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

In the matter of an application for Leave to Appeal in terms of the Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 5c of the High Court of the Provinces (special Provisions Act No. 19 of 1990 as amended by the Act No. 54 of 2006.

SC. Appeal.67/2015
S.C.(H.C.C.A) LA.248/12
WP/HCCA/Kalutara03/2005 (F)
D.C Horana 365/L

Eliyadura Osman Weerasena Silva,
No.4/3, Train Houses, Modera
Moratuwa.

**Plaintiff**

VS.

EliyaduraPadmaRanjani,
No.126, Batuwita,
Gonapola Junction.

**Defendant**

**AND**

Eliyadura Padma Ranjani,
No.126, Batuwita,
Gonapola junction.

**Defendant-Appellant**

**Vs.**

Eliyadura Osman Weerasena Silva
No.4/3, Tain Houses, Modara,
Moratuwa.

**Plaintiff-Respondent**

AND NOW

Eliyadura Padma Ranjani,
No.126, Batuwita,
Gonapola junction.

**Defendant-Appellant-Petitioner**
**Vs.**

Eliyadura Osman Weerasena Silva,
No.4/3, Train Houses, Modera
Moratuwa.

**Plaintiff-Respondent-Respondent**

**BEFORE:** **B.P.ALUWIHARE, PC, J,**
**PRIYANTHA JAYAWARDENA, J &**
**ANIL GOONERATNE, J.**

**COUNSEL:** Yasas de Silva for the Defendant-Appellant-Appellant.
E.B.Atapattu with PrasanjeewaPattiarachchi instructed by Ms. P. Weerasekera for the Plaintiff-Respondent-Respondent

**WRITTEN SUBMISSIONS:** 10.04.2015 20.04.2016 by the Appellant
09.05.2016 by the Plaintiff-Respondent-Respondent

ARGUED ON: 12.05.2017.

DECIDED ON: 14.12.2017

ALUWIHARE, PC, J:
The Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff) in a *rei-vindicatio* action filed before the District Court of Horana, inter alia sought:

(a) a declaration that the Plaintiff is the owner of the land, the subject matter to this application, and

(b) an order for the ejectment of the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant) therefrom.

This court granted leave to appeal on the questions of law referred to in sub-paragraphs (a), (b), (c) and (g) of paragraph 23 of the Petition of the Petitioner which are reproduced below:

(a) Whether the said judgement of their Lordship's of the Civil Appellate High Court is contrary to the law and material placed at the trial?

(b) Whether their Lordships have erred in law by failing to consider that the Respondent has not proved the necessary requirement to obtain a judgement of a *rei-vindicatio* action?

(C) Whether their Lordships have erred in law by failing to consider that the Respondent has not properly identified and proved the land in issue and in that event, he was not entitled to obtain a judgement in his favour?

(g) Whether their Lordshipshave erred in law by holding that the Petitioner has failed to prove her case, as in a *rei-vindicatio*action, the burden is entirely on the Plaintiff?

At the conclusion of the trial before the District Court, the learned District Judge held with the Plaintiff and aggrieved by the said judgement, the Defendant appealed to the High Court of Civil Appeals (Kalutara). The learned Judges of the High Court, affirmed the judgement of the learned District Judge and accordingly the appeal of the Defendant was dismissed.

The present appeal arises from the judgement of the High Court of Civil Appeals.

Background:

According to the Plaint, in the year 1954, the property in suit had been granted toone Diyaneris Silva by way of a crown grant (P4) under the Land Development Ordinance. Said Diyaneris Silva nominated his son Edwin Silva as his successor and had effected the registration of the said nominee as well (P3). Edwin Silva had died in the year 1997 and his wife also had passed away thereafter. In terms of Section 72 of the Land Development Ordinance, the Plaintiff who happened to be the eldest surviving son of Edwin Silva,became entitled to the property in suit and the same had been registered with the Divisional Secretary's office under reference LDO 753. After the death of Edwin Silva in 1977, the Defendant who happened to be a younger sister of the Plaintiff, had come into occupation of a building that stood on this property which had been used for religious activities, according to the Plaintiff. The Plaintiff, in 2001, by a letter

sent through his attorney, had requested the Defendant to quit the property and to have vacant possession handed over to the Plaintiff.

The Defendant in her answer had taken up the position that the property in suit was allotted to Diyaneris Silva by the District Court of Kalutara consequent to a partition decree in case No. 9646.

It was the position of the Defendant that Edwin Silva inherited the property in question after the death of his father Diyaneris Silva. After the death of Edwin Silva, the Defendant being a child of Edwin Silva, inherited the property. In addition, the Defendant also had taken up the position that she was in possession of the property for a period of 42 years and she claimed prescriptive title to the property as well.

