

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

In the matter of an application for Leave
to Appeal.

SC.APPEAL NO.173/2012

SC.HC.CALA.NO.52/2012

CP/HC/CA/84/10

DC(Nuwara-Eliya)993/MISC

MohedeenPichche Peer Mohomed
No.16, Mohomed Building,
Holbrook Bazaar,
Agarapathana.
Plaintiff-Respondent-Petitioner-
Appellant

Vs.

HameedMohomedMusamil
No.16/08, Bandaranayake Square,
Talawakelle.
Defendant-Appellant-Respondent-
Respondent

BEFORE : SISIRA J. DE ABREW, J.
K.T. CHITRASIRI, J. &
PRASANNA S. JAYAWARDENA, PC, J.

COUNSEL : M. NizamKariapper with M.C.M. Nawas, M.I.M.
Iynullah and M.S.S. Sanfara for the Plaintiff-
Respondent-Appellant.
Dr. S.F.A. Cooray with SudarshaniCooray for the
Defendant-Appellant-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 02.06.2014 by the Defendant-Appellant-
Respondent.
28.7.2016 and 13.7.2016 by the
Plaintiff-Respondent-Appellant

ARGUED ON : 13.07.2016.

DECIDED ON : 23.11.2016

SISIRA J. DE ABREW, J.

The Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff-Appellant) filed a case in the District Court of NuwaraEliya asking for a declaration that he is the lawful possessor of the land described in the plaint. He also sought a permanent injunction preventing the Defendant-Appellant-Respondent (hereinafter referred to as the Defendant-Respondent) entering into

the premises described in the plaint. The learned District Judge, by his order dated 17.6.2004, refused to grant an injunction. There is no appeal against the said order. The learned District Judge by his judgment dated 25.5.2010, decided that the Plaintiff-Appellant was the lawful possessor of the premises described in the plaint. Being aggrieved by the said judgment, the Defendant-Respondent appealed to the Civil Appellate High Court. The Civil Appellate High Court, by its order dated 14.12.2011 set aside the said judgment. Being aggrieved by the said judgment, the Plaintiff-Appellant has appealed to this court. This court by its order dated 28.9.2012, granted leave to appeal on the questions of law set out in paragraph 9 of the petition of appeal dated 25.1.2012 which are reproduced below.

1. Did the Civil Appellate High Court judges err when they came into the conclusion that the action of the Petitioner is not based on lease and licence?
2. Did the Civil Appellate High Court judges misdirect themselves when they came into the conclusion that that the authority cited in the judgment is not applicable?
3. Did the Civil Appellate High Court judges misdirected themselves when they came into a finding that the District Court is not entitled to enter judgment based on the admitted evidence at the trial to the effect that the Defendant-Appellant-Respondent had obtained possession of the premises from the Plaintiff-Respondent-Petitioner and had been in possession without any payments and as such the Plaintiff-Respondent-Petitioner is entitled to have the possession back?
4. Did the Civil Appellate High Court judges err in coming to the conclusion that there is a burden on the Plaintiff-Respondent-Petitioner

to prove what rights he had to be in possession?

The plaintiff-Appellant in his evidence states that he got the beef stall in the year 2001 from Pradeshiya Sabha Nuwara Eliya on an agreement marked P1 and in 2011 he gave the beef stall to the Defendant-Respondent. The Plaintiff-Appellant takes up the position that the Defendant-Respondent is his licensee. When he requested the Defendant-Respondent to hand over beef stall to him, he (the Defendant-Respondent) refused to do so. The Defendant-Respondent challenges the above position of the Plaintiff-Appellant. He states that the beef stall was given to him by the Plaintiff-Appellant as he (the Plaintiff-Appellant) could not repay the money taken from him (the Defendant-Respondent).

The Plaintiff-Appellant takes up the position in his evidence that he got the beef stall from Pradeshiya Sabha Nuwara Eliya on an agreement marked P1 in 2001. The period of the said agreement is only two years. Thus the agreement has come to an end in 2003. The case was filed on 5.1.2004. It is therefore seen that when the Plaintiff-Appellant filed the case, the agreement P1 was not in existence. Then on what basis does the Plaintiff-Appellant claim a declaration that he is the lawful possessor of the beef stall? It appears from the above facts that he has no legal right to claim the possession of the beef stall. Further he, in his evidence, admits that he has not been in possession of the beef stall from the year 2001.

When I consider all the above matters, I hold that the Plaintiff-Appellant is not entitled to the declaration that he sought in his plaint. In view of the conclusion reached above, I answer the 1st, 3rd and 4th questions of law raised by the Plaintiff-Appellant in the negative. The 2nd question of law raised by the

Plaintiff-Appellant does not arise for consideration.

For the above reasons, I affirm the judgment of the Civil Appellate High Court and dismiss the appeal of the Plaintiff-Appellant. However in all the circumstances of the case, I do not make an order for costs.

Judge of the Supreme Court.

K.T.CHITRASIRI J

I agree.

Judge of the Supreme Court.

PRASANNA JAYAWARDENA PC J

I agree.

Judge of the Supreme Court.