

SC Appeal 04/2013

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

In the matter of an application for Leave
to Appeal against the order of the Civil
Appellate Provincial High Court of
Anuradhapura

Mohamed Thamby Lebbe Noor
Mohamed (Deceased)
Rajarata Furniture, Kaduruwela.

PLAINTIFF

SC Appeal 04/2013

SC HCCA LA No:-176/11

Anuradhapura CAHC NCP/NCCA/ARP/204/2007

District Court Pollonnaruwa 8047/L/ 2000

V.

N.M.Abdul Hameed,
1/126, Pimburana Junction,
Sungawila.

DEFENDANT

AND BETWEEN

N.M.Abdul Hameed
1/126, Pimburana Junction,
Sungawila.

DEFENDANT-APPELLANT

V.

Noor Mohamed Ahamed Saheed

Rajarata Furniture, Kaduruwela.

SUBSTITUTED-PLAINTIFF-RESPONDENT

AND PRESENTLY BETWEEN

Noor Mohamed Ahamed Saheed

Rajarata Furniture, Kaduruwla.

SUBSTITUTED-PLAINTIFF-RESPONDENT-PETITIONER

V.

N.M.Abdul Hameed,

1/126, Pimburana Junction,

Sungawila.

DEFENDANT-APPELLANT-RESPONDENT

BEFORE:- S.E.WANASUNDERA, PC, J.

H.N.J.PERERA, J.

PRASANNA JAYAWARDENA, PC, J.

COUNSEL:- Nizam Kariappar PC with M.I.M. Iynullah for the Substituted

Plaintiff-Respondent-Appellant

Shamith Fernando for the Defendant-Appellant-Respondent

ARGUED ON:- 13.03. 2018

DECIDED ON:- 23.05.2018

H.N.J.PERERA, J.

The Plaintiff-Respondent-Appellant (here-in-after referred to as the Plaintiff) Instituted action against the Defendant-Appellant-Respondent (here-in-after referred to as the Defendant) for a declaration that he is the permit holder to the land more fully described in the schedule to the plaint and for ejectment of the Defendant, his servants and dependents from the said land and for damages.

It was the Plaintiff's position that he became the owner to the land more fully described in the schedule to the plaint on a permit dated 20.09.1961 issued under the Land Development Ordinance and he was in possession of the land until about 1995 and as he fell ill, the Defendant was asked to cultivate the said land and that the Defendant agreed to vacate the said land, a paddy field, on a request of the Plaintiff. The Plaintiff further claims that thereafter the Plaintiff requested the Defendant to hand over the possession of the said land to him, the Defendant failed to do so and illegally, unlawfully and forcibly continued to possess the said land causing damages to the Plaintiff.

The Defendant filed answer and admitted the fact that the said land was handed over to him by the Plaintiff and that he was in possession of the said land since 1972 up to date. Further the Defendant claimed that after he came into occupation of the said land he improved the said land by spending money with the bona fide belief that he is the owner of the said land. The Defendant further claimed that the permit issued to the Plaintiff has been cancelled.

The District Judge held in favour of the Plaintiff and the Civil Appellate High Court set aside the judgment of the District Court and dismissed the Plaintiff's action and allowed the Defendant's appeal. On 16.01.2013 this Court granted leave to appeal on the following question of law.

"Whether the learned Judges of the Civil Appellate High Court of Anuradhapura erred in law in holding that the learned District Judge did not have jurisdiction to consider whether the license issued to the Plaintiff-Appellant has not been properly cancelled, in accordance with the procedure laid down by law under which the permit has been issued."

On a plain reading of the plaint it is very clear that the Plaintiff filed action against the Defendant on the basis that it was with the leave and license of the Plaintiff that the Defendant was in possession of the land described in the schedule to the plaint. The Defendant did not deny this position taken by the Plaintiff but claimed title to this land on the basis that he developed the land with the belief that he owned it. The Plaintiff in his prayer sought not only ejectment and damages but also a declaration of title. Therefore the question arises whether the action becomes a *rei vindicatio* for which strict proof of the Plaintiff's title would be required, or else is merely one for declaration (without strict proof) of a title which the Defendant is by law precluded from denying.

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 scope of action by a lessor against an over holding lessee for restoration and ejectment, however is different.

Both these forms of action referred to, are no doubt designed to secure the same primary relief, namely the recovery of property. But the cause of action in one case is the violation of the Plaintiff's rights of ownership, in the other it is the breach of the lessee's contractual obligation. A decree for a declaration of title may, of course, be obtained by way of additional relief either in *rei vindicatio* action proper (which is in truth an action *in rem*) or in a lessor's action against his over holding 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. *Pathirana V. Jayasundera* 58 N.L.R.169.