When the matter was taken up for hearing the learned counsel for the Defendant submitted that both the judgment of the learned District Judge as well as the judgment of the High Court of Civil Appeals cannot be sustained for the following reasons:

(1) The Plaintiff had failed to establish title to the impugned property.
(2) The Plaintiff had failed to comply with the requirements of Section 41 of the Civil Procedure Code.
(3) The Plaintiff had failed to discharge the burden of proof he is required to meet in accordance with the law.
(4) The judgement of the District Court is erroneous in fact and in law.

With regard to the failure on the part of the Plaintiff to establish the title to the property, it was argued, that although he relied on a State grant the evidence adduced by the Plaintiff is not clear enough to show that the Plaintiff is in fact the owner of the impugned property.

At the commencement of the trial, the corpus was admitted by the parties. The Plaintiff had led the evidence of the Land Officer attached to the relevant Divisional Secretariat, who had testified to the effect that in 1954 under the Crown grant P1, a land in extent of 1 Acre, 1 Rood and 11 Perches had been granted to Diyaneris Silva and the witness also marked in evidence the relevant plan (P2) depicting the land that was granted to the said grantee. The Land Officer conceded that the land described in the grant P1 and the Plan P2 is one and the same land that is referred to in the schedule to the plaint. The witness also admitted that Diyaneris Silva had nominated his son Edwin Silva as the successor and that the nomination had been registered (P4). Thereafter the title of the impugned property had been transferred to Osman Weerasena Silva, the Plaintiff, in terms of Section 72 of the Land Development Ordinance consequent to a decision taken by the Provincial Commissioner of Lands, which had been forwarded for registration to the Registrar of Lands and the registration had been effected by the Registrar of Lands. At one point the Plaintiff had requested that the land be divided among his male siblings, but due to the protest by the Defendant, on the basis that the impugned property is private land, the Land Officer had not carried out that request, but had advised the parties to resolve the dispute through a court of law.

It is also significant that steps had been taken to have the disputed property surveyed through the surveyor attached to the Divisional

Secretariat and the surveyor had confirmed the disputed property is the same as the land referred to in the grant P1.

The evidence given by this witness remains unassailed and I see no infirmities in the testimony of this witness to disbelieve him or to have it rejected and quite rightly the learned District Judge had acted on his testimony which establishes that the impugned property is a crown grant.

The next issue is the succession of the impugned property after the death of Edwin Silva. It is common ground that Edwin Silva had not nominated a successor. As such, it was the position of the Land Officer that in terms of Section 72 of the Land Development Ordinance the Plaintiff was nominated.

I shall advert to the evidence given by the Land Officer in this regard. His evidence was that the title of the impugned property had been handed over to Osman Weerasena Silva (the Plaintiff) in terms of Section 72 of the Land Development Ordinance as per the decision of the Provincial Commissioner of Lands and the said decision had been conveyed to the Registrar of Lands by the letter, P5 which says the perfected schedules are forwarded for the purpose of the transfer of title to Osman Weerasena Silva (the Plaintiff) of the land referred to in the grant No.3242, under the provisions of the Land Development Ordinance.

It was the position of the Land Officer that the transfer of the title of the grant was made under Section 72 of the Land Development Ordinance, which deals with the succession upon death of the life-holder.

Section 72 of the Land Development Ordinance; -

72. (1) Upon the death of the life-holder of a holding the nominated successor, if any, shall succeed to the holding-

(2) If **no successor has been nominated** or if the nominated successor fails to succeed, the title to the holding **shall devolve as prescribed by the rules in the Third Schedule.** (emphasis added)

For ease of Reference Schedule 3 of the Land Development Ordinance is reproduced to below:

**THIRD SCHEDULE**

**RULES**

1. (a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.

*(b)* Title to a holding for the purposes of section 72 shall **devolve on one only** of the relatives of the permit-holder or owner **in the order of priority in which they are respectively mentioned in the subjoined table,** the older being preferred to the younger where there are more relatives than one in any group.

*Table*

| | |
|---|---|
| **(i) Sons**. | (vii) Brothers. |
| (ii) Daughters. | (viii) Sisters. |
| (iii) Grandsons. | (ix) Uncles. |
| (iv)granddaughters | (x) Aunts. |
| (v) Father. | (xi) Nephews. |
| (vi) Mother. | (xii) Nieces. |

In this rule, " relative " means a relative by blood and not by marriage.

2. Where in any group of relatives mentioned in the table subjoined to rule 1 there are two or more persons of the same age who are equally entitled and willing to succeed, the Government Agent may nominate one of such persons to succeed to the holding. Such decision of the Government Agent shall be final.

