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

Nadarajah Indranee
Sooriya Lane, Batticaloa.

Plaintiff

Case No. C. A. 1222/2000(F)
D. C. Batticaloa Case No. 4340/L

Vs.

Arulanandam Puvirajakeerthi
No. 140, Hospital Road, Batticaloa.

Defendant

AND

Arulanandam Puvirajakeerthy (Deceased)
No. 140, Hospital Road, Batticaloa.

Defendant-Appellant

Banumathy Puvirajakeerthy
No. 20, Sooriya Lane, Batticaloa.

Substituted Defendant-Appellant

Vs.

Nadarajah Indranee
Sooriya Lane, Batticaloa.

Plaintiff-Respondent

Before: Janak De Silva J.

Counsel:

N. R. Sivendran with D. Jayasuriya and P. Ragavan for the Substituted Defendant-Appellant

S. A. D. S. Suraweera for the Plaintiff-Respondent

Argued on: 15.03.2019

Written Submissions tendered on:

Substituted Defendant-Appellant on 28.05.2019 and 03.01.2020

Plaintiff-Respondent on 28.05.2019 and 10.02.2020

Decided on: 22.07.2020

Janak De Silva J.

This is an appeal against the judgment of the learned District Judge of Batticaloa dated 20.04.2000.

The plaintiff instituted the above styled action in the District Court of Batticaloa seeking *inter alia* a declaration of title to the land more fully described in Schedule D to the plaint dated 10.05.1995 [page 17 of the Appeal Brief] and the ejectment of the defendant and all those holding under him.

The plaintiff in her plaint averred that –

1. The defendant and she jointly became entitled to the land more fully described in Schedule A to the plaint by virtue of Deed of Gift No. 1996 dated 19.08.1965 attested by K. V. M. Subramaniam, Notary Public (P1);
2. By Deed of Partition No. 1808 dated 29.08.1984 attested by V. Sharvananda, Notary Public (P2), the defendant and she amicably partitioned the said land and she became entitled to the land more fully described in Schedule B to the plaint whereas the defendant became entitled to the land more fully described in Schedule C to the plaint;
3. By Deed of Gift No. 1809 dated 29.08.1984 attested by V. Sharvananda, Notary Public (P3), the defendant gifted a divided portion of his entitlement (i.e. the land more fully described in Schedule D to the plaint) to their uncle namely Kandiah Arulanandam;
4. The said Kandiah Arulanandam gifted this portion to the plaintiff by Deed of Gift No. 17950 dated 02.05.1990 attested by A. E. Saminathan, Notary Public (P4);
5. The defendant is in wrongful possession/occupation of the said land causing damages amounting to Rs. 1,000/- per month.

The defendant filed his answer on 02.11.1995 and took up the position that –

1. The deed marked 'P3' was executed to enable Kandiah Arulanandam to obtain a loan for carrying on a business;
2. Despite the execution of 'P3', the defendant remained in possession of the land in dispute;
3. The land in dispute was held by Kandiah Arulanandam in trust for the defendant;
4. The deed marked 'P4' was not the act of Kandiah Arulanandam and his signature was forged and thus it was fraudulently executed.
5. The defendant has been in undisturbed and uninterrupted possession of the land in dispute for more than 10 years and has acquired prescriptive title.

The defendant sought *inter alia* a declaration that 'P4' is null and void and a declaration of title to the land in dispute.

At the trial, Kandiah Nadarasa, an attesting witness to 'P4' and Surendra Kirupaharan, an Income Officer of Municipal Council of Batticaloa and the plaintiff gave evidence on behalf of the plaintiff. On behalf of the defendant, only Kandiah Parimalarajah, a Sub-Postmaster gave evidence.

The learned District Judge, by the judgment dated 20.04.2000, granted a declaration of title to the land in dispute in favour of the plaintiff. Being aggrieved, the defendant appealed.

It is an established principle that ownership of the property claimed in a *rei vindicatio* action is a fundamental condition to its maintainability [*De Silva v. Goonetileke* (32 N.L.R. 217), *Pathirana v. Jayasundara* (58 N.L.R. 169), *Mansil v. Devaya* (1985) 2 Sri.L.R. 46, *Latheef v. Mansoor* (2010) 2 Sri.L.R. 333] and the burden is on the plaintiff to establish the title pleaded and relied on by him [*Dharmadasa v. Jayasena* (1997) 3 Sri.L.R. 327].

There is no dispute that the plaintiff and the defendant jointly became entitled to the land more fully described in Schedule A to the plaint by virtue of 'P1'.

None of the parties dispute the execution of 'P2' by which the plaintiff and the defendant amicably partitioned the land more fully described in Schedule A to the plaint. Accordingly, the plaintiff became entitled to the land more fully described in Schedule B to the plaint whereas the defendant became entitled to the land more fully described in Schedule C to the plaint.

However, the defendant contends that the mere execution of an amicable partition deed cannot end co-ownership. To substantiate this position, the defendant relies on *Al Hareen Bin Ahamed v. Mohamed Rafi Ismail Bin Hassan* [S.C. Appeal 53/2011, S.C.M. 29.11.2017].

It must be noted that the facts of that case are quite different to the facts of the instant case. In *Al Hareen Bin Ahamed v. Mohamed Rafi Ismail Bin Hassan* (supra), the co-owners did not execute a partition deed but prepared an amicable partition plan and started possessing their respective portions exclusively. The question to be answered was whether the preparation of the said amicable partition plan puts an end to the co-ownership when the co-owners have not signed it. While answering the said question, Anil Gooneratne J. observed –

> *"I am unable to agree with the views expressed by the High Court by referring to several authorities that the co-owners have not signed the partition plan.* ***If the parties concerned (co-owners) signed the partition plan it would have been very easy for all parties,*** *but in the absence of such signatures, I cannot conclude the way the High Court Judges dealt with the case when there was sufficient oral and documentary evidence of the plaintiff's party of amicable divisions of the land in dispute and separate and independent possession of same from the year 1959."* [Emphasis added]

The view taken up by Anil Gooneratne J. clearly implies that signing of an amicable partition plan and/or deed puts an end to the co-ownership.

Furthermore in *Dona Cecilia v. Cecilia Perera and Others* [(1987) 1 Sri.L.R. 235] it was held that where a land is divided with the consent of all the co-owners but no cross-conveyances are executed in respect of the lots, co-ownership terminates only after undisturbed, uninterrupted and exclusive possession of the divided lots for a period of over ten years.

Again, it is implied that in the presence of a duly executed partition deed, there is no need to prove undisturbed, uninterrupted and exclusive possession of the divided lots for a period of over 10 years in order to establish the termination of the co-ownership.

In view of the above, I have no hesitation in rejecting the contention of the defendant that the mere execution of 'P2' did not end the co-ownership created by 'P1'.

The defendant further contended that 'P3' was executed to enable Kandiah Arulanandam to obtain a loan for carrying on a business and that he was holding the land in dispute in trust in favour of the defendant.

Section 103 of the Evidence Ordinance reads –

> *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."*

Accordingly, the legal burden of proving any particular fact rests upon the party who wishes the court to believe in its existence and therefore, the burden is on the defendant to show that 'P3' was executed to enable Kandiah Arulanandam to obtain a loan for carrying on a business and that he was holding the land in dispute in trust in favour of the defendant.

Kandiah Parimalarajah, the only witness who gave evidence on behalf of the defendant has stated that Kandiah Arulanandam was in debt and since he did not have any property to keep as security to obtain a loan, the defendant gifted the land in dispute to him subject to the condition that he will retransfer it to the defendant once the loan is obtained [page 89 of the Appeal Brief].

Other than that, there is no evidence whatsoever to show that Kandiah Arulanandam was in debt or that he obtained a loan. If he was in debt and/or he intended to obtain a loan as alleged by the defendant, the defendant had ample opportunity to produce evidence such as bank statements and/or letter demands sent by the creditors to Kandiah Arulanandam to prove that he was in need of money. No such evidence was placed before the Court other than the testimony of Kandiah Parimalarajah.

It is observed that 'P3' was executed in 1984. If Kandiah Arulanandam was actually in debt but failed to obtain a loan due to some reason, the defendant, as a reasonably prudent person, should have asked him to re-transfer the land in dispute to him as it was only transferred to Kandiah Arulanandam for the purpose of obtaining a loan. However, there is no evidence to show that the defendant took such measures until the institution of the instant action by the plaintiff in 1995.

On the other hand, the plaintiff has stated that the land in dispute was gifted to Kandiah Arulanandam by 'P3' to show gratitude as he looked after the plaintiff and the defendant since they were orphaned [page 53 of the Appeal Brief]. The evidence of Kandiah Nadarasa, a brother of late Kandiah Arulanandam confirms the position of the plaintiff.

In view of the above, I reject the contention of the defendant that 'P3' was executed to enable Kandiah Arulanandam to obtain a loan for carrying on a business and that he was holding the land in dispute in trust in favour of the defendant.

The next question to be considered is whether 'P4' is duly executed or whether the execution of 'P4' is tainted with fraud as alleged by the defendant.

A careful perusal of the trial court proceedings shows that 'P4' was read in evidence at the close of the plaintiff's case without any objections [page 88 of the Appeal Brief].

In *Sri Lanka Ports Authority and Another v. Jugolinija -Boal East* [(1981) 1 Sri.L.R. 18], it was held that if no objection is taken when at the close of a case documents are read in evidence, they are evidence for all purposes of the law.

However, in *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* [SC Appeal 45/2010 decided on 11.06.2019], Sisira J. De Abrew, J. observed –

> *"Therefore, it is seen that although a document is produced in court with or without objection, it cannot be used as evidence if it is not proved. If the principle enunciated in the case of Sri Lanka Ports Authority and Another v. Jugolinija -Boal East (supra) is accepted in respect of deeds, even a fraudulent deed marked subject to proof can be used as evidence if it is not objected by the opposing party at the close of the case of the party which produced it. In such a situation, one can argue that courts will have to disregard section 68 of the Evidence Ordinance. I do not think that the principle enunciated in the case of Sri Lanka Ports Authority and Another v. Jugolinija -Boal East (supra) extends to such a situation. Whether the opposing party takes up an objection or not to a deed which is sought to be produced, the courts will have to follow the procedure laid down in law."*

In light of the above, it is essential to consider whether the principle introduced by *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) applies to the instant application.

In *Wijesinghe Acharige Hemalal v. Rev. Waralle Nandaloka Thero and Other* [CA 1192/1998; C.A.M. 17.10.2019], I held –

> *"This comparative examination of the possibility of only a prospective application of a judgment establishes one main point which is that the question of prospective operation of judgments arises only when a decision by court on a point of law represents a change from what it was previously thought to be. This may be by express overruling or a new interpretation to the relevant statutory provision or the creation of a new legal principle in common law."*

At the time 'P4' was marked in evidence, the only available judicial precedent was *Sri Lanka Ports Authority and Another v. Jugolinija -Boal East* (supra) and there was no requirement to adduce further proof when there was no objection to a document been read in evidence at the close of a party's case.

The judgment of *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) made a change on a point of law. It created a new legal principle regarding the proof of execution of a document required by law to be attested.

The question then is whether the ratio in *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) should be applied to this case. In deciding this issue, it is useful to make a comparative examination of the approach other jurisdictions take on this matter.

Retrospective/Prospective Effect of a Judgment

In the US prospective overruling was recognized as far back 1848 in *Bingham v. Miller* [(1848) 17 Ohio 445]. Until the landmark decision in *Chevron Oil Co. v. Huson* [404 U.S. 97 (1971)] the Federal and State courts functioned on the premise that it was constitutionally permissible and often equitable for judgments to be given a prospective operation. Justice Cardozo in *Great Northern Railway. Co. v. Sunburst Oil & Refining Co.* [287 U.S. 358 (1932)] held that the Constitution neither prohibits nor requires prospective overruling. The US federal courts during this era was of the opinion that to hold otherwise would lead to an inequitable situation where transactions that had been concluded relying on a previous state of the law would be undermined by the retroactive application of a new rule recognized in a recent judgment.

