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

In the matter of an application for Leave to Appeal under High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006

Rajamanthri Gedera Somalatha,
Polwatta, Samapura,
Hemmathagama

Plaintiff

SC Appeal 33/2013

SC/HCCA/LA 526/2012
WP/ HCCA/KAG/826/2011(F)
DC/ Mawanella Case No. 702/L

Vs,

Wajira Kanthi Rathnasinghe,
Siriwardena Niwasa, Samapura,
Hemmathagama

Defendant

And then between

Wajira Kanthi Rathnasinghe,
Siriwardena Niwasa, Samapura,
Hemmathagama

Defendant-Appellant

Vs,

Rajamanthri Gedera Somalatha,
Polwatta, Samapura,
Hemmathagama

Plaintiff-Respondent

And Now between

Rajamanthri Gedera Somalatha,
Polwatta, Samapura,
Hemmathagama

Plaintiff -Respondent-Petitioner

Vs,

Wajira Kanthi Rathnasinghe,
Siriwardena Niwasa, Samapura,
Hemmathagama

Defendant-Appellant-Respondent

Before: **Justice Vijith K. Malalgoda PC**
Justice L.T.B. Dehideniya
Justice P. Padman Surasena

Counsel: Sunil Abeyratne with Ms. Lakmali Algama for Plaintiff-Respondent-Appellant

Ms. Sudarshani Cooray for Defendant-Appellant-Respondent

Argued on: **06.09.2019**

Decided on: **07.11.2019**

Vijith K. Malalgoda PC J

The Plaintiff-Respondent-Appellant (hereinafter referred to as 'the Plaintiff-Appellant') instituted action in the District Court of Mawanella against the Defendant-Appellant-Respondent (hereinafter referred to as 'the Defendant-Respondent') for declaration of title and for

ejectment of the Defendant-Respondent from the land called 'Madangahamulawatte Assedduwe Kumbura'. After the trial, the learned District Judge delivered the judgment dated 31st of March 2011 in favour of the Plaintiff-Appellant. Being aggrieved by the said judgment of the District Court, the Defendant-Respondent appealed to the High Court of Civil Appeal holden in Kegalle. However, on appeal, the learned Judges of the High Court of Civil Appeal, by the judgment dated 23rd of October 2012, set aside the judgment of the District Court. Being dissatisfied with the said judgment of the High Court of Civil Appeal, the Plaintiff-Appellant has made this appeal to this court seeking leave to appeal. This court, by the order dated 6th of February 2013, granted leave to appeal on the questions of law set out in paragraph (7) (i) (ii) (iii) (iv) (v) (vi) and (vii) of the Petition dated 30th November 2012, which reads as follows;

(i) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle erred in facts and law of this case declaring the Respondent has obtained prescriptive title for the Corpus?

(ii) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle erred in law by giving undue weight on case No: 93969 filed under Primary Court's Procedure Act in which the Respondent and one Jayarathne were the parties to the case however, Petitioner was not a party to the same case?

(iii) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle have misinterpreted the provision under the section 110 of Evidence Ordinance?

(iv) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle have applied erroneously in their judgment that the detail in the Agricultural Land Registry was prima facie evidence in prescription case?

(v) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle have failed to express reasons to reject findings of the learned District Judge, Mawanella on contradictory evidence forwarded by the Respondent and her witnesses for the defense?

(vi) Whether the learned Judges of the High Court of Province (Civil Appellate), Kegalle have failed to give reasons for the conclusion in their judgment on adverse, independent, uninterrupted possession of the Respondent for more than 10 years of the subject matter as requirements to establish the prescriptive title for the subject matter under section 03 of the Prescription Ordinance in favour of the Respondent?

(vii) Whether the Learned Judges of the High Court of Province (Civil Appellate), Kegalle erred in facts and law by setting aside the judgment dated 31.03.2011 of the learned District Judge, Mawanella?

The facts observed as relevant by this court will be summarized in order to ascertain the question of law and facts in relation to the present case. In an action for declaration, the burden to establish the title to the land is vested on the Plaintiff. As observed in the case of ***Abeykoon Hamine vs. Appuhamy 52 NLR 49***, the initial burden of proof rests on the plaintiff to prove that he had *dominium* to the land in dispute. Furthermore, in ***Wanigarathne vs. Juwanis Appuhamy 65 NLR 167***, *Herat J* observed that

> "In an action *rei vindicatio*, the plaintiff must prove and establish his title. He cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established."

Accordingly, it is necessary to consider whether the Plaintiff-Appellant in the present case has discharged the burden of proof that rests on him. As per the evidence led before the District

Court, it can be summarized that, the original owner of the land was one Uduma Lebbe Mariyam Bibi. By deed No. 4479 dated 19th August 1942, the land was transferred to Segu Mahudun Adam Lebbe Padiliyar. Then, by the deed No. 4685 dated 26th October 1942, the same land was transferred to Rajamanthrie Gedara Abaran Appu. Later, by the deed No. 213 dated 17th October 1994, this land was transferred to Rajamanthrie Gedara Somalatha who was the Plaintiff before the District Court. Thus, this court is in a position, to observe that, the Plaintiff-Appellant has established a clear paper title to the land in dispute.

In ***Fernando vs. Somasiri 2012 BLR 121***, it was held that,

> "In a vindicatory action the burden of proof rests upon the plaintiff to prove his title including identification of the boundaries and it is necessary to establish the corpus in a clear and unambiguous manner."

Therefore, it is a must to consider these aspects, since the ownership cannot be ascribed without clear identification of the land. (*vide*: ***Abdul Latheef v Abdul Majeed (2010) 2 SLR 333***). However, in the present case, there was no controversy and both parties admitted the boundaries of the land in question.