** 4. If any relative on whom the title to a holding devolves under the provisions of these rules is unwilling to succeed to such holding, the title thereto shall devolve upon the relative who is next entitled to succeed under the provisions of rule 1. (**Emphasis is mine**)

From the above schedule, it is clear that for the purposes of Section 72, title devolves on only one relative of the permit holder in the order of priority, referred to in the third schedule. Furthermore,the sons of the permit holder have priority over his or her other relatives and the Plaintiff happened to be the eldest living son at the relevant time as his sole elder brother had passed away. Death of the elder brother was acknowledged by the Defendant in her evidence.

The Defendant in her evidence stated that her grandfather became entitled to the impugned property consequent to a partition decree and her father inherited the land after the death of her grandfather. In answer to court she had said that she was told by her father that her grandfather transferred the property on a title deed, but the defendant failed to either give details of the deed or to produce the deed during the trial.

Record Keeper of the District Court of Kalutara also had given evidence on behalf of the Defendant and produced, the court record in case No.9646 D.C. Kalutara and that both Diyaneris Silva and his wife had been allotted 9/96 of the corpus. There is no evidence, however, to say that there is any nexus between the corpus of the said partition case and the impugned property of the case before us.

On the material referred to above, one cannot fault the finding of the learned District Judge that the Plaintiff had proved his title to the property in suit.

The second issue raised on behalf of the Defendant Appellant, was that the Plaintiff had not complied with Section 41 of the Civil

Procedure Code. It was contended on behalf of the Appellant that the evidence led at the trial showed that another sister of the parties was also residing within the corpus and as such Plaintiff is not the only possessor of the impugned land. It was argued on this basis that the Plaintiff ought to have referred to the specific portion of land he is claiming.

It is to be noted that there is no evidence to say that there is a dispute as to the possession or title of the impugned property between the Plaintiff and the other sister of the Plaintiff who is also in possession of a portion of the land or that she also has put forward a claim to the impugned property. From the evidence led at the trial it appears that the said sister is in possession with leave and license of the Plaintiff, thus I hold that there is no non-compliance with Section 41 of the Civil Procedure Code on the part of the Plaintiff.

The third issue raised on behalf of the Defendant Appellant was that the Plaintiff had not discharged the burden of proving title. I have already discussed the evidence placed by the Plaintiff with regard to the title and I see no reason to reiterate them. It is abundantly clear from the documents produced and from the oral testimony, the devolution of title commencing from the original grantee Diyaneris Silva to his son Edwin Silva and from him to his eldest surviving son, the present Plaintiff, which had been regularized by the authorities as reflected in documents marked P4 and P5. According to the evidence of the Land Officer, the surveyor attached to the Divisional Secretariat having surveyed the impugned property, had confirmed that it is the same land as in grant given under R3242 to Diyaneris Silva. Thus, I am of the view that there is no doubt with regard to the identity of the corpus. This evidence in my view is relevant and admissible in terms

of Section 35 of the Evidence Ordinance, the surveyor being a public servant and an entry made with regard to what he performed in the discharge of his official duty.

As a fourth point of argument the Defendant-Appellant contended that the learned District Judge had erred both in fact and in law, and drew the attention of the court to an admission purported to have been recorded and the learned counsel contended that no such admission had been recorded.

It was submitted that the learned District Judge had referred to an admission in his judgment to the effect that, both parties agree that the Defendant is residing in the impugned property, and it was contended that no such an admission was recorded by the parties.

The admission that was recorded is as follows:

**"චිත්තිකාරිය නෙරපීමට ඉල්ලා සිටින ඉඩමේ පිහිටීම සහ පැමිණිලිකරුගේ පදිංචිය මෙම අධිකරණ බලසීමාව තුල බව පිලිගනී"**

I have considered the evidence led in the case and it is common ground that the Defendant is residing in a building used for religious activities within the corpus. The Plaintiff had said that the Defendant attended their father's funeral and continued to occupy the building referred to. The Defendant's position was that from her childhood, she was residing in the building. As such I am of the view that no prejudice had been caused to either party by reference to the purported admission by the learned District Judge.

Upon consideration of the above, I cannot fault either the learned District Judge with regard to the findings, he had arrived at orthe Judges of the High Court of Civil Appeals in holding that the learned District Judge was correct. Accordingly, I answer the three questions of law on which leave was granted in the negative.

The appeal is dismissed and the Plaintiff-Respondent-Respondent will be entitled to costs here and also costsin the High Court of Civil Appeals.

JUDGE OF THE SUPREME COURT

JUSTICE PRIYANTHA JAYAWARDENA.PC

I agree.

JUDGE OF THE SUPREME COURT

JUSTICE ANIL GOONERATNE

I agree.

JUDGE OF THE SUPREME COURT