However, in 1971 the US Supreme Court in *Chevron Oil Co. v. Huson* (supra) took a different approach to this question of operation and held that judgments **should as a rule apply retroactively, and that there should be exceptional circumstances for the judgment to be applied on a purely non-retroactive (prospective) basis.**

The test applied by the USA Supreme Court to decide whether a judgment should apply prospectively hinged on the manner in which the following 3 questions would be answered.

1. Whether the decision to be applied non-retroactively establishes a new principle of law, either by overruling clear past precedent or by deciding an issue of first impression; (was the rule genuinely new?)
2. If, in light the new rule's purpose and effect, retroactive operation would further or retard its operation (retroactive application was not necessary to further the operation of that rule) and
3. The extent of the inequity imposed by retroactive application, namely the injustice or hardship that would be caused by retroactive application.

This test underwent further modification in the 1990s. During this period the US Supreme Court took the position that whenever a particular issue has been newly decided in a case **and applied to the parties to that litigation, that proposition of law would necessarily have to be applied retroactively to other pending litigation on the same question**, irrespective of whether such litigation had been initiated prior to the judgment.[1]

This position was succinctly explained in the case of Harper v. VA. Dep't of Taxation [509 U.S. 86, 97 (1993)] in the following manner:

> *"When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in* ***all cases still open on direct review***[2] *and as to all events, regardless of whether such events predate or postdate our announcement of the rule ...."*

Thus, the widely accepted legal position regarding this question at federal level is that a new proposition of law that has been applied to the parties to the litigation must necessarily be applied retroactively to other **pending cases** on the same question of law. In other words, it is not

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[1] James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 543-44 (1991)

[2] In James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 543-44 (1991), it was held that transactions which had attained a degree of firm finality either because of a statute of limitations or the doctrine of res judicata would not be affected by the retroactive application of a new legal rule.

possible to selectively apply the new proposition of law retroactively to just the parties to the litigation and exempt the application of the rule to other pending cases on the same question. In an immigration case decided in 2011, the US Ninth Circuit Court of Appeal[3] held that judgments cannot be made prospective in relation to third party cases on the same question but at the same time be applied retroactively to the parties to the litigation. The Court went further and held that one can still rely on the tests in the *Chevron Oil Co.* case (*supra*) and decide to apply the judgment prospectively *vis a vis* all parties concerned.[4] (i.e. parties to the specific litigation and third parties)

It has often been said that courts in the US will be more inclined to apply a new rule of law on a purely prospective basis when it comes to the fields of contract and property. This is because litigants in this area of the law would generally have *relied substantially* on the previous state of the law when ordering and implementing their transactions.[5] Similarly, due to the US legal system's discomfort with ex-post facto criminality, the courts there have often applied judgments which criminalize conduct that was previously legal (i.e. judgments that expand criminal liability) on a prospective basis i.e. to acts and conduct which occur subsequent to the date of the decision.[6]

In sum therefore, the US system has now embraced the position that judgments should as a rule be applied retroactively to the parties' concerned and pending litigation of third parties on the same question. Nevertheless, the US courts have left the door ajar for purely prospective application of judgments, when justice and equity so desire such a step.

Although traditionally the UK courts have been reluctant to adopt a practice of prospective overruling [*Birmingham Corporation v. West Midland Baptist (Trust) Association Inc.* (1970) AC 874, 898-899, *Launchbury v. Morgans* (1973) AC 127, 137, *Kleinwort Benson Ltd. v. Lincoln City Council* (1999) 2 AC 349, 379] the ability to do so has been raised from time to time [*R. v. National Insurance Commissioner, Ex p Hudson* (1972) AC 944, 1015, 1026, *Miliangos v. George Frank (Textiles) Ltd.* (1976) AC 443, 490, *R. v. Grovenor of Brockhill Prison, ex p Evans (No. 2)* (1999) QB 1043, 1058, *Arthur J S Hall & Co. v. Simons* (2002) 1 AC 615, 710].

