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

SC/ Appeal 175/2016

Supreme Court Special Leave to Appeal Application No. 11/16

C.A Appeal No. CA 413/99 (F)

DC Kegalle Case No. 3781/L

Nandawathie Kodituwakku nee A.R Nandawathie,
Landewelawatte, Karagahawela,
Bandarawela.

Plaintiff

Vs.

1. Wanigasinghe Aratchchige Piyadasa,
   Waharakgoda, Ussapitiya
2. Ananda Ajith Chandralal,
   Landewelawatte, Karagahawela,
   Bandarawela.
3. Sumith Prasanna Rohitha,
   Landewelawatte, Karagahawela,
   Bandarawela.

Defendants

AND BETWEEN

Nandawathie Kodituwakku nee A.R Nandawathie,
Landewelawatte, Karagahawela,
Bandarawela.

Plaintiff- Appellant

Vs.

1. Wanigasinghe Aratchchige Piyadasa,
   Waharakgoda, Ussapitiya
2. Ananda Ajith Chandralal,
   Landewelawatte, Karagahawela,
   Bandarawela.
3. Sumith Prasanna Rohitha,
   Landewelawatte, Karagahawela,
   Bandarawela.

Defendants-Respondents

AND NOW BETWEEN

1. Wanigasinghe Aratchchige Piyadasa,
   Waharakgoda, Ussapitiya

1st Defendant- Respondent- Petitioner

Vs.

Nandawathie Kodituwakku nee A.R Nandawathie,
Landewelawatte, Karagahawela,
Bandarawela.

Plaintiff- Appellant- Respondent

1. Ananda Ajith Chandralal,
   Landewelawatte, Karagahawela,
   Bandarawela.
2. Sumith Prasanna Rohitha,
   Landewelawatte, Karagahawela,
   Bandarawela.

Defendants- Respondents-Respondents

Before: B.P Aluwihare, PC, J.
L.T. B Dehideniya, J.
P. Padman Surasena, J.

Counsels: Ms. L.M.C.D Bandara for the 1st Defendant- Respondent-Appellant
W. Dayaratne PC. With Ms. R. Jayawardene for the Plaintiff-Appellant-Respondent

Argued on: 02.07.2019

Decided on: 18.11.2022

L.T.B. Dehideniya, J.

The Plaintiff-Appellant-Respondent (hereinafter sometimes referred to as the 1st Respondent) instituted an action in the District Court of Kegalle by plaint dated 05.01.1987 seeking a declaration of title and ejectment of the 1st Defendant-Respondent-Appellant (hereinafter sometimes referred to as the Appellant) from the property in question called "Arambahena", more fully described in the schedule to the Plaint. The 1st Respondent's complaint is that the Appellant was in unlawful and forcible occupation in the said property. The 1st Respondent stated that Alexander Reed (1st Respondent's father) was the original owner of the land and it was transferred to his three sons namely, A.R. Jayewardene, A.R. Ananda Ajith Chandralal (2nd Respondent) and A.R. Sumith Prasanna Rohitha (3rd Respondent) by virtue of the Deed No. 5746 dated 14.12.1980 marked **P-1**. A.R. Jayawardane demised unmarried and issueless and his 1/3rd share devolved on his siblings, the 1st, 2nd and 3rd Respondents.

The 1st Respondent states that Alexander Reed, the original owner of the property, gave permission to the Appellant to live in the cadjan house in the said land and to cultivate chena cultivation in the land by the informal agreement dated 07.01.1977 marked as **P-2**.

The Appellant in his amended answer dated 08.03.1991 had denied the title of the 1st Respondent and claimed that the Appellant was in possession of a property called "Egodahena" and not "Arambahena". He claims that the original owner of the said property is one Ukku Banda and on his death it was devolved on his son Punchi Banda. The said Punchi Banda transferred the property to the Appellant by deed No: 3813 dated 10.12.1987 which is a date after filing this case in the District Court. He further claims title to it by way of prescriptive title.

The 1st Respondent's position was that the Appellant entered in to the property in question with leave and license of Alexander Reid and the Appellant is bound to leave the property upon the

request. However, the 1st Respondent stated that the Appellant refused to leave the property on request and continues to remain in occupation of the said property illegally and forcibly.

