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

C.A. Appeal Case
No.785/98 (F)
D.C. Colombo Case No: 15905/L

Herath Mudiyanselage Ariyadasa
No.291, Meewella Road
Pethiyagoda
Kelaniya

PLAINTIFF

- **Vs** -

Herath Mudiyanselage Wijedasa
No.291/1, Meewella Road
Pethiyagoda
Kelaniya.

DEFENDANT

AND now

Herath Mudiyanselage Wijedasa (Deceased)
No.291/1, Meewella Road
Pethiyagoda
Kelaniya.

DECEASED-DEFENDANT-APPELLANT

Herath Mudiyanselage Nayana Sri Manjula
438A, Mawella Road, Pethiyagoda
Kelaniya formerly known as No.291/1,
Mewella Road, Pethiyagoda
Kelaniya.

SUBSTITUTED-DEFENDANT-APPELLANT

- **Vs** -

Herath Mudiyanselage Ariyadasa (Deceased)
No.291, Meewella Road
Pethiyagoda
Kelaniya.

PLAINTIFF-RESPONDENT- (DECEASED)

Nilanka Kushanee Ariyadasa
No.291, Mewella Road
Pethiyagoda
Kelaniya.

SUBSTITUTED-PLAINTIFF-RESPONDENT

Before:	**Janak De Silva J.**
	&
	N. Bandula Karunarathna J.
Counsel:	V. Thevasenadhipathi with I. Nisha Faiz for the Defendant - Appellant K.V. Sirisena for the Plaintiff- Respondents
Written Submissions:	By the Plaintiff - Respondent on 07.08.2019 and 26.02.2020
	By the Defendant-Appellant on 21.06.2019 and 11.02.2020.
Argued on:	17/01/2020
Judgment on:	**18/11/2020**

N. Bandula Karunarathna J.

The Defendant-Appellant (hereinafter called and referred to as the "Defendant") preferred this appeal against the Judgment dated 11.09.1998 of the learned Additional District Judge of Colombo in case No. 15905L.

The Plaintiff-Respondent (hereinafter referred to as the Plaintiff) instituted action in this nature to eject the Defendant-Appellant (hereinafter referred to as the Defendant) from the premises described in the schedule to the Plaint.

The Plaintiff bases his arguments mainly on the grounds hereinbelow mentioned;

(a) The Plaintiff is the lawful owner of the property in the Schedule,

(b) The Defendant is a Licensee of the Plaintiff,

(c) The Plaintiff terminated the leave and license by the notice dated 25.02.1992,

(d) The Defendant refused to leave the premises

The Defendant states that:

(a) He denied ownership of the Plaintiff,

(b) The Defendant is the owner of the premises in the Schedule of the Plaint.

The Plaintiff in his evidence stated that, he is the lawful owner of the property in Schedule by virtue of the Deed No. 394 (marked as P1) and his brother, who is the Defendant in this case, Wijedasa occupied a part of the house No. 291/1, with leave and license of the Plaintiff. The remaining part had been rented out until 1988. Thereafter up to 1998 the sister of the Plaintiff occupied the remaining part of the house, while Defendant occupied the same other part where he was residing earlier.

The Sister of the Plaintiff, Dayawathi, left the said house in 1988 which she occupied. Then that premises also occupied by the Defendant. The Plaintiff further testified that in 1988 the Defendant challenged the Plaintiff's rights and therefore he terminated leave and license which he has given to the Defendant on 25.02.1992. Plaintiff further testified that all property described in the schedule were possessed by him.

It is the position of the Defendant that the Plaintiff does not possess legal title to the property. He denied the Plaintiff's title to the property and the Defendant pleaded that the Plaintiff does not have a valid title to the land and premises which is the subject matter of this action and further pleaded that the Defendant is having the prescriptive title to the premises in suit. The Defendant further pleaded that he was in occupation and possession of the disputed property, for more than 30 years. He has indicated that he was in undisturbed, uninterrupted, adverse possession and occupation and thus the Defendant has acquired prescriptive title to the property.

The Defendant's position was that he never came as a leave and licensee under the Plaintiff. According to the Plaint, the Plaintiff stated that the Defendant was a leave and licensee under the Plaintiff himself. Thereafter the trial commenced and the parties raised their respective issues and admissions. Then this matter was fixed for hearing. At the trial both the Plaintiff and the Defendant gave evidence, marked their respective documents and led their evidence. The trial was concluded and after submissions by both parties the judgment was delivered in favour of the Plaintiff.

Against the said judgment the Defendant preferred this Appeal to this Court and we directed both parties to file their Written Submissions after the arguments were concluded. When this Appeal is pending, first the Plaintiff passed away and his daughter was substituted in place of the Plaintiff as the substituted Plaintiff Respondent. In the meantime, Defendant also passed away and the Defendant's son was substituted in place of the deceased Defendant.

It is settled law that in a Rei-Vindicatio action, the Plaintiff must prove his title in establishing his rights. The Plaintiff cannot rely on the weakness of the Defendant's title. In this appeal we have to consider whether the Plaintiff has established his title or not.

It is important to note that, in De Silva vs Gunathileke 32 N.L.R. 217 at page 219 Macdonell C.J. Citing authorities on Roman Dutch Law, referred to principles applicable to Rei-Vindicatio action in the following manner: -

A party claiming a declaration of title must have the title for himself. To bring an action of Rei-Vindicatio, Plaintiff must have ownership actually vested in him. The right to possess may be taken to include the ius-vinicandi, which Grotius puts in the forefront of his definition of ownership. This action arises from the right of Dominium, by if we claim specific recover of property belonging to us but possessed by someone else. The authorities unite in holding that Plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie.

In Wanigarathne vs.Juwanis Appuhamy 65 N.L.R 167 Herath J. stated that the Defendant in a rei-Vindicatio action need not prove anything still less his own title. The Plaintiff cannot ask for a declaration of title in his favour merely on the strength that the Defendants title is poor or not established. The Plaintiff must prove and establish his title.

It is my view that, in the present situation the Plaintiff has proved his case, without relying on the weight of the evidence led on behalf of the Defendant.

The Defendant emphasizes on the fact that the title deed of the Plaintiff was not proved by the Plaintiff either calling the previous owner or the witness to the Deed or the Notary Public. The Plaintiff has to prove his title Deed during the trial. He had produced a deed marked P1 subject to proof. Plaintiff has failed completely to establish any proof on that deed. The Defendant therefore states that the Plaintiff's title should be rejected on that basis itself. The Defendant argues that the judgment of the Learned District Judge has misdirected himself to arrive at the wrong conclusion that Deed marked as P1 is proved.

It is very clear that, when the Plaintiff closed his case marking Documents "P-1" to "P-7" the Defendant had not objected for Plaintiffs failure to prove those Deeds.

In the case of, Sri Lanka Ports Authority and another Vs Jugolinga bolt East (1981) 1 SLR 18 it was decided that "if no objection taken when at the close of the Plaintiff's case, document are read in evidence they are evidence for all purpose of the law. There is the curses Curiae of original Civil Courts".

It was held In Balapitiya Gunarathna Thero Vs Thalalle Meththananda Thero (1997) 2 SLR 101, that "where the document is admitted subject to proof that when tendered and read in evidence at the close of the case is accepted without objection it becomes evidence in the case. This is Curses curie".

In the present case, it is clear that failure of the Defendant to challenge P-2 letter written by the Plaintiff, amounts to accept the contents of the facts in the same. As the Defendant had failed to challenge the aforementioned document produced by the Plaintiff for evidence, it amounts to the acceptance of the said document.

In Colombo Electric and Lightning Co. Vs. Perera 25 NLR 193, it was held that "the Failure of the Defendant to reply Braid's Letter of July 29 when it was clearly states that Defendant as agreed and was liable to pay two third of the cost of the installation until September 22 after he had threatened with action amounts in my opinion all most and admission in law.

As per the above authorities the Learned District Judge is Correct when he accepted P-1 which is an original Deed, as evidence.

The Plaintiff had produced Municipal receipts P-3 to P-7 to prove his prescription which, Defendant has not challenged. It was revealed that the Defendant did not pay Municipal Taxes for the premises.

Further, the sister of the Plaintiff, Herath Mudiyanselage Dayawathie testified that she occupied the premises which Premarathna earlier occupied from 1983 to 1988 and thereafter the Defendant occupied the same premises. There is clear evidence to say that up to 1988, the Defendant occupied, only one part of the premises. But there is no independent evidence to prove that the Defendant came into the possession of the said premises before 1980.

It was held in Sirajudeen Vs Abbas 1994 (2) SLR 365, that in a *Rei Vindicatio* action, the burden of proof rests fairly and squarely on the person, if he is claiming prescription and has to be proved with specific facts and not mere statements. A facile story of walking into abandoned premises after the Japanese air raid constitutes material far too slender to found a claim based on prescriptive title.

As regards the mode of proof of prescriptive possession, mere general statements of witnesses that the Plaintiff possessed the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is necessary that the witnesses should speak to specific facts and the question of possession has to be decided thereupon by Court.
In the present case it had never happened.

It was further held that one of the essential elements of the plea of prescriptive title as provided for in section 3 of the Prescription Ordinance is, proof of possession by a title adverse to or independent of that of the claimant or plaintiff. The occupation of the premises must be of such character as is incompatible with the title of the owner. Furthermore, it was stated that, where the evidence of possession lacked consistency, the fact of occupation alone or the payment of Municipal rates by itself is insufficient to establish prescriptive possession.

It was decided in Chelliah Vs. Wijenathan 54 NLR 337, where a party invokes the provisions of section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his acquisition of prescriptive rights.

The Judgement of the District Court, accept that the Appellant possessed the disputed property for over 10 years, but the trial Judge observed that mere Prescription, in the absence of requirements in section 3 of the Prescription Ordinance, would not sufficient to acquire Prescriptive rights.

There is no reason to interfere with the Judgement of the learned District Judge. In my view that there is no merit in this Appeal. Judgment of the District Court is affirmed.

Due to the aforesaid reasons, this Appeal is dismissed with cost.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal