IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI L ANKA

S.C. Appeal No. 10/2013
SC/HCCA/LA/511/2012
HCCA Kegalle 831/2011
D.C. Kegalle 6932/L

In the matter of an Application for Leave to Appeal under and in terms of Article 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5c of the High Court of Provinces (Special Provision) Act No, 54 of 2006

Jayasinghe Appuhamilage Anura
Jayasinghe Ambawela of
No. 58, Edwin Wijerathna Mawatha,
Kegalle.

PLAINTIFF

Vs.

Liyanage Shanthapriya Lalith Kumara
Liyanage of
No. 50, Edwin Wijerathna Mawatha,
Kegalle.

DEFENDANT

AND

Jayasinghe Appuhamilage Anura
Jayasinghe Ambawela of
No. 58, Edwin Wijerathna Mawatha,
Kegalle.

PLAINTIFF-APPELLANT

Vs.

Liyanage Shanthapriya Lalith Kumara
Liyanage of
No. 50, Edwin Wijerathna Mawatha,
Kegalle.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Liyanage Shanthapriya Lalith Kumara
Liyanage of
No. 50, Edwin Wijerathna Mawatha,
Kegalle.

DEFENDANT-RESPONDENT-PETITIONER

Vs.

Jayasinghe Appuhamilage Anura
Jayasinghe Ambawela of
No. 58, Edwin Wijerathna Mawatha,
Kegalle.

PLAINTIFF-APPELLANT-RESPONDENT

BEFORE: Priyasath Dep P.C., C.J.,
B. P. Aluwihare P.C., J. &
Anil Gooneratne J.

COUNSEL: Nuwan Bopage with Lahiru Welgama and
Kennady Kodikara for the Defendant-Respondent-Petitioner

M.S.A. Saheed with A.M. Hussain for the
Plaintiff-Appellant-Respondent

WRITTEN SUBMISSIONS OF THE PETITIONER FILED ON:
04.04.2013

WRITTEN SUBMISSIONS OF THE RESPONDENT FILED ON:
24.04.2013

ARGUED ON: 21.02.2017

DECIDED ON: 20.03.2017

GOONERATNE J.

This was an action for a declaration of title to lot 21 shown in plan No. 2036 of 25.07.1965 (P8) of Surveyor Baddewela, by which the larger land called Raddala Estate was subdivided into 46 lots. The material placed before this court indicates that the said lot 21 which is the disputed small portion of land is about 2 ½ perches. It would be necessary to understand the facts of this case as the Plaintiff and Defendant both claim lot 21, the above small portion of land (strip of land).

Plaintiff purchased lot 20 by deed No. 1107 (iv2) of 19.02.1985. It is stated that Plaintiff built a house on it. It is the Plaintiff's case that on purchase of lot 20 he erected a fence and possessed it within his boundaries. It is also stated by Plaintiff that he also purchased lot 21 the disputed lot by deed P2 No. 1524 of 19.03.1997. Plaintiff amalgamated the two lots and possessed both lots as the same land. On purchase lot 21 Plaintiff removed the barbed wire and the fence on the eastern boundaries of lot 20. (keeping some old trees) to have access to lot 21. What the Plaintiff complained of that point of time is that the

Plaintiff being a Bank Office was away from the land in dispute on 06.02.2003 to 07.02.2003, and during his absence the Defendant illegally erected a new fence on the eastern boundary of Plaintiff's lot No. 20, which covered the disputed lot No. 21. In short what has happened as urged by the Plaintiff is that the fence he removed as above was erected by the Defendant on the eastern boundary of Plaintiff's lot No. 20 to prevent the Plaintiff enjoying both lots 21 and 20.

Both the Defendant and Plaintiff are owing adjoining lots to each other. Defendant own lot 22 in plan 2036. Defendant claim lot 22 on the pedigree relied by him. The Defendants claim to lot 21 is not on a deed but based on prescription.

The learned District Judge delivered Judgment on 21.01.2011 dismissing Plaintiff's action. Being aggrieved by the said Judgment the Plaintiff lodged an appeal to the Civil Appellate High Court of Kegalle and the High Court allowed the Appeal and set aside the Judgement of the District Court. Supreme Court granted leave on about 23.01.2013 on the questions of law contained in paragraph 12(i) (iii) & (iv) of the petition dated 21.11.2012. The said questions reads thus:

(i) The said judgment is contrary to law and evidence placed before District Court of Kegalle.

(iii) Their Lordship Judges of Civil Appellate High Court of Sabaragamuwa erred in law in failing to appreciate the fact that the Respondents own evidence and documents are detrimental to his case and thus he has failed to prove his case.

(iv) Their Lordship Judges of Civil Appellate High Court of Sabaragamuwa failed to evaluate the prescriptive title of the Petitioner.

The Defendant-Petitioner emphasise the fact that the Defendant-Petitioner and his predecessors in title have possessed both lots 21 and 22 together and attempts to convey that they possessed for over 15 years. It is also submitted that the Court Commissioner's evidence prove that the fence between lots 20 and 21 is more than 10 years and considerable part of lot 21 falls within lot 22. In the written submissions of the Defendant-Petitioner there is one whole paragraph explaining the conduct of the Plaintiff. (pg. 6) I note the same but to decide on the question of law on which leave was granted such conduct would not take the case anywhere to prove prescription. Defendant-Petitioner's position is that title began from deed No. 494 of 23.08.1965. According to the said deed western boundary of the schedule of the said deed is lot 72 and is not lot 21 but lot 20. Therefore by deed No. 7316 of 23.01.1973 the Petitioner's father purchased lot 22 and even in the said deed the western boundary is lot 20. Further all the subsequent deeds relied by the Defendant

includes the same schedule. The above seems to be the line of argument advanced by the Defendant-Petitioner.

I note a very interesting and a relevant point highlighted by the Civil Appellate High Court. There is in relation to issue No. 51 which is answered in the affirmative i.e if issues raised by the Defendant have to be answered in favour of the Defendant the plaint should be dismissed. The plaint has not been dismissed but the learned District Judge has pronounced a Judgment by partitioning lot 21 between the parties to the suit. This being an action for a declaration of title, either Judgment should be entered in favour of the Plaintiff, if title is established by Plaintiff and if not to dismiss the action. This point alone is sufficient to set aside the Judgment of the District Court. Learned trial Judge, instead of dismissing the action has allotted lots 3, 4, 6 & 7 to the Defendant, and lot 5 to the Plaintiff. Such a ruling could be made in a partition suit and not in an action for declaration of title.

Both parties admitted plan No. 2036 which consists of lots 19 – 22 marked P1. This plan consists of only 4 lots, which is part of plan 2036 which is described as the mother plan P8. Parties do not dispute this position. I agree with the submissions of learned counsel for Plaintiff-Respondent that plan 2036 consists of lots 20 to 23. According to these plans western boundary of

Defendant lot 22 is the disputed lot 21 but Defendant's title deeds 1V1 and 1V6 states lot 20 as the western boundary of lot 22. Learned District Judge has not appreciated this fact. I also note that western boundary in deeds 1V1 and 1V6 are contradictory with Defendant's documents 1V4 and 1V5. Trial Judge in his Judgment states that the boundaries in the deeds of the Defendant is problematic (ගැටලු සහගතයි). Having said so, this court is unable to fathom as to how Judgment was entered in favour of the Defendant party. If the Defendant has prescribed to the particular lot 21 it need to be proved as per Section 3 of the Prescription Ordinance. Mere possession would not suffice. *Pathmasiri and Another Vs. Baby and Another 2006 (1) SLR 35*. It is the adverse possession that should be established. Where is the evidence to prove adverse possession for 10 years? Evidence of Plaintiff was that Defendant forcibly erected the fence on the western boundary of lot 21 on 06.02.2003 and 07.02.2003. If that be so it would become adverse from 06.02.2003 or 07.02.2003 by forcible erection of fence, on the western boundary to lot 21. Plaintiff instituted action on 02.06.2003 which is shortly after the above erection of the fence. Therefore the period of 10 years cannot be contemplated or computed in this background.

Upon a consideration of all material placed before this court. I am unable to interfere with the Judgment of the Civil Appellate High Court. The three questions of law are answered in favour of the Plaintiff as 'No'. As such I proceed to dismiss this appeal without costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C.,

I agree.

CHIEF JUSTICE

B. P. Aluwihare

I agree.

JUDGE OF THE SUPREME COURT