

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

D.M. Sumanawathie,  
No. 267,  
5<sup>th</sup> Village,  
Siyambalanduwa.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/61/2014**

**SC LA NO: SC/HCCA/LA/20/2014**

**HCCA UVA NO: UVA/HCCA/BDL/01/2008 (F)**

**DC MONARAGALA NO: L/1950**

Vs.

D.M. Susiripala,  
Kongaspitiya,  
Kandaudapanguwa.  
Defendant

AND BETWEEN

D.M. Sumanawathie,  
No. 267,  
5<sup>th</sup> Village,  
Siyambalanduwa.  
Plaintiff-Appellant

Vs.

D.M. Susiripala,  
Kongaspitiya,  
Kandaudapanguwa.  
Defendant-Respondent

AND NOW BETWEEN

D.M. Susiripala,  
Kongaspitiya,  
Kandaudapanguwa.  
Defendant-Respondent-Appellant

Vs.

D.M. Sumanawathie,  
No. 267,  
5<sup>th</sup> Village,  
Siyambalanduwa.  
Plaintiff-Appellant-Respondent

Before: Vijith K. Malalgoda, P.C., J.

Achala Wengappuli, J.

Mahinda Samayawardhena, J.

Counsel: Sanjeewa Ranaweera for the Defendant-Respondent-Appellant.

Parakrama Agalawatte for the Plaintiff-Appellant-Respondent.

Argued on: 29.10.2021

Written submissions:

by the Defendant-Respondent-Appellant on  
03.11.2014.

by the Plaintiff-Appellant-Respondent on  
29.09.2015.

Decided on: 20.01.2022

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court of Monaragala seeking a declaration that she is the owner of the land described in the schedule to the plaint on the permit marked P1 issued under the Land Development Ordinance, and ejectment of the defendant therefrom. The defendant filed answer seeking dismissal of the plaintiff's action and a declaration that he is the owner or possessor of the land. In addition, he prayed that in the event the court is inclined to grant the reliefs sought by the plaintiff, the plaintiff be directed to pay him compensation in a sum of Rs. 1 million for the improvements effected to the land.

After trial the District Judge dismissed the plaintiff's action predominantly on the basis that the Divisional Secretary had issued the permit P1 in violation of the provisions of the Land Development Ordinance. On appeal, the High Court set aside the judgment of the District Court and entered judgment for the plaintiff but the defendant was allowed to remove the buildings without causing damage to the land. Hence this appeal by the defendant to this court. This court granted leave to appeal on the following questions of law:

*Did the High Court err in law:*

- (a) when it held that the plaintiff proved she is the permit-holder;*
- (b) when it held that the plaintiff had established her rights pertaining to the land;*
- (c) when it failed to consider that the plaintiff could not have been issued a permit as she was just 13 or 14 years of age at the time;*
- (d) when it failed to apply the fundamental principles of rei vindicatio actions in determining the plaintiff's rights pertaining to the land;*
- (e) when it held that the defendant was not entitled to any compensation for the improvements that he had effected on the land.*

The position of the plaintiff is that the original permit issued in 1979 was destroyed when their house was burnt down during the insurgency in 1988 and the permit P1 is a copy thereof issued by the Divisional Secretary. P1 issued by the Divisional Secretary, who is the lawful authority to issue permits under the Land Development Ordinance, was not marked subject to proof at the trial. The Land Officer gave evidence confirming the position of the plaintiff. P1 was not challenged by invoking the writ jurisdiction of the Court of Appeal. Above all, the Divisional Secretary is not a party to the case. The case is between the plaintiff and the defendant. In these circumstances, the District Judge was wrong to have concluded that the issuance of P1 is erroneous or P1 is a nullity.

The land in suit is admittedly a state land. The position of the defendant is that the plaintiff's father sold this land to him in

1989 by an informal writing marked V1. The plaintiff's father had no right to sell the land to the defendant. State lands cannot be sold by individuals. In terms of section 46 of the Land Development Ordinance, even the permit-holder cannot alienate the permit land without the written consent of the Divisional Secretary: such alienations are null and void. Besides, P1 is a non-notarial document and has no force or avail in law in view of section 2 of the Prevention of Frauds Ordinance.

As evident from P3, there had been an inquiry into this dispute with the participation of both the plaintiff and the defendant, by the Divisional Secretary in 2000. P1 has been issued in 2001 after the inquiry.

P4 *inter alia* goes to show that the defendant has made at least some improvements to the land despite the Divisional Secretary's warning not to effect improvements until the dispute was settled. He effected the improvements at his own risk. There is no evidence that the defendant attempted to obtain a permit for the land. This may be because he knew that a permit had already been issued in respect of the land.

Only *bona fide* possessors are entitled to compensation for useful improvements and the *ius retentionis* (right of retention) is available to them until compensation is paid by the owner. Even if the defendant is a *bona fide* possessor, the plaintiff does not want the buildings on the land perhaps because she does not have the financial capacity to pay compensation. The buildings cannot be thrust upon her and she cannot be compelled to pay compensation to the defendant. The High Court allowed the defendant to remove the buildings. The *ius tollendi* (right to

remove improvements) is available to the improver when compensation cannot be awarded.

The defendant does not have a permit; only the plaintiff has one issued by the Divisional Secretary. The contention of learned counsel for the defendant is that in a *rei vindicatio* action the plaintiff shall prove title as pleaded in the plaint and the plaintiff in this case did not prove that P1 is a copy of the original permit. What the plaintiff in a *rei vindicatio* action shall prove is that he was the owner of the land at the time of filing the action and continues to be so until judgment is entered in his favour. In my view the plaintiff has discharged her burden.

As I held in *Wasantha v. Premawathie* (SC/APPEAL/176/2014, SC Minutes of 17.05.2021), there is no necessity to interpret the law with excessive stringency against the plaintiff in a *rei vindicatio* action and if the plaintiff proves on a balance of probabilities that he has “sufficient title” or “superior title” to that of the defendant, the plaintiff shall succeed.

Learned counsel for the defendant submits that it was erroneous on the part of the learned High Court judges to have considered the defendant’s case in entering judgment in favour of the plaintiff because in a *rei vindicatio* action the defendant need not prove anything and the burden lies fairly and squarely on the plaintiff to prove title to the land. As I held in *Wasantha v. Premawathie* (*supra*):

*Notwithstanding that in a rei vindicatio action the burden is on the plaintiff to prove title to the land no matter how fragile the case of the defendant is, the court is not debarred from taking into consideration the evidence of the defendant in*

*deciding whether or not the plaintiff has proved his title. Not only is the court not debarred from doing so, it is in fact the duty of the court to give due regard to the defendant's case, for otherwise there is no purpose in a rei vindicatio action in allowing the defendant to lead evidence when all he seeks is for the dismissal of the plaintiff's action.*

Moreover, in the instant case, the plaintiff sought a declaration that he is the owner of the land on P1. The defendant countersued for a declaration that the defendant is the owner of the land. In such circumstances, is the court not entitled to look at the competing claims of both parties to decide who the owner of the land is? The court eminently is.

In my view there is no reason to interfere with the judgment of the High Court. I answer the questions of law in the negative and dismiss the appeal but without costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court