The Appellant's contention is that he has been in occupation of the land in question and acquired the prescriptive title,

The Learned District Judge decided that lands which were described in the Plaint and the amended answer are similar to each other and there is no dispute on the identity of the corpus. This finding has not been contested in the Appeal. After conclusion of the trial, the learned District Judge delivered the judgement dated 23.04.1999 in favour of the Appellant and dismissed the Plaint, holding that the 1st Respondent has failed to prove her title to the land and the Appellant has proved that he has been in the possession of the land. Being dissatisfied by the said judgement the 1st Respondent tendered an appeal there from to the Court of Appeal. Upon hearing the parties, the Court of Appeal delivering the judgement dated 17.12.2015 in favour of the 1st Respondent, set aside the Judgement of District Court holding that the 1st Respondent has proved the title to the land. It is from the aforesaid judgement that this appeal is preferred.

This Court granted leave to appeal on the following question of law;

1) Has the Court of Appeal erred in Law by granting the Respondent the relief prayed for by her in paragraph (a) of the prayer to the Plaint, to which the Respondent was not entitled to?

The Appellant's case is based on the ground that the 1st Respondent has failed to prove the title to the land in suit which the Appellant has been in possession for a long period of time. It was further submitted by the Appellant that the Appellant has title to the same land by the Deed No. 3813 dated 10.12.1987. The Appellant denies 1st Respondent's title and the purported license granted by Alexander Reid and denied the cause of action of the 1st Respondent and

further stated that the land in suit was originally owned by Ukku Banda whose intestate rights were devolved on Punchi Banda who had transferred his rights to the Appellant. The Appellant further claimed that the Appellant and his predecessors have been in the possession of the said land for more than ten years and therefore, has a right to claim prescriptive title on long and undisturbed possession.

In the eyes of the law, since the 1st Respondent sought a declaration of title to the property in question, the burden of proof is on the 1st Respondent to prove that he is the owner of the property. This view is supported by a range of judicial decisions. In the case of ***D.A.Wanigaratne v. Juwanis Appuhamy*** 65 NLR 167 wherein this court held that in an action rei vindicatio the plaintiff must prove and establish his title.

A similar view was expressed in the case of ***Dharmadasa v. Jayasena*** [1997] 3 Sri L.R 327.

Per G.P.S. De Silva C.J., at p.330

"..But the point is that this is a rei vindicatio action and the burden is clearly on the plaintiff to establish the title pleaded and relied on by him."

In the case of ***Hariette v. Pathmasiri*** [1996] 1 Sri L R 358 court held that our law recognises the right of a co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land because the owner of the undivided share has an interest in every part and portion of the entire land.

Therefore, it is important for this Court to examine whether the 1st Respondent has proved his title. For this purpose, in addition to the paper title, the Court should observe how the parties have exercised their title rights. The 1st Respondent submits that her father Alexander Reid has gifted the land in question to his three sons A.R Jayawardena, the 2nd Respondent and the 3rd Respondent by the Deed No. 5746 dated 14.12.1980 marked **P-1**. When said A.R Jayawardena died unmarried and issueless, his rights were devolved on the 1st, 2nd and 3rd Respondents.

Consequently, the 1st Respondent became entitled to 1/9th share of the land in question and the 2nd and the 3rd Respondents to 4/9 shares each.

The 1st Respondent has led evidence at the trial court to prove that she is a co-owner of the land in suit. According to the District Court judgement (Page 3), the Learned District Judge accepted the same and held that 1st, 2nd and 3rd Respondents are co-owners of the land. The 2nd Respondent had produced the deed marked **P-1** and other documents marked **P-2 to P-8** to substantiate the paper title to the land and no objection was taken at the close of the 1st Respondent's case in the original court. However, after considering the evidence tendered by the 1st Respondent, the Learned District Judge reached conclusion that the 1st Respondent has failed to prove her title to the land and the Appellant has possessed the land for a long period of time.

