

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

In the matter of an application for Leave to Appeal
in terms of Section 5C(1) of the High Court of the
Provinces (Special Provisions) (Amendment) Act
No. 54 of 2006.

SC.Appeal No. 95/2012

SC.HC.CALA.No. 507/2011

SP/HC. Civil/ Galle No. 069/2002.

DC. Balapitiya. No. 2455/L

Kalutara Acharige Namadasa alias
Sumanapala of Udumulla,
Kommala,
Benthota

presently at

St. Margaret Bazaar,
Udupussellawa.

Plaintiff-Respondent-Petitioner

-Vs-

W.D. Wimalaweera
of Wadumulla,
Kommala,
Benthota.

Defendant-Appellant-Respondent

Before : **Sisira J.de Abrew, J**
Anil Gooneratne, J &
Nalin Perera, J

Counsel: : N.Mahendra with D.Pathirana for the Plaintiff-Respondent-Appellant
Ms. Sajeevi Siriwardhane for the Defendant-Appellant-Respondent.

Argued &
Decided on: : 01.06.2016.

Sisira J.de Abrew, J

Heard both counsel in support of their respective cases. The Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff) filed this case in the District Court of Balapitiya to get a declaration of title to the land described in the plaint and to eject the Defendant. The learned District Judge, by his judgment dated 01.11.2002, granted relief to the Plaintiff. Being aggrieved by the said judgment the Defendant-Appellant-Respondent (hereinafter referred to as the Defendant) filed an appeal in the Civil Appellate High Court. The learned Civil Appellate High Court Judges by their judgment dated 02.11.2011, set aside the judgment of the learned District Judge. Being aggrieved by the said judgment of the Civil Appellate High Court, the Plaintiff has appealed to this Court. This Court by its order dated 25.05.2012, granted leave to appeal on the following questions of law.

- 1) Did the High Court fall into grave error when it held that the Plaintiff had failed to prove the identity of the corpus and his title thereto despite the fact that it has been recorded in the Court Commissioner's report of Plan No. 1532 dated 26.09.1998 (page 118 of the brief) that the Defendant-Appellant-Respondent had admitted that he came into possession of the corpus as licensee of the Petitioner, which is also evidenced by P3-P6, which have been read into evidence without objection ?

- 2) Did the High Court fall into substantial error when it dismissed the Plaintiff's action when the Defendant had failed to produce any documents and/or evidence to challenge the title of the Plaintiff ?

The case for the Plaintiff is that the Plaintiff granted leave and license to the Defendant to stay in the said land . The Defendant however took up the position that the identity of the land has not been established. But we note when the surveyor, on a commission issued by the District Court, went to survey the land, the Defendant being present at the survey admitted that the Plaintiff granted leave and license to occupy the land. (Vide page 118 of the brief). With this admission, the contention of the Defendant fails.

The Defendant, in letters marked P3, P4, P5 and P6, has very clearly admitted that the Plaintiff had granted leave and license to the Defendant to occupy the the land. These documents were not challenged by the Defendant at the trial. The Defendant failed to give evidence at the trial. The contention that the land has not been properly identified was not established by way of evidence by the Defendant at the trial.

The learned Counsel for the Defendant contended that the Plaintiff has not established the title.

When we consider the documents marked P3- P6, we hold that the Plaintiff has clearly established that the Defendant was a licensee of the Plaintiff. The Defendant, by the said letters, admitted that the Plaintiff was the owner of the land. When a person occupies a land as a licensee of the owner of a land, such a person (licensee), by his own act, accepts the title of the owner. Therefore licensee has no right to challenge the title of the owner. This view is supported by Section 116 of the Evidence Ordinance, which reads as follows:- “ 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 persons 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 .”

We would like to consider the Judgment in the case of *Gunasinghe Vs Samarasinghe reported in 2004 (3) SLR Page 28* wherein it was held thus:- “a licensee or a lessee is estopped from denying the title of the licensor or lessor. His duty in such a case is first to restore the property to the licensor or the lessor and then to litigate with him as to the ownership”.

In the present case, the Defendant, by his letters marked P3 to P6 has clearly admitted that the Plaintiff is the owner of the land and that he occupies the land as a licensee of the Plaintiff. He has failed to challenge the said letters. Therefore he has no right to challenge the title of the Plaintiff.

The learned High Court Judges have failed to consider the above matters.

The Defendant in this case has failed to challenge the letters sent by him to the Plaintiff admitting that he is the licensee . He has failed to adduce any evidence at the trial.

When we consider all the above matters, we hold that the High Court Judges have erred when they set aside the judgment of the District Judge. In these circumstances we answer the above questions of law in the affirmative. We set aside the judgment of the Civil Appellate High Court and affirm the judgment of the District Judge dated 01.11.2002. Accordingly this appeal is allowed with costs.

JUDGE OF THE SUPREME COURT

Anil Gooneratne, J

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

Kpm/-