IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

Court of Appeal Case No: CA 0274/00
DC. Kandy No: 16507/L

A.M.N.G. Lokubanda
49, Mahaaswedduma,
Hasalaka.

Plaintiff- Appellant

A.M.N.G. Biso Menika
49, Mahaaswedduma,
Hasalaka.

Substituted- Plaintiff- Appellant

Vs.

1. B.M.K. Rambanda
2. B.M.K. Basnayake
   Both of 2, Mahaaswedduma, Hasalaka.

Defendants- Respondents

K.M.P. Herath Menika
No: 2/2 Mahaaswedduma, Hasalaka.

Substituted 1st and 2nd Respondents

Before	:	**Janak De Silva J.** **&** **N. Bandula Karunarathna J.**
Counsel	:	M.D.J. Bandara for the 1(a) Substituted- Plaintiff- Appellant. Rohan Sahabandu, PC with Hasitha Amarasinghe for the 1st and 2nd Defendant- Respondent.
Written Submissions	:	By the Substituted- Plaintiff- Appellant on 25/03/2013 By the Substituted 1st and 2nd Defendant- Respondent on 25/03/2014
Argued on	:	31/05/2019
Judgment on	:	16/11/2020

N. Bandula Karunarathna J.

The Plaintiff Appellant (herein after referred to as the Appellant) instituted action in the District Court of Kandy on or about 27.12.1990 seeking inter alia a declaration that the land described in the schedule to the plaint belongs to the State, that the Appellant is the lawful permit holder in respect of the said land, eviction of the Defendants from the said land whom the Appellant alleged to be in forcible possession. It was the position of the Appellant that he has been granted the permit bearing No.13771 dated 05.09.1969 and that the Defendants came into unlawful possession of the land in question in the year 1987.

The Appellant submits that according to P1 the allotment of land granted to the Appellant is not given on the said Permit but however, the Permit described the corpus as one in extent of 2 Acres situated within the boundaries given therein. During the course of the Trial a survey was carried out by Hettiaratchchi L.S., on a Commission issued on her, who prepared a Plan depicting Lot No:315 in the Final Village Plan No:304 together with a report, having identified the subject matter in terms of the said Final Village Plan.

The Surveyor very precisely has stated that, she can affirm that, the land she identified is the land conveyed to the Appellant upon the permit bearing No: 13771 (P1).

On the other hand, the Appellant states that she also has reported to Court that, she has perused the Permit produced by the 2nd Respondent and has come to the finding that, it's boundaries given therein, do not tally with that of the subject matter. She further has stated that, thereupon she had made a query to the Divisional Secretary and that, the Divisional Secretary in turn has sent in a reply, which reply too was annexed to the Report returned by her (P9).

The Appellant states that the Commissioner gave evidence before Court substantiating the contents of the Plan and the Report prepared by her. On the aforesaid and other evidence and also on the documents, the Appellant had proved his entitlement for the possession of the subject matter, as is required by the Law.

It was argued by the Appellant that however, the Learned Trial Judge has misinterpreted the said Document V3 in adopting the principles governing the Law of Prescription.

On the other hand, the Appellant states that the Learned Trial Judge has come to the wrongful finding that, the Appellant has failed to identity the corpus, when in fact the evidence led before Court were contrary to the said wrongful finding. Therefore, the Appellant prays that be set aside and a Judgment be entered in favor of the Appellant as prayed for by him in his Plaint.

The original 1st and 2nd Defendants, the 2nd Defendant being the son of the 1st Defendant filing their joint answer denied the position of the Plaintiff and maintained that they came into occupation of the said land in the year 1968 and were permitted to cultivate under *Minipe* 2nd stage, a project carried out under the Land Development Ordinance, and that it later transpired that he had cultivated in excess than the area which he had been allotted. A scheme inquiry was held to divide that excess land among the family members of the colonists as a

result of which the 2nd Defendant, being the son of the 1st Defendant became entitled to the land in question.

The aforesaid Defendants state that the land in question belongs to the State was recorded as an admission at the outset and parties proceeded to trial on 15 issues out of which 6 issues were raised on behalf of the Plaintiff and the remaining being raised on behalf of the Defendants. The Assistant Surveyor General, the licensed surveyor Padma Hettiarachchi to whom a commission was issued to survey the land on the joint application of the parties, the Divisional Secretary and Another villager from a neighboring land were called by the Plaintiff as witnesses and read in evidence documents marked P1-P10.

The 1st and 2nd Defendants, a villager called Wijeratnebanda Rambukwella and an official from the Registry of the District Court of Kandy testified before Court in support of the Defendant's position and read in evidence document marked V1-V4.

The essence of the submission of the aforesaid respondents are that the Plaintiff had failed to establish the identity of the corpus which is fundamental for the purpose of attributing rights or ownership and for ordering ejectment and that the Plaintiff has failed to establish title to the land in question.

Subsequent to a thorough analysis of the facts of the case, it could be asserted that since the present action is to indicate the title of the Plaintiff, and to obtain possession of the land, it is the duty of the Plaintiff to establish identity of the corpus together with his title, and upon the failure to establish these ingredients the Plaintiff's action must necessarily fail.

As correctly pointed out by the Learned District Judge in his Judgment, the corpus has not been properly identified. The evidence given by the Plaintiff's witness regarding the Southern boundary is uncertain and contradictory.

