

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

In the matter of an application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provision) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

S.C. Appeal No. 36/2019

SC/HC/CA/LA/No. 401/2017

WP/HCCA/COL/55/2014 (F)

D.C Colombo/4345/LA

U. Don Reginold Felix De Silva

No. 146/32/A, Salmal Place,

Mattegoda.

Defendant-Appellant-Petitioner

Madduma Arachchilage Sadimenike,

No. 146/32/A, Salmal Place,

Mattegoda.

Substituted Defendant-Appellant-Appellant

Vs.

Director (Land) Acquisition Officer,

Road Development Authority,

9th Floor, Sethsiripaya,

Battaramulla.

Plaintiff-Respondent-Respondent

BEFORE

:

S. THURAIRAJA, PC, J.

KUMUDINI WICKREMASINGHE, J.

JANAK DE SILVA, J.

COUNSEL : Kamal Dissanayake with Ms. Sureni Amaratunga, Ms. Purni Karunaratne and Ms. Hasara Matharaarachchi.

Ms. Sabrina Ahmed, SC for the Hon Attorney General as amicus.

ARGUED & DECIDED ON: 29th February 2024

Janak De Silva J.

The corpus forming the subject matter of this appeal was acquired by the State in terms of the Land Acquisition Act. The Defendant-Appellant-Petitioner (“Petitioner”) claimed that he had prescriptive title. As there were no claimants to the corpus, the compensation payable was deposited in the National Savings Bank and referred the matter to the District Court in terms of Section 10(1)(b) of the Land Acquisition Act as amended.

The Petitioner made a claim therein based on prescriptive title and Deed of Declaration No. 11966 attested on 26.08.2007. The District Court held that prescriptive title was not proved and dismissed the claim of the Petitioner. This judgment was affirmed by the High Court of Civil Appeal of the Western Province (holden in Colombo).

Leave to appeal was granted on the following questions of law:

- (1) Hon. PHC has failed to take cognizance of the fact that the learned Additional District Judge of Colombo has erred in coming to the conclusion that no specific assessment for the identical plot of land, whereas in fact the said 6.51 perch land has been assessed in 1995 as 25/1 Swasthika Gardens, Peliyagoda, and rates had been paid from 1995
- (2) Hon. PHC has failed to take cognizance of the fact that the learned District Judge of Colombo has failed to give weight to the fact that that the Petitioner has enjoyed the property for more than 30 years from 1972 and had adequate title and he has commenced paying rates from 1995 onwards
- (3) The learned Additional District Judge of Colombo as well as High Court have failed to analyze the fact that the Petitioner has paid rates for the said portion of land and that he has possessed and enjoyed as if he is the owner of the relevant land for more than ten years

Where a party invokes the provisions of Section 3 of the Prescription, the burden of proof rests fairly and squarely on him to establish a starting point for his or her acquisition of prescriptive rights [*Chelliah v. Wijenathan et al* (54 N.L.R. 337)].

The Petitioner claimed that he was in possession of the corpus from 1972. The corpus is situated North of Lot 6 depicted in P. Plan No. 2995 containing 15 perches in extent claimed by the son of the Petitioner. In fact, this claim was upheld and compensation paid for the said portion of land to the son. Nevertheless, the corpus claimed by the Petitioner is not shown to the North of the said land in the Plan No. 93 made by licensed surveyor M.J. Setunga dated 19.9.1971.

In the Deed of Declaration No. 11966 attested on 26.08.2007, the Petitioner claims to have constructed a corrugated sheets thatched small hut on the corpus in 1973. This claim if proved can certainly be taken in favour of the prescriptive title of the Petitioner. However, Plan No. 3462 made by licensed surveyor B.P. Gangodawila dated 26.05.1980 does not show any construction on the corpus.

In order to establish his prescriptive title, the Petitioner claimed that he had paid assessment rates for the corpus. Nevertheless, the payment receipts tendered in evidence prove only that such rates have been paid from 1995 onwards. The corpus was acquired by the State in 1999.

Moreover, the Deed of Declaration No. 11966 was prepared seven years after the corpus was acquired by the State. The claim of the Petitioner was made only thereafter. The Petitioner has failed to establish his claim of prescriptive title by cogent evidence.

For all the foregoing reasons, I answer all three questions of law in the negative.

Appeal dismissed. Parties shall bear their costs.

Judge of the Supreme Court

S. Thuraiaraja, PC, J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court