

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

In the matter of an Appeal with leave to appeal having been granted by the Supreme Court under Article 127 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Appeal No. 146/2013

S.C.HC. (CALA) No. 98/2013
CP/HCCA/CA No. 139/10
D.C. Kandy Case No. 2644/RE

1. Dr. Rasiah Jeyarajah,
2. Rassiah Yogarajah,
Both of No. 43/A, Yatinuwara Street,
Kandy . appearing by their duly
appointed Power of Attorney holder
Sanmugam Sabhapathi Ganeshan.

Plaintiffs

Vs.

Yogambihai Thambirajah nee-
Renganathan Pillei,
No. 43, Yatinuwara Street,
Kandy .

Defendant

And

Yogambihai Thambirajah nee-
Renganathan Pillei,
No. 43, Yatinuwara Street,
Kandy .

Defendant-Appellant

Vs.

1. Dr. Rasiah Jeyarajah,
2. Rassiah Yogarajah,
Both of No. 43/A, Yatinuwara Street,
Kandy . appearing by their duly
appointed Power of Attorney holder
Sanmugam Sabhapathi Ganeshan.

Plaintiffs-Respondents

And Now

1. Dr. Rasiah Jeyarajah,
2. Rassiah Yogarajah,
Both of No. 43/A, Yatinuwara Street,
Kandy . appearing by their duly
appointed Power of Attorney holder
Sanmugam Sabhapathi Ganeshan.

**Plaintiffs-Respondents-
Appellants**

Vs.

Yogambihai Thambirajah nee-
Renganathan Pillei,
No. 43, Yatinuwara Street,
Kandy .

**Defendant-Appellant-
Respondent**

* * * * *

BEFORE : **S. Eva Wanasundera, PC. J**
Buwaneka Aluwihare, PC.J. &
Upaly Abeyrathne,J.

COUNSEL : Ikram Mohamed, PC. with S. Mitrakrishnan for the Plaintiff-
Respondent-Appellants .

Sanath Weerasinghe for the Defendant-Appellant-
Respondents.

ARGUED ON : **24.06.2015**

DECIDED ON : **12.08.2015**

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S. Eva Wanasundera, PC. J.

This is an appeal arising from a judgment of the Civil Appellate High Court dated 12.02.2013. Leave was granted on 21.10.2013 on the questions set out in paragraphs 28(a), (b), (c), (d) and (e) of the Petition dated 18.03.2013. I find that paragraph 28(e) does not pose a question of law to be decided. Therefore, the questions of law to be decided by this Court are as follows:-

- 28(a) Is the said judgment contrary to law and against the evidence available in the record?
- (b) Did the High Court of Civil Appeal err in holding that this action should be viewed as rei vindicatio action and not as one based on privity of contract?
- (c) In any event did the High Court of Civil Appeal misdirect itself in fact and in law when deciding that in every case where a declaration of title is sought it automatically becomes a rei vindicatio action disregarding the basic principles of law set out in Pathirana vs. Jayasundara and Majubudeen and others vs. Simon Perera?
- (d) Did the High Court of Civil Appeal in any event err by holding that the entire action should be dismissed when at least the relief of ejectment could have been granted by reducing the scope of relief that could be granted to the Petitioner, particularly in view of the fact that the lease agreement was accepted by the High Court as having been proved and the fact that the High Court of Civil Appeal rejected the defense position of the Respondent being a statutory tenant?

The property in question is business premises in the town of Kandy contained in the Schedule to the plaint. The Defendant is the person who took the premises on lease from the Plaintiffs who are brothers. The Defendant's husband was the first lessee. After his death the Defendant herself entered into a lease agreement with the Plaintiffs. The lease ended but the Defendant did not vacate the place.

