

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

Weerasinghe Arachchige Sarath
Weerasinghe,
No. 11, Templars Road,
Mount Lavinia.
Plaintiff

SC APPEAL NO: SC/APPEAL/193/2014

SC LA NO: SC/HCCA/LA/246/14

HCCA COLOMBO NO: WP/HCCA/COL/315/2008(F)

DC COLOMBO NO: 20510/L

Vs.

H.D. Sarath Premaratne,
No. 184, Avissawella Road,
Wellampitiya.
Defendant

AND BETWEEN

H.D. Sarath Premaratne,
No. 184, Avissawella Road,
Wellampitiya.
Defendant-Appellant

Vs.

Weerasinghe Arachchige Sarath
Weerasinghe,
No.11, Templars Road,
Mount Lavinia.
Plaintiff -Respondent

AND NOW BETWEEN

Weerasinghe Arachchige Sarath

Weerasinghe,

No.11,

Templars Road,

Mount Lavinia.

Plaintiff -Respondent-Appellant

Vs.

H.D. Sarath Premaratne,

No. 184,

Avissawella Road,

Wellampitiya.

Defendant-Appellant-Respondent

Before: Murdu N.B. Fernando, P.C., J.

Kumuduni Wickremasinghe, J.

Mahinda Samayawardhena, J.

Counsel: Chandana Wijesooriya with Wathsala Dulanjanie for the
Plaintiff-Respondent-Appellant.

K.G. Jinasena with Pradeepa Ariyawansa for the
Defendant-Appellant-Respondent.

Argued on: 23.11.2021

Written submissions:

by the Plaintiff-Respondent-Appellant on 04.12.2014 and
14.12.2021.

by the Defendant-Appellant-Respondent on 14.12.2021.

Decided on: 22.05.2023

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court of Colombo seeking ejectment of the defendant from Lot B in Plan No. 268 and damages. Plan No. 268 comprising Lots A and B was marked P3. The defendant filed answer seeking a declaration that he is the owner of Lots A and B. The trial before the District Court proceeded on 8 admissions and 14 issues.

The defendant in paragraph 11 of his answer and by admission No. 8 admitted that his father gifted Lot A in Plan No. 268 to him by the deed marked V1. The plaintiff does not dispute that Lot A belongs to the defendant.

The plaintiff in paragraph 7 of his plaint and by way of issue No. 3 claimed that his mother had gifted Lot B in Plan No. 268 to him by the deed marked P2. This was accepted by the defendant in his evidence-in-chief itself. However, by paragraph 12 of his answer and by issue No. 13, the defendant claims title to Lot B by prescription. The subject matter of this litigation is Lot B in Plan No. 268. After trial, the District Court held with the plaintiff. On appeal, the High Court of Civil Appeal in Colombo set aside the judgment of the District Court and dismissed the plaintiff's action. The plaintiff appealed to this Court from the judgment of the High Court.

At the trial, several witnesses gave evidence. The judgment of the District Court is comprehensive, running into 22 pages. The District Judge has analysed all the evidence led at the trial to consider the competing claims made by the two rival parties. In contrast, the judgment of the High Court is brief, running into 2 ½ pages, where the only question considered was whether the plaintiff proved that "the defendant came into occupation of these premises with his (the plaintiff's) leave and license." This is because the plaintiff in the plaint and by way of issues has stated that the plaintiff

came into occupation of Lot B as a licensee of the plaintiff's mother with the agreement of the plaintiff and thereafter this licence was terminated. In just one paragraph the High Court holds that this is not proved. The High Court judgment is silent about the other issues including the cross-claim of the defendant to Lot B on prescription.

In my view the High Court adopted a very mechanical approach to the whole case. When considering the admissions recorded and issues raised before the District Court, there is no dispute that, on deeds, Lot A of Plan P3 is owned by the defendant and Lot B is owned by the plaintiff. The defendant is now in occupation of both Lots and the plaintiff wants to eject the defendant from Lot B. As I have already stated, the defendant's position is that he has prescribed to Lot B. It is against this background that the Court needs to consider the claim of the plaintiff that the defendant had been in possession of Lot B together with Lot A, with the leave and licence of the plaintiff's mother since 1990 (*vide* issue No.7).

As seen from Plan P3, there is a large house on the land extending to both Lots. It is the position of the plaintiff that his mother occupied the portion of the house in Lot B until 1990. The defendant has admitted in evidence that until 1996 the name of the defendant's mother was included in the electoral registers marked V3-V24. The action was filed in 2004. If I were to assume that adverse possession began in 1996, there would still not be a period of prescriptive possession lasting at least ten years. Moreover, the plaintiff's mother and the defendant's father are close relatives, not strangers. Adverse possession in such circumstances cannot be by any secret intention in mind. It is my considered view that there is no room whatsoever for the defendant to claim prescriptive title to Lot B.

It is true that there is no document to say that the plaintiff's mother gave leave and license to the defendant to share Lot B together with Lot A. But on the facts and circumstances of the case, the District Court was correct

to have considered that the defendant was in occupation of Lot B with the leave and licence of the plaintiff's mother.

The High Court states that the plaintiff filed the action on the basis that the defendant came into occupation of the premises with the leave and licence of the plaintiff and since this has not been sufficiently proved, the plaintiff's action must fail. In respect of leave and licence, the High Court states that the plaintiff's evidence is inadequate.

The facts of the Supreme Court case of *Khan v. Jayman* [1994] 2 Sri LR 233 are similar to the instant case where the plaintiff sued the defendant for ejectment from the premises in suit and damages on the basis that the defendant was in forcible occupation of the premises after the termination of the leave and licence given to the defendant. The defendant claimed tenancy. The District Court dismissed the plaintiff's action on the basis that the plaintiff failed to establish that the defendant was a licensee and the Court of Appeal affirmed it. On appeal, the Supreme Court held that the plaintiff shall succeed since the defendant failed to establish a "better title" to the property after the plaintiff established his title and the defendant in his evidence admitted it. The Supreme Court directed to enter judgment for the plaintiff as prayed for in the plaint.

In the instant case, when the defendant does not dispute that the plaintiff is the paper title holder of Lot B, does it matter even if the defendant did not come into possession of Lot B with the leave and licence of the plaintiff? It does not. If the plaintiff is the owner of Lot B by the deed P2, by virtue of his ownership he is entitled to the right to possession of Lot B irrespective of whether he has specifically prayed for ejectment in the prayer to the plaint. The right to possession and the right to recover possession are essential attributes of ownership. In such circumstances, it is up to the defendant to prove on what right he is in possession of Lot B. *Vide Theivandran v. Ramanathan Chettiar* [1986] 2 Sri LR 219 at 222

per Sharvananda C.J. In *Leisa v. Simon* [2002] 1 Sri LR 148 at 151 it was held “Once the paper title became undisputed the burden shifted to the defendants to show that they had independent rights in the form of prescription as claimed by them.” The defendant in the instant case claimed prescriptive title to Lot B in the District Court. This claim has rightly been held not to have been proved. The High Court has not interfered with that finding. If so, the defendant has no choice but to vacate Lot B.

Should the plaintiff’s main relief that the defendant be ejected from Lot B be refused on the basis that the plaintiff is not seeking a declaration of title to Lot B in the prayer to the plaint? The answer is in the negative.

In the early case of *Wanigasekera v. Kirihamy* (1937) 7 CLW 134 it has been held that where a person obtains a declaration of title to land without an order for ejectment he is not entitled to a writ for delivery of possession. The same conclusion was reached in *Vangadasalem v. Chettiar* (1928) 29 NLR 446.

In *Sopi Nona v. Karunadasa* [2005] 3 Sri LR 237, the Court of Appeal held that without a specific prayer to that effect, the Court cannot order ejection of the defendant on the strength of the finding that the plaintiff is entitled to a declaration of title to the property.

In *Jane Nona v. Padmakumara* [2003] 2 Sri LR 118 there was no relief prayed for in the prayer to the plaint for ejectment of the defendant. But there was a paragraph in the plaint averring that a cause of action had accrued to the plaintiff to obtain an order for peaceful possession of the land and damages. In a prayer to the plaint the plaintiff had prayed for quantified damages until possession is restored to the plaintiff. The plaintiff also raised an issue as to whether the plaintiff would be entitled to the reliefs claimed in the plaint (not in the prayer to the plaint) if the

plaintiff's issues are answered in the affirmative. In this backdrop, the Court of Appeal held that a prayer for ejectment of the defendant is implicit in the issues.

The Supreme Court case of *Khan v. Jayman (supra)* provides a good authority for the proposition that there is no impediment for the Court to grant ejectment despite there is no prayer in the plaint seeking declaration of title.

The recent trend of authority in the Supreme Court favours the plaintiff. Accordingly, the Court can now allow an application for ejectment of the defendant in order to restore the plaintiff to possession on the strength of the finding that the plaintiff is the owner of the property notwithstanding that there is no prayer for ejectment in the plaint.

In *Weerasinghe v. Heling* [2020] 3 Sri LR 136 the question was whether the plaintiff could seek ejectment of the defendants from the land in suit without a specific prayer for declaration of title. This Court answered it in the affirmative. De Abrew J. citing with approval *Pathirana v. Jayasundara* (1955) 58 NLR169, *Jayasinghe v. Tikiri Banda* [1988] 2 CALR 24 and *Dharmasiri v. Wickramatunga* [2002] 2 Sri LR 218 held at 141 “*in an action for ejectment of the defendant from the property in dispute, once the plaintiff's title to the property is proved, he (the plaintiff) is entitled to ask for ejectment of the defendant from the property even though there is no prayer in the plaint for a declaration of title.*”

In *Kamalawathie v. Premarathne* (SC/APPEAL/118/2018, SC Minutes of 2.6.2021) the Supreme Court reiterated this legal position.

In *Jayasinghe v. Tikiri Banda* [1988] 2 CALR 24 Viknaraja J. held “*Where title to the property has been proved, as in this case, the fact that one had failed to ask for a declaration of title to the property will not prevent one from claiming the relief of ejectment.*”

A similar conclusion was reached in *Dharmasiri v. Wickramatunga* [2002] 2 Sri LR 218. The plaintiff sought ejectment of the defendant but there was no prayer for a declaration of title. However the Court held that the absence of a specific prayer for a declaration of title causes no prejudice if the title is pleaded in the body of the plaint and issues are framed and accepted by Court on the title so pleaded.

The question of law upon which leave to appeal was granted reads as follows: Did the High Court err in law in reversing the findings of fact of the District Court on the question of licence without adequate consideration of material analysed by the District Court? I answer this question in the affirmative.

I set aside the judgment of the High Court and restore the judgment of the District Court. The plaintiff is entitled to costs in all three Courts.

Judge of the Supreme Court

Murdu N.B. Fernando, P.C., J.

I agree.

Judge of the Supreme Court

Kumuduni Wickremasinghe, J.

I agree.

Judge of the Supreme Court