IN THE SUPREME COURT

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. D. A. Suranga Mojith Kumara
2. L. Nilmini Nirosha
   Gulankanda, Horangalla, Thalagaswala

Defendant-Respondent-Appellants

S.C.APPEAL No.123/15
SC/HCCA/GA/0082/2006 (F) Vs.
DC ELPITIYA L 26/2001

K. B. Ariyarathna
Horangalla, Thalagaswala

Plaintiff-Appellant-Respondent

BEFORE : **B.P.ALUWIHARE, PC, J.**
SISIRA J.DE.ABREW, J.
K.T.CHITRASIRI, J.

COUNSEL : Widura Ranawaka
for the Defendant-Respondent-Appellants
Baghya Herath
for the Plaintiff-Appellant-Respondent

ARGUED ON : 13.01.2016

WRITTEN : 25.08.2015 by the Defendant-Respondent-Appellants
SUBMISSIONS ON : 23.12.2015 by the Plaintiff-Appellant-Respondent

DECIDED ON : 29.03.2016

CHITRASIRI, J.

Plaintiff-Appellant-Respondent (hereinafter referred to as the plaintiff) filed action bearing No.26/L in the District Court of Elpitiya seeking for a declaration that he is entitled to the land morefully described in the schedule to the plaint dated 7.9.2001. In that plaint, he also has sought to have the defendant-Respondent-Appellants (hereinafter referred to as the defendants) evicted from the said land. He has claimed damages as well from the defendants.

Plaintiff claimed title to the aforesaid land upon a decree entered in an earlier action filed in the District Court of Balapitiya which bears the No.503/L. He also has pleaded prescriptive title to the land in question. However, learned Counsel for the plaintiff submitted to this Court that the plaintiff is not relying on prescription though such a claim had been averred in the plaint. Claim on prescription has not been agitated in the Provincial Civil Appellate High Court either. Issue raised by the plaintiff on his prescriptive claim at the commencement of the trial in the original court had been answered in the negative. In the circumstances, the claim of the plaintiff, as it stands now is limited to the rights emanated from the decree dated 23.7.1990, entered in the case bearing No.503/L filed in the District Court of Balapitiya. (at page 185 in the appeal brief) It is on the strength of the aforesaid decree entered in the case 503/L that the plaintiff has sought to establish his title against the defendants in this case and not on any other ground.

The two defendants in their answer dated 01.09.2003, sought only to have the plaint dismissed. In that answer, they have stated that the 2nd defendant was permitted to possess this land by her father, who had been in possession of the same since the year 1973 having built a house on it. However, it is important to reiterate that the defendants have prayed only to have the plaint dismissed without having claimed any right or title over the land in dispute despite the fact that they and their predecessors in title alleged to have been living on that land since the year 1973.

Learned District Judge having considered the evidence recorded before him, dismissed the plaint on the ground that the plaintiff cannot rely on the judgment delivered in the case 503/L since the defendants in this case were not made parties to the said case 503/L. However, learned High Court Judges in the Civil Appellate High Court decided the other way around. They have stated that the plaintiff is in a position to have title to the land referred to in the schedule to the plaint on the strength of the decree entered in the case 503/L despite the fact that the defendants were not parties to that earlier action bearing No.503/L.

In the circumstances, the only issue in this appeal is to ascertain whether the plaintiff could rely on a decree in a *rei vnidicatio* action which was in his favour to establish title to the same land in a subsequent case when the defendants in the subsequent case were not parties to that earlier

action. This is the crux of the questions of law upon which the leave to proceed with this appeal was granted by this Court.

It is trite law that the burden of proving the case is on the plaintiff who claim title to a land in a *rei vindicatio action*. **[De Silva Vs. Goonatilake 32 NLR 217, Wanigaratne Vs. Juwanis Appuhamy 65 NLR 167, Luwis Singho and Others Vs. Ponnamperuma 1996 (2) SLR 320, Dharmadasa Vs. Jayasena 1997 (3) SLR 327]** Hence, I will now turn to consider whether the plaintiff in this case has discharged the said burden in this instance.

As mentioned above, the plaintiff relies on the decree entered in the case 503/L to establish title to the land in suit. Significantly, the defendants in this case were not made parties to the aforesaid action 503/L even though they or their predecessors had been in possession of the land in question since the year 1973. The plaintiff in his evidence has admitted that the said action 503/L was filed in the year 1980 without making the defendants as parties to the action though they were in possession of the land even by then. Such possession of the defendants to the land is clearly evident by the documents marked 1V1 and 1V2 filed in this case. (Vide at pages 175 and 176 in the appeal brief). No explanation is forthcoming as to why the defendants in this case were not joined as parties to the action 503/L despite the fact that they were

in physical possession of the land in dispute long prior to the case 503/L was filed. On the other hand, the plaintiff has stated that he had never been in possession of this land. (Vide at pages 192 and 193 in the appeal brief).

