

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

1. Letchumy Suntharanathan,
New Kalmunai Road,
Kallady, Batticaloa.

2. Suntharanathan Premini,
New Kalmunai Road,
Kallady, Batticaloa.

Defendant-Respondent-Appellants

SC/APPEAL/194/2014

EP/HCCA/BC/26/2007

DC BATTICALOA 4535/L

Vs.

Sellathangam Logitharajah,
New Kalmunai Road,
Kallady, Batticaloa.

(Deceased)

Janaththany Logitharajah,
New Kalmunai Road,
Kallady, Batticaloa.

Substituted Plaintiff-Appellant-
Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice Achala Wengappuli
Hon. Justice Mahinda Samayawardhena

Counsel: S. Mandaleswaran with S. Abinya for the Defendant-Respondent-Appellants.

V. Puvitharan, P.C. with Joseph Beneraj Ragul for the Plaintiff-Appellant-Respondent.

Argued on: 02.12.2024

Written submissions:

By the Appellants and Respondent on 15.01.2024

Decided on: 19.02.2025

Samayawardhena, J.

The plaintiff filed this action against the 1st defendant in the District Court of Batticaloa by plaint dated 10.10.1997, seeking a declaration of title to, ejection of the defendant from, the two portions of the land described in schedules C and D to the plaint, and damages. The defendant filed answer seeking dismissal of the plaintiff's action. Her daughter was later added as the 2nd defendant. The position of the 1st defendant was that she has prescribed to the land and on that basis she gifted the land in suit to the 2nd defendant by a deed. After trial, the District Judge, by judgment dated 29.10.2004, dismissed the plaintiff's action and allowed the cross-claim of the defendant. The District Judge held that the 2nd defendant is entitled to Lots 1 and 2 of Plan No. 29 marked X by prescriptive possession.

At the trial, during the cross-examination, the plaintiff admitted that she became entitled only to a 1/5 share of the land by her title deed marked P3, although the deed purported to convey the entire land to her. The plaintiff admitted in evidence that this deed was executed without any payment as a gesture of goodwill. On that basis, the District Judge correctly answered issue No. 1 of the plaintiff, "*Is the plaintiff the owner*

of the property described in schedule B to the plaint as set out in paragraphs 2-5 of the plaint?”, as “Sole ownership was not proved”.

The third issue of the plaintiff, *“Was the defendant’s husband Kanapathipillai Suntharanathan in occupation of a divided south western portion out of the land described in schedule B morefully described in schedule C to the plaint with leave and licence of the original owner Sinnathamby Thangarasa and Rasamanikabathy Seenithamby?”* was correctly answered by the District Judge in the negative. Although the plaintiff stated in paragraph 7 of the plaint that the 1st defendant’s husband was there with the leave and licence of Sinnathamby Thangarasa and Rasamanikabathy Seenithamby, no evidence whatsoever acceptable to Court was led to establish that fact. The District Judge correctly states in the judgment that even the plaintiff in his evidence firmly and clearly did not take up such a position except to make a passing remark in his evidence that the 1st defendant’s late husband was there with the leave and licence of the plaintiff’s predecessors. The District Judge also states that the plaintiff even in his statement made to the police marked P4 does not mention about leave and licence. None of the witnesses of the plaintiff spoke about leave and licence. Neither Sinnathamby Thangarasa nor Rasamanikabathy Seenithamby who are the plaintiff’s predecessors in title was called to give evidence that they gave leave and licence to the defendant’s husband to possess the land.

During the cross-examination of the defendant, it was put to her that her late husband possessed the land with the leave and licence of the predecessors of the plaintiff but the defendant had completely rejected it. The question of leave and licence has not been pursued further with any seriousness.

According to the evidence of the defendant, after her marriage to her late husband in 1978, she came into occupation of the house on the land. At

that time, her husband and his parents had been living in the house. All three of them are now deceased. Admittedly, the husband had been operating a cycle repair shop on the premises. Several witnesses were called and several documents were marked to prove long possession. Among them, the trade registration licences for the years 1981-1985 had been marked in evidence as P4-P7. The voter registration list for 1986, which included the name of the 1st defendant, was marked as P8. The Gramaseva Officer of that area during the relevant time, Selliah Arasaratnam, also gave evidence. He stated in his evidence that when he served as the Gramaseva Officer of that area for around 20 years from 01.01.1980, the husband of the 1st defendant was operating a cycle repairing shop on the land in suit, with the shop in the front and the house at the rear side of the building. He has visited the house for several official purposes which he had described in evidence.

All the witnesses had given evidence, and all the documents had been marked before the District Judge who pronounced the well-considered judgment. Unlike the appellate Court Judge, he was in a distinctly advantageous position to observe the demeanour and deportment of the witnesses in the witness box. As there was ample credible evidence that the defendants and their predecessors had been living on the land in suit (Lots 1 and 2 of Plan X, approximately 3 perches in extent) without paying rent to anyone or acknowledging anyone's rights for over ten years, the District Judge held that the defendants had prescribed to the land in suit.

Being dissatisfied with the judgment of the District Court, the plaintiff appealed to the High Court of Civil Appeal of Batticaloa. The High Court set aside the judgment of the District Court and directed the judgment to be entered in favour of the plaintiff only in respect of paragraph B of the

plaint, i.e. only ejectment of the defendants from the land in suit. The High Court did not make a finding on declaration of title.

The judgment of the High Court lacks any analysis of the evidence led at the trial. At one point, it merely reiterates the well-established legal principle that a co-owner may institute an action to have his undivided share declared and to seek the ejectment of a trespasser. The District Judge has not stated anything contrary to that principle in the judgment. What the District Judge states is that the plaintiff is not the sole owner of the land, which is correct. The High Court does not explain the applicability of this principle to the facts of the case or make a determination on that matter. As I stated previously, the High Court only orders ejectment of the defendant without any finding on the soil rights. Reiterating well-established legal principles and citing judicial precedent in a judgment serves no purpose unless their relevance to the facts of the case is properly articulated.

Thereafter the High Court states without any rational basis “*this Court is of the view that Sundaranathan (defendant’s husband) has entered into the land with leave and license. A person who has entered into possession of land in one capacity is presumed to continue to possess it in the same capacity*” and sets aside the judgment of the District Court on the premise that the defendant did not prove prescriptive title. As the District Judge correctly states after analysing the evidence, the plaintiff did not prove that the 1st defendant’s husband came into possession of the land with the leave and licence of anybody. If this is not proved by the plaintiff, on the facts and circumstances of the case, the defendant’s claim for prescriptive title is bound to succeed.

The two questions of law on which leave to appeal was granted and the answers thereto are as follows:

Q. Did the High Court err in law in granting ejectment without the declaration of title?

A. In the circumstances of this case, yes.

Q. Did the High Court err in law in holding that the 1st defendant's husband is a licensee of the plaintiff's predecessor in title?

A. Yes.

I set aside the judgment of the High Court and restore the judgment of the District Court. The appeal is allowed with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court