When deciding which party has proved that he has the title to the land in question, it is important to probe the evidence on how the 1st Respondent and the Appellant has exercised their title rights. The 1st Respondent has led evidence to substantiate that Alexander Reid had leased the land in question to the lessee named G.R Wijeratne in 1965 for five years by deed of lease No.20690 dated 03.07.1965 and afterwards Alexander Reed and G.R Wijeratne filed a case bearing No. 17673 in the District Court of Kegalle to eject three people who were in the unlawful possession of the land in suit. The said case was concluded and the final decree (document marked **P-5)** was entered declaring that Alexander Reed is the owner of the land.

Thereafter, Alexander Reid leased the land in suit to W.A David by the deed No.21439 dated 28.09.1972. Consequently, Alexander Reed filed the case bearing No.1273/L (document marked **P-6**) to eject W.A David and T.D Andiris from the property. When examining the documents including the terms of settlement marked **P-6A**, tendered by the 1st Respondent related to the said case, it appears that W.A David and T. D Andiris has admitted that Alexander

Reid was the owner of the land in question. The 1st Respondent had led evidence to prove that the land was again leased by the deeds of Lease No. 984 dated 13.02.1978 (document marked **P-4**) and No.7922 dated 16.10.1992 (document marked **P-7**) to a lessee named Warshakone. When the trial was taken up, the said lessee Warshakone gave evidence and stated that while he was enjoying the possession of the land in suit under the lessor Alexander Reid, the Appellant was staying at the cadjan house under the license of Alexander Reed. Warshakone further stated that Alexander Reid had given permission to Appellant only to occupy the Cadjan house in the land to attend chena cultivations.

Aforementioned documentary evidence had been marked and produced to the original court without any objection from the Appellant. The said documentary evidence and the evidence of the said witnesses give an indication to Court on how Alexander Reid had exercised his title rights.

When carefully considering all the documentary evidence and oral evidence led by the 1st Respondent, the original owner Alexander Reid and his successors had been exercising their title rights to the land in suit for a long period of time. Further, it is clear to this Court that the 1st Respondent and her predecessors were aware of their rights and actively engaged in protecting their rights.

It is a question with great importance before this Court is that, whether the Appellant has a right to claim prescriptive title to the land in question against the 1st Respondent. Appellant's position is that the Appellant is not a licensee of Alexander Reid and he is not the original owner but the subject matter is originally owned by Ukku Banda whose intestate rights were devolved on Punchi Banda who has later transferred his rights to the Appellant. The Appellant further denied the rights of the 1st Respondent and claimed prescriptive rights by long, uninterrupted and adverse possession over ten years.

Section 3 of the Prescription Ordinance No.22 of 1871 declares the fundamental requirements of undisturbed, uninterrupted and adverse possession that must be met, where a party invokes the provision of Section 3 in order to defeat the title rights of the owner of the property.

The present law governing the prescription of immovable properties has been discussed in a long line of case law jurisprudence. In the eyes of the law, as a mode of proof of prescriptive possession, mere statements of Defendant's possession of the land by residing on it or cultivating for over ten years is not enough to substantiate the evidence of uninterrupted and adverse possession.

In ***Hassan V. Romanishamy*** 66 C.L.W Vol. LX VI at page 112 it was held that mere statements of a witness, "I possessed the land" or "We possessed the land" and "I planted plantain bushes and vegetables", are not sufficient to entitle him to a decree under section 3 of the Prescription Ordinance, nor is the fact of payment or rates by itself proof of possession for the purposes of this section

Further, it is a well-established legal principle that a person who bases his title in prescriptive possession must show compelling evidence that his possession was hostile to the original owner and the acts of the person in possession should be irreconcilable with the rights of the true owner. This principle is laid down in the case of ***de Silva Vs Commissioner General of Inland Revenue*** (1978) 80 NLR 292

> At p.295-296 per Sharvananda J.
>
> *"The principle of law is well established 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. In order to constitute adverse possession, the possession must be in denial of the title of the true owner. The acts of the person*

in possession should be irreconcilable with the rights of the true owner; the person in possession must claim to be so as of right as against the true owner. Where there is no hostility to or denial of the title of the true owner, there can be no adverse possession."

