

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

Gajaba Mohotti Ajantha
of “Mohotti Nivasa”,
Meepe, Habaraduwa.
Plaintiff

SC APPEAL NO: SC/APPEAL/144/2012

SC LA NO: SC/HCCA/LA/531/2012

HCCA NO: SP/HCCA/GA/36/2002(F)

DC GALLE NO: 13163/P

Vs.

1. Haputhantrige Wimalarathne,
Meepe, Habaraduwa.
 2. Thusitha Dias Jayasundara
 3. Udayapala Dias Abegundawardena
- Defendants

AND BETWEEN

1. Haputhantrige Wimalarathne,
Meepe, Habaraduwa.
1st Defendant-Appellant

Vs.

Gajaba Mohotti Ajantha

of “Mohotti Nivasa”,
Meepe, Habaraduwa.
Plaintiff-Respondent

2. Thusitha Dias Jayasundara
3. Udayapala Dias Abegundawardena
2nd and 3rd Defendant-Respondents

AND NOW BETWEEN

1. Haputhantrige Wimalarathne,
Meepe, Habaraduwa.
1st Defendant-Appellant-Appellant

Vs.

Gajaba Mohotti Ajantha
of “Mohotti Nivasa”,
Meepe, Habaraduwa.
Plaintiff-Respondent-Respondent

2. Thusitha Dias Jayasundara
3. Udayapala Dias Abegundawardena
2nd and 3rd Defendant-Respondent-
Respondents

Before: Hon. Justice Vijith K. Malalgoda, P.C.
Hon. Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena

Counsel: Thusitha Wijekoon for the 1st Defendant-Appellant-Appellant.
Thushari Hirimuthugodage for the Plaintiff-Respondent-Respondent.

Argued on: 27.03.2023

Written Submissions:

By the 1st Defendant-Appellant-Appellant on 12.09.2012

By the Plaintiff-Respondent-Respondent on 23.10.2012 and
24.04.2023

Decided on: 04.04.2024

Samayawardhena, J.

The plaintiff filed this action in the District Court of Galle on 17.06.1996 to partition the land described in the schedule to the plaint among the plaintiff and the 1st defendant in equal shares. At the preliminary survey, the wife of the 1st defendant and another person claimed rights in the land. They were made the 2nd and 3rd defendants. Only the 1st and 2nd defendants filed statements of claim.

There is no corpus dispute. The 2nd defendant's mother, Cecilia, became entitled to the corpus (Lot B of Plan No. 586) by a partition decree. This is the land to be partitioned in this case.

There is no pedigree dispute acceptable to Court.

The said Cecilia gifted an undivided half share on the eastern side of Lot B to her daughter, the 2nd defendant, by Deed of Gift No. 3339 dated 05.03.1980 marked P5. Thereafter, Cecilia sold the other half share on

the western side to Somapala Ratnayake by Deed of Transfer No. 3023 dated 16.02.1981 marked P1.

Somapala by Deed of Transfer marked P2 dated 13.06.1981 transferred it to Devapriya Mohotti who in turn transferred it to Nikulas Mohotti by Deed of Transfer marked P3 dated 21.06.1994. Nikulas, who is the plaintiff's father, transferred it to the plaintiff by Deed of Transfer marked P4 dated 03.07.1995.

Although the 1st and 2nd defendants are husband and wife living in harmony under one roof, the 2nd defendant wife sold her half share to her husband by Deeds of Transfer marked P6 dated 07.11.1980 and P7 dated 03.06.1981.

The contention of the 1st and 2nd defendants before the District Court was that they were entitled to the whole land by prescription despite the fact that it is the 1st defendant's mother-in-law and the 2nd defendant's mother who transferred the western half share of Lot B to the plaintiff's predecessor.

The District Court refused the prescriptive claim of the 1st and 2nd defendants and ordered partition of the land according to the aforesaid pedigree. The High Court of Civil Appeal of Galle affirmed the said judgment.

The 1st defendant came before this Court against the judgment of the High Court. At the argument, learned counsel for the 1st defendant confined his argument to the question of law, stated in paragraph 12(d) to the petition, which reads as follows:

Did the High Court of Civil Appeal err in holding that the defendant had only led his evidence to prove prescription, whereas the defendant was not permitted to bring evidence to prove prescription?

It is clear that the plaintiff's prescriptive claim for the entire land cannot succeed on the facts and circumstances of this case.

There had been another partition action (8249/P) in the same District Court for the larger land, which included Lot B (the subject matter of the instant partition action). In the said partition action, the aforementioned Devapriya Mohotti was the plaintiff, and the 1st defendant in the instant case was the 2nd defendant. Cecilia was the 4th defendant.

According to P10 marked through the 1st defendant himself, an interim settlement was recorded in that case on 30.09.1981 between the plaintiff and the 1st defendant in the instant case whereby the 1st defendant had agreed to possess only the eastern half of Lot B, allowing Devapriya Mohotti to possess the western half of Lot B. This settlement is in line with the title deeds of the parties. This settlement was recorded when both parties were fully represented by their respective lawyers. Both parties have signed the case record signifying the settlement. According to the judgment marked P8, the said partition action was dismissed on 03.11.1993 mainly on the basis that defined portions of land had been included in the land to be partitioned. In the judgment, the undivided rights of the present plaintiff and the present 1st defendant to Lot B had also been acknowledged. No one has appealed against that judgment.

This demonstrates that at least from 30.09.1981 to 03.11.1993, a period of 12 years, both the plaintiff and the 1st defendant possessed the corpus in equal shares upon a settlement.

The instant partition action was filed on 17.06.1996, i.e. less than 3 years after the dismissal of the said partition case.

In the evidence, the 1st defendant admitted that the plaintiff was living on the land opposite to the land to be partitioned (page 64 of the brief). The plaintiff has not abandoned his rights to the land to be partitioned.

The 1st defendant in his evidence stated that he was a process server in a Court (page 69 of the brief). In the aforesaid settlement marked P10 also his address indicates that he was employed in the Family Court of Galle (page 135 of the brief). The 1st defendant seems to be stating that he did not honour the aforesaid undertaking given to Court (settlement) regarding possession. Employment in Court is not a license to take the law into one's own hands.

Section 3 of the Prescription Ordinance determines the mode of acquisition of the prescriptive title. It requires the defendant to prove undisturbed and uninterrupted possession by a title adverse to or independent of that of the plaintiff for ten years prior to the bringing of the action.

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 acknowledgment 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 herein before 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.

The 1st defendant has failed to prove these ingredients.

Both the District Court and the High Court were correct in holding that the plaintiff's prescriptive claim cannot be successful.

Proof of prescriptive title against the real owner is difficult. Proof of prescriptive title against co-owners is more difficult. Unless the contrary is proved by cogent evidence, possession of one co-owner is in law the possession of the other co-owners. (*Corea v. Iseris Appuhamy* (1911) 15 NLR 65, *Sediris Appuhamy v. James Appuhamy* (1958) 60 NLR 297 at 302-303, *Rajapaksha v. Hendrick Singho* (1959) 61 NLR 32, *Maria Perera v. Albert Perera* [1983] 2 Sri LR 399, *Wickremaratne and Another v. Alpenis Perera* [1986] 1 Sri LR 190 at 195, *Maria Fernando v. Anthony Fernando* [1997] 2 Sri LR 356)

The 1st defendant's complaint that the District Court did not give him a date to call further witnesses and therefore he could not properly establish prescriptive title against all other co-owners cannot be accepted in the unique facts and circumstances of this case.

I answer the question of law in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court