

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

*In the matter of an appeal under Section 5 C of the  
High Court of the Provinces (Special Provisions)  
(Amendment Act) No. 54 of 2006 read with Article  
128(4) of the Constitution of the Republic of Sri  
Lanka.*

**SC Appeal No. 28/2016**

SC/HCCA/LA/No. 110/2015

WP/HCCA/MT/08/2002/Rev

D.C. Gampaha Case No. 1136/L

Madduma Liyanage Bandumathee  
No. 247/75,  
Chandana Uyana,  
Parakandeniya.

**PLAINTIFF**

**Vs.**

Ajith Priyankara  
No. 163/134,  
Bangalawatta,  
Kirillawala,  
Kadawata.

**DEFENDANT**

***AND THEN BETWEEN***

Madduma Liyanage Bandumathee  
No. 247/75,  
Chandana Uyana,  
Parakandeniya.

**PLAINTIFF-PETITIONER**

**Vs.**

Ajith Priyankara  
No. 163/134,  
Bangalawatta,  
Kirillawala,  
Kadawata.

**DEFENDANT-RESPONDENT**

***AND NOW BETWEEN***

Madduma Liyanage Bandumathee  
No. 247/75,  
Chandana Uyana,  
Parakandeniya.

**PLAINTIFF-PETITIONER-  
APPELLANT**

**Vs.**

Ajith Priyankara  
No. 163/134,  
Bangalawatta,  
Kirillawala,  
Kadawata.

**DEFENDANT-RESPONDENT-  
RESPONDENT**

**BEFORE** : **P. PADMAN SURASENA, J.**  
**MAHINDA SAMAYAWARDHENA, J.**  
**K. PRIYANTHA FERNANDO, J.**

**COUNSEL** : Manohara De Silva, PC with Hirosha Munasinghe and Sasiri Chandrasiri for the Plaintiff-Appellant-Appellant

Charith Galhena instructed by Shalani Jayasinghe for Defendant-Respondent-Respondent.

**ARGUED ON** : 23-10-2023

**DECIDED ON** : 18-07-2024

**P. PADMAN SURASENA, J.**

Plaintiff-Petitioner-Appellant (hereinafter sometimes referred to as the Plaintiff) filed plaint in this case against the Defendant-Respondent-Respondent (hereinafter sometimes referred to as the Defendant) praying inter alia for following relief:

- (i) a declaration that he is the owner of the property more fully described in the schedule to the Plaint;
- (ii) an order for ejectment of the Defendant from the said premises;
- (iii) an order for damages payable for the alleged illegal occupation of the said premises by the Defendant.

The Plaintiff is sister of the Defendant. Both parties have admitted the fact that the property relevant to this case was owned by David Madduma Liyanage, who is the father of both the Plaintiff and the Defendant.

The Plaintiff states that her father, said David Madduma Liyanage, by Deed No. 886 attested by D. H. Ekanayake Notary Public on 20<sup>th</sup> December 1989, had transferred the said property to her. The Plaintiff also states that she continued to possess the said property since that time.

It is the position of the Plaintiff that she gave leave and license for her brother (the Defendant), to occupy the small shop premises in 1997. The Plaintiff has alleged that the Defendant had constructed some additions to that premises in violation of the permission she had granted to him for mere occupation. It is the case for the Plaintiff that she had terminated the aforesaid leave and license and informed the Defendant to handover the vacant possession of the said shop back to her. The Plaintiff has filed this action as the Defendant had failed to heed the said demand for the vacant possession.

The position taken up by the Defendant is that he had acquired the prescriptive title to this property. This can be seen from Issue No. 8 framed by the Defendant which is as follows:

ISSUE NO. 08

*In relation to the land, as defined in both the Schedule to the Plaint and the Schedule of the Defendant's Answer to the Plaint, does the Defendant enjoy continuous and uninterrupted possession of the land as an independent land, in a manner adverse to the rights of any other, since some time, in or around the month of December of 1989?*

While the Plaintiff, Plaintiff's sister (Madduma Liyanage Yasuntha) had given evidence on behalf of the Plaintiff, the Defendant and a resident (Ranjith Upali Radampala Gamage), living in the vicinity of the land in dispute, had given evidence on behalf of the Defendant.

After the trial, the learned District Judge by her judgement dated 26<sup>th</sup> March 2012, had concluded that the Defendant had acquired the prescriptive title to the relevant premises.

