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 Section 5C(1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC. Appeal No. 232/2017

SC. HC. CA. LA. No. 428/2012

H.C.C.A. Case No.
CP/HCCA/KAN/141/2009 (FA)

District Court of Hatton
Case No. L/409

1. M. L. M. Ameen
2. Mahmud Riad Ameen

Both of

No. 01, Col.
T. G. Jayawardana Mawatha,
Colombo 03.
Plaintiff-Respondent-Petitioners

Vs.

Ammavasi Ramu alias Ramaiah
South Wanarajah Estate,
Dikoya.
Defendant-Appellant-Respondent

BEFORE : Sisira J. de Abrew, Acting CJ.

Murdu N. B. Fernando, PC, J.

E. A. G. R. Amarasekara, J.

COUNSEL : Faisz Musthapha, PC, with Thushani Machado instructed by G.S. Thavarasa for the Plaintiff-Respondent-Appellants.

Uchitha S. Bandara instructed by S. Yogarajah for the Defendant-Appellant-Respondent.

ARGUED & DECIDED ON : 22.01.2019

Sisira J. de Abrew, Acting CJ.

Heard both Counsel in support of their respective cases.

This is an appeal against the Judgment of the Civil Appellate High Court dated 04.09.2012 wherein the learned Judges of the Civil Appellate High Court dismissed the Plaintiffs' action and also dismissed the cross claim of the Defendant.

Being aggrieved by the said judgment, the Plaintiff-Respondent-Appellants (hereinafter referred to as Plaintiff-Appellants) have appealed to this Court.

Learned District Judge by his judgment dated 19.07.2009 held the case in favour of the Plaintiff-Appellants and ordered them to pay Rs.100,000/-(Rupees One Hundred Thousand) as compensation for the improvements done to the relevant house by the Defendant.

This Court by its order dated 24.11.2017 granted leave to appeal on questions of law set out in paragraph 9 (a), (b) and (f) of the petition of appeal dated 12.10.2012 which are stated below:-

1. Did the Provincial High Court err and/or misdirect itself in law by failing to appreciate that the Petitioners' cause of action was for ejection of the Respondent on the basis of termination of leave and licence?

2. Did the Provincial High Court err and/or misdirect itself in law by concluding that a declaration of title essential to maintain the Petitioners' action?

3. Did the Provincial High Court err and/or misdirect itself in law by failing to appreciate that the sketch marked "P2" annexed to the Plaint was sufficient compliance with Sections 40 and 41 of the Civil Procedure Code?

Learned District Judge by his judgment decided that the Defendant-Appellant-Respondent (hereinafter referred to as the

Defendant-Respondent) was a licensee of the Plaintiff. Learned Judges of the Civil Appellate High Court too in their judgment concluded that the Defendant-Respondent was a licensee of the Plaintiff.

We note that the Defendant-Respondent has failed to appeal to this Court against the said judgment. Therefore, he has admitted the fact that he was a licensee of the Plaintiff.

The learned Judges of the Civil Appellate High Court had dismissed the Plaintiff's action on the basis that the Plaintiff has failed to set out an averment asking for declaration of title. But, we note that the issue No. 01 raised by the Plaintiff to the effect that whether the Plaintiff was the owner of the land described (Wanarajah Estate) in the Plaint. There was no objection raised to this issue. Therefore the trial in the District Court has proceeded on the issue whether the Plaintiff was the owner of the land. The learned District Judge was duty bound to answer the said issue. The learned District Judge has answered the above issue in the affirmative.

Therefore when the learned Civil Appellate High Court Judges decided to dismiss the Plaintiff's action on the basis that the Plaintiff had not asked for a declaration of title, the said conclusion, in our view, is wrong.

Now the question that must be decided is whether the Defendant-Respondent who is a licensee is entitled to claim the plea of prescription.

In finding an answer to the above question, I am guided by **Section 116 of the Evidence Ordinance** which reads as follows:-

"*No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and*

no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

I am further guided by the judicial decisions of this Court on this question.

