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

S.C Appeal No. 43/2017

SC HCCALA 197/2016
SP/HCCA/RAT/22/2011(F)
D.C. Embilipitiya Case No. 8587/Land

1. Beauty Ramani Ratnaweera

2. Olokku Patabendige Amarasena

Both of "Amara", Morakatiara,
Nakulugamuwa.

PLAINTIFFS

Vs.

1. Amarakoon Kankanamge Sugunawathie
2. Dhammika Munasinghe

Both of opposite O.P. Rice Mills,
Kiralawalkatuwa. Embilipitiya.

DEFENDANTS

AND

1. Beauty Ramani Ratnaweera
2. Olokku Patabendige Amarasena

(DECEASED)

2A. Olokku Patabendige Yenika Gayani

Both of "Amara", Morakatiara,
Nakulugamuwa.

PLAINTIFFS-APPELLANTS

Vs.

1. Amarakoon Kankanamge Sugunawathie
2. Dhammika Munasinghe

Both of opposite O.P. Rice Mills,
Kiralawalkatuwa. Embilipitiya.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

1. Amarakoon Kankanamge Sugunawathie
2. Dhammika Munasinghe

Both of opposite O.P. Rice Mills,
Kiralawalkatuwa. Embilipitiya.

DEFENDANTS-RESPONDENTS-PETITIONERS

Vs.

3. Beauty Ramani Ratnaweera
4. Olokku Patabendige Amarasena

2A. Olokku Patabendige Yenika Gayani

Both of "Amara", Morakatiara,
Nakulugamuwa.

PLAINTIFFS-APPELLANTS-RESPONDENTS

BEFORE: Sisira J. de Abrew J.
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: Rohan Sahabandu P.C. for Defendants-Respondents-Petitioners

Chandrasiri De Silva with Nadeera Weerasinghe
for Plaintiffs-Appellants-Respondents

ARGUED ON: 16.10.2017

DECIDED ON: 22.11.2017

GOONERATNE J.

This was an action filed in the District Court of Embilipitiya for a declaration of title in favour of the 1st Plaintiff, to the land described in the schedule to the plaint, and ejectment of the Defendants/damages in a sum of Rs. 30,000/-. As pleaded in the plaint the original owner was one K. V. Wanigatillake. On 19.08.1973 by Deed No. 1255, the original owner transferred the land to the 2nd Plaintiff. On 05.09.1981 by Deed of gift No 2779, 2nd Plaintiff gifted the land in question to the 1st Plaintiff. It is pleaded in the plaint that they built a house in the said land and had been operating a rise mill but later on they closed down the rice mill. Thereafter the Defendants with the leave and licence of the Plaintiff, occupied a room (කඩකාමරය) in the said premises. Plaintiff aver in the plaint that the Defendants requested that the house and property be sold to them. Plaintiff's agreed to sell the house and property for a sum of Rs.

7,00000/- and permitted the Defendants to reside in the property until they obtain a Bank loan and purchase the property, in dispute.

The Defendants, however did not purchase the property as agreed between parties, and continued to reside in breach of the above undertaking. In paragraph 11 of the plaint it is averred that the Defendants disputed the title of the Plaintiff to the property in dispute and threatened the Plaintiffs that they would not quit the premises. Defendants whilst disputing title of the Plaintiffs, state that the land described in the schedule to the Defendants answer, belongs to the Land Reforms Commission. It is also pleaded that the land and premises described in paragraphs 4 and 5 of the plaint does not belong to the Plaintiff by the respective deeds referred to in the plaint.

Parties proceeded to trial on 22 issues. The Defendants have prayed for dismissal of the Plaintiff's action in their answer and for a declaration that the land described in the schedule to the Defendants' answer does not belong to the Plaintiffs. Defendants have also made a counter claim of Rs. 2,00000/-. The learned District Judge by his Judgment of 22.01.2017 dismissed the Plaintiff's action and also rejected the claim in reconvention of the Defendants. Plaintiffs appealed to the Civil Appellate High Court, and the High Court set aside the Judgment of the learned District Judge. This court on 28.02.2017 granted

Leave to Appeal on questions of law in sub paragraphs (a), (b) and (g) of paragraph 15 of the petition. It reads thus:

(a) Did Their Lordships err in law when they failed to appreciate that the corpus had not been identified properly?

(b) Did Their Lordships, err in law when they failed to appreciate correctly, that the Plaintiffs- Appellants-Respondents are the owners of the premises in question?

(g) Did Their Lordship, err in law when they failed to appreciate correctly that the Plaintiffs-Appellants-Respondents have also failed to prove the necessary ingredients of a Rei Vindicatio Action?

