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

In the matter of an appeal with leave to appeal obtained from this Court.

GALLAGE DON SUNIL SHANTHA
No. 12, Puttalam Road, Nikaweratiya.
PLAINTIFF

S.C. Appeal No.226/14
S.C. HCCA LA No:352/13
NWP/HCCA/KUR No.139/2007(F)
D.C. Maho Case No. 5999/L

VS.

DISSANAYAKE MUDIYANSELAGE KUSUMAN PATRICIA
No. 10, Puttalam Road, Nikaweratiya.
DEFENDANT

AND

DISSANAYAKE MUDIYANSELAGE KUSUMAN PATRICIA
No. 10, Puttalam Road, Nikaweratiya.
DEFENDANT- APPELLANT

VS.

GALLAGE DON SUNIL SHANTHA
No. 12, Puttalam Road, Nikaweratiya.
PLAINTIFF-RESPONDENT

AND NOW BETWEEN

GALLAGE DON SUNIL SHANTHA
No. 12, Puttalam Road, Nikaweratiya.
PLAINTIFF-RESPONDENT -PETITIONER/APPELLANT

VS.

DISSANAYAKE MUDIYANSELAGE KUSUMAN PATRICIA
No. 10, Puttalam Road, Nikaweratiya.
DEFENDANT-APPELLANT-RESPONDENT

BEFORE:	Sisira J. De Abrew J. Upaly Abeyrathne J. Prasanna Jayawardena PC, J.
COUNSEL:	Niranjan de Silva for the Plaintiff-Respondent-Petitioner/Appellant. W.Dayaratne, PC, with Ms. D.N.Dayaratne and Uditha Gunathilake for the Defendant-Appellant- Respondent.
WRITTEN SUBMISSIONS FILED:	By the Plaintiff-Respondent-Petitioner/Appellant on 07th January 2015. By the Defendant-Appellant-Respondent on 05th November 2015.
ARGUED ON:	03rd February 2017.
DECIDED ON:	22nd June 2017.

Prasanna Jayawardena, PC, J.

On 14th August 2002, the Plaintiff-Respondent-Petitioner/Appellant ["the plaintiff"] filed this action in the District Court of Maho praying for an Order that he is the owner and possessor of the land and premises described in the schedule to the plaint ["පහත උපලේඛනයේ සඳහන් ඉඩම් කොටසේ සහ එය පිහිටි ගොඩනැගිල්ලේ පැමිණිලිකරුගේ අයිතිය හා බුක්තිය තහවුරු කිරීමේ නියෝගයක් ලබා දෙන මෙන් ද"] and for an Order directing the Defendant-Appellant-Respondent ["the defendant"] to refrain from interfering with the plaintiff's possession of these land and premises.

The schedule to the amended plaint described the land and premises which are the subject matter of this action as an allotment of land with a shop premises thereon, situated adjacent to the main road [*ie:* Puttalam Road] in Nikaweratiya town and bearing Assessment No.12 (and No. 126/1). The evidence shows that, these shop premises are in a building which has two units. One unit of that building is the shop premises bearing Assessment No. 12 (and No.126/1), Puttalam Road, Nikaweratiya, which is the subject matter of this action. The other unit in that building, is, admittedly, occupied by the defendant. The unit occupied by the defendant is said to bear Assessment No. 10 (and No.126A) Puttalam Road, Nikaweratiya.

In the plaint itself, the plaintiff states that, the land described in the schedule is State land. However, the plaintiff claims that he has possessed the land and premises bearing Assessment No.12 for several years and that, the defendant has recently attempted to disturb the plaintiff's possession.

In her answer, the defendant denied that the land and premises had been correctly described in the schedule to the plaint and the defendant set out a description of the land in the two schedules to the answer. She denied that the land which the plaintiff refers to, is State land. She further pleaded that, her father had title to the land described in the schedules to the answer and that there is a building with two units standing on this land, which bear Assessment No.s 10 and 12 respectively. She claimed she now has title to the said land and premises, which she derived from her father. She pleaded that, prior to 1984, the plaintiff had entered the unit bearing Assessment No. 12 with the permission of her father and later on a monthly lease from her father. The defendant claimed that the plaintiff had subsequently left the premises but that, recently, the plaintiff had forcibly placed a person named Senanayake in possession of the premises. On this basis, the defendant prayed that the plaintiff's action be dismissed, that a Declaration be made that the defendant has title to the entire land and premises described in the schedules to the plaint, that the plaintiff be ejected from the said land and premises and for the recovery of damages from the plaintiff.

