

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

S.C. Appeal No. 89/2013
SC HC CA LA Application No. 551/2012
SP/HCCA/GA/066/2004 (F)
DC Galle Case No. L/13147

In the matter of an Appeal to the
Honourable Supreme Court of the
Democratic Socialist Republic of Sri
Lanka.

Neil Jayasundera
No. 283, Morris Road,
Maitipe, Galle

PLAINTIFF

Vs.

Agostinu Saranapala
No. 16A, Aluthgedarawatta
3rd Lane, Maitipe, Galle.

DEFENDANT

AND

Neil Jayasundera
No. 283, Morris Road,
Maitipe, Galle

PLAINTIFF-APPELLANT

Vs.

Agostinu Saranapala
No. 16A, Aluthgedarawatta
3rd Lane, Maitipe, Galle.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Agostinu Saranapala
No. 16A, Aluthgedarawatta
3rd Lane, Maitipe, Galle.

DEFENDANT-RESPONDENT-PETITIONER

Vs.

Neil Jayasundera
No. 283, Morris Road,
Maitipe, Galle

PLAINTIFF-APPELLANT-RESPONDENT

BEFORE: Priyasath Dep P.C., C.J.
Anil Gooneratne J. &
Vijith K. Malalgoda P.C., J.

COUNSEL: Ms. V. Arulanathan with Ms. J. Arulanathan
for the Defendant-Respondent-Petitioner

Harsha Soza P.C. with Srihan Samaranayake
For the Plaintiff-Appellant-Respondent

ARGUED ON: 11.09.2017

WRITTEN SUBMISSIONS OF THE APPELLANT FILED ON:

13.08.2013

WRITTEN SUBMISSIONS OF THE RESPONDENT FILED ON:

08.10.2013

DECIDED ON: 16.10.2017

GOONERATNE J.

Action was filed in the District Court of Galle by Plaintiff-Appellant-Respondent against the Defendant-Respondent-Appellant (hereinafter called the Defendant) praying for the following relief:

- (a) A declaration that the land morefully described in paragraph 2 of the plaint and the building standing thereon belongs to the Respondent.
- (b) The ejectment of the Appellant from the said land and the building standing thereon and for peaceful vacant possession thereof to be given to the Respondent; and
- (c) Damages in a sum of Rs.10,000,00 together with Rs.750,00 per mensum from 01.10.1995 until restoration of the Respondent to vacant and peaceful possession of the premises in suit.

Plaintiff inherited the premises in dispute. In or about 1946 father of the Appellant was permitted to live in order to look after the plantation, on the basis that he would handover vacant possession and building when requested to do so. On the demise of Appellant's father the Defendant continued to live and occupy the land with his wife and children. It was, as stated by Plaintiff with the leave and license of Plaintiff's father. On 05.07.1995 Appellant built an extension to the house already built. Plaintiff lodged a complaint with the Galle police. Appellant failed to hand over possession. On or about 22.08.1995 Plaintiff sent

a quit notice, through his Attorney-at-Law. The Appellant ignored the notice and continued to occupy.

The Plaintiff has good/sound title to the property in dispute. Land in question is identified as lot 2 in plan 421A of Surveyor Gunasekera in D.C Galle 23536 in extent of 1 Rood 5.8 perches, a divided portion of a land called Mulane Ketakalagahawatta". Plaintiff traces his title to a partition decree in D.C. Galle 23536. Defendant was in occupation of a portion of land described above. Defendant was a caretaker. Attention of this court has been drawn to the following points by the learned President's Counsel.

- (a) Identity of corpus
- (b) Plaintiff's title
- (c) Defendant's wrongful occupation
- (d) Damages caused to Plaintiff

This court takes the view that, Plaintiff having established above (a) to (d), has satisfied court that the Plaintiff is entitled to a declaration of title and ejectment of the Defendant and all those holding under the Defendant.

Defendant could be described as in permissive occupation, which later turned out to be unlawful occupation. In fact in evidence Defendant has admitted title of Plaintiff. Defendant has not placed material to show any adverse possession which is a requirement under Section 3 of the Prescription Ordinance.

I don't see a basis to interfere with the High Court Judgment. Corpus has been identified very clearly. Vide Jayasuriya Vs. Ubaid 61 NLR 352 at 353. Lathiff and Another Vs. Mansoor. 2001(BLR) 189 at 197. Plaintiff has established paper title. Vide Loku Menike and another Vs. Gunasekera 1997 (2) SLR 281; Leisa and another V. Simon 2002 (1) SLR 148 at 151 – 153. It was also established the termination as an revocation of Defendant's leave and licence. Vide Ahriff Vs. Rasik 1985 (1) SLR 162 at 166.

In all the above circumstances, I affirm the Judgment of the High Court and dismiss this appeal without costs.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C

I agree

CHIEF JUSTICE

Vijith K. Malalgoda P.C.

I agree.

JUDGE OF THE SUPREME COURT