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

In the matter of an appeal against the judgment of the Civil Appellate High Court of Ampara

KA Mary Nona

Plaintiff

SC Appeal 39A/2010
SC/(HC)CALA 34/2010
High Court Ampara
Appeal EP/HCCA/AMP/141/07
DC Ampara 378/L

Vs

HAP Wimaladasa

Defendant

AND BETWEEN

HAP Wimaladasa

Defendant-Appellant

Vs

KA Mary Nona

Plaintiff-Respondent

AND NOW BETWEEN

HAP Wimaladasa

Defendant-Appellant-Appellant

Vs

KA Mary Nona

Plaintiff-Respondent-Respondent

Before : Eva Wanasundera PC, J
Buwaneka Aluvihare PC, J
Sisira J De Abrew J

Counsel : Palitha Kumarasinghe PC with Nuwan Rupasinghe
for Defendant-Appellant-Appellant
Buddika Gamage for Plaintiff-Respondent-Respondent

Argued on : 22.9.2014
Decided on : 11.2.2015

Sisira J De Abrew J.

This is an appeal against the judgment of the Judges of the Civil Appellate High Court of Ampara dated 14.12.2009 wherein they, affirming the judgment of the learned District Judge, held in favour of the Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent).

This Court by its order dated 18.5.2010, granted leave to appeal on the following question of law.

'Whether the judges of the Civil Appellate High Court erred in law in resorting to the provisions of the Land Development Ordinance to uphold the validity of a permit issued under the provisions of the State Land Ordinance."

The Plaintiff Respondent initiated this action in the District Court of Ampara on the following basis.

1. Plaintiff-Respondent's husband KGM Jinadasa was declared to be the owner of the land described in the 1st schedule to the plaint by judgment dated 3.6.1991 in DC Ampara case No.199/L which was between the Plaintiff-Respondent's husband and one T.Lilly Nona. There is no evidence to suggest that there is any relationship between the said T.Lilly Nona and the Defendant-Appellant-Appellant (hereinafter referred to as the Defendant-appellant).

2. Possession of the land described in the 1st schedule to the plaint was handed over to the husband of the Plaintiff-Respondent on 3.9.1991as a result of the judgment in DC Ampara 199/L

3. Thereafter from 1991 till 1994 the Plaintiff-Respondent and her predecessor in title were in possession of the said land.

4. The Defendant-Appellant in 1994 entered a portion of the said land which is described in the 2nd schedule to the plaint.

The Plaintiff-Respondent, in the plaint, inter alia, sought the following relief.

1. A declaration of title in respect of the land described in the 2nd schedule to the plaint.

2. Ejectment of the Defendant-Appellant and his agent from the said land (described in the 2nd schedule to the plaint) and grant vacant possession to the Plaintiff-Respondent.

It is common ground that the land described in the schedule to the plaint is a State land. The entire land which is two acres and two roods in extent, has been given to the husband of the Plaintiff-Respondent by permit No. 8440 which was marked P3(c) at the trial. The learned District Judge, in his judgment 21.7.2006, decided that the said permit had been issued under the provisions of the Land Development Ordinance. The learned High Court Judges too in their judgment dated 14.12.2009 decided the same. Learned President's Counsel for the Defendant-Appellant contended that conclusions of both courts on the said point were wrong and that the said permit had been issued under the State Land Ordinance and not under the Land Development Ordinance. The learned High Court Judges further decided that under Section 48A of the Land Development Ordinance, the spouse of the permit holder became entitled to succeed the land. Therefore the most important question that must be decided in this case is whether the said permit has been issued under the provisions of the Land Development Ordinance or the State Land Ordinance.

