described in the

plaint is an undivided portion of a larger land where as the Petitioners established that the said portion was possessed as defined and definite portion for more than 70 years.

- (ii) whether the learned High Court Judges of Civil Appeal erred in law by holding that the Petitioners could not maintain this action as the Petitioners could not described a define portion despite of the fact that the boundaries of the said land were demarcated and shown by a survey plan.

The only matter that concerns this court is to arrive at a decision connecting the above questions i.e as to whether the Plaintiff-Appellant-Petitioners had long possession of the land in dispute and possessed the land as a defined and definite portion of a larger land. It is a question of fact, whether parties have had long exclusive possession in a defined area to enable the party concerned to claim prescriptive rights, to the land in dispute. We have heard submissions of both learned counsel on either side.

Parties proceeded to trial on nine issues. Based on the issues Plaintiff-Appellant-Petitioner urged that they have title to the land described in schedule 3 of the amended plaint and that the Defendant party illegally and forcibly possess the land in dispute. The Defendant-Respondents' position, as could be gathered from the issues take up the position that schedules 1, 2 & 3 described in the amended plaint are undivided portions of lands of a land called

'Muththetuwatte' in extent of about 30 Acres. It is also the position of the Defendant-Respondent that the land described in schedule 3 above and the land transferred to Plaintiff's son Pradeep Prasanna are undivided portions of land included in a large extent 30 Acres of land stated above. Further the case of the Defendant-Respondent is that the Plaintiff party has not been able to possess divided portions of land. As an alternative relief, Defendant-Respondent claim that land described within schedule 3 of the amended Plaint was possessed by the Defendant party and Defendant-Respondent has prescribed to the land in dispute.

This court having perused the evidence led at the trial and the two Judgments delivered by the lower courts is more than satisfied that the land described in schedule 3 of the amended Plaint is only a part of an undivided portion of a larger land. Learned District Judge has correctly considered and analysed the evidence led at the trial and it supports the contention of the Defendant-Respondents as stated above. I note the following important items of evidence of the Surveyor who gave evidence at the trial, and produced plan No. 968 of 23.04.1997.

In cross-examination:

ප්‍ර : තමා මැනූන අවස්ථාවේදී තමා සැලකිල්ලට ගත්ත යම් ලේඛණයක් තිබුණද?

ඔප්පුවක් හෝ පිඹුරක් ?

උ: නැත. මට තිබුණේ කොමිෂම පමණයි

ප්‍ර : කිසිම ඔප්පුවකින් මායිම් පෙන්වුවාද?

උ: ඔප්පු මා බලන්නේ නැහැ. ඉදිරිපත් කලේ නැහැ

ප්‍ර : තමා මොකද කියන්නේ මනින්න කිව්ව ඉඩමත් මැනූන ඉඩමත් ගැන

උ: ප්‍රමාණයේ විශාල වෙනසක් දක්නට තියෙනවා

ප්‍ර : තමා මනින්න ගිය අවස්ථාවේදී තමා දැන ගන්නාද මේ ඉඩම් කොටස අක්කර 39 ක් විශාල ඉඩමක කොටසක් කියා?

උ: ඔව්

ප්‍ර: බෙදුපු කොටසකට කිසිම සැලැස්මක් ඉදිරිපත් කර තිබුණේ නැද්ද?

උ: නැත.

Surveyor's evidence reveal that no plan or deed was submitted to him to conduct the Survey. He only had the commission papers. Surveyor states in evidence that there was a clear difference in extent. Difference of 1 Acre and 7 Perches. Surveyor further states that he became aware by the survey that the land to be surveyed was part of a larger land in extent of 30 Acres. I note that the above items of evidence (not contradicted) does not in any way support the Plaintiff-Appellant's case. Learned District Judge also observes, that the Plaintiff parties' position was their possession of the land in dispute was a separate, defined and identifiable plot of land with long possession, but no plan was submitted to prove the defined portion and Plaintiff's case not supported with reliable evidence. A mere statement of a witness of occupying a land for long years would not suffice to satisfy the requirements of Section 3 of the Prescription Ordinance. Definite acceptable boundaries need to be shown and

established. This should be so in a case where the contest by the opposing party is so strong based on undivided property rights. In *Loku Menika Vs. Gunasekera 1997 (2) SLR 281 Ranarajah J.* followed the principle that that the separate possession alone does not constitute adverse possession for purpose of establishing prescriptive title against co-owners. The above position more or less discussed in *Seeman Vs. David 2000(3) SLR 23.*

I also note that Deed P1 relied upon by Plaintiff-Appellants describe the land as 1/20th share (undivided) from a 30 Acre land. P2 & P3 the schedules refer to as undivided lands. Plaintiff has also admitted that there is a Partition Case for the 30 Acre land and that the Plaintiff is a party to that case.

The evidence led at the trial does not support a separate and a defined portion of land as argued by the Plaintiff-Appellants. Both courts the District Court and the High Court arrived at the same conclusions as above. Both courts have considered and given its judicial mind to basic primary facts as stated above. This court is not in a position to interfere with such basic and primary facts. It could be done only in a case where a perverse finding could be detected. Plaintiff-Appellants have not convinced this court that the Judgments

of both courts are perverse. Further on a balance of probability the Trial Court has chosen to accept and recognise the case and version of Defendant-Respondents. Mere expression of possession and referring to some boundaries would not suffice. What is required in law would be independent long possession of definite and defined portions of lands. This is so in cases where the corpus consists of undivided portions of lands. The two questions of law are answered in the negative and I observe that the High Court has not erred in its Judgment and conclusions. Therefore I dismiss this appeal without costs.

Appeal dismissed.

S.E. Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT

JUDGE OF THE SUPREME COURT