It was alleged by the defendants that the earlier case 503/L was a collusive action in which the parties were two brothers and one of them had been the plaintiff. Judgment in that case was delivered on 20.01.1993. (Vide at page 185 in the appeal brief). It had been delivered without any issue been raised and therefore, the decree entered in that case was a consent decree. In terms of the decree entered in 503/l, the plaintiff in this case was declared entitled to Lot 88B in Plan No.1294A which is the subject matter in this case.

In that case, the Court has considered only the rights of the persons who were made parties to that action. Rights of the defendants in this case could not have been looked at in that action 503/L since they were not made parties in that action. Accordingly, their rights to the property had not been looked into, in that case. In other words, decision in 503/L had been made without giving an opportunity for the defendants in this case to present their case. Therefore, such a decision would certainly not bind the defendants in this case.

The decree entered in 503/L, it being a *decree in personam* would bind only the parties namely, B.Siripala and B.Ariyaratne in that action. Said Ariyaratne is the plaintiff in this case. Moreover, the plaintiff in this case has

admitted that he did not move court to have the decree executed in that earlier case. Had he made such an application to obtain possession of the land in suit pursuant to the decree been entered in that case, the defendant in this case or his predecessors in title could have objected to the writ being executed in that case since they were not parties to that earlier action and also because they were in possession of the land for a long period of time. Such circumstances lead to think that the plaintiff had an ulterior motive to have filed the action 503/L without the persons who were in possession being made parties to the same and also by obtaining a consent decree in that case.

Those circumstances show that the plaintiff in this case has obtained a consent decree in his favour without giving the defendants who had been in possession of the land in question, an opportunity to assert their rights to the land in dispute. Hence, it is abundantly clear that the decree in the case 503/L had been entered without making the persons who have interests in the land, as parties to the action. Those persons who claim interest to the land, at least by been in possession include the defendants in this case or their predecessors in title. Under those circumstances, it is incorrect to rely on the decree entered in 503/L and to decide this case in favour of the plaintiff even though the learned High Court Judges have decided so.

I arrived at the findings referred to above on the basis that a decree in a case in which a declaration of title is sought, binds only the parties in that action. Such a proposition is not applicable when it comes to a *decree in rem* which binds the whole world. Effects and the consequences of *actions in* rem and *actions in Personam* are quite different. *Action in rem* is a proceeding that determines the rights over a particular property that would become conclusive against the entire world, such as the decisions in courts exercising admiralty jurisdictions and the decisions in partition actions under the partition law of this country. Procedure stipulated in Partition Law contains provisions enabling the interested parties to come before courts and to join as parties to the action even though the plaintiff fails to make them as parties to it. Therefore, there is a rational to treat the decrees in partition cases as *decrees in rem*.

Actions in personam are a type of legal proceedings which can affect the personal rights and interests of the property claimed by the parties to the action. Such actions include an action for breach of contract, the commission of a tort or delict or the possession of property. Where an *action in personam* is successful, the judgment may be enforced only against the defendant's assets that include real and personal or moveable and immoveable properties. Therefore, a decree in a *re vindicatio* action is considered as a decree that would bind only the parties to the action. In the circumstances, it is clear

that the plaintiff cannot rely on the decree in 503/L to establish rights to the property in question as against the defendants in this case are concerned.

At this stage, it is also necessary to refer to the consideration made by the learned Civil Appellate High Court Judges as to the inability of the defendants to prove their possession to the land in suit. Such a consideration in this instance is completely irrelevant since the defendants have not claimed any right relying upon their possession to the land though such a possession was not in dispute. It had no bearing to establish or to contradict the claim of the plaintiff either. Hence, I cannot see any reason as to why the learned High Court Judges in the Civil Appellate High Court had stated that the defendants have failed to establish prescriptive title to the land. No such a claim had been made by the defendants in this case. Therefore, it is clear that the learned Judges in the Civil Appellate High Court have completely misunderstood the issue that was to be looked into in the appeal before them.

When looking at the matters referred to hereinbefore, it is clear that the plaintiff cannot rely on the aforesaid judgment in the case 503/L to establish his title to the land in question as against the defendants in this case. Therefore, the action of the plaintiff should necessarily fail as the reliefs prayed for are directly against the defendants. It is the decision arrived at by the learned District Judge as well. Hence, the decision of the learned District Judge should remain intact.

For the aforesaid reasons, judgment dated 16.09.2014 of the learned High Court Judges of the Civil Appellate High Court in Galle is set aside. Defendant-respondent-appellants are entitled to the costs of both appeals filed in this Court and the Civil Appellate High Court.

Appeal allowed.

JUDGE OF THE SUPREME COURT

B.P.ALUWIHARE, PC, J.

I agree

JUDGE OF THE SUPREME COURT

SISIRA J.DE.ABREW, J.

I agree

JUDGE OF THE SUPREME COURT