

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

SC.APPEAL.No. 108/2022

Civil Appeal Case No:

UVA/HCCA/BDL/42/19(f)

DC Bandarawela Case No.: L 1866

W.M. Bandara Menika,
Buthsaranawatte, Kumbalwela, Ella.

PLAINTIFF

- VS -

1. T.M. Wini Thennakoon,
No. 137, Kotiyawatta,
Andiambalama, Katunayaka.

2. H.W. Amarasiri,

3. Pushpani Perera, (H.W.
Amarasirik's wife)

Both are
Medawatta, Udukumbulwela, Ella

DEFENDANTS

AND BETWEEN

W.M. Bandara Menika,
Buthsaranawatte, Kumbalwela,
Ella.

PLAINTIFF – APPELLANT

- VS -

1. T.M. Wini Thennakoon,
No. 137, Kotiyawatta,
Andiambalama, Katunayaka.

2. H.W. Amarasiri,

3. Pushpani Perera, (H.W.
Amarasirik's wife)

Both are
Medawatta, Udukumbulwela, Ella

DEFENDANT – RESPONDENTS

AND NOW BETWEEN

2. H.W. Amarasiri,

3. Pushpani Perera, (H.W.
Amarasirik's wife)

Both are
Medawatta, Udukumbulwela, Ella

**DEFENDANT – RESPONDENT –
APPELLANTS**

- VS –

W.M. Bandara Menika,
Buthsaranawatte, Kumbalwela,

Ella. (Deceased)

1. Edirisinghe Mudiyanalage Sudu
Manike
Dodanwatta, Diyathalawa.
2. Edirisinghe Mudiyanalage Podi
Manike,
288, Gediyaaroda, Bandarawela.
3. Edirisinghe Mudiyanalage Sarath
Bandara,
Darshana Niwasa,
Udukumbalwela, Ella
4. Edirisinghe Mudiyanalage
Madduma Manike
“Rasika Wee Mola”, Weherayaya,
Athiliwewa,
5. Edirisinghe Mudiyanalage
Wijebandara,
Buthsarana Watta,
Udukumbalwela, Ella

SUBSTITUTED – PLAINTIFF –
APPELLANT – RESPONDENT

1. T.M. Wini Thennakoon,
No. 137, Kotiyawatta,
Andiambalama, Katunayaka.

1st DEFENDANT – RESPONDENT
– RESPONDENT

Before : P. Padman Surasena, J.
E. A. G. R. Amarasekara, J.
Mahinda Samayawardhena, J.

Counsel : S.N. Vijithsingh for the Defendant – Respondent – Appellants.

H. Withanachchi with Shantha Karunadhara for the 1st – 5th Substituted
Plaintiff – Appellant – Respondents.

Argued on : 20.06.2024

Decided on : 16.06.2025

E.A.G.R. Amarasekara, J.

This Appeal is made to this Court by the 2nd and 3rd Defendant – Respondent – Appellants (Hereinafter referred to as the “2nd and 3rd Defendant” or “Appellants”) against the Judgment of the Civil Appellate High Court in Case No. UVA/HCCA/BDL/42/19(f), dated 18.11.2020. The said Judgment was made in the appeal made to it by the original Plaintiff, W. M. Bandara Menike who is the mother of the 1st – 5th Substituted Plaintiff – Appellant – Respondents (Hereinafter referred to as the “Plaintiff” or “Respondents”) against the Judgement of the District Court of Bandarawela in Case No. L 1866, dated 26.03.2019 that dismissed the Plaint of the Plaintiff and the Claim in Reconvention of the Defendants. The learned High Court Judges set aside the Judgment of the District Court and directed to enter Judgment in favour of the Plaintiff as prayed for by the Plaintiff except for the variation made to the payment of damages.

The basis for the learned High Court Judges’ Judgment is that the Learned District Court Judge misdirected himself as to the nature of the action filed before him by considering it as a *rei*

vindicatio action when it was based on the contractual relationship of the parties as licensor and licensee. The learned High Court Judges have made their observations that;

- No cross appeal had been made against the finding of the learned District judge that the 1st Defendant is the licensee of the Plaintiff,
- On a plain reading of the Plaint, it is apparat that the base for the cause of action as alleged by the Plaintiff is that 1st Defendant who entered the property with leave and license of the Plaintiff, later acted in a manner impinging on the Plaintiff's rights,
- The learned District Judge had come to the conclusion that the action is a *rei vindicatio action* solely on the ground that the Plaint contain a prayer for declaration of title. Nevertheless, in the Plaint, the Plaintiff had clearly averred the contractual nexus as licensor and licensee.

Based on the above observations the learned High Court Judges had identified the issue before them as one whether the action is, in fact, a *rei vindicatio* action in which strict proof of title is require or one of mere declaration of title where the licensee is precluded from denying the title of licensor. The learned High Court Judges also had focused on the question whether the mere inclusion of a prayer for declaration of title make an action automatically a *rei vindicatio* action.