The Plaintiffs filed action on 21.5.2003 praying for a declaration that the property in the Schedule to the plaint be declared to be a property owned by the Plaintiffs, for ejectment of the Defendant from the premises, and damages. The 1st Plaintiff gave evidence and produced P1 to P4, ie. lease agreements P1, P3 and P4 and a letter P2 promising that the Defendant will vacate the premises on or before 30.04.2003 which she failed to do. In 2009, the Defendant gave evidence and accepted that she has not paid the lease rent according to the lease agreement she had signed from the month of April, 2003. She said that her husband came into the shop in the year 1959 as an employee of the Plaintiffs and later on became a lessee on 20.07.1996 by lease agreement No. 1119, marked as P3. Thereafter her husband and one Gunaseelan

who was a partner in the business signed a lease at the end of the lease period in P3. The said lease No. 1320 was signed on 20.08.1998. It was marked as P4. Those agreements had ended on 20.08.2000. Thereafter Gunaseelan had left the premises. Then only the Defendant's husband carried on the business till he died. He died on 22.11.2001. On 01.6.2002 another lease agreement, No.1865 marked as P1 was signed by the Defendant for 10 months which was effective from 01.6.2002. When that lease period also ended, the Defendant did not leave the premises. Letter P2 was signed by the Defendant promising to leave the premises on or before 30.4.2003. The damages per each day after that was agreed upon as Rs. 4000/- per day. This amount was contested by the Defendant and it was noted by the District Judge that in all the lease agreements there was a clause that Rs.2000, Rs. 2500 etc. was agreed as damages for a day to be paid for over staying and in the last agreement, it was an increased amount as Rs.4000/- per day. It is to be noted that a clause for damages was contained in every agreement that was signed by the Defendant and her husband. The Defendant admitted that she was staying in the premises without paying any lease rental from 2003.

The District Judge at the end of the trial granted relief as prayed for in the plaint including the declaration that the Plaintiffs are the owners of the property in suit. The Civil Appellate High Court Judges reversed the decision of the District Court on the basis that there was not a single issue raised regarding title of the Plaintiffs and title was not proved and therefore the Plaintiffs were not entitled to the reliefs prayed for and granted by the District Judge.

The High Court held that it was a rei vindicatio action. The Plaintiff-Appellants argued that the District Court case is not a re-vindicatio action but an action based on privity of contract; the Defendant was an over holding lessee; the Defendant is stopped from denying the Plaintiff's title to the premises. The Defendant-Respondent argued that she is a statutory tenant. Incidentally the business is that of selling mainly coconut oil, cattle feed made with coconut dust etc.

I observe that the action filed by the Plaintiffs in the District Court **is not by itself only 'a rei vindicatio' action. The action was mainly intended to eject the Defendant who was an over-holding lessee.** The main theme of the action and the main theme

in the evidence placed before Court by the lawyer of the Plaintiff-Appellant seems to be “ejectment of the over-holding lessee” and nothing else. It is true that the Plaintiff-Appellant’s lawyer had failed to raise any issues with regard to title of the Plaintiffs. I further observe that in the plaint dated 21.5.2003 in paragraph 2 the Plaintiff has pleaded the title deeds of the two Plaintiffs and annexed the said title deeds with markings on the same and pleaded them as part and parcel of the plaint. It reads thus:-

“මෙහි පහත උපලේඛණයේ විස්තර කර ඇති දේපල මහනුවර ප්‍රසිද්ධ නොතාරිස් පී බාලසිංහම් මහතා විසින් 1979-04-25 වෙනි දින සහතික කල අංක 4084 සහ 4085 දරණ සිත්තකකර ඔපපු අනුව පැමිණිලිකරුවන්ට අයිතිව භුක්ති විදින බවයි. එම ඔපපුවල සහතික පිටපත් පැ1 සහ පැ2 වශයෙන් ලකුණු කර මේ සමග මෙම පැමිණිලිලේම කොටසක් සහ කැබැල්ලක් ලෙස ආයාචනා කර සිටිමි.”

The Plaintiff’s lawyer, by mistake, I believe, has failed to frame an issue and lead the deeds in evidence at the trial. The deeds are dated 25th April, 1979 and are deeds of transfer. It is to be noted that the Defendant never took up a position that the Plaintiffs were not the owners, in their answer but has denied all the twelve paragraphs of the Plaint in one paragraph of her answer and narrated her stand in this matter in the rest of the answer. Anyway I am of the opinion that proof of title to the land has not been done formally in the District Court proceedings.