At the trial, the plaintiff raised seven issues. It is significant to note that, although the plaintiff had prayed in the plaint for an Order that he is the owner and possessor of the land, the plaintiff did *not* raise an issue as to whether he was the *owner* of the land. Instead, he raised issues as to whether the land was a State land and whether the land was in his possession and, if so, whether the plaintiff is entitled to the reliefs prayed for in the plaint. Thus, on the basis of the pleadings in the plaint and the issues raised by the plaintiff, this action has to be regarded as a possessory action filed by the plaintiff.

Issue No. [8] raised by the defendant is whether the plaintiff could maintain his action without any title or right to the land which is the subject matter of this action. The other nine issues raised by the defendant are based on whether the *defendant* has *title* to the land and premises which are the subject matter of this action and whether the defendant had been in possession of the said land and premises until the plaintiff had forcibly placed Senanayake in possession, and, if so, whether the defendant is entitled to the reliefs prayed for in the answer. Thus, on the basis of the pleadings in the answer and the issues raised by the defendant, the defendant's claim in reconvention has to be regarded as a *rei vindicatio* action.

The plaintiff gave evidence and stated that he had built the shop premises which he now claims, on State land, and that he has been in possession since 1985, but that the defendant had recently sought to interfere with his possession. The plaintiff led the evidence of another witness who stated that he had helped the plaintiff to build this shop premise. The plaintiff led the evidence of an officer from the Provincial Land Commissioner's Department who confirmed that, the land which is the subject matter of this case, is State land. This witness further stated that, the plaintiff is in possession of the unit bearing Assessment No.12 [which is the unit described in the schedule to the plaint]. This witness also stated that, the State has not issued any permits in respect of the entire land but that, the process of issuing permits to

claimants was underway. The plaintiff also led the evidence of the Colonization Officer who confirmed that the land which is the subject matter of this action is State land. The plaintiff produced the documents marked **"පැ1"** to **"පැ8"** in his efforts to prove that he was in possession.

The defendant gave evidence and stated that, her father built two shop premises on the land described in the schedule to the answer and that these two shop premises bore Assessment No.s 10 and 12 respectively. She said that her father transferred the title to the entire land and both shop premises to her, by Deed of Transfer No. 6504 dated 07th October 1997, which was marked **"වි 4"**. She said that her father had obtained title to the land under and in terms of the decree entered in the District Court of Maho Case No. 1074/L and produced a certified copy of the judgment in that case and the order in the related appeal marked **"වි 3"**. The defendant said that her father had permitted the plaintiff to occupy the unit bearing Assessment No.12 and that the plaintiff had later vacated the premises

When the defendant was cross examined, it transpired that, District Court of Maho Case No. 1074/L had been instituted by one Tennekoon against the defendant's father and that, in the answer filed by the defendant's father in that case, the defendant's father had specifically pleaded that, the land which is the subject matter of this case, is State land. Further, in the course of his evidence in that case, the defendant's father had stated that, the land is State land. A certified copy of the pleadings, proceedings and judgment in District Court of Maho Case No. 1074/L was produced by the plaintiff, marked **"පැ 10 ඊ"**.

In his judgment, the learned District Judge observed that, the Deed No. 6504 marked **"වි 4"** which the defendant relies on to prove her title, clearly states that, the defendant's father claims title to the land under and in terms of the decree entered in the District Court of Maho Case No. 1074/L. The learned District Judge observed that, however, the defendant's father had admitted that the land was State land in his answer filed in the District Court of Maho Case No. 1074/L. The learned District Judge further observed that, the judgment entered in that case had only dismissed Tennekoon's case against the defendant's father and that it had not been held that the defendant's father had title to the land. The learned District Judge observed that, the evidence of the officer from the Provincial Land Commissioner's Department and the Colonization Officer further established that the relevant land was State land and that permits have not been issued as yet. The learned District Judge held that, the defendant had failed to prove that the State had issued a permit to her, or conveyed the rights to the land to the defendant, in any other manner.