In the case of **De Soysa v. Fonseka, 58 NLR, page 501**, this Court held as follows:-

"*When a user of immovable property commences with leave and licence the presumption is that its continuance rests on the permission originally granted. Clear and unmistakable evidence of the commencement of an adverse user thereafter for the prescriptive period is necessary to entitle the licensee to claim a servitude in respect of the premises."*

In the case of **Siyaneris v. Jayasinghe Udenis de Silva, 52 NLR page 289 Privy Council** held as follows:-

"*If a person goes into possession of land as an agent for another, prescription does not begin to run until he has made it manifest that he is holding adversely to his principal."*

In the case of **Reginald Fernando vs. Pabilinahamy and others 2005 1SLR page 31**, this Court observes the following facts:-

"The plaintiff-appellant ("the plaintiff") instituted action against the original defendant ("the defendant") for ejectment from a cadjan shed where the defendant and his father had resided for four decades. The evidence proved that the defendant's father J was the carter under the plaintiff's father. After the death of J the defendant continued to reside in the shed as a licensee. On 22.03.1981 the plaintiff had the land surveyed by a surveyor; and on 06.01.1987 sent a letter to the defendant through an attorney-at-law calling upon the defendant to hand over the vacant possession of the shed which as per the said letter the defendant had been occupying as a licensee. The defendant failed to reply that letter without good reason for the default. The defendant also falsely claimed not to have been aware of the survey of the land. In the meantime the plaintiff had been regularly collecting the produce of the land. The defendant claimed prescriptive title to the land. The District Judge gave judgment for the plaintiff. This was reversed by the Court of Appeal."

This Court held as follows:-

"Where the Plaintiff (licensor) established that the Defendant was a licensee, the Plaintiff is entitled to take steps for ejectment of the Defendant whether or not Plaintiff was the owner of the land.

The Court of Appeal erred in holding that the District Court had entered judgment in favour of the Plaintiff in the absence of sufficient evidence to prove that the Plaintiff was either the owner or that the Defendant was his licensee".

I would also like to consider the judicial decision in **Ruberu and Another v Wijesooriya 1998 1SLR page 58 wherein Justice Gunawardane** held as follows:-

"Whether it is a licensee or lessee, the question of title is foreign to a suit in ejectment against either. The licensee (defendant-respondent) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of the plaintiff-appellant without whose permission he would not have got it. The effect of Section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must first quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-respondent is perforce an admission of the fact that the title resides in the plaintiff."

When we examine the evidence of the Defendant-Respondent, we can come to the conclusion that the Defendant-Respondent in his evidence has admitted that the Plaintiff is the owner of the land. The Plaintiff-Appellants, by letter marked P5 dated 30.04.2004, has terminated the leave and licence granted to the Defendant-Respondent. Applying the principles laid down in the above judicial

decisions, I hold that when a person starts possessing an immovable property with leave and licence of the owner, the presumption is that he continues to possess the immovable property on the permission originally granted and such a person or his agents or heirs cannot claim prescriptive title against the owner or his heirs on the basis of the period he possessed the property.

For the above reasons we hold that the Defendant-Respondent is not entitled to claim prescriptive title in this case. We have earlier held that the learned Judges of the Civil Appellate High Court were wrong when they rejected the Plaintiff's case.

For the above reasons we answer the 2nd question of law as follows:-

"Since the Plaintiff-Appellants have raised an issue whether the Plaintiff-Appellants are the owner of the land in dispute, Provincial High Court has erred on this matter. Therefore the 2nd question of law is answered in the affirmative. The 1st question of law is also answered in the affirmative. The 3rd question of law does not arise for consideration."

For the above reasons, we set aside the judgment of the Civil Appellate High Court and affirm the judgment of the learned District Judge.

The learned President's Counsel appearing for the Plaintiff-Appellants submits that the Plaintiff-Appellants are prepared to

pay Rs.100,000/= (Rupees One Hundred Thousand) ordered by the learned District Judge to the Defendant- Respondent.

Appeal allowed.

ACTING CHIEF JUSTICE

Murdu N. B. Fernando, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

E. A. G. R. Amarasekara, J.

I agree.

JUDGE OF THE SUPREME COURT

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