I further note that the witnesses summoned by the Plaintiff could not give a plausible explanation as to why the boundaries set out in the permit relied upon by him does not tally with the boundaries of lot no.315 in plan No. V.P 304. The land in between, the land in question and Hasalaka Oya, has not been properly identified as an area reserved for Hasalaka Oya. The Plaintiff could not also establish the eastern boundary. There is also a considerable difference in the extent of the land in question and lot No.315 of plan No. V.P 304. The extent as stated in the plaint is 2 acres, whereas the extent of lot No. 315 is given as 0.662 hectares.

I hold the position that the identity of the corpus is vital that if on the identity of the corpus the Plaintiff fails to discharge the burden he shall not be entitled to succeed in his action.

In Sopinona VS. Pltlpanaarachchl And Two Others 2010(1) SLR 87 Saleem Marsoof., J.stated that;

> "Clarity in regard to the identity of the corpus is fundamental to the investigation of title in a partition case. Without proper identification of the corpus it would be impossible to conduct a proper investigation of title."

It is also pertinent to note that where in an action for declaration of title, the Defendant is in possession of the land, the burden is on the Plaintiff to prove that he has title. Not only must he prove his title, he must also prove that the Defendant withholds possession from him or prevents him from obtaining possession, which the Plaintiff in the instant case failed to do.

In the instant case, the Plaintiff cannot establish his title without first having properly identified the land in question. In an action of this nature, the principle that the weaknesses of the Plaintiff's case cannot be strengthened by relying on the imperfection of the case of the Defendant applies. The evidence of the Plaintiff's witnesses which is to the effect that the Defendant has had only an annual permit which is no longer valid as it has not been renewed, cannot be treated as strengthening the case of the Plaintiff.

In Dharmadasa Vs. Jayasena 1997 (3) SLR 327, the Court was reiterative and persistent in emphasizing that in an action for declaration of title, the burden is always on the Plaintiff to establish ownership pleaded. It means that the Defendant is under no obligation to prove anything in such an action. If the Plaintiff fails to discharge the burden of proof expected of him, his action for vindication of title deserved no favorable consideration.

It was held in Wanigaratne Vs. Juwanis Appuhamy 64 NLR 167 that, It could therefore be noted that the Learned District Judge having heard the witnesses and having considered the documentary evidence placed before court was of the view that the Plaintiff had not proved his case. The Plaintiff in a declaratory action need not prove anything, still less his own title;

> It could further be noted that the Judgment of the Learned District Judge is a well-reasoned Judgment in which all the evidence placed before Court both documentary and oral have been properly examined and evaluated.

The reasons given by the Learned District Jude in the said Judgment were;

- That the assistant surveyor General who testified admitted that the boundaries of plan P1, does not tally with the boundaries given in the permit.

  The Plaintiff could have led evidence to show whether lot 318 2/2, is a reservation attached to Hasaka Oya, and that the Eastern boundary is colony land, which he failed to do.

- The survey who was summoned to give evidence did not explain how she identified the land physically and failed to state the distance between the Northern boundary and Hasalaka Oya and also whether a reservation of 40m was kept aside as a reservation for Hasalaka Oya.

- The Divisional Secretary has stated that there exists a land occupied by a 3rd party which is of an extent of 1 acre on the boundary of Hasalaka Oya, which goes to show that the Southern boundary of the land in question has not been identified.

- Although the villager who was summoned to give evidence attempted to state that the Plaintiff was in possession from 1965-1987, he admitted that he was away from the village and was working in Colombo up until 1987, and also did not deny that the 1st Defendant had been occupying the land.

- That the document V1 has been altered, and that if it had been an official act, at lease the short signature of the official who effected the alteration should appear.

- Even of V1, is accepted still it is only an annual permit which has not been renewed and therefore has no validity.

- The Evidence of the Divisional Secretary is to the effect that Defendant's position that the land belongs to Minipe Colony is improbable due to the fact that the land in question is not wet or marshy land but is a 'goda idama'.

- Court proceedings annexed marked V2 and V3 clearly show that the dispute between the parties had arisen way back as in 1977, and not after 1987 as averred by the Plaintiff in his plaint.

Thus, the Appeal Court will be deferential to the findings of the lower Court, and the Judgment of the instant case does not warrant the intervention by an Appeal Court as there aren't any errors in the said lower Court Judgment and in my view, it is a Judgment supported by adequate reasoning.

In Sri Lanka Cooperative Industries Federation Ltd. v. Ajith Devapriya Kotalawela (S.C.5 Appeal No.02/2005), the Supreme Court noted that "....an Appellate court would not lightly interfere with the decision of the trial judge who had the advantage of seeing and hearing the testimony of witnesses who are called to give evidence." And further quoted with approval an extract in Munasinghe vs. Vidanage 69 NLR 97.

In the said case Justice Simon's decision in the House of Lords case of Watt Vs. Thomas [1947] 1 All E.R.582 at pages 583 was quoted and which observed that: "...an Appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution.

If there is no evidence to support a particular conclusion (and this is really a question of law) the Appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if the conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the Appellate Court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration.

Like other tribunals he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal evidence, has the advantage (which is denied to Court of Appeal) of having the witnesses before him and observing the manner in which their evidence is given."

The Learned District Judge's findings in the instant case does not warrant interference by the Appellate Court.

The judgement of the learned Trial Judge is affirmed. I therefore dismiss the Appeal of the Plaintiff Appellant, with costs.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal