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

1. Weerathunga Arachchige Samuel de Costa (Deceased)

1A. Weerathunga Arachchige Hema de Costa

2. Weerathunga Arachchige Albert de Costa

3. Weerathunga Arachchige Hema de Costa

4. Weerathunga Arachchige Violet de Costa

5. Weerathunga Arachchige Prema de Costa

All of No. 31/2,
Anderson Road,
Kohuwala.

Plaintiffs

SC APPEAL 75/2014
SC/HCCA/LA 44/2011
WP/HCCA/MT 24/2002(F)
DC/MT LAVINIA 691/96/L

Vs.

Polwattage Bandusena Gomez of
No. 19/3, Srigal Mawatha,
Kohuwala,
Nugegoda.

Defendant

AND BETWEEN

Polwattage Bandusena Gomez of
No. 19/3, Srigal Mawatha,
Kohuwala, Nugegoda.
Defendant-Appellant

Vs.

1. Weerathunga Arachchige Samuel de Costa (Deceased)
1A. Weerathunga Arachchige Hema de Costa
2. Weerathunga Arachchige Albert de Costa (Deceased)
3. Weerathunga Arachchige Hema de Costa
4. Weerathunga Arachchige Violet de Costa
5. Weerathunga Arachchige Prema de Costa
All of No. 31/2,
Anderson Road,
Kohuwala.
Plaintiff-Respondents

AND NOW BETWEEN

Polwattage Bandusena Gomez of
No. 19/3, Srigal Mawatha,
Kohuwala,
Nugegoda.
Defendant-Appellant-Appellant

Vs.

1. Weerathunga Arachchige Samuel de Costa (Deceased)
1A. Weerathunga Arachchige Hema de Costa
2. Weerathunga Arachchige Albert de Costa (Deceased)
3. Weerathunga Arachchige Hema de Costa
4. Weerathunga Arachchige Violet de Costa (Deceased)
5. Weerathunga Arachchige Prema de Costa

All of No. 31/2,
Anderson Road,
Kohuwala.

Plaintiff-Respondent-Respondents

Before: P. Padman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Rohan Sahabandu P.C. with Sachini Senanayake for the Defendant-Appellant-Appellant.
Manohara de Silva P.C. with Harithriya Kumarage and Sasiri Chandrasiri for the Plaintiff-Respondent-Respondents.

Argued on: 20.11.2023

Written Submissions:

By the Defendant-Appellant-Appellant on 16.09.2014, 08.11.2022 and 01.12.2023
By the Plaintiff-Respondent-Respondents on 27.07.2021 and 04.12.2023

Decided on: 12.01.2024

Samayawardhena, J.

The plaintiffs-respondents filed this action in the District Court of Mount Lavinia against the defendant-appellant seeking a declaration of title to Lot D in Plan No. 684, ejectment of the defendant therefrom and damages. The defendant filed answer seeking dismissal of the plaintiffs' action and claiming title to Lot D on prescription. After trial, the District Court entered the judgment as prayed for in the prayer to the plaint. On appeal, the High Court affirmed the judgment of the District Court. This Court had granted leave to appeal against the judgments of the Courts below on two questions of law:

(a) Has the District Court and the High Court misinterpreted and misconceived the terms of settlement when the terms of settlement did not give Lot D in Plan No. 684 referred to in the plaint to any party?
(b) In the circumstances pleaded, are the judgments of the District Court and the High Court correct and according to law?

The District Court and the High Court rejected the defendant's prescriptive claim. This Court also did not grant leave to appeal against the refusal of the defendant's prescriptive claim. Hence there is no necessity to consider the defendant's claim on prescription.

Learned President's Counsel for the defendant submits that notwithstanding the defendant's failure to prove prescriptive title, the plaintiff did not prove title to Lot D. He argues that the District Judge was wrong to have held with the plaintiffs on the basis that the plaintiffs became entitled to Lot D in terms of the settlement entered into in another case (962/L) between the same parties.

Let me now consider whether this line of argument is sustainable.

The defendant and the plaintiffs were parties to case No. 962/L. The said case was settled. In accordance with the settlement, Lots A, B and F of Plan No. 684 were transferred by the plaintiffs as owners of the said Lots to the defendant by Deed No. 1988. It had later been realised that the plaintiffs had mistakenly transferred Lot D of the said Plan also to the defendant by that Deed.

This mistake has been rectified by the Court of Appeal in Case No. CA/83/1988(F). Accordingly, Deed No. 1988 has been cancelled and new Deed No. 2232 has been executed by the plaintiffs transferring only Lots A, B and F to the defendant.

It may be noted that when Lots A, B, F and D were transferred by the plaintiffs to the defendant by Deed No. 1988, they did so as the owners of the said Lots. This was not contested by the defendant.

It is the position of the plaintiffs that their father became entitled to Lot D by Deed No. 35 and they became entitled to this Lot through their father. At the trial, this Deed was not marked subject to proof. Deed No. 35 does not refer to Lot D in Plan No. 684, the reason being that at the time of the execution of Deed No. 35, Plan No. 684 was not in existence. However, the plaintiffs' position is that what was purchased by Deed No. 35 is crystalized in Lot D. This is not a new position taken up by the plaintiffs for the first time in this appeal.

It may be noted that when Lot D was transferred by Deed No. 1988 executed on 05.11.1979, the plaintiffs also described Lot D as the land described in the schedule to Deed No. 35 – *vide* item 4 of the schedule to the Deed. This was not disputed by the defendant when Deed No. 1988 was executed in his favour.

The 3rd plaintiff in her evidence clearly described how the plaintiffs became entitled to Lot D. The learned District Judge in the judgment has referred to Deed No. 35 as the title Deed of the plaintiffs' father. The 1st issue raised by the plaintiffs was regarding title. This issue was answered by the District Judge in favour of the plaintiffs.

In terms of section 3 of the Prescription Ordinance, the defendant shall, *inter alia*, prove adverse possession against the true owner. This land was not a "no man's land". What the defendant prayed in paragraph (b) of his answer was "මෙහි පහත උපලේඛනයේ විස්තර වන ඉඩම කාලාවරෝධ භුක්තියෙන් පැමිණිලිකරුවන්ට හෝ වෙන කොයි කවරෙකුට හා එරෙහිව විත්තිකරුට සතු වී ඇති බවට නියෝග කර තීන්දු ප්‍රකාශ කරන ලෙස ද".

The defendant has indirectly accepted that the plaintiffs are the true owners of Lot D, but his claim is that he acquired the said Lot by prescription. As stated previously, this claim has been rejected by all Courts.

For the aforesaid reasons, I am unable to accept the argument of learned President's Counsel for the defendant that the plaintiffs failed to prove title to Lot D. The plaintiffs proved 'sufficient title' to Lot D on a balance of probabilities as required from a plaintiff in a *rei vindicatio* action. The plaintiffs need not prove absolute title to Lot D against the whole world. They need to prove title only against the defendant.

I accept that the learned District Judge was not correct when it was stated in the judgment that the plaintiffs became entitled to Lot D in

terms of the aforesaid settlement. However, merely because the District Judge has stated so in the judgment, this Court need not set aside the judgment of the District Court and allow the appeal. Such attitude by the apex Court will cause grave prejudice to the plaintiffs for no fault of them.

When the judgment was entered in favour of the plaintiffs as prayed for in the prayer to the plaint, there was no reason for the plaintiffs to prefer an appeal against the judgment. The plaintiffs should not be made to suffer for the lapses of the learned District Judge.

I answer the first question of law quoted above in the affirmative, which is in favour of the defendant. I answer the second question of law as follows: "The conclusion of the judgments of the Courts below is correct".

The appeal is accordingly dismissed but without costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court