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

Henri Edama,
New Heaven,
Kahaththewela,
Prise Road,
Bandarawela.
Plaintiff

SC APPEAL NO: SC/APPEAL/189/17
SC LA NO: SC/HCCA/LA/347/16
HCCA BADULLA NO: UVA/HCCA/BDL/38/2014(F)
DC BANDARAWELA NO: L/1671

Vs.

A.L.G. Somasiri,
No. 444, Bindunuwewa,
Bandarawela.
Defendant

AND BETWEEN

A.L.G. Somasiri,
No. 444, Bindunuwewa,
Bandarawela.
Defendant-Appellant

Vs.

Henri Edama,
New Heaven,
Kahaththewela,
Prise Road,
Bandarawela.
Plaintiff-Respondent

AND NOW BETWEEN

Henri Edama,
New Heaven,
Kahaththewela,
Prise Road,
Bandarawela.
Plaintiff-Respondent-Appellant

Vs.

A.L.G. Somasiri,
No. 444, Bindunuwewa,
Bandarawela.
(Deceased)
Defendant-Appellant-Respondent

Arabegoda Loku Gamage Bandula
Karunarathne Perera,
No. 444, Bindunuwewa,
Bandarawela.

Substituted Defendant-Appellant-Respondent

Before: Yasantha Kodagoda, P.C., J.
Janak De Silva, J.
Mahinda Samayawardhena, J.

Counsel: Ravindra Anawaratne for the Plaintiff-Respondent-Appellant.
Sandamal Rajapakshe for the Substituted Defendant-Appellant-Respondent.

Argued on: 25.10.2022

Written submissions:
by the Defendant-Appellant-Respondent on 18.07.2017.
by the Plaintiff-Respondent-Appellant on 19.03.2018.

Decided on: 16.12.2022

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court of Bandarawela seeking a declaration of title to the land described in the first schedule to the plaint, ejectment of the defendant from a portion of that land as described in the second schedule to the plaint, and damages. The defendant filed answer seeking dismissal of the plaintiff's action, a declaration that he is the owner of the land described in the second schedule to the plaint by prescription and deeds, and compensation in a sum of Rs. 50,000 for malicious prosecution. After trial, the District Court held with the plaintiff. On appeal, the High Court of Civil Appeal of Badulla set aside the judgment of the District Court and dismissed the plaintiff's action.

This Court granted leave to appeal against the judgment of the High Court on the following questions of law.

> *Did the High Court err in law in holding that the plaintiff has failed to identify the land in suit?*
>
> *Did the High Court err in law in holding that the land claimed by the defendant tallies with the land depicted in plan V22 of the defendant?*
>
> *Did the High Court err in law in holding that the plaintiff has failed to prove title to the land?*

The High Court predominantly set aside the judgment of the District Court on the basis that the land in suit has not been identified. This is a perverse finding. There was no such issue at all before the District Court. On the contrary, the defendant in the schedule to the answer expressly stated that the land in suit is depicted as lot 1 in plan No. 6049. According to the plaint, the land described in the first schedule to the plaint is depicted as lots 1 and 2 in plan No. 205. The learned High Court Judge states that plan No. 205 was neither produced nor could be found in the case record. This is incorrect. This plan is found in the case record as part of P7. Plan No. 6049 (referred to earlier) was prepared to show the encroachment of the defendant as described in the second schedule to the plaint. Plan No. 6049 and its report were marked as X and X1. The surveyor who prepared this plan also gave evidence. In his report as well as in his evidence, he clearly states that it was prepared by the superimposition of plan No. 205 referred to in the first schedule to the plaint. The surveyor was not cross-examined on the accuracy of the plan or his evidence. His evidence remains uncontroverted. The learned High Court Judge in the judgment says the surveyor has not superimposed lots 1 and 2 on plan No. 6049. It seems that the learned High Court Judge

has not read the brief properly, and the argument before the High Court has been disposed of on written submissions.

The third admission recorded at the trial is that possession of the disputed land described in the second schedule to the plaint was handed over to the defendant in execution of the order made in the section 66 application filed regarding this dispute. It is that portion which is depicted as lot 1 in plan No. 6049.

I cannot possibly understand why the learned High Court Judge decided to dismiss the plaintiff's action predominantly on non-identification of the land. It appears that the learned High Court Judge has been misled by the misleading written submissions filed before him. The question of identification of the land cannot be raised for the first time on appeal. It is not a pure question of law but a mixed question of fact and law.

The learned High Court Judge states that the defendant's title deeds marked V2, V4 and V5 describe a land of 80 feet in length and 40 feet in breadth which is about 11.6 perches, and it is depicted in the plan marked V22. There is no necessity to refer to V22. As I have already made clear, the defendant clearly identifies the disputed land in the plan marked X.