In these circumstances, the learned District Judge held that the land was State land.

Next, the learned District Judge held that, the oral evidence before the Court together with the documents produced by the plaintiff marked **"පැ1"** to **"පැ4"** and **"පැ6"** to **"පැ8"** prove that, the plaintiff has been in possession of the Unit bearing

Assessment No.12 from 1982 onwards. The learned District Judge also held that, the defendant was threatening to disturb the plaintiff's possession.

On the aforesaid basis, the learned District Judge answered the seven issues raised by the Plaintiff in the affirmative and the ten issues raised by the defendant in the negative and then entered judgment for the plaintiff, `as prayed for in the plaint'.

At this point itself, it should be stated that, the learned District Judge erred when he entered judgment `as prayed for in the plaint', since doing so resulted in the issue of an Order declaring that the plaintiff was the owner of the land. That Order should not have issued since the District Judge himself had held that, the land was State land.

However, when the learned District Judge entered judgment `as prayed for in the plaint', the District Court has also issued the *other* Orders prayed for in the plaint against the defendant - *ie:* an Order that, the plaintiff was entitled to the possession of the land and an Order directing the defendant to refrain from interfering with the plaintiff's possession of the land and premises. The fact that, the land is State land will not necessarily preclude the issue of these two Orders in favour of the plaintiff against the defendant since the two Orders could be validly issued against the defendant if the plaintiff had succeeded in proving the requisites of a possessory action. Therefore, the correctness of these two Orders remains to be considered.

The defendant appealed to the High Court of Civil Appeal holden at Kurunegala. The learned High Court Judges observed that, since the land was State land, the real question in issue was whether it had been proved that, the plaintiff had been in possession of the shop premises which are the subject matter of this action and was entitled to the Orders prayed for in the plaint relating to the possession of the said land and premises. In this regard, the learned High Court Judges held that the evidence established that, the defendant's father had been in *"long continued and uninterrupted possession"* of the land and, on that basis, allowed the appeal and set aside the judgment of the District Court.

The plaintiff sought leave to appeal to this Court. This Court granted the plaintiff leave to appeal on the following question of law:

(i) Did the Civil Appellate High Court of Kurunegala err in law in holding that the Respondent's father had been in possession of Assessment No. 12, Puttalam Road, Nikaweratiya ?

Learned President's Counsel appearing for the defendant framed the following further question of law:

(ii) Did the District Court err in granting relief prayed for by the Plaintiff by his amended plaint date 08.08.2003, by judgment dated 14.4.2007 ?

For purposes of convenience, the aforesaid second question of law can be considered first.

In this regard, the learned District Judge held that, the land which is the subject matter of this action is State land. The High Court did not disagree. The plaintiff admits that the land is State land. Two official witnesses confirm that fact. In his answer filed in D.C.Maho Case No. 1074/L, the defendant's father admitted that the land is State land and, in his evidence, he stated "**මේ ගොඩනැගිල්ල තිබෙන ඉඩම ආණ්ඩුවේ ඉඩමක්** ". Although the defendant denied that this was State land and claimed she had title, the defendant did not suggest that she had obtained any rights to the land by way of a grant or permit issued by the State. The Deed of Transfer No. 6504 marked **"වි 4"** under which the defendant claims title, was executed by her father, as the "Vendor". However, in that Deed, the defendant's father has only stated that he has *possession* [භුක්තිය] of the land. He has *not* claimed that he has title to the land. Therefore, **"වි4"** does not establish that the defendant has *title* to the land. Thus, it is clear that, the learned District Judge correctly held that the land which is the subject matter of this action, was State land.

Since the land is State land, the plaintiff was not entitled to the declaration of title he has prayed for in the plaint. Therefore, as observed earlier, the learned District Judge erred when he entered judgment `as prayed for by the plaintiff'.