In *Ruberu and another V. Wijesooriya* (1998) 1 Sri.L.R 58 it was held that:-

“Whether it is a licensee or a lessee, the question of title is **foreign** to a suit in ejectment against either. The licensee (Defendant) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of the Plaintiff without whose permission he would not have got it. The effect of Section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must first quit the land. The fact that the licensee or the lessee obtained possession from the Plaintiff is perforce an admission of the fact that the title resides in the Plaintiff.”

It was further held in that case that in an action by the person who granted the license or permission to eject a licensee, the question of title (of the Plaintiff) is wholly irrelevant is a rudiment of the law; a rule partaking of the character of a first principle. No question of title can possibly arise on the pleadings in this case, because the Defendant has stated in his answer and in his evidence that the Plaintiff handed over the possession of the said land to him and left to a village called Akurana and he thereafter developed and converted the said land into a paddy field. 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 lease or the permission to occupy or possess the land or to set up want of title in that person. It is therefore quite apparent that the action as originally constituted

was not a rei vindicatio action proper in which any issue as to rights of ownership could properly arise for adjudication.

In Majubudeen and Others V Simon Perera [2003] 2 Sri.L.R 341 it was held that:-

“Privity of contract is the foundation of the right to relief in an action by a lessor against an over holding lessee for restoration and ejectment and issues as to title are irrelevant. 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 obligations.”

In the instant case too, the privity of contract is the foundation of the right to relief and the issues as to title are irrelevant to the proceedings. The Defendant who has entered into possession of a land with the leave and license of the Plaintiff is precluded from disputing the Plaintiff’s title until he has first restored the property in fulfilment of his contractual obligation. Since the Defendant has admitted that he came into possession of the said land with the permission of the Plaintiff, the Defendant is estopped from denying the Plaintiff’s title and therefore there is no burden of proof on the Plaintiff to prove his title. On the scrutiny of the plaint, I am of the view that it discloses a cause of action based on trespass. The Defendant had admitted the fact that he received the quit notice sent by the Plaintiff. By the said notice the Plaintiff had clearly cancelled the license he has given the Defendant to occupy and possess the said land. The Defendant had clearly continued to possess the said land unlawfully thereafter as a trespasser.

The evidence led in this case clearly indicate that the Defendant came into possession of this land with the leave and license of the Plaintiff and on 05.01.2000 the Plaintiff had sent a letter to the Defendant through his Attorney-at-Law calling upon the Defendant to hand over the vacant possession to him. The Defendant in his answer had admitted that he received the said letter. The Defendant failed to reply the said letter without good reason for the default.

In Reginald Fernando V. Pabilinahamy and others (substituted) (2005) 1 Sri.L.R 31 it was held that Where the Plaintiff(licensor) established that the Defendant was a licensee, the Plaintiff is entitled to take steps for ejectment of the Defendant whether or not the Plaintiff was the owner of the land. The Plaintiff had instituted action against the Defendant on the ground that the Defendant had entered the land described in the schedule to the plaint with the leave and

license of the Plaintiff. The Plaintiff had sent a quit notice through his Attorney-at-Law to the Defendant, informing him to hand over the vacant possession of the said land to the Plaintiff.

There is no evidence to show that the Defendant took any action to reply the Plaintiff.

In the circumstances, this Court is of the opinion that the Plaintiff as the licensor is entitled to eject the Defendant who is his licensee from the premises in question.

The Civil Appellate High Court erred in holding that this is a *rei vindicatio* action and there is a burden on the Plaintiff to prove his title. The learned Judges of the Civil appellate High Court also misdirected themselves in fact and in law when they held that the District Court has entered judgment in favour of the Plaintiff in the absence of sufficient evidence to prove that he was the owner of the said premises.

Therefore I answer the question of law raised in this case in the affirmative in favour of the Plaintiff. This Court is of the opinion that It was not necessary for the Learned District Judge to find out whether the Plaintiff had a valid permit issued under the Land Development Ordinance.

For the aforementioned reasons, the appeal is allowed, the judgment of the Civil Appellate High Court dated 27.04.2011 is set aside and the judgment of the District Court of Pollonnaruwa dated 11.03.2004 is affirmed. I make no order for costs.

JUDGE OF THE SUPREME COURT

S.E.WANASUNDERA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

PRASANNA S. JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT