

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

1. S. T. M. Nihal Pushpakumara,
  2. L. Gnanalatha de Silva,
- both of Wellawaya Road,  
Ella.

Defendant-Appellants

**CASE NO: CA/DCF/550/2000**

**DC BANDARAWELA CASE NO: 806/L**

Vs.

K. Nimalasena,  
of Gannilewatte,  
Kitalellagama,  
Wellawaya Road,  
Ella.

Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Rohan Sahabandu, P.C., with Hasitha  
Amarasinghe for the Defendant-Appellants.  
H. Withanachchi with Shantha Karunadhara  
for the Plaintiff-Respondent.

Argued on: 23.07.2020

Decided on: 15.09.2020

Mahinda Samayawardhena, J.

The Plaintiff filed this action in the District Court of Bandarawela seeking a declaration of title to the land described in the first schedule to the plaint, ejectment of the two Defendants from the land described in the second schedule to the plaint (which seems to be a portion of the land described in the first schedule to the plaint), recovery of damages until the Plaintiff is restored to possession, and costs of the action. The Defendants filed the answer seeking dismissal of the Plaintiff's action with costs. After the trial, the learned District Judge entered Judgment for the Plaintiff. Hence this appeal by the Defendants.

I must begin by stating that in a *rei vindicatio* action such as this, the burden lies fairly and squarely on the Plaintiff to prove his title to the land in the manner pleaded in the plaint. The Defendant has no burden to prove on what right he is in possession until the Plaintiff successfully discharges the initial burden cast upon him. Has the Plaintiff in the instant case done his part? In my judgment, he has not.

Let me consider on what basis the Plaintiff claims title to the land in the plaint.

- (a) Ukku Menika was the original owner of the land described in the first schedule to the plaint, containing in extent 1 acre and 2 roods.
- (b) Upon her death, her only son, Peris Silva, became the owner of the said land by inheritance.

- (c) Peris Silva, by Deed marked P1, transferred the land to William Silva (who is the father of the 2<sup>nd</sup> Defendant and father-in-law of the 1<sup>st</sup> Defendant).
- (d) William Silva transferred ½ acre to Jamis Appu by Deed marked P2.
- (e) Jamis Appu transferred the said portion to Dayawathie by Deed marked P3.
- (f) Dayawathie transferred her ½ acre to the Plaintiff by P4.
- (g) The said William Silva then transferred an undivided 1 acre to Chandrasena by Deed marked P6 in 1970.
- (h) The Defendants came into occupation of the house standing on the above 1 acre described in the second schedule to the plaint with the leave and license of Chandrasena on 10.11.1982.
- (i) Chandrasena transferred the said 1 acre to the Plaintiff by Deed marked P8 in 1988.
- (j) The balance ½ acre was acquired by the State in 1973 to broaden the Ella-Wellawaya road.
- (k) The Defendants are disputing the rights of the Plaintiff to the land from the date of execution of Deed marked P8.

At the trial, the issues raised were also on the same lines.

Although the Plaintiff says the larger land which belonged to Ukku Manika is described in the first schedule as 1 ½ acres, according to Deed marked P1 executed in 1956, it is in fact 2 acres in extent. Accordingly, Peris Silva had inherited 2 acres which was transferred to the 2<sup>nd</sup> Defendant's father, William Silva, by Deed marked P1. Of the said 2 acres, William Silva

first transferred  $\frac{1}{2}$  acre to Jamis Appu, and the Plaintiff later became entitled to this  $\frac{1}{2}$  acre by P4. That is not disputed in this case.

The Plaintiff then says William Silva transferred 1 acre to Chandrasena by P6 in 1970 and Chandrasena transferred the said 1 acre to the Plaintiff by P8 in 1988. The Plaintiff also says the balance  $\frac{1}{2}$  acre of land was acquired by the State in 1973.

If  $\frac{1}{2}$  acre was acquired by the State in 1973, Chandrasena could not have transferred to the Plaintiff by P8 in 1988 the 1 acre he received by P6 in 1970. Chandrasena could have only transferred  $\frac{1}{2}$  acre.

On the other hand, P6 does not say William Silva transferred 1 acre to Chandrasena. What is transferred by P6 is an undivided half share of the 2 acre land.

However, when P6 was executed in 1970, it may be recalled, William Silva had already transferred  $\frac{1}{2}$  acre of the 2 acres to Jamis Appu by P2.

Also, according to the Plaintiff himself,  $\frac{1}{2}$  acre was acquired by the State in 1973 to broaden the road.

Then, according to the Plaintiff's own pedigree, of the  $1\frac{1}{2}$  acre land, 1 acre was no longer available when P8 was executed in 1988 in favour of the Plaintiff, and therefore the Plaintiff is only entitled to  $\frac{1}{2}$  acre by P8.

If the entire land is considered to be 2 acres (which is not the Plaintiff's case as pleaded in the plaint and in the issues raised), William Silva by P2 transferred  $\frac{1}{2}$  acre in 1969 and another  $\frac{1}{2}$  acre was acquired by the State in 1973, and what was in fact

transferred to the Plaintiff by P8 in 1988 was an undivided half of the (remaining portion of) land, i.e.  $\frac{1}{2}$  acre of the land, thereby leaving another  $\frac{1}{2}$  acre intact, which, in my view, belongs to William Silva.

According to the Plan marked P6, the Defendants are in possession of Lot 1 and they live in the old house standing thereon. The surveyor in his report prepared in 1990 says the house is about 30 years old. This is the house William Silva had been living in with his family. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been living in this house after marriage.

There is no evidence to say the Defendants came to the said house on 10.11.1982 with the leave and license of Chandrasena.

P14 dated 02.03.1988 sent by the 1<sup>st</sup> Defendant to Chandrasena the day after the execution of Deed marked P8 dated 01.03.1988 is not irreconcilable with the above position because what was sought to be transferred by P8 was not the entire land but part of it, which is different from the portion of land where the Defendants were and still are residing.

The learned District Judge in his Judgment has not, in my view, analysed the facts of the case from the proper perspective. I set aside the said Judgment and allow the appeal with costs. The Plaintiff's action in the District Court shall stand dismissed.

Judge of the Court of Appeal