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

In the matter of an appeal under and in terms of Article 128 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / APPEAL / 35 / 2021

SC / HCCA / LA / 129 / 2020

HCCA (Badulla):

UVAP/ HCCAC / BDL / 01 / 2019 / F

DC (Badulla): L / 1692

Tuan Mansoor,

Bonzo, nee Minna

Samsudeen, *alias*

Nona Zuhaira Samsudeen Casim

PLAINTIFF

Tuan Bashier Bonzo,
No. 14/12, Shalawa Road,
Ambuldeniya,
Nugegoda.

SUBSTITUTED PLAINTIFF

-Vs-

1. **J.M. Premawathie,**
2. **D.M. Nandawathie**
   Both of 18th Mile Post,

Balagalla,
Megahakiwla.

DEFENDANTS
AND BETWEEN

1. **J.M. Premawathie,**
2. **D.M. Nandawathie**

Both of 18th Mile Post,
Balagalla,
Megahakiwla.

DEFENDANT –APPELLANTS

-Vs-

Tuan Mansoor,

Bonzo, nee Minna

Samsudeen, *alias*

Nona Zuhaira Samsudeen Casim

PLAINTIFF

Tuan Bashier Bonzo,
No. 14/12, Shalawa Road,
Ambuldeniya,
Nugegoda.

SUBSTITUTED PLAINTIFF – RESPONDENT

AND NOW BETWEEN

1. **J.M. Premawathie,**
2. **D.M. Nandawathie**

Both of 18th Mile Post,
Balagalla,
Megahakiwla.

DEFENDANT – APPELLANT-APPELLANT

-Vs-

Tuan Mansoor,
Bonzo, nee Minna
Samsudeen, *alias*
Nona Zuhaira Samsudeen Casim

PLAINTIFF

Tuan Bashier Bonzo,
No. 14/12, Shalawa Road,
Ambuldeniya,
Nugegoda.

PLAINTIFF – RESPONDENT – RESPONDENT

Before: Murdu N.B. Fernando, PC, CJ

Yasantha Kodagoda, PC, J &

A.H.M.D. Nawaz, J

Counsel: Kushan Illangatillake with Ruvendra Weerasinghe for the Defendant – Appellant – Petitioners.

Pulasthi Rupasinghe with Zaneta Ragel and Nayanthi Wanninayake for the Plaintiff – Respondent – Respondent.

Argued on: 03.02.2025

Decided on: 25.07. 2025

A.H.M.D. Nawaz,J.

Material Facts

1. The Plaintiff-Respondent-Respondent (the Plaintiff) instituted action in the District Court of Badulla and sought the following reliefs;

a) A determination that the Plaintiff is entitled to the property mentioned in schedule 'X'.

b) Ejectment of the Defendant-Appellant-Appellants, her agents and representatives from the property mentioned in schedule 'X', and grant of undisturbed and clear possession of the said property;

c) An order on the Defendants to pay damages of Rs. 15,000/- per month with effect from the date of the action being instituted, until undisturbed and clear possession of the property is granted to the Plaintiff.

2. Both the District Court and Provincial High Court of the Uva Province have held against the Defendants. In a nutshell the reliefs claimed by the Plaintiff in (a), (b) and (c) have been granted to the Plaintiff. This Court has granted leave to the Defendants on the following questions of law;

a) Has the learned Civil Appellate High Court Judge erred by failing to recognize that the Respondent has failed to read in evidence of the documents that have been led during the trial and relying on the said documents for the purpose of the Judgment?

b) Has the learned Civil Appellate High Court Judge erred in law by failing to recognize that the documents marked P-9, P-12 and P-13 have been produced in evidence in contravention of the provisions of Section 160 of the Civil Procedure Code and relying on the said documents for the purpose of the Judgment?

c) *Has the Civil Appellate High Court Judge erred in law by failing to appreciate the evidence that has been led by the Petitioners in respect of the acquisition by the Petitioners of prescriptive rights in respect of the land in dispute*?

3. The quotidian questions that usually arise in a *rei vindicatio* action also come up in this case namely, whether the Plaintiff has proved his title to the property. It is trite law that in a *rei vindicatio* action, the burden rests on the plaintiff to prove title to the property in dispute, regardless of any deficiencies in the defendant's case. In evaluating whether the plaintiff has discharged this burden, the defendant's case may become relevant—particularly where facts emerging from the defendant's evidence, whether alone or in conjunction with other established facts, support or confirm the plaintiff's assertion of title. Such facts may relate to the existence, non-existence, nature, or extent of any right, liability, or disability asserted or denied in the proceedings.

4. The word "proof" in Section 3 encompasses consideration of all matters before Court in terms of Section 3 of the Evidence Ordinance and the definition of the word "proved" contained in Section 3 applies generally to all the provisions of the Ordinance.

5. Thus, the documents marked by the Plaintiff namely, **P4, P5, P6, P7** and **P8** on the basis that the they were written by the Defendants acknowledging title in the Plaintiff is a relevant fact that goes to prove the fact in issue namely whether the Plaintiff had proprietary title in the land and moreover, apart from the fact that the acknowledgement of title in the Plaintiff emanates from the above documents, Plaintiff's title flows from a bestowal conferred upon the Plaintiff by virtue of a settlement order published under the Land Settlement Ordinance. That title traceable to the settlement order was not seriously impugned before this Court and as such, it should be taken that the title of the plaintiff by virtue of the settlement order has been established without any scintilla of doubt.

6. Further, the Plaint averred that the original Plaintiff was the wife of the deceased of the deceased claimant out of whom 07 children had conveyed their undivided shares to their mother, the original plaintiff, by Deeds marked '**P16**' and '**P17**' at the trial. The above Deeds were not objected to or subjected to proof by the Defendants.

7. Thus, it is clear the title of the Plaintiff has been clearly established at the trial. Accordingly, the onus would now shift to the Defendants to establish their legal entitlement to be in possession of the land in question.

8. The Defendants plead adverse possession or *ut dominus* possession to establish prescriptive title. Both Courts have held against the Defendants on any claim of prescriptive title. It is the case of the Plaintiff that the Defendants commenced their possession by leave and license. The documents marked at the trial and the tenor, nature and contents of the letter marked '**P4**', '**P5**', '**P6**', and **'P7'** demonstrate the subordinate character and permissive possession on the part of the Defendants.

9. The document '**P4'** dated 24.04.2022 acknowledges the permission granted to cultivate the land of the Plaintiff. It is written by Kumari who was the daughter of Siyathu-the licensee. The same writer communicates the expenses incurred to build a wall by **P5** dated 25.02.2006.

10. 'P6' dated 15.03.2006 informs the Plaintiff that the Defendants received notice asking them to do some work on the land. It is a letter written by Siyathu, the aforesaid licensee. '**P7'** notifies the death of Siyathu by his daughter Premawathie-the 1st defendant in the case. The Document '**P8'** is a request for a sum of Rs. 20,000/- to bring the land under cultivation. All these documents show permissive possession on the part of the Defendants and these assertions prove that prescription had not begun to operate. The documents clearly demonstrate that the Defendants occupied the land by virtue of the Plaintiff's leave and license, and that they recognized the Plaintiff as their landlord. Section 115 of the Evidence Ordinance embodies the principle of estoppel as articulated in *Pickard v. Sears*, preventing a party from denying a representation they have allowed another to rely upon. Furthermore, Section 116 of the Evidence Ordinance establishes the doctrine of estoppel by tenancy, which bars a tenant from disputing the title of the landlord during the subsistence of the tenancy. Taken together, these provisions reinforce the conclusion that the Defendants cannot approbate and reprobate in respect of the nature of their possession.

11. I must at this stage state that when documents **P4 – P8** were marked at the trail, there was repudiation of them by the Defendants as the Counsel for the Defendants denied that they were sent by the Defendants. However, it must be recalled that when the Plaintiff closed his case on 10.09.2015, there were no objections to the admissibility of these documents.

12. To establish the first question of law—namely, that the Plaintiff failed to read the documents in evidence at the close of his case—it was argued before this Court that there was no specific reference to

the term *"documents marked in the case."* The submission was that an express reference to documents is required at the conclusion of the Plaintiff's case for such documents to be treated as read in evidence.

13. In the present case, when the Plaintiff closed his case on 10.09.2015, he did so using a general statement to the effect that the case was being closed "upon the evidence led." It was contended that the omission of any specific mention of "documents" in this closing statement implies that the marked documents were not formally read into evidence.

14. I would hold this argument to be fallacious and contrary to the spirit of the provisions of the Evidence Ordinance.

15. In terms of Section 3 of the Evidence Ordinance, the word 'Evidence' means and includes a. oral evidence, b. documentary evidence. Therefore, a reference to the nomenclature 'evidence' would include documentary evidence that has been already led in the case and thus the subordinate character of the Defendants' possession has been clearly established by the documents marked.

16. This landlord and tenant relationship is further strengthened by documents **P9** and **P10**. **P9** is a complaint made at the Kandeketiya Police by the Plaintiff regarding the unauthorized mortgage of some produce from the land to other persons.

17. In response, Premawathie, the 1st Defendant in the case made a statement marked **P10** wherein she clearly admitted that they were

occupying the subject matter under the leave and license of the Plaintiff. The document marked **P13** is a representation that the Plaintiff's predecessor in title is the owner of the land. The Civil Appellate Court has also referred to the 2nd admission recorded at the trial on the 02.09.2013, wherein leave and license and a quit notice terminating the leave and license had been admitted by the Defendants. A careful perusal of the admission reveals that the Defendants have admitted the Respondent's title and they were license holders of the land in question. Thus, adverse possession or ouster of the Plaintiff has not been proved by the Defendants who have not, in the circumstances, established the onus of proving that they have a superior title by virtue of their prescriptive possession- See **De Silva Vs. Commissioner General of Inland Revenue** ;

A person who bases his title in adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

18. An argument has been made that the document marked **P12** and **P13** were produced in evidence in contravention of the provisions of Section 160 of the Civil Procedure Code. However, when these documents were produced, no objections were raised. The said Premawathie never referred to these documents in her evidence and controverted them. Therefore, the question of law raised on the basis of Section 160 of the Civil Procedure Code is unwarranted and has to be answered against the Defendants. Accordingly, there is sufficient material on record to establish that the Defendants have not acquired prescriptive title to the land in question. Consequently, the judgments of both the District Court and the Civil Appellate High Court were

correctly entered, being firmly supported by relevant and admissible evidence.

19. Accordingly, I affirm the judgment of the District Court dated 02.10.2018 and that of the High Court dated 01.06.2020. In the circumstances, the appeal of the Defendant-Appellant-Appellants stands dismissed.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC. CJ.

I agree

CHIEF JUSTICE

YASANTHA KODAGODA, PC. J.

I agree

JUDGE OF THE SUPREME COURT