Being aggrieved by the judgment pronounced by the District Court, the Plaintiff had filed a Revision Application in the Provincial High Court of Civil Appeals. After the argument, the Provincial High Court of Civil Appeals by its judgement dated 9<sup>th</sup> February 2015, had proceeded to dismiss the said Revision Application with costs.

In addition to the merits of the case, the Provincial High Court of Civil Appeals also had based its decision to dismiss the Plaintiff's Revision Application, on her failure to adduce exceptional circumstances in view of her failure to lodge an appeal against the impugned judgment pronounced by the District Court.

Being aggrieved by the judgment pronounced by the Provincial High Court of Civil Appeals, the Plaintiff has filed the instant appeal. When the Leave to Appeal Petition relevant to the instant appeal was supported, this Court by its Order dated 30<sup>th</sup> November 2015, having heard the learned Counsel for both parties, had decided to grant Leave to Appeal on the following question:

*Did the High Court as well as the District Court misdirect themselves by failing to properly consider the ingredients of Section 3 of the Prescription Ordinance and the legal principles pertaining to proof of prescriptive title, in considering whether the Defendant has prescribed the land in suit.*

Since, the above question of law has referred to Section 3 of the Prescription Ordinance, let me at the outset, reproduce the said section below:

*Proof of the undisturbed and uninterrupted possession by a defendant in any action or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor from which an acknowledgement of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as hereinbefore explained, by such plaintiff or intervenient, or by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs: Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.*

It is the position taken up by the Defendant in his evidence, that he came to occupy this shop premises somewhere in 1987 or 1988. He also has stated that the Plaintiff started disturbing his possession since 1990.

The Plaintiff in her evidence has produced the Notice of Assessment marked **P3** and the receipt issued on 26-03-2008 for the payment of Assessment Tax to Gampaha Pradeshiya Sabha marked **P4** to show that she had paid Assessment Tax in the year 2008. She also has relied on the document dated 03-11-2005 marked **P5** which is a permission granted by the Divisional Secretary to fell two Jak trees in that premises. The Plaintiff has also relied on the complaint she had made on 08-04-2006 to the Grama Niladhari of the area.

The perusal of the judgment of the learned District Judge, shows that the learned District Judge had concluded that it was the Plaintiff's father who had permitted the Defendant to occupy the relevant premises. The learned Provincial High Court Judge had concluded that

according to the document marked **D1**, the Defendant had come in to the occupation of the premises before 1990.

According to the Deed No. 886 (marked **P1**) the Plaintiff's father had transferred the impugned property to her on 20<sup>th</sup> December 1989. Thereafter, since the property has been transferred in the name of the Plaintiff, one must understand that it is inevitable that all the other subsequent documentation such as the Notice of Assessment (**P3**), the receipt for the payment of Assessment Tax (**P4**), permission granted to cut down two Jak trees (**P5**) have to be issued in the name of the new owner irrespective of the person behind the respective operations. This is particularly so in the instant case because all three persons involved in the sequence of events relevant to this case are members of the same family i.e., father daughter and son. Thus, I have to be reticent in accepting that the documents relied upon by the Plaintiff: the Notice of Assessment (**P3**); the receipt for the payment of Assessment Tax (**P4**); permission granted to cut down two Jak trees (**P5**); have firmly established that it was the Plaintiff who was in possession of the impugned property for all purposes. Thus, let me further probe into this aspect by considering the oral evidence adduced by both parties in the trial.

It was on 07-07-2006 that the Plaintiff had filed plaint in this case against the Defendant. The Plaintiff's father had transferred the property to the Plaintiff on 20<sup>th</sup> December 1989. The following excerpts from the Plaintiff's evidence would show that even on the Plaintiff's account, the Defendant had been in possession of this property by at least 1990. These excerpts are as follows:

ප්‍ර: තමා අරන් කියෙන්නේ 1989. අවුරුදු 2ක් ගියත් තමාට එන්න දුන්නේ නැහැ නේද?

උ: ඔව්.<sup>1</sup>

Thus, I can observe that even the Plaintiff in her evidence has accepted the position taken up by the Defendant that the Defendant came to occupy this shop premises somewhere in 1987 or 1988. Since the Defendant has also stated that the Plaintiff started disturbing his possession since 1990, I observe that the above evidence of the Plaintiff has confirmed the Defendant's position. Therefore, I have no doubt that the Defendant had commenced the possession of this property somewhere in 1990 as asserted by him. Therefore, there is no difficulty to hold that the Defendant had been in possession of this property for more than ten years prior to bringing the instant action by the Plaintiff in 2006.