In these circumstances, the second question of law raised by learned President's Counsel appearing for the defendant is answered as follows: the learned District Judge erred when he entered judgment `as prayed for by the plaintiff' and, thereby, issued an Order declaring that, the plaintiff has title to the land. That Order could not issue since this is State land. Accordingly, the learned High Court Judges correctly set aside the Judgment of the District Court in that respect only. However, the correctness of the Judgment of the High Court setting aside the aforesaid *other* two Orders issued by the District Court, still remains to be considered.

Next, the first question of law, which asks whether the learned High Court Judges erred when they held that, the defendant's father had been in possession of the land and premises which are the subject matter of this action, has to be considered.

The learned District Judge held that, the evidence established that, from 1982 onwards, the plaintiff had been in possession of the premises which are the subject matter of this action. In this regard, it is seen that: the Grama Sevaka's letter dated 03rd August 2002 marked **"පැ1"** certifies that the plaintiff resides at these premises on that date; the Electoral List dated 06th August 2002 marked **"පැ2"** shows that, the plaintiff resided at these premises on 28th May 2002; the Business Registration Certificate marked **"පැ3"** states that, the plaintiff carried on a bicycle repair shop at these premises on 20th August 1991; the Mediation Board Certificate marked **"පැ4"** shows that when the defendant made an application to the Mediation Board on 14th June 2002, she stated that the plaintiff resides at these premises at that time; the

Driving License marked **"පැ6"** states that, the plaintiff's residential address on 03rd July 1982 was No.12, Puttalam Road, Nikaweratiya – *ie:* the premises which are the subject matter of this action; the Sri Lanka Telecom Receipt dated 09th December 1996 marked **"පැ7"** shows that the plaintiff had a telephone registered in his name at the premises in December 1996; and the People's Bank Account Statement for February/March 2002 marked **"පැ8"** indicates that the plaintiff resided at the premises at that time.

In addition to the aforesaid documentary evidence which established that, the plaintiff was in possession of the premises which are the subject matter of this action, the officer from the Provincial Land Commissioner's Department clearly stated that, the plaintiff was in possession of these premises [වරිපනම් අංක 12 හි දැනට මෙම පැමිණිලිකරු පදිංචි වෙලා ඉන්නවා]**.**

On the other hand, apart from her claim made when she gave evidence that, she had possession of the premises which are the subject matter of this action, the defendant was unable to produce any documents to prove such possession. In fact, the Electricity Bill marked **"වි7"** only show that the defendant was the user of electricity supplied to the premises bearing Assessment No.10 and the Electoral Lists marked **"වි9"** and **"වි10"** only show that the defendant was residing at the premises bearing Assessment No. 126/A , which is the other Number used to refer to the premises bearing Assessment No. 10, Puttalam Road, Nikaweratiya. The Assessment Register marked **"වි5"** and Rate Payment Receipt marked **"වි8"** produced by the defendant do not help prove that the defendant was in possession. These documents only establish that the defendant has registered her name as the owner of the premises under and in terms of the aforesaid Deed marked **"වි4"**.

Further, in her Statement of Objections in reply to the plaintiff's prayer for an interim injunction restraining the defendant from interfering with the plaintiff's possession of the premises bearing Assessment No. 12, the defendant has admitted that, the plaintiff was residing and occupying the premises bearing Assessment No. 12. Thereafter, at the time of filing her Statement of Objections in open Court on 27th September 2002, the defendant has stated that she is in occupation of the premises bearing Assessment No. 10 and that she undertakes not to interfere with the plaintiff's possession of the adjoining premises which are described in the schedule to the plaint [*ie:* the premises bearing Assessment No. 12], until the determination of the action.

In the light of the aforesaid facts, the learned District Judge correctly held that, at the times relevant to this action, the plaintiff was in possession of the premises which are the subject matter of this action. In this connection, it is relevant to also note that, the plaintiff maintained that, he was in possession of the premises in his own right and that he does not recognise any right of the defendant in respect of the premises.

A perusal of the lengthy judgment of the learned High Court Judges reveals that, the learned Judges have relied on the evidence and judgment in D.C.Maho Case No. 1074/L to reach their conclusion that, in the early 1980s, the defendant's father had been in possession of the premises which are the subject matter of this action. However, that action was in respect of the premises bearing Assessment No. 10 which are now, undisputedly, occupied by and possessed by the defendant. The premises which are the subject matter of this action are the premises bearing Assessment No. 12. Therefore, the evidence and judgment in D.C.Maho Case No. 1074/L cannot be relied on to prove the defendant's possession of the premises which are the subject matter of this action. Further, the learned High Court Judges failed to consider whether the defendant had proved that she had taken possession of the premises bearing Assessment No. 12 at any stage or even claimed any right to possession against the plaintiff – either before or after her father's death in 1998 – until the defendant made the police complaint marked **"වී4"** and made an application to the Mediation Board two months before the plaintiff instituted this action.

In these circumstances, substantial doubt arises as to the correctness of the Judgment of the High Court with regard to the setting aside of that part of the Judgment of the District Court which decided to issue the Orders prayed for in the plaint with regard to the plaintiff's right to possession against the defendant. Therefore, if this appeal is to be decided on its merits, it will be necessary to more closely examine whether the plaintiff had proved the requisites of a possessory action and also whether the plaintiff was entitled to maintain a *quia timet* action.

However, there is no need to consider these issues any further since, when this appeal was heard, both learned Counsel for the Plaintiff-Respondent-Petitioner/ Appellant and learned President's Counsel for the Defendant-Appellant-Respondent agreed that, the plaintiff was in possession of the premises which are the subject matter of this action at the times relevant to this action and that the plaintiff has remained in possession since then. It was further agreed that, the parties will maintain this *status quo* without prejudice to their rights to seek to obtain a permit or grant of the land from the State and/or institute fresh actions if required.

In view of the aforesaid agreement of the parties and to give effect to that agreement, it is necessary, for purposes of clarity, to refer to the concluding part of the Judgment of the High Court which stated, *"The question what is material as far as this case is concerned is that whether the respondent has title to obtain the reliefs he claims. ….. It is clear that whoever the owner of the land in question the respondent has no right to obtain a judgment against the appellant. This is the point raised by the appellant in suggesting issue No.08, her first issue. That issue should have been answered in the appellant's favour. Therefore, it is clear that the learned district judge could not have given the reliefs prayed for by the appellant. In the circumstances, the appeal is allowed with costs and the judgment of the learned district judge is set aside. The action of the respondent is dismissed with costs"*.

It has to be noted that, Issue No.[8] which the learned High Court Judges referred to, was as to whether the plaintiff could maintain his action without any right or title to the land. It is clear that, even if that issue was decided against the plaintiff, it will not result in the defendant becoming entitled to the Declaration of title, Order for ejectment and Order for recovery of damages at the rate of Rs.3,000/- per month prayed for in the defendant's answer. Instead, if the defendant is to obtain these reliefs, she should have proved the requisites which would entitle her to the said reliefs. But, in their judgment as quoted above, the learned High Court Judges failed to state their determination regarding the reliefs prayed for in the defendant's petition of appeal to the High Court, which included prayers for the aforesaid reliefs prayed for in the answer, although the learned High Court Judges have stated that the defendant's appeal is allowed. The learned High Court Judges should have ensured that, their determination with regard to the reliefs prayed for by the defendant was clearly stated in their judgment so as to avoid any doubt and confusion which can give room for injustice to be caused to a party.

Therefore, to in order to remove doubt, I hold that, the defendant is not entitled to the Declaration of title prayed for in the answer, as this is State land. Next, since it has been agreed that, the plaintiff will remain in possession, the defendant is not entitled to the other two reliefs prayed for in the answer.

In the aforesaid circumstances, the Judgment of the High Court is set aside. The plaintiff's action and the defendant's claim in reconvention are both dismissed. Both parties are free to pursue their respective claims, if any, to the land and premises which are the subject matter of this action, by making appropriate applications to the State or Provincial authorities and, if required, to institute actions or applications in a Court, to establish any such rights. In the meantime, as agreed by the parties, the plaintiff is entitled to remain in possession of the said land and premises until an order determining the person who is entitled to the possession of the said land and premises, is made by the appropriate State or Provincial Authority or Court. In the circumstances of this appeal, each party will bear their own costs.

Judge of the Supreme Court

I agree
Sisira J. De Abrew J

Judge of the Supreme Court

I agree
Upaly Abeyrathne J

Judge of the Supreme Court