Accordingly, the Plaintiff-Appellant has established the title to the land and clearly identified the corpus. This was accepted by both the learned District Judge and the learned Judges of the High Court. Conversely, the Defendant-Respondent argued before us, that he has been in possession of the land in question and claimed prescriptive title to the land for over a period of ten years. However, once the title is proved by the Plaintiff, the burden of proof shifts to the Defendant to prove that he has a right to possession of the property (*vide*: ***Siyaneris vs. Udenis De Silva 52 NLR 289***).

According to section 3 of the Prescription Ordinance, if a person claims prescriptive title, he must prove that he has been in undisturbed, uninterrupted and adverse possession of the land for a period of ten years. Therefore, it is necessary to consider whether the Defendant-Respondent has proved her prescriptive title to the land. As per the evidence adduced by the Defendant-Respondent, one William Rathnasinghe has cultivated the said land prior to 80 years. After the death of William Rathnasinghe, his son, Wilfred Rathnasinghe had cultivated the said land and after the death of Wilfred, his son, Nandalal Rathnasinghe, and his daughter Wajira Kanthi Rathnasinghe, who is the Defendant-Respondent in this case, has continued the possession. Later, on 12th of July 2004, the Defendant-Respondent's brother, Nandalal, transferred undivided ½ portion by deed No 3372 to his sister, the Defendant-Respondent.

In ***De Silva vs. Commissioner General of the Inland Revenue 80 NLR 292***, it was held that;

> "A person who bases his title in adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

Furthermore, in the case of ***Sirajudeen and others vs. Abbas (1994)2 SLR 365***, *G.P.S. De Silva CJ* held,

> "As regards the mode of proof of prescriptive possession, mere general statements of witnesses that the plaintiff possessed the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is necessary that the witnesses should speak to specific facts and the question of possession has to be decided thereupon by Court. One of the essential elements of the plea of prescriptive title as provided for in

> section 3 of the Prescription Ordinance is proof of possession by a title adverse to or independent of that of the claimant or plaintiff. The occupation of the premises must be of such character as is incompatible with the title of the owner."

Accordingly, when considering the present case, mere statements of witnesses that the Defendant-Respondent possessed the land in dispute for several years exceeding prescriptive period are not enough for *rei vindicatio* action and payment receipts issued on the basis of Agricultural Land Register cannot be considered as prima facie evidence to prove undisturbed, uninterrupted and adverse possession under section 3 of the Prescription Ordinance.

The learned Judges of the High Court when reversing the judgment of the learned District Judge had further observed that,

> "Where the Plaintiff fails to prove ouster, the defendants possession must be assumed to be lawful and the defendant is entitled to rely on the presumption created by section 110 of the Evidence Ordinance."

However, as discussed above, it is obvious that once the Plaintiff-Appellant has proved his or her title to the land, then the burden shifts to the Defendant-Respondent to prove his or her possession. In the said circumstances, section 110 of the Evidence Ordinance is misinterpreted by the learned High Court Judges and cannot be assumed that the Defendant-Respondent's possession is lawful.

It is further observed by this court that the learned Judges of the Civil Appellate High Court were carried away by a Primary Court decision which was marked as V-1 during the trial before the

District Court. Whilst referring to the said action before the Primary Court, it is observed in the said judgment that,

> "It is worth to be mentioned that there is a case (case No. 93969) instituted under Primary Court Procedure Act which is marked as V-1. This action clearly demonstrates that there was a dispute between the defendant and one Jayarathne as to the possession of the field. The Plaintiff in this case was not a party to case No. 93969 when the Plaintiff was cross examined on this point she replied that she had intervened to the case, which is a lie. On the other land, if she possess the land she should have been a party to this case. This position clearly convinced my mind that the plaintiff did not possess the land"

As revealed before us, the said action was instituted on 15th of April 2015 which is a day after filing the present action before the District Court for Declaration of Title and ejectment of the Defendant-Respondent.

Furthermore, a matter under section 66 of the Primary Court Procedure Act is not a civil action and the object is to prevent a breach of peace, not to decide any question of title or right to possession of the parties to the land (*vide*: ***Ramalingam vs. Thangarajah (1982)2 SLR 693***). Therefore, an order of the said action does not affect to the civil case relating to the declaration of title or *rei vindicatio*. Accordingly, based on the Order made by the Magistrate's Court under the section 66 application, the learned Judges of the High Court cannot justify that the Defendant-Respondent in the present case had adverse possession to the land in dispute.

In ***Alwis vs. Piyasena Fernando (1993)1 SLR 119***, it was held that, finding of primary facts by trial judges who hear and see witnesses are not to be lightly disturbed on appeal. However, on the perusal of the Judgment of the High Court, I observe that the learned Judges of the High Court

have failed to give reasons for rejecting the findings of the learned District Court Judge and the learned High Court Judges are not in a position to re-analyze the facts of the case without having any reasonable ground to do so. Accordingly, it can be concluded that there is no reasonable basis upon the High Court to reverse the findings of the trial judge, since the learned District Judge has clearly analyzed the facts of this case and has come to a correct conclusion.

As per the aforementioned reasons, I hold that the Judges of the Civil Appellate High Court had erred in law when they reverse the judgment of the learned District Judge of Mawanella. In the said circumstances, I answer the questions of law under which the leave was granted, in favour of the Plaintiff- Appellant. The judgment dated 23.10.2012 of the Civil Appellate High Court of Kegalle is set aside and the Judgment dated 31.03.2011 of the District Court of Mawanella is affirmed.

The appeal is allowed.

Judge of the Supreme Court

Justice L.T.B. Dehideniya

I agree,

Judge of the Supreme Court

Justice P. Padman Surasena

I agree,

Judge of the Supreme Court