

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

1. Theppanawe Mannalage Madumali
2. Theppanawe Mannalage Podina
Both of Deraniyagala, Udahenakande.
3. Theppanawe Mannalage Siriya
4. Theppanawe Mannalage Podina
5. Theppanawe Mannalage Punchikira
6. Theppanawe Mannalage Pinamali
7. Theppanawe Mannalage Sugathadasa
All of Thalpanawa, Galkada.

Plaintiff

Case No: CA 730/2000(F)

D.C. Ratnapura Case No: 5833/P

Vs.

1. Theppanawe Mannalage Pinsethuwa
Maligana, Higarana,
Kegalle District.
2. Theppanawe Mannalage Jayasena
3. Theppanawe Mannalage Suratha
4. Mannalage Dingibaba
5. P.M.C.M Kiridinga
All of Galkada, Kuruwita,
Thepanawa.
6. M Leisa (Deceased)
- 6A. P.M.C.M Kiridinga

Defendants

AND NOW BETWEEN

1. Theppanawe Mannalage Madumali
2. Theppanawe Mannalage Podina
Both of Deraniyagala, Udahenakande.
3. Theppanawe Mannalage Siriya
4. Theppanawe Mannalage Podina
5. Theppanawe Mannalage Punchikira
6. Theppanawe Mannalage Pinamali
7. Theppanawe Mannalage Sugathadasa
All of Thalpanawa, Galkada.

Plaintiff-Appellants

Vs.

1. Theppanawe Mannalage Pinsethuwa
Maligana, Higarana,
Kegalle District.
2. Theppanawe Mannalage Jayasena
3. Theppanawe Mannalage Suratha
4. Mannalage Dingibaba
5. P.M.C.M Kiridinga
All of Galkada, Kuruwita,
Thepanawa.
6. M Leisa (Deceased)
- 6A. P.M.C.M Kiridinga

Defendants-Respondents

Before: Janak De Silva J.

Counsel:

Daya Guruge for 4th, 5th and 7th Plaintiffs-Appellants

Anuruddha Dharmaratna with Srihan Samaranayake for 4th, 5th and 6A Defendants-Respondents

Written Submissions tendered on:

4th, 5th and 7th Plaintiffs-Appellants on 05.03.2019

4th, 5th and 6A Defendants-Respondents on 05.10.2018 and 05.03.2019

Argued on: 22.01.2019

Decided on: 24.05.2019

Janak De Silva J.

This is an appeal against the judgment of the learned District Judge of Ratnapura dated 31.07.2000.

The Plaintiffs-Appellants (Appellants) instituted the above styled partition action seeking a partitioning of the land called Hiriketiyeheena fifteen sews of kurakkan sowing in extent and more fully described in the schedule to the plaint. The learned District Judge entered inter locutory decree allowing the partitioning of only Lots 3 and 4 of Preliminary Plan No. 244 dated 09.02.1986 and directed that Lots 1, 2 and 5 therein be excluded on the basis that the 5th Defendant-Respondent (5th Respondent) had prescribed to Lot 2, the 4th Defendant-Respondent (4th Respondent) had prescribed to Lot 5 therein while Lot 1 was excluded in favour of Eswattage Gunasekera who is not a party to the action.

When this matter was taken up for argument the learned counsel for the Appellants informed that the appeal is pursued only regarding Lot 5 of P. Plan No. 244 made by licensed surveyor Cyril B. Alawathura on 18.04.1986 and that there was no contest with regard to Lot 2.

The evidence led shows that the 4th Respondent was in possession of Lot 5 for a long time. In fact, the survey report of P. Plan No. 244 shows that only the 4th Respondent claimed it during the preliminary survey which establishes that he was in possession of the said lot on that date. The preliminary plan and report of the surveyor can be used as evidence without further proof [Section 18(2) of the Partition Law].

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 or her acquisition of prescriptive rights [*Chelliah v. Wijenathan* (54 N.L.R. 337 at 342)]. The 4th Appellant admitted that the 4th Respondent was in possession of Lot 5 even prior to 1958 [Appeal Brief pages 94-97]. The 3rd Appellant also admitted that the 4th Respondent was in possession of Lot 5 for over 30 years [Appeal Brief pages 121-123].

In *D.R. Kiriamma v. J.A. Podibanda and 8 others* (2005 B.L.J. 9 at 11) Udalgama J. adverted to some important points to be borne in mind in considering a claim of prescriptive title:

“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 an independent to that of a claimant or plaintiff.”

The evidence establishes that this possession of the 4th Respondent is adverse to all others. Ratnapura Court of Requests Case No. 6378 had been filed against 4th Respondent and the 2nd Appellant was herself the 3rd Plaintiff in that case and the prayer to the plaint therein shows that the 4th Respondent was in possession of the land which is the subject matter of this case. That case was dismissed subject to costs. Previously there was a Rural Court of Kuruwita Case No. 1554 filed against the 4th Respondent where the 2nd Appellant was the 1st Plaintiff therein. The learned Judge had recognised the rights of the 4th Respondent in that case. Another case No.

4192 was filed in the District Court of Ratnapura by the Appellants against the 4th Respondent and had been dismissed leaving the liberty to file a fresh action.

I have carefully considered the evidence led before the learned District Judge touching on the claim of prescriptive title and find that he has judiciously considered all the evidence and correctly concluded that the 4th Respondent had established the requisites for a successful claim of prescriptive title.

I see no reason to interfere with judgment of the learned District Judge of Ratnapura dated 31.07.2000.

Appeal is dismissed with costs.

Judge of the Court of Appeal