

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

S.C Appeal Mo. 170/2015

S.C/HCCA/LA No. 14/2015

WP/HCCA/GPH/ No. 109/2007(F)

D.C. Gampaha Case No. 321/L

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 against the Judgment of the Civil Appellate High Court of Gampaha.

H.D. Lionel Weeraratne of
No. 156, Walpola Road,
Ragama.

PLAINTIFF

Vs.

1. Velu Kannappan
2. Sawarimuththu Rajendra
3. Hakmana Kaluthanthrige Don Anthony
Bernard Perera

All of Suraweera Mawatha,
Walpola, Ragama.

DEFENDANTS

AND BETWEEN

1. Velu Kannappan
More correctly Velu Kannappan Thevar
(now deceased)
- 1a. Kannappan Ranjith
2. Sawarimuththu Rajendra

3. Hakmana Kaluthanthrige Don Anthony Bernard Perera

All of Suraweera Mawatha,
Walpola, Ragama.

DEFENDANTS-APPELLANTS

Vs.

H H.D. Lionel Weeraratne of
No. 156, Walpola Road,
Ragama.

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

H H.D. Lionel Weeraratne of
No. 156, Walpola Road,
Ragama.

PLAINTIFF-RESPONDENT-PETITIONER

Vs.

1. Velu Kannappan
More correctly Velu Kannappan Thevar
(now deceased)
- 1a. Kannappan Ranjith
2. Sawarimuththu Rajendra
3. Hakmana Kaluthanthrige Don Anthony Bernard Perera

All of Suraweera Mawatha,
Walpola, Ragama.

DEFENDANTS-APPELLANTS-RESPONDENTS

BEFORE: S.E. Wanasundera P.C., J.
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: S.A.D.S. Suraweera with P.K.C. Dilhan
For the Plaintiff-Respondent-Appellant

Chandana Wijesuriya
for the Defendant-Appellant-Respondents

WRITTEN SUBMISSIONS TENDERED BY THE APPELLANT ON:

14.06.2016

ARGUED ON: 29.06.2017

DECIDED ON: 12.07.2017

GOONERATNE J.

This was an action filed in the District Court of Gampaha for a declaration of title and ejectment/damages against the Defendants from premises described in the schedule to the plaint. The case before court is not so complicated. Plaintiff-Respondent-Petitioner rely on his paper title and Defendant-Appellant-Respondent plead prescriptive title. Parties proceeded to trial on 10 issues. Learned District Judge held with the Plaintiff and entered Judgment in favour of Plaintiff-Respondent-Petitioner. The Defendant being

aggrieved with the above Judgment appealed to the High Court and the learned Judge of the High Court set aside the District Court Judgment.

The Supreme Court on or about 07.10.2015 granted leave on the question of law raised in sub paragraphs ii, iii, iv & v of paragraph 13 of the petition, filed of record. It reads thus:

- (ii) Did the learned Judges of the Provincial High Court misdirect themselves on the fundamental principles on the law prescription and does the said judgment have any force or avail in law?
- (iii) Did the learned judges of the Provincial High Court have arrived at the erroneous conclusion that the Defendants have been in possession of the land for a period well over ten years at a time when the evidence of the Defendants themselves was to the contrary?
- (iv) Did the learned Judges of the Provincial High Court have arrived at an erroneous conclusion that the evidence of the Plaintiff is contradictory and is against the pleadings which had greatly influenced the judgment and is the said judgment bad in law for the said reason?
- (v) Did the learned Judges of the Provincial High Court have misdirected themselves on the facts of the case in arriving at the erroneous conclusion that the learned trial Judge had considered documents 'P7' to 'P9' which were not proved by misinterpreting the Judgment of the learned trial Judge?

I have read the evidence led at the trial which is supportive of the submissions of learned counsel for the Plaintiff-Respondent-Petitioner. The

evidence of the 1st Defendant was that he came into occupation of the land only in the year 1997 or 1998. This evidence is corroborated by the police statement dated 15.12.2000 marked P10(a) by the 1st Defendant. 3rd Defendant testified that he came into occupation on or about 1999. So was the 2nd Defendant. The Defendant's position was that they do not know who the owner of the property in dispute. The 2nd Defendant testified that they entered the land without knowing who the owner of the property in question. The Plaintiff filed action on or about 2001.

This court heard both counsel for the Plaintiff-Respondent-Petitioner as well as the learned counsel for Defendant-Respondent. We are unable to accept the submissions of learned counsel for Defendant-Appellant in the context of the case in hand that the case enunciated must reasonably accord with the pleadings vide explanation 2 of Section 150 of the Civil Procedure Code. No such issue was raised in the Trial Court, i.e a case materially different from that which was pleaded. When I consider the date of institution of action and the alleged date of possession of Defendants, it is very clear that the required 10 years as per Section 3 of the Prescriptive Ordinance have not been fulfilled by the Defendant party. As such all questions of law raised before this court are answered in the affirmative in favour of the Plaintiff-Respondent-Petitioner.

The Defendant party had never possessed the land for 10 years. In fact they do not know as to who the owner of the land in dispute. It appears that the Defendants are trespassers. The Provincial High Court Judgement is bad in law and in fact. There is no basis to set aside the Judgment of the learned District Judge. I affirm the Judgment of the District Court and set aside the High Court Judgment.

Appeal Allowed with costs.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree.

JUDGE OF THE SUPREME COURT