The material placed before this court suggest that the learned District Judge has considered the identity of the land in dispute with the schedule to deeds P1 to P2 and with survey plan 231 of 05.08.1973 of Surveyor S.K. Piyadasa, since the deeds in its schedule refer to Surveyor Piyadasa's plan. The schedules to the plaint refer to Surveyor L.S. Siribaddana's Plan No. 1442 of 30.07.1999. As such the question is whether land in deeds P1 and P2 refer to the same land described in the schedule to the plaint? District Judge also comments that no commission was taken to superimpose plan No. 231 on plan 1442 of Surveyor, Siribaddana. Further the Plaintiff have also failed to prove how the 10 perches land described in the schedule to the plaint come within the land described in the 1st schedule to the plaint and also title to the 10 perch land.

I have considered the Judgment of the learned High Court Judge in its entirety and the submissions made by learned counsel on either side. At the very outset I wish to observe that a licencee as the Defendant who entered the property in dispute with the leave and licence of Plaintiff cannot in law challenge the title of the owner of the property in suit, in this case the Plaintiff party. Plaintiffs terminated Defendant's licence by notice of 02.05.2004 (P6). Section 116 of the Evidence Ordinance on estoppal of tenant and licensee, has made provision in this regard. I refer to 52 NLR at 436

Under the common law all things may be the subject of the contract of letting and hiring whether they belong to the lessor or are the property of a third party since lease does not affect the ownership of the thing let (Voet 19.2.34); and if the tenant receives the undisturbed enjoyment of the premises he is liable for his corresponding obligations, and he is not allowed, when sued by his landlord, to set up the defence that the latter had no right to let the property to him (Voet 19.2.32); Clarke v. Nourse Mines. Section 116 of the Evidence Ordinance (Cap. 11) is based on this rule. It follows therefore that under the common law the plaintiff is, in relation to the defendant, the landlord of the premises as defined in s. 27, and the defendant is not entitled to deny the plaintiff's title as a ground for refusing to pay the 'rent or to give up possession.

In Pathirana Vs. Jayasundera 58 NLR 169 held a person who entered the premises as a lessee with permission of lessor cannot dispute the title of lessor.

The learned High Court Judges very correctly considered the un-contradicted evidence of Surveyor S. Siribaddana and plan 1442 (Pg. 92). In his evidence he states plan P4 No. 1442 was produced in court. His plan 1442 was prepared by using or utilising plan 231 of 05.08.1973 of S.k. Piyadasa. He also

states by the said plan the land has been subdivided to 14 lots. On either side of the land roads shown. In lot 14 a house is shown and subdivided to sell the lots. His plan P4 was accordingly prepared. High Court Judge observe that the evidence of licenced Surveyor remains unchallenged. The boundaries of land described in deeds P1 and P2 are identical with plan P4.

I observe that it would have been desirable to have superimposed plan 231 on plan P4. But Surveyor's evidence is convincing and a court could rely on such evidence as the Surveyer has shown a building on lot 14. The land and house to be 20 perches and with the subdivision 10 perches occupied by the Defendant are apparent. I see no basis to interfere with the findings of the High Court in this regard.

The learned High court Judge in his Judgment also state, though 26 years have lapsed, plan P4 is bounded from east and west by the old road and the new road. Extent of the land remains static. Surveyor Siribaddana's plan clearly demonstrate in his evidence as to identity of the land remained unchallenged. Further in compliance with Section 41 of the Civil Procedure Code the 2nd schedule of the plaint clearly refer to plan P4 (1442) referred to in the 1st schedule to the plaint. Shop premises is approximately 10 perches and situated within lot 14 which is 20 perches. Boundaries of the shop are given as from

north, east and south by the balance portion of lot 14. As such metes and bounds as required by Section 41 of the Code could be clearly identified.

The other matter is that all four boundaries of both plans (P4 & plan 231) are the same. Even the extent is the same. On behalf of the Defendant party much has been said about the land being owned (schedule of answer) by the Land Reform Commission. Defendant allege that a deed would be executed on her behalf by the LRC. But no such deed was produced at the trial. LRC plan was produced marked V8. However the LRC witness could not say whether the land I n plan V8 is the same as lot 14 of plan P4.

The questions of law (a), (b) & (g) are answered in the negative. Plaintiff-Respondent has identified the corpus and proved title to the land in dispute. There is no legal basis to interfere with the Judgment of the Civil Appellate High Court. I affirm the Judgment of the High Court. This appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree.

JUDGE OF THE SUPREME COURT