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[3] Nunez-Reyes v. Holder, 646 F. 3d 684, 690-95 (9th Cir. 2011)
"For those aliens convicted before the publication date of this decision [July 14], LujanArmendariz applies. For those aliens convicted after the publication date of this decision, Lujan-Armendariz is overruled

[4] An example of a judgment that has been applied on a 'purely prospective' basis is Barnett v. First National Insurance Co. of America, 110 Cal. Rptr. 3d 99, 104 (Cal. Ct. App. 2010)

[5] See Traynor, "Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility" (1977) 28 *Hasting Law Journal* 533 at 543

[6] See State v Jones 107 P.2d 324 (N.M. 1940); James v United States 366 U.S. 213 (1961)

in *Arthur J S Hall & Co. v. Simons* (supra) Lord Hope made the first judicial statement which endorsed the idea that prospective overruling may be a legitimate court function. He stated as follows:

> *"I consider it to be a legitimate exercise of your Lordships' judicial function to declare prospectively whether or not the immunity - which is a judge-made rule - is to be available in the future and, if so, in what circumstances."*

Later, in *National Westminster Bank plc v. Spectrum Plus Ltd and Others (in liquidation)* [(2005) UKHL 41], the House of Lords attempted to reconcile these seemingly divergent strands of judicial opinions. Lord Nicholls writing for the majority acknowledged the principled objections taken to prospective overruling by the UK system in the past viz. the usurpation of the legislative function by Court when they declared law as only applying to the future and treating decisions taken before and after the judgment differently. However, Lord Nicholls and the House of Lords were willing to leave the door ajar for prospective only operation of judgments as long as the following high threshold was met [para. 40]:

> *"Instances where this power has been used in courts elsewhere suggest there could be circumstances in this country where prospective overruling would be necessary to serve the underlying objective of the courts of this country: to administer justice fairly and in accordance with the law.* ***There could be cases where a decision on an issue of law, whether common law or statute law, was unavoidable but the decision would have such gravely unfair and disruptive consequences for past transactions or happenings*** *that this House would be compelled to depart from the normal principles relating to the retrospective and prospective effect of court decisions"*(emphasis added)

In India non-retroactive effect can be given not only to cases where an earlier decision is overruled but also to cases which decides an issue for the first time [*India Cement Ltd v. State of Tamil Nadu* (1990) 1 SCC 12].

In my view applying the ratio of *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) to the instant case causes injustice to the plaintiff who was entitled to rely on the then applicable judicial precedent *Sri Lanka Ports Authority and Another v. Jugolinija -Boal East* (supra).

Accordingly, I hold that the principle introduced by *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) has no retrospective effect on this application.

Alternatively and for the sake of completeness, if it is assumed that the principle laid down in *Dadallage Anil Shantha Samarasinghe v. Dadallage Mervin Silva and Another* (supra) is applicable to the instant action, section 68 of the Evidence Ordinance requires at least one attesting witness to be called for the purpose of proving the execution of the document in question before using the said document as evidence and the plaintiff has led the evidence of one attesting witness, who is also a brother of the Donor, who has stated that Kandiah Arulanandam signed 'P4' in his presence and he can recognize the signature of Kandiah Arulanandam [page 82 of the Appeal Brief].

E. R. S. R. Coomaraswamy; Law of Evidence (Pages 103 – 104 of Vol. II, Book 1, 2nd Edition) states that although Section 68 speaks of at least one attesting witness being called, as a matter of precaution, however, it is better to call all the attesting witnesses. The object of requiring attestation by more than one witness is to guard against the difficulties arising out of death, unavailability, absence from jurisdiction and other causes. **If one witness is called and he speaks to attestation, the document is *prima facie* proved. But it is open to the other side to rebut the proof by evidence that the apparent attestor is not an attestor in the legal sense. Where only one of the attesting witnesses is called and his evidence is not believed, the provisions of section 68 would not have been complied with. The evidence of an attesting witness is not necessarily conclusive and can be rebutted.** [Emphasis added]

In view of the above, it is safe to conclude that 'P4' is *prima facie* proved in terms of section 68 of the Evidence Ordinance and 'P4' and its contents can be used in evidence.

However, the defendant contends that the execution of 'P4' was not the act of Kandiah Arulanandam and his signature was forged. In such a situation, the burden is on him to prove that the execution of 'P4' is tainted with fraud [*Dr. Durgadas De Fonseka v. Vasanthi Gunathillake* (C.A. 326/1997; C.A.M. 05.12.2019)] and rebut the evidence led by the plaintiff.

However, the defendant has failed to produce any cogent evidence before the Court to prove these allegations. The defendant has not given evidence and the only evidence led to show that 'P4' was fraudulently executed is the testimony of Kandiah Parimalarajah, who has only stated that the signature of the Donor in 'P4' is not the signature of late Kandiah Arulanandam [page 91 of the Appeal Brief]. The defendant has not even sought to issue a commission to the Examiner of Questioned Documents to ascertain whether the signature is forged as alleged.

In these circumstances, I hold that the defendant has failed to prove his allegations to the satisfaction of this court and that 'P4' and its contents can be used in evidence.

Hence, I hold that the plaintiff has proved her title to the land in dispute as required by law.

This leaves the question of prescriptive title pleaded by the defendant. It is admitted that the defendant is in possession of the land in dispute [page 29 of the Appeal Brief].

In *Siyaneris v. Jayasinghe Udenis De Silva* (52 N.L.R. 289), it was held that in an action for declaration of title, where the legal title is in the plaintiff, but the property is in the possession of the defendant, the burden of proof is on the defendant.

In *Juliana Hamine v. Don Thomas* (59 N.L.R. 546 at page 548) L. W. De Silva A. J. observed –

> *"The paper title being in the 2nd and 3rd defendants, the burden of proving a title by prescription was on the plaintiff. That burden he has failed to discharge. Apart from the use of the word possess, the witnesses called by the plaintiff did not describe the manner of possession. Such evidence is of no value where the court has to find a title by prescription."*

In determining the question of prescriptive title, it is also important to bear in mind that it is a means of defeating the paper title a party holds and in that context as Udalagama J. held in *D. R. Kiriamma v. J. A. Podibanda and Others* (2005 B.L.J. 9 at 11) –

> *"Onus probandi or the burden of proving possession is on the party claiming prescriptive possession. Importantly, prescription is a question of fact. Physical possession is a factum probandum. I am inclined to the view that considerable circumspection is necessary to recognize the prescriptive title as undoubtedly it deprives the ownership of the party having paper title. It is in fact said that title by prescription is an illegality made legal due to the other party not taking action. It is to be reiterated that* ***in Sri Lanka prescriptive title is required to be by title adverse to and independent to that of a claimant or plaintiff.***"
>
> [Emphasis added]

The principles of burden of proof and mode of proof where a party claims prescriptive title was succinctly stated by the Supreme Court in *Sirajudeen and Others v. Abbas* [(1994) 2 Sri.L.R. 365] as follows –

> *"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.*

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."

The plaintiff and the defendant are relatives. In *Abeysinghe v. Abeysinghe* (34 C.L.W. 69) it was held that "very strong evidence of exclusive possession" was necessary to establish prescriptive title where a family member claims prescriptive title against other family members.

During trial, the defendant did not give evidence. Nor has he led evidence to show that he was in exclusive possession of the land in dispute for more than 10 years prior to the date of the plaint. The evidence of his only witness, Kandiah Parimalarajah, shows that taxes in respect of the land in dispute were paid by the plaintiff and by late Kandiah Arulanandam [page 99 of the Appeal Brief]. The evidence led by the defendant does not establish that he had undisturbed and uninterrupted possession for more than 10 years of the land in dispute by title adverse to that of the plaintiff or her predecessor.

In light of the above, I hold that the defendant has failed to prove his title to land in dispute.

For all the foregoing reasons, I see no reason to interfere with the judgment of the learned District Judge of Batticaloa dated 20.04.2000. I affirm the judgment and dismiss the appeal with costs.

Judge of the Court of Appeal