In the case of ***Jayasinghe Pathman v. Korale Kankanamge Somapala*** (SC Appeal 06/2014, SC minutes dated- 19.11.2021) this Court discussed the distinction between 'occupation' and 'possession' and it was held that in order to possess a land a person must occupy a land with the intention of holding the land as the owner. Further, it is clear that such possession should be proved by specific facts and general statements of witnesses that a person 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.

At p.11

"..Law draws a distinction between possession and occupation. Mere occupation of another's property is not by itself construed as "possession" in the eyes of law. For an occupation of another's property to amount to possession in the eyes of law is occupation with the intention of holding the land as the owner. Therefore, the Respondent has not satisfied Court that he in fact had adverse possession in the land in suit."

When observing the evidence in the present application, it shows that the Appellant has started occupying the land in question with the consent and licence of Alexander Reid. The 1st Respondent had led oral and documentary evidence to prove that the Appellant came into occupation of the land in question under the permission given by way of an agreement (document marked **P-2**).

The Appellant led evidence to establish that he was occupying the land in question as the owner by leading evidence of the renovations that the Appellant made throughout the time. However, according to the proceedings most of the said renovations had been done after instituting this action in the original Court.

Based on the factual evidence and case laws pertaining to the present application, I am of the view that, the Appellant has been residing in the premises as a mere occupant and a licensee of the original owner Alexander Reid. It is quite clear that the 1st Respondent has tendered adequate amount of evidence to display how the 1st Respondent and her predecessors have exercised their title rights by leasing the property to different parties and constituting several actions in the court to declare title before and after the Appellant has started occupying the land in question. Therefore, it appears that the Learned District Judge has erred in deciding that the Appellant has claimed prescriptive title by long possession. The Appellant has failed to prove his adverse possession hostile to the 1st Respondent. Therefore, the Appellant's mere long possession, cultivation and renovations done on the 1st Respondent's property has no legal validity upon claiming Prescriptive rights.

The Appellant's contention is that document marked **P-2** which was signed by the Appellant on 07.01.1977 is a forged document and the Appellant did not sign such document. The Appellant denied the contents of the said document as a whole. Nevertheless, **P-2** was marked subject to proof when it was produced at the Trial, but has not been objected to at the time the 1st Respondent closed his case. By not objecting to the document **P-2** at the time of closing the case, **P-2** has been accepted by Court as a document which was produced in evidence. The Appellant admitted the same in the Court of Appeal. The law consider this legal scenario as *cursus curiae* of the Original Civil Courts.

In the case of ***The Sri Lanka Ports Authority and Another v. Jugolinija-Boal East*** [1981] 1 Sri L.R 18 Samarakoon C.J, held that;

> *"If no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the cursus curiae of the original civil courts."*

Provisions similar to the aforesaid legal principle laid down by ***The Sri Lanka Ports Authority and Another v. Jugolinija-Boal East*** [1981] 1 Sri L.R 18 has been recently introduced to the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, No. 17 of 2022. **Section 3 (a) ii** of the said Act provides that if a document is objected to being received as evidence, but not objected at the close of a case, the court shall admit such deed or document as evidence without requiring further proof.

> **<u>Section 3 (a) ii</u>**
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> "Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act –
>
> (a) (ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence,
>
> the court shall admit such deed or document as evidence without requiring further proof;"

When considering aforementioned legal context with regard to the present application, in a situation where law provides that a document which was not objected at the close of a case shall be admitted in court without requiring further proof, the Appellant of the present application

cannot deny the fact that the document marked **P-2** has already become a proven evidence before the Court. Therefore, it is evident that the Appellant cannot challenge the legal validity of the document marked **P-2** in this Court.

For the circumstances discussed above, it is the view of this Court that the 1st Respondent has proved her title and the Appellant has failed to substantiate his prescriptive title to the land.

I answer the questions of law as follows;

1) No

Therefore, I affirm the judgement of the Court of Appeal.

Judge of the Supreme Court

B.P Aluwihare PC, J.

I agree

Judge of the Supreme Court

P. Padman Surasena J.

I agree

Judge of the Supreme Court