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<sup>1</sup> Vide Page 8 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 05-01-2011.

On her own account, the Plaintiff in her evidence has stated that the Defendant at no time allowed her to enter the relevant property. The relevant excerpts from the Plaintiff's evidence are reproduced below:

ප්‍ර: පොලීසිය කිව්වත් විත්තිකරු ඇහුවේ නැහැ. බලහත්කාරයෙන් තමාගේ ඉඩම භුක්ති වින්දා?

උ: මම ගියෙත් නැහැ. මට එන්න දුන්නේ නැහැ. මෙයා ගහනවා.

ප්‍ර: 1991 ගනන් වල තමයි ඔය සිද්ධිය වුනේ?

උ: ඔව්.<sup>2</sup>

The Plaintiff's evidence in this regard has been confirmed and corroborated by the evidence of the Plaintiff's sister (Madduma Liyanage Yasuntha), by the evidence of the Defendant and also by the evidence of (Ranjith Upali Radampala Gamage) a resident living in the vicinity of the land who was called to give evidence on behalf of the Defendant.

The afore-stated evidence of the Plaintiff's sister (Madduma Liyanage Yasuntha), in this regard is as follows:

ප්‍ර: 1990 වර්ෂයේ පියා මිය යන්න පෙර ඔය ඉඩමේ පදිංචියට ආවා?

උ: ඔව්.

ප්‍ර: තාත්තා මියගියාට පසුව සහෝදරයා සහ පැමිණිලිකරු අතර ආරවුල් ඇති වුණා?

උ: ඔව්.

ප්‍ර: ඒ කියන්නේ පැමිණිලිකරු අයිතිවාසිකම් ඉල්ලලා කරදර කරන්න පටන් ගත්තා?

උ: ඔව්.

ප්‍ර: විත්තිකරු බලහත්කාරයෙන් සිටින්නේ?

උ: ඔව්.

ප්‍ර: මෙම නඩුවේ පැමිණිලිකාරිය පිළිගන්නා 1990 වර්ෂයේ සිට ඉන්නේ කියලා?

උ: ඔව්.<sup>3</sup>

In the presence of the above evidence, it is not difficult to hold that the possession of this property by Defendant is 'undisturbed and uninterrupted possession' within the meaning of Section 3 of the Prescription Ordinance.

<sup>2</sup> Vide Page 8 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 05-01-2011.

<sup>3</sup> Vide Pages 6 and 7 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 28-02-2011.

The evidence of (Ranjith Upali Radampala Gamage) a resident living in the vicinity of the land who was called to give evidence on behalf of the Defendant has also established the fact that the Defendant has at no time allowed the Plaintiff to come into occupation of this premises is clearly established. That is manifested by the following pieces of evidence adduced in the case.

- ප්‍ර: තමන් ඔය ප්‍රදේශයේ පදිංචියට පැමිණියේ කොයි කාලයේදී ද?
- උ: 1984-1985 දී පමණ.
- ...
- ප්‍ර: ආරවුල ඇතිවෙන අවස්ථාවේදී විත්තිකරු මොනවද කරන්නේ?
- උ: කෑ ගහලා පැමිණිලිකාරියව එළවනවා.
- ප්‍ර: පැමිණිලි කාරිය කවදාවත් මේ ඉඩමේ භුක්තියට පැමිණ තියෙනවා?
- උ: අපි නම් දැකලා නැහැ.<sup>4</sup>

The evidence of the Plaintiff's sister (Madduma Liyanage Yasuntha), in this regard is as follows:

- උ: මල්ලි බැඳලා දවස් දෙකක් ඉඳලා කඩ කාමරයට පදිංචියට ගියා.
- ප්‍ර: කසාද බැන්දාට පසුව ඔය ඉඩමේ තමයි විත්තිකරු පදිංචියට වුණේ?
- උ: ඔව්.
- ප්‍ර: තාත්තා මියගියේ කවද්ද?
- උ: 1990 වර්ෂයේ.
- ...
- ප්‍ර: තාත්තා මිය යන්න පෙර බලහත්කාරයෙන් පදිංචි වුණාද?
- උ: ඔව්.
- ...
- ප්‍ර: 1989 වර්ෂයේ ඔය පැ.1 කියන ඔප්පුව ලිච්චාට පසුව මේ විත්තිකරු තමයි පදිංචි වෙලා සිටියේ?
- උ: ඔව්.<sup>5</sup>

The evidence of (Ranjith Upali Radampala Gamage) a resident living in the vicinity of the land who was called to give evidence on behalf of the Defendant.