The plaintiff did not present his case in the District Court on the basis that he is the paper title holder of the land described in the second schedule to the plaint. In that context, there was no necessity to give undue prominence to the defendant's deeds. After all, the High Court did not grant the defendant's cross-claim. As crystalised in the issues, the defendant's case was that he prescribed to the disputed portion of the land. Thereafter, by issue No. 13, the defendant in my view in passing says that he purchased the land on deed No. 158. If the defendant rested his case chiefly on paper title, he ought to have raised that issue first and

then, if necessary, an issue on prescriptive title. He does not even raise an issue seeking compensation for improvements to the land in case the substantive issue is decided in favour of the plaintiff. Let me reproduce the defendant's issues for a better understanding of what I endeavour to say:

10. විත්තිකරුවන්ගේ උත්තරයේ සිය උපලේඛණයේ විස්තරකර ඇති පරිදි මෙම නඩුවට සම්බන්ධ ඉඩම් කොටස හෝ එහි අතුරු ඉඩම් කොටසක් හෝ පැමිණිලිකරු කිසිම දිනක බුක්තිවිඳ නොමැත්තේ ද?
11. පැමිණිල්ලේ සවිස්තරව දක්වා තිබෙන පැමිණිලිකරුට අයිතිවාසිකම් ලැබී ඇතැයි කියනු ලබන ඔප්පුව මත ඔහුට ඇතිවූවායැයි කියනු ලබන එකී අයිතිවාසිකම් එකී ඔප්පුවට පමණක් සීමාවී තිබෙන්නේ ද?
12. මෙම නඩුවට සම්බන්ධ දේපල මෙම නඩුවේ විත්තිකරු විසින් ඔහුගේ පූර්වගාමී අයිතිකරු වූ බුක්තිකාරයන් සමග වසර 100කට ආදීන ඉතා දීර්ඝ කාලයක් තිස්සේ බුක්තිවිඳ තිබෙන්නේද?
13. එකී දීර්ඝ කාලීන බුක්තියට අමතරව විත්තිකරු මෙම නඩුවට සම්බන්ධ දේපල 1994.02.01 දින ප්‍රසිද්ධ නොතාරිස් පි. ලංකාධිකාර මහතා විසින් ලියා සහතික කළ අංක 0158 දරණ විකුණුම්කාර ඔප්පුව මත මිලදීගැනීම කරණ කොටගෙන අයිතිය තිබේද?
14. විත්ති උත්තරයේ 7 වන ඡේදයේ වඩා විස්තර කර ඇති පරිදි පැමිණිල්ලේ 'අ' උපලේඛණයේ විස්තර කර ඇති ඉඩම් කොටස තුල විත්තිකරු මේ වන විට ලක්ෂ විසිපහකට (රු: 25,000,000/=) වඩා වටිනා නිවසක් සිය පෞද්ගලික වියදමින් ගොඩනගාගෙන එහි පදිංචිව සිටින්නේද?
15. විත්තිය විසින් මෙතෙක් ඉදිරිපත් කරන ලද විසඳිය යුතු ප්‍රශ්නයන්ට ඔවුන්ගේ වාසියට පිළිතුරු ලැබෙන්නේනම් ඔවුන් සිය උත්තරයේ අයදුමේ අයද තිබෙන සියලු සහන ලබාගැනීමට සුදුසු වන්නේද?

Deed No. 158 which is referred to in issue No. 13 has been marked as V4. It is noteworthy that in the schedule to this deed the vendor also refers to the order given in favour of the defendant in the section 66 application as a source of title. It is clear that the said deed has been executed after the section 66 application to consolidate the possession of

the defendant confirmed in the section 66 application. The reference to the section 66 application itself shows the strength of the vendor's title to the land which he conveyed to the defendant by V4.

The learned High Court Judge says the schedule to the defendant's deeds tallies with the plan marked V22. This is also incorrect. This plan has been prepared seven years after the institution of the action. The plan V22 depicts a land of 11.3 perches. The extent of the land referred to in the deeds is 2/5 share of a land of 80 feet in length and 40 feet in breadth. This is equivalent to 4.7 perches, not 11.3 perches.

It is strange that the learned High Court Judge has not mentioned a word about the defendant's main claim – prescriptive title.

It is also strange that the learned High Court Judge has not mentioned the plaintiff's title deeds. The plaintiff filed this action on paper title. The District Court accepted those deeds and held that the plaintiff is the paper title holder of the land. If the High Court reverses that finding, it behoves the High Court to give reasons. This was not done; nor was an attempt made to do so.

The learned High Court Judge says the plaint does not disclose the date on which the cause of action accrued to the plaintiff. These matters cannot be taken up for the first time in the appellate Court. If that were the case, even the District Court could not have dismissed the action at first sight. In terms of section 46 of the Civil Procedure Code, the Court can return the plaint for amendment.

Learned counsel for the defendant makes a new case for the defendant, in that counsel seeks to argue that the title deeds of both parties do not refer to the same land but to two different lands situated in two villages and that the lands have been registered in different folios in the Land Registry. These are not questions of law but questions of fact. They

cannot be agitated for the first time in the Supreme Court. The matters put in issue by the defendant in the trial Court are reflected in the issues I reproduced above.

I unhesitatingly set aside the judgment of the High Court and restore the judgment of the District Court and allow the appeal with costs.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.
I agree.

Judge of the Supreme Court

Janak De Silva, J.
I agree.

Judge of the Supreme Court