

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

Ranepurage Jayatissa,
Dematapelessa,
Kirriibbanwewa.
Defendant-Appellant

CASE NO: CA/DCF/447/2000
DC EMBILIPITIYA CASE NO: 3963/L

Vs.

Abeykoon Jalath Pathiranage
Karunawathie,
Dematapelessa,
Kirriibbanwewa.
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Nimal Jayasinghe for the Defendant-Appellant.
Anuruddha Dharmaratne with Indika
Jayaweera for the Plaintiff-Respondent.

Decided on: 18.09.2020

Mahinda Samayawardhena, J.

The Plaintiff filed this action against the Defendant in the District Court of Embilipitiya seeking declaration of title to the land described in the second schedule to the plaint, ejectment of the Defendant from the land described in the third schedule which is part of the land described in the second schedule to the plaint, damages, and costs. The Defendant filed answer seeking dismissal of the Plaintiff's action, declaration of title to the land described in the schedule to the answer, compensation, and costs. After trial, the learned District Judge entered Judgment for the Plaintiff. Hence this appeal by the Defendant.

According to the plaint, the Defendant has been cultivating the paddy land described in the third schedule to the plaint since 1985. The Plaintiff says she allowed the Defendant to cultivate the paddy land on an oral agreement that the Defendant would hand over 25 bushels of paddy per season to her as ground rent, which he has refused to do since the 1989/90 *maha* season.

Even if this is true, such oral agreements, as opposed to notarial executions, are obnoxious to section 2 of the Prevention of Frauds Ordinance and have no force or avail in law.

The Defendant does not accept that he is a licensee of the Plaintiff. His evidence is that he has been cultivating the paddy land since 1978 and the said land belongs to the State. He has produced several documents to substantiate this position.

The Plaintiff in his evidence produced the statement made by the Defendant to the *Gramaseva* Officer on 01.03.1991 marked X1. In this statement, the Defendant denies having taken the land from the Plaintiff and says he bought it from Themanis on 10.07.1977, for which he has a receipt, and Themanis had bought the land from the Plaintiff's husband, for which Themanis has a receipt dated 03.06.1975. The Defendant further says he has not paid rent to any person in respect of the land and will not do so in future either.

The learned District Judge at page 3 of the Judgment misconstrues the said position of the Defendant and says the Defendant admitted in his statement to the *Gramaseva* Officer to having obtained possession of the paddy land from the husband of the Plaintiff and therefore the Defendant has entered into possession of the land on the leave and license of the Plaintiff or her husband.

It is settled law that had the Defendant entered into possession of the land as a licensee of the Plaintiff, he could not have, in law, questioned the Plaintiff's claim to ownership of the land unless he had changed the character of possession by an overt act as the starting point of adverse possession.

It seems the learned District Judge has assessed the evidence of the Plaintiff as to the ownership of the land with the mind that the Defendant is admittedly a licensee, which is not an admitted fact.

In a *rei vindicatio* action such as this, the burden is fairly and squarely on the Plaintiff to prove title to the land in the manner pleaded in the plaint. There is no initial burden on the Defendant to prove his title or right to possession. The Defendant can remain silent until the Plaintiff accomplishes his task.

In the instant case, the Plaintiff sets out her title in the plaint as follows: the original owners of this land are Peiris Appuhamy and Dionis Appuhamy. Peiris by Deed P1 transferred his rights to the Plaintiff and Priyanthika, the latter not being a party to the case. Dionis transferred his rights by Deed P2 to the Plaintiff. The Plaintiff in lieu of her undivided rights possessed the land described in the second schedule to the plaint and acquired prescriptive possession of the land.

The land described in the first schedule to the plaint is 155 acres 2 roods and 3 perches in extent. The land described in the second schedule to the plaint is “*about 10 ½ acres*” in extent. The land described in the third schedule to the plaint is “*about 2 acres*” in extent. None of the said portions of land have been identified by way of a Plan.

Assuming Deed P1 is relevant to the land in question, of the 155 acres 2 roods and 3 perches, only an undivided 9/10 portion of the undivided 10 acres has been transferred. By Deed P2, an undivided 1 ½ acres has been transferred.

The learned District Judge at page 2 of the Judgment says Peiris Appuhamy by Deed P2 transferred 10 ½ acres of land. This is wrong. The learned District Judge has manifestly failed to

properly analyse the evidence of the Plaintiff as to the ownership of the land.

If the two Deeds P1 and P2 are accepted, it is clear that the Plaintiff is only a co-owner of the land. There is no evidence to support the Plaintiff's claim that she separated a portion of the co-owned land described in the second schedule to the plaint and acquired prescriptive title to it. How can prescriptive title be claimed to land in extent of "*about 10 ½ acres*"? Prescriptive title cannot be claimed to undivided rights. Prescriptive title can only be established to a defined portion of land. But no such defined portion was identified by the Plaintiff in this case although the learned District Judge, by answering issue No.3 affirmatively, has come to the finding that the Plaintiff acquired prescriptive title to the portion of land described in the second schedule to the plaint, which is not correct.

The learned District Judge has not touched upon the evidence of the acquiring officer of the Mahaweli Authority who says this is not private land but land belonging to the Mahaweli Authority.

It is my considered view the Plaintiff has neither proved that the Defendant who is admittedly in possession of the land in suit is a licensee of hers, nor proved her own title to the property to the satisfaction of the Court.

The Defendant's cross claim to the property is not entitled to succeed because the land, according to the Defendant himself, is State land.

I set aside the Judgment of the District Court and allow the appeal with costs. The Plaintiff's action in the District Court shall stand dismissed.

Judge of the Court of Appeal