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<sup>4</sup> Vide Pages 2 and 3 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 16-09-2011.

<sup>5</sup> Vide Pages 5 and 6 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 28-02-2011.



ප්‍ර: මේ නඩුවට අදාළ දේපල තමන් දන්නා දා සිටම භුක්ති වින්දේ කවුද?

උ: අපිත් ප්‍රියන්ත.

ප්‍ර: ඒ හැර වෙනත් කවුරුවත් භුක්තියෙහි සිටියාද?

උ: නැහැ.<sup>6</sup>

Thus, the fact that the Defendant in the instant case has continuously maintained and claimed a title adverse to that of the plaintiff is also established before Court.

It is not the case of the Plaintiff that the possession held by the Defendant was at any time accompanied by any payment of rent or produce, or performance of service or duty within the meaning of Section 3 of the Prescription Ordinance. However, it is the position of the Plaintiff that she gave leave and license for the Defendant, to occupy the relevant shop premises in 1997 and the Defendant refused to vacate the premises when she demanded him to do so by virtue of the letter dated 15-11-1990 produced marked ව1.

I observe that the Plaintiff in her evidence has failed to state as to when, or during what period (at least approximately), she had granted leave and license for the Defendant, to occupy the relevant shop premises. On the other hand, she has also stated in her evidence that it was in 2006 that she demanded vacant possession of the premises from the Defendant. The following excerpts from her evidence clearly show this position.

උ: යන්න බැහැ කියල කිව්වා. පසුව මම කිව්වා ඉඩම අරන් සල්ලි දෙන්න කියලා. අයින් වෙන්න කියලා කිව්වහම නඩු දානවා කියලා කිව්වා.

ප්‍ර: ඒ මොන වර්ෂයේද ?

උ: 2006 වර්ෂයේදී කිව්වේ.

ප්‍ර: ඒත් ගියේ නැහැ.

උ: නැහැ.

ප්‍ර: 2006 වර්ෂයේ සිට තමුන්ගේ සහෝදරයා බලහත්කාරයෙන් තමයි ඉන්නේ?

උ: ඔව්.

ප්‍ර: ඒ සම්බන්ධයෙන් පරකන්දේ ණිය ග්‍රාමනිලධාරී මහතා වෙත 2006.04.08 වන දින පැමිණිල්ලක් කලා?

උ: ඔව්.<sup>7</sup>

<sup>6</sup> Vide Pages 2 and 3 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 16-09-2011.

<sup>7</sup> Vide Pages 7 and 8 of the Proceedings of the District Court of Gampaha in case bearing No. 1136/L, on 04-11-2010.

The Plaintiff had produced the afore-said complaint made by her to Parakandeniya Grama Niladhari on 08-04-2006 marked ඉ.6.

Thus, according to the Plaintiff's evidence, it was in 2006 that the Plaintiff had demanded vacant possession of the premises from the Defendant. In such scenario, the question arises as to what the Plaintiff had attempted to achieve by producing the letter dated 15-11-1990 produced marked ඉ1. This is because it was in 1990 that the Plaintiff had demanded vacant possession of the premises from the Defendant according to the letter marked ඉ1. Therefore, it is clear that both the position in ඉ1 and the position taken up by the Plaintiff in oral evidence cannot stand together. In those circumstances, I too have to approve the conclusion reached by the Provincial High Court of Civil Appeals that the Plaintiff has failed to establish to the satisfaction of Court that she gave leave and license for the Defendant to occupy the relevant shop and the Defendant thereafter refused to vacate the premises when she demanded him to do so.

In the above circumstances, it is clear that the evidence adduced in the trial has successfully established the prescriptive title of the Defendant. Therefore, I am of the view that the answering of Issue No. 08 in the affirmative by the learned District Judge is justified. Thus, for the foregoing reasons, I answer the question of law in respect of which this Court had granted Leave to Appeal in the negative. I proceed to affirm the judgement dated 9<sup>th</sup> February 2015 pronounced by the Provincial High Court of Civil Appeals dismissing the Revision Application filed by the Plaintiff.

I proceed to dismiss this appeal.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree,

**JUDGE OF THE SUPREME COURT**

**K. PRIYANTHA FERNANDO, J.**

I agree,

**JUDGE OF THE SUPREME COURT**

NS