Has the permit in respect of the land been issued to the husband of the Plaintiff-Respondent under the provisions of the Land Development Ordinance? If the answer to the above question is in the negative, both judgments of the District Court and the High Court are wrong. I now advert to this question. Permit No.8440 (marked as P3(c) at the trial) very clearly states that it has been issued under the provisions of the Crown Land Ordinance No.8 of 1947. It appears that both the District Judge and High Court Judges have failed to examine the permit. For the above reasons, I hold that conclusions reached by the District Court and the High Court are wrong. Although learned counsel for the Plaintiff-Respondent contended that no issue was raised on this point, as I pointed out earlier, the judgment of the learned District Judge has been based on this point and the High Court affirmed the

judgment of the learned District Judge on the same point. Therefore both the judgments should be set aside.

It is pertinent to consider Section 16 of the State Land Ordinance which reads as follows:

"16(1) Where it is provided in any permit or licence that such permit or licence is personal to the grantee thereof, all rights under such permit or licence shall be finally determined by the death of such grantee.

16(2) Where it is provided in any permit or licence that such permit or licence shall be personal to the grantee thereof, the land in respect of which such permit or licence was issued and all improvements effected thereon shall, on the death of the grantee, be the property of the State ; and no person claiming through, from or under the grantee shall have any interest in such land or be entitled to any compensation for any such improvements."

According to condition No.5 of the permit, the permit is personal to the permit holder. The Plaintiff-Respondent, in her evidence, admits that at the time she filed the case her husband was dead. When I consider Section 16 of the State Land Ordinance and the conditions of the permit, it appears that the rights of the Plaintiff-Respondent under the permit have come to an end with the death of her husband and the Plaintiff-Respondent has no title to the land. Therefore the case of the Plaintiff-Respondent should fail.

Earlier I have held that both judgment of the learned District Court and the High Court should be set aside. For the above reasons, I set aside the judgment of the learned District Judge dated 21.7.2006 and the judgment of the learned High Court Judges dated 14.12.2009.

In view of the above conclusion reached by me, I answer the question of law raised by the appellant in the affirmative.

As the case in the District Court has been filed only in respect of the land described in the 2nd schedule to the plaint, this judgment is applicable only in respect of the said land.

Learned President's Counsel for the Defendant-Appellant submitted that the Defendant-Appellant has been ejected by executing the writ of ejectment issued by the District Court pending the appeal. Learned counsel for the Plaintiff-Respondent too admitted this position. Learned President's Counsel for the Defendant-Appellant made an application to restore the Defendant-Appellant to the possession of the land described in **the 2nd schedule** to the plaint. I note that the Defendant-Appellant has come into occupation of this land without any legal basis. The Government has not issued him any permit to occupy the said land. If this Court now directs to restore the Defendant-Appellant to the possession of the said land, indirectly this Court gives him permission to occupy the State Land for which he did not or does not have a permit. Further if such a direction is given, it can be construed as an encouragement for illegal occupiers of State lands to occupy such lands. It appears that the Defendant-Appellant was in illegal possession of the land. Such persons can be evicted under the provisions of the State Lands (Recovery of Possession) Act. For the above reasons I am of the opinion that this Court should not restore the Defendant-Appellant in possession of the land. I therefore refuse the application of learned President's Counsel to restore the Defendant-Appellant in possession of the land described in the 2nd schedule to the plaint. However as I have set aside the judgments of District Court and the High Court, execution of the writ placing the Plaintiff-Respondent too cannot be permitted. I therefore direct the

learned District Judge to take steps to recall the writ of execution which placed the Plaintiff-Respondent in possession of the land described in **the 2nd schedule to the plaint.** Both parties cannot occupy the land described **in the 2nd schedule** to the plaint and it will continue to be State land. However the Divisional Secretary or the Government Agent of the area is at liberty to decide whether he should issue a permit to the said land and if decides so, the person in whose favour it should be issued

Judgments of the District Court and the High Court are set aside

Judge of the Supreme Court

Eva Wanasundera PC, J

I agree.

Judge of the Supreme Court

Buwaneka Aluwihare PC,J

I agree.

Judge of the Supreme Court