Leaving that aside, I observe that the Civil Appellate High Court had set aside the judgment of the District court on the basis that the action was a rei-vindicatio action **merely because a declaration of title was sought in limb 1 of the prayer to the plaint.**

The High Court Judges said that no issue was raised to that effect and title to the land was not proved and therefore the Plaintiff’s action should be dismissed. I find that the **High Court Judges also have failed to see or consider the other reliefs that were prayed for in the plaint filed in the District Court when dismissing the whole action, by their judgment.**

The main grievance of the Plaintiffs was that the Defendant’s husband came into the business premises on a lease, which was extended and when he died it was leased out to the Defendant for 10 months and gave an extension for one more month; the

Defendant gave a written undertaking that she would leave on a particular date; she did not leave; she is an over holding lessee and therefore a judgment to eject the Defendant was what was mainly sought by the Plaintiff.

Reading the evidence led at the trial it is obvious that the case heard by the District Judge was one of privity of contract. The Plaintiffs had a lease agreement which is a contractual relationship. I am of the view that the observations and conclusion of the District Judge with regard to the evidence given by the 1st Plaintiff and the Defendant should not be disturbed. The District Judge has believed the Plaintiff's evidence. The District Judge decided that the Defendant had no right to stay on, any longer, in the premises and that she should be evicted.

In **Pathirana Vs. Jasyasundera 58 NLR 169** Gratien J. has explained this situation very well, thus; **“A decree for a declaration of title may, of course be obtained by way of an additional relief either in a rei-vindicatio action proper (which is in truth an action in rem) or in a lessor's action against his over holding tenant(which is an action in personam). But in the former case, the declaration is based on proof of ownership; in the latter, on proof of the contractual relationship which forbids a denial that the lessor is the true owner ”.**

I am of the view that in the instant case the Civil Appellate High Court was wrong in totally dismissing the action without considering the evidence regarding the over stay by the over holding lessee. Even if the title to the premises was not proved by the Plaintiff, the High Court should have given the other reliefs prayed for by the Plaintiffs, for ejection of the Defendant on the over whelming evidence before Court with regard to the lessee having stayed much longer than agreed and not paying any lease rent to the Plaintiffs.

In a rei- vindicatio action, a Plaintiff comes to Court to get a declaration for title and that would be proof of his title to the land against the whole world. In the instant case **the relief praying for a declaration of title is incidental to the relief prayed on the contractual relationship which was the main relief begged of Court.** Apparently there was no contest on the ownership.

In the case *of Majubdeen and Others vs. Simon Perera 2003, 2 SLR 341*, it was again held that an action on privity of contract disentitles the Defendant from denying the Plaintiff's title. In fact no evidence was led formally to prove title; the Plaintiff based his case on the footing that he had inherited the premises from his father. Edissuriya, J. clearly said that even though the pleaded title was not proved, **on the basis of privity of contract, the question of title did not arise and the Defendants were disentitled from denying the Plaintiff's title.** I am of the view that the moment that a lease agreement is admitted, the need to prove title to the premises in question does not arise. The lessor is entitled to get the over holding lessee ejected from the premises.

Accordingly, I answer the questions of law raised at the commencement of the hearing of this case before this Court, in favour of the Appellants. I hold that judgment of the Civil Appellate High Court was contrary to law and against the evidence available on record. **The present action is not a rei-vindicatio action but it is an action based on privity of contract.** Every action where a declaration of title is sought does not automatically become a rei-vindicatio action. **The decision in *Majubdeen and Others vs. Simon Perera 2003, 2 SLR 341* and *Pathirana Vs. Jasyasundera 58 NLR 169* have set down the law to be applied in this kind of situation.**

I set aside the judgment of the High Court of Civil Appeal of the Central Province holden in Kandy dated 12.2.2013. I affirm the judgment of the District Court of Kandy dated 04.6.2010. The Appeal is allowed. However, I order no costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC.J.

I agree.

Judge of the Supreme Court

Upaly Abeyrathne, J.

I agree.

Judge of the Supreme Court

