

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

Saraswathie Duraisamy,
No. 22,
Approach Road,
Fruithill,
Hatton.

SC APPEAL 69/2020

Plaintiff

SC HCCA LA No. 286/19

**WP/HCCA/Colombo
Case No. 03/14/F**

**District Court of Colombo
Case No.21632/L**

Vs.

S. Manickarasa,
No. 47/8,
Walls Lane,
Mutual,
Colombo 15.

Defendant

AND BETWEEN

S. Manickarasa,
No. 47/8,
Walls Lane,
Mutual,
Colombo 15.

Defendant-Appellant

Saraswathie Duraisamy,
No. 22,

Approach Road,
Fruithill,
Hatton.

Plaintiff-Respondent

AND NOW BETWEEN

Saraswathie Duraisamy,
No. 22,
Approach Road,
Fruit Hill,
Hatton.

Plaintiff-Respondent-Petitioner

S. Manickarasa,
No. 47/8,
Walls Lane,
Mutual,
Colombo 15.

Defendant-Appellant-Respondent

Before : **S. Thurairaja PC, J**
A. L. Shiran Gooneratne, J
K. Priyantha Fernando, J

Counsel : M.Nizam Kariapper, PC with M.I.M.
Iynullah and Ms. Arshada for the
Plaintiff-Respondent-Appellant.

V. Puvitharan, PC with G.A.Arunraj
and V.Rinogi for the Defendant-
Appellant-Respondent.

Argued on : 29.11.2023

Decided on : 23.01.2024

K. PRIYANTHA FERNANDO, J

1. The Plaintiff-Respondent-Petitioner (hereinafter referred to as the “plaintiff”), by plaint dated 13.12.2007, instituted action against the Defendant-Appellant-Respondent (hereinafter referred to as the “defendant”) at the District Court of *Colombo*, praying *inter alia*, for a declaration of title to the land of 5.50 perches described in the 1st Schedule to the plaint and for the ejectment of the defendant from the land of 1.686 perches described in the 2nd Schedule to the plaint.
2. After trial, the learned Additional District Judge pronounced Judgment on 29.01.2014 in favour of the plaintiff. Thereafter, the defendants filed an appeal against the Judgment of the learned District Judge, to the High Court of Civil Appeal of *Colombo*, upon which the learned Judges of the High Court by their Judgment dated 12.07.2019, allowed the appeal setting aside the District Court Judgment which was entered in favour of the plaintiff.
3. Being aggrieved by the decision of the learned Judges of the High Court of Civil Appeal, the plaintiff preferred this instant appeal, whereby this Court on 06.07.2020, granted leave to appeal on the following question of law:
 - 1) *Did the Civil Appellate High Court err in law when it held that the Defendant has prescribed to the property whereas the Defendant has admitted that he has entered the premises as a licensee?*
4. The main issue in the instant appeal is whether a person who entered a land as a licensee could claim prescriptive title over the same piece of land. In order to answer to the question of law raised, I shall also address the issue

as to whether a licensee would continue to remain as a licensee even when the licensor has died and the land had been passed onto his/her heirs, and whether he could claim prescriptive title, against the heirs of the owners of the land (his licensor), on the basis that he possessed the property for a period as per section 3 of the Prescription Ordinance.

Facts in Brief:

5. The plaintiff's case, as pleaded in the plaint, was that one *Kunchjipullai Poornam* (hereinafter referred to as "*Poornam*") (claimed to be the mother of the plaintiff) became owner of the land described in the first schedule to the plaint by virtue of Deed No. 909 dated 21st May 1979 attested by *T. J. E. N. Fernandopulle*, Notary Public.
6. On 30.11.1983, the said *Poornam* had created a Last Will (Will no. 2047, which is marked as ൧൨(අ)). In her Will, she had appointed her adopted daughter *Saraswathie Duraisamy* (the plaintiff) as the sole and universal heiress of all her estate and effects, as well as the executrix of her Will.
7. *Poornam* had died on 23.06.1989, and upon her death, the said Last Will had been duly administered and probate had been issued to the plaintiff in the District Court of Colombo Case No. 32407/T.
8. Thereafter, upon the conclusion of the District Court Case, the property had been conveyed to the plaintiff by Executrix Conveyance No. 2035 on 07.12.2000, upon which the plaintiff became the owner of the land described in the first schedule to the plaint in extent of 5.50 perches.
9. The issue in the instant case arises when the plaintiff alleged that the defendant had been in wrongful

occupation of the land described in the second schedule to the plaint, in extent of 1.686 perches, which as alleged by the plaintiff, is a part of the land described in the first schedule.

10. However, the defendant claims that he and his wife had been in exclusive occupation and, undisturbed and uninterrupted possession of the land in dispute, by a title adverse to, and/or independent of that of the plaintiff for more than ten years previous to the date of the action. The defendant claims that he has become the owner of the land by way of prescription in terms of Section 3 of the Prescription Ordinance.
11. The plaintiff contends that the defendant cannot obtain prescriptive title of the land in dispute, as the defendant had been occupying the land in the capacity of a licensee. During the hearing of this case, the learned President's Counsel for the plaintiff draws attention of this Court to the evidence of the defendant of the proceedings dated 28.08.2012 to show that the defendant has accepted that he came to the premises as a licensee.
12. The learned President's Counsel for the defendant in his written submissions submitted that, the defendant has never admitted that, he entered the land in dispute as a licensee of the plaintiff. The learned President's Counsel takes the position that he was only a licensee to *Poornam*, but had never been a licensee to the plaintiff.
13. The defendant's position was that the said *Poornam* gave the said portion of land to him and his wife, during their marriage, when dowry was being asked by them. The said *Poornam* had told the defendant to put up a hut and reside therein. Thereafter, the defendant and his family have lived in that premise up until today. The defendant submitted that *Poornam*, had never told them that they should leave when asked for.

14. Furthermore, the learned President's Counsel for the defendant submitted that, the alleged permission granted to the defendant by *Poornam* had lapsed when the said *Poornam* died on 23.06.1989. The learned President's Counsel for the defendant submitted that, upon the death of *Poornam*, no one had demanded the defendant and his wife to leave the premises. The defendant had been living in the premises since 02.06.1977 (from the date of their marriage) and that the defendant had therefore established adverse possession under and in terms of Section 3 of the Prescription Ordinance.

Answering to the Question of Law:

15. Having heard learned President's Counsel for both parties at the hearing, and at the perusal of the petition of appeal, the written submissions and the proceedings in the District Court, I shall now resort to answering the question of law before this Court.

16. The learned President's Counsel for the plaintiff takes the position that someone who entered the land in dispute as a licensee, cannot prescribe to the land. A person who enters a land as a licensee is estopped from denying the title of the licensor. For him to claim title over that land by prescription he must prove that his possession was adverse to the owner commencing from an overt act for a period specified in Section 3 of the Prescription Ordinance.

17. In the case of **Ashar v. Kareem, SC Appeal 171/2019, S.C. Minute dated 22.05.2023**, his Lordship Justice Samayawardhena stated that,

“A defendant who enters into a land in a subordinate character such as a tenant, lessee or licensee of the plaintiff is estopped from disputing the title of the

plaintiff to the land. Section 116 of the Evidence Ordinance enacts:

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.”

His Lordship further stated that,

“The presumption is that a person who commences possession in a subordinate character continues such possession in that character. In order to show change of the character of possession, cogent and affirmative evidence is required.”

18. Bonser CJ in the case of ***Maduanwala v. Ekneligoda*** **3 NLR 213 at p.215** held that,

“A person who is let into occupation of property as a tenant or as a licensee must be deemed to continue to occupy on the footing on which he was admitted, until by some overt act he manifests his intention of occupying in another capacity. No secret act will avail to change the nature of his occupation.”

19. In the case of ***Chaminda Abeykoon v. H. Caralain Pieris***, **SC Appeal 54A/2008, S.C. Minute dated 02.10.2018**, his Lordship Justice Prasanna Jayawardena, PC, stated that,

“It is a well-established principle of law that, so long as a person possesses a property as the licensee or agent of the owner, that person cannot acquire prescriptive title to that property. Instead, the running of prescription can commence only upon the licensee or agent committing some “overt act” which demonstrates that he has cast aside his subordinate character and is now possessing the property adverse to or independent of the owner of the property and without acknowledging any right of the owner of the property. The overt act is required to give [or deem to give] notice to the owner that his erstwhile licensee or agent is no longer holding the property in the capacity of a licensee or agent and is, from that time onwards, claiming to possess the property adverse to or independent of the owner. The overt act makes the owner aware [or is deemed to make him aware] that he runs the risk of losing title to the property if the licensee or agent complete ten years of such adverse or independent possession and acquires prescriptive title to the property.”

20. Furthermore, it is for the person who claims prescriptive title to prove that he, by an overt act showed his intention to possess the immovable property adversely to the right of the owner.

21. In the case of **Seeman v. David [2000] 3 Sri LR 23 at 26**, his Lordship Justice Weerasuriya held that,

“It is well settled law that a person who entered property in a subordinate character cannot claim prescriptive rights till he changes his character by an overt act. He is not entitled to do so by forming a secret intention unaccompanied by an act of ouster. The proof of adverse possession is a condition precedent to the claim for prescriptive rights.”

22. As per the above case law authorities, it is well settled law that for a licensee to claim title by way of

prescription, he must commence his possession independent and adverse to the licensor commencing from an overt act.

23. Admittedly, the defendant came into possession of the land as a licensee of *Poornam*. The plaintiff has thereafter gained title from *Poornam*. The position taken by the learned Counsel for the defendant is that the defendant was not a licensee of the plaintiff but of *Poornam*.

24. This issue was discussed in case of ***Ameen and Another v. Ammavasi Ramu, SC/Appeal/232/2017, SC Minute dated 22.01.2019*** in which case, one of the questions to be decided was whether the defendant who was a licensee was entitled to put forward a plea of prescription. It was held by his Lordship Justice De Abrew A.C.J. in that case 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.”

25. The above principle was also referred to and followed in the case of ***Ashar v. Kareem (Supra)*** by his Lordship Justice Samayawardhena.

26. As mentioned before, the defendant has come to possession of premises in question as a licensee of *Poornam*. The plaintiff has derived her title from the said *Poornam*. Hence, the defendant continues to be a licensee of the plaintiff. The defendant has failed to prove adverse possession independent that of to the plaintiff commencing from an overt act. Hence, the defendant has failed to prove prescriptive title to the property in question.

27. In the above premise, the question of law raised is answered in the affirmative. The Judgment of the High Court dated 12.07.2019 is set aside and the Judgment of the District Court is affirmed.

Appeal allowed with costs.

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA, PC.

I agree

JUDGE OF THE SUPREME COURT

JUSTICE A. L. SHIRAN GOONERATNE.

I agree

JUDGE OF THE SUPREME COURT