In this regard learned High Court Judges had quoted **Pathirana V Jayasundara 58 N L R 169** as follows;

"I have no doubt that it is open to a lessor in an action for ejectment to ask for a declaration of title, but the question of difficulty which arises is whether the action thereby becomes a rei vindicatio for which strict proof of the Plaintiff's title would be required, or else is merely one for a declaration (without strict proof) of a title which the tenant is by law precluded from denying. If the essential element of a rei vindicatio is that the right of ownership must be strictly proved, it is difficult to accept the proposition that an action in which the Plaintiff can automatically obtain a declaration of title through the operation of a rule of estoppel should be regarded as a vindicatory action." (Emphasized in the High Court Judgment)

Referring to the above case law, the learned high Court Judges have stated that;

- A decree for declaration of title may be obtained as an additional relief either in a *rei vindicatio* action or in a licensor's action against a licensee,

- Mere reason of including a prayer for declaration of title would not automatically change the fundamental nature of the action which is based upon a contractual relationship.

The learned High Court Judges have further observed and concluded as follows;

- The instant case presented by the Plaintiff is leave and license case and especially issues No. 7,8 and 9 were raised before the District Court in that relation,
- The Plaintiff in her evidence had described how the 1st Defendant, her son in law came into the land and the 1st Defendant also in evidence had admitted that his wife's Parents (Plaintiff is the mother of his wife) gave permission to him.
- As per evidence, as the 1st Defendant was not given any document on title, has obtained a title from a 3rd Party through deed No, 40 and to defeat the attempts of the Plaintiff and her husband to reclaim the property, the 1st Defendant had let the 2nd and 3rd Defendants to occupy the premises and later had conveyed the same to the 3rd Defendant through deed No.15261.
- The learned District Judge correctly held that the 1st Defendant is a licensee, and therefore the claim of prescriptive title of the Defendants must fail.
- Through the affirmative answers to issues No.7 and 8 the learned District Judge had accepted the position that the 1st Defendant came to the land as a licensee but the answer to issue 9 in the negative which indicates that after the demise of his wife left the premises is inconsistent with judgment itself as nowhere in the judgment of the Learned District Judge it is stated that the said license came to an end after the demise of the death of the 1st Defendant's wife.
- The contractual nexus between the 1st Defendant and the Plaintiff has been proven and even the learned District Judge had accepted it. There is no cross appeal against that finding of the learned District Judge. Hence, Section 116 of the evidence Ordinance comes into operation which says: *"No person who came upon any immovable property by the the licence of the person 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."*

With regard the relevancy of said Section 116, the learned High Court Judges has referred to **Ruberru v Wijesooriya (1998) 1 Sri L R 58** which held: *"It is an inflexible rule of law that no lessee or licensee will ever be permitted either to question the title of the person who gave*

him the leave or the license or the permission to occupy or possess the land or setup of title in that person." To indicate that a lessee or licensee or tenant who entered into possession is precluded from disputing lessor's or licensor's title without first restoring, surrendering or giving up the property to his licensor or lessor, the High Court judges have cited **Majibudeen V. Simon Perera (2003) 2 Sri L.R 341, Alvar Pillai V. Karuppan (1899) 4 N.L.R 321, and Visvalingam v Gajaweera (1954) 56 NLR 111.**

If one looks at the Learned District Judges Judgment, it is clear that the learned District Judge considered the action filed before him as an action that can be recognized as *re vindicatio proper*. On that basis the learned District Judge had cited a plethora of case laws to say that in a *rei vindicatio* action, the burden in proving the dominium and the identity of the corpus as well as the Defendant has the possession of the corpus is with the Plaintiff, and until such proof, the Defendant has no burden of proving even his title. Some of the case laws he had referred in this regard include **Jamaldeen Abdul Latheef and Another v. Abdul Majeed Mohamed Mansoor and Another (2011) 2 Sri L.R. 33, Leisa and Another v. Simon and Another (2002) 1 Sri L.R. 148 at 151, Wanigaratne v Juwanis Appuhamy 65 N L R167.**

The propositions of law that have been discussed in both Judgments are correct in law but the issue is with their application and the understanding of the nature of the action filed in the District Court.

When one looks at the Plaint filed in the District Court, it can be observed that other than the reference to paper title and prescriptive title of the Plaintiff it had been clearly averred in paragraph 4 to 7 how the licensor and licensee relationship came into existence and how cause of action arose. There it is explained how the 1st Defendant became the licensee and he brought the 2nd and 3rd Defendants in to the land. In fact, the cause of action has been described as arisen when requested to hand over the possession, the Defendants failed to hand over the same. If the action was a purely a *rei vindicatio*, there is no need to aver such relationship since the *rei vindicatio* action is based on title of the Plaintiff and the possession of the Defendant against such title. The Plaintiff further has raised issues with regard to the said relationship which were clearly indicative of the fact that the Plaintiff was relying on the Licensor Licencee relationship that existed between them.

In **Pathirana v Jayasundare (1955) 58 N.L.R. 169** at 172 and 173 it is stated: “*I agree. In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. “The plaintiff’s ownership of the thing is of the very essence of the action”. Maasdorp’s Institutes (7th Ed.) Vol. 2, 96.*”

“*The scope of an action by a lessor against an overholding lessee for restoration and ejectment, however, is different. Privity of contract (whether it be by original agreement or by attornment) is the foundation of the right to relief and issues as to title are irrelevant to the proceedings. Indeed, a lessee who has entered into occupation is precluded from disputing his lessor’s title until he has first restored the property in fulfilment of his contractual obligation. “The lessee (conductor) cannot plead the exceptio dominii, although he may be able easily to prove his own ownership, but he must by all means first surrender his possession and then litigate as to proprietorship” Voet 19.2.32.*”

“*A decree for a declaration of title may, of course, be obtained by way of additional relief either in a rei vindicatio action proper (which is in truth an action in rem) or in a lessor’s action against his overholding tenant (which is an action in personam). But in the former case, the declaration is based on proof of ownership; in the latter, on proof of the contractual relationship which forbids a denial that the lessor is the true owner.*”

What has been discussed above indicate the deference between the *re vindicatio* action and an action against an overholding lessee or licensee. Mere presence of a prayer for a declaration of title cannot make the action a *re vindicatio* action. In both type of cases, one may include a prayer for declaration of title. On the other hand, in **B.R. Chandrasena v A.M. Lokubanda SC Appeal No. 20/2010, SC minuetts dated 18.12.2020** it was held as follows:

“*However, the statement of law made in the said Attanayake v. Aladin (supra), that when a declaratory remedy is not sought for the consequential relief for ejectment shall fail, does not seem to present the correct position of Law. It has not considered the decision of the same court made in T.B. Jayasinghe v. Kiriwanegedara Tikiri Banda (1988) II CALR 24 in coming to the said conclusion which clearly held where title to the property is proved, mere failure to ask for a declaration of title to the property will not prevent one from claiming relief of ejectment. Even Dharmasiri v. Wickramatunga (2002) 2 Sri LR 218 has held that the absence*

in the prayer for a declaration of title cause no prejudice, if in the body of the plaint, the title is pleaded and issues were framed and accepted by court on the title so pleaded. Thus, it is clear even in a rei vindicatio or a declaration of title action, if the issues are raised as to the title and it is proved, even though there is no prayer for declaration of title, the prayer for ejectment can remain as a standalone valid relief.” Also see **Abeydeera Arachchige Charlotte Kamalawathie v Walpola Arachchige Premaratne** SC/Appeal/No. 118/18, SC minutes dated 02.06.2021.

Thus, what is necessary in a *re indicatio* action is the proof of title of the Plaintiff against the Defendant who is violating the rights of the Plaintiff as the owner of the property.

Hence, the learned District Judge erred in deciding that the action filed before the District Court was a *re vindicatio* action disregarding averments in the Plaint as to the license given and issues raised in that regard based on the prayer containing a declaration of title.

Even though, it is not directly relevant to the questions of law raised in this appeal, the learned District Judge failed to observe that the Plaintiff’s position in the Plaint as well as in issues raised was that her predecessor’s title was through inheritance (vide issue No.1) and it is so stated in the Deed No.28644, marked P2. Merely because the Plaintiff, who was 80 years of age at the time of giving evidence, had stated that her husband’s father had given the property as a gift or through a Deed, the learned District Judge had ignored what is stated in the Deed by the predecessor in title as to the mode he got title to the land.

Anyhow, the learned District Judge has found that the 1st Defendant came into the land as a licensee of the Plaintiff and the evidence is that he brought in the 2nd and 3rd Defendants to the land. The learned District Judge also refused to accept the title claimed by the 3rd Defendant through certain Deeds originating from one Karunawathie and through the 1st Defendant. These findings were not challenged by the Defendants through a cross appeal as observed by the learned High Court Judge. Thus, the action filed was an action to evict the licensee and who came to the land through him, and the facts proved indicated that the 1st Defendant was a licensee.

When Leave to Appeal was sought from this Court on 14.09.2022, Leave to Appeal was granted on the following questions of law:

1. *Did the learned High Court Judges err, in the circumstances of the case, by holding that the Plaintiff – Appellant – Respondent is entitled to the relief by virtue of section 116 of the evidence ordinance?*

2. *Whether, the inclusion of a prayer for a declaration of title, in addition to a prayer for ejection on privity of contract between the parties would make the action a rei vindicatio proper?*

As per the reasons discussed above both questions have to be answered in the Negative.

Hence this Appeal has to be dismissed with Costs.

Appeal Dismissed.

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Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

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Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

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Judge of the Supreme Court