

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

In the matter of an Appeal to the Court of
Appeal of the Democratic Socialist Republic
of Sri Lanka.

C.A. No.946/98 (F)
DC Trincomalee Case No.2337/86

K.H. Charlies Silva
No. 256, Main Road
Kanthale.

PLAINTIFF

Vs.

T.H. Chandra alias CHANDRATHILAKE
No.140, Pottam Kadu Road
(Opposite Bank of Ceylon)
Kanthale.

DEFENDANT

AND NOW BETWEEN

T.H. Chandra alias CHANDRATHILAKE
No.140, Pottam Kadu Road
(Opposite Bank of Ceylon)
Kanthale.

DEFENDANT-APPELLANT

K.H. Charlies Silva
No. 256, Main Road
Kanthale. (Deceased)

PLAINTIFF-RESPONDENT

K.D. Wimalawathie
No.265, Main Street,
Kanthala. (Deceased)

SUBSTITUTED – PLAINTIFF- RESPONDENTS

1. KANAKKA HEWAGE CHANDRAWATHI
 2. KANAKKA HEWAGE DHARMASASA
 3. KANAKKA HEWAGE SOMAWATHIE
 4. KANAKKA HEWAGE YASAWATHIE
 5. KANAKKA HEWAGE RAJASOORIYA
- All of No.256, Main Street,
Kanthale.

**SUBSTITUTED-SUBSTITUTED-PLAINTIFF-
RESPONDENTS**

Before: Janak De Silva J.
&
N. Bandula Karunarathna J.

Counsel: Athula Perera with K.S.K. Mendis for the Defendant-Appellant
J.A.J. Udawatta with Anuradha N. Ponnamparuma for the Substituted-Substituted-Plaintiff-Respondent.

Written Submissions: By Defendant-Appellant on 10.06.2019 and 26.11.2019
By Substituted-Substituted-Plaintiff-Respondent
on 03.06.2019 and 14.11.2019

Argued on: 26/09/2019

Judgment on: 18/11/2020

N. Bandula Karunarathna J.

The original Plaintiff instituted the present action and, in his Complaint, dated 31.3.1986 stated inter alia that;

- a. The Plaintiff has been in occupation of the land in dispute since 1957;
- b. By virtue of the Permit bearing Number K.N/227/32 dated 20.3.1985, he became the Permit Holder of the land described in the schedule to the Complaint.
- c. He submitted that the Defendant was one of his sons-in-law and he on or about 19.4.1930 had granted leave the license to the Defendant to occupy the land and the half-completed house on the promise/undertaking that the Defendant shall vacate the same whenever requested by the Plaintiff. The Plaintiff had further stated that Defendant had agreed to make final touches to the house and complete the construction thereof.
- d. It was the position of the original Plaintiff that irrespective of the said undertaking Defendant failed to handover the vacant and undisturbed possession of the land as agreed.
- e. In the circumstances aforesaid, the Plaintiff has submitted that a cause of action had accrued to him to sue the Defendant to obtain the declaration that he is the lawful allotted of the said land and for the ejectment of the Defendant therefrom.

On the basis of the aforesaid permit, the Plaintiff sought a declaration that he is entitled to the land and the house herein above described. The Plaintiff further pleaded damages of

Rs.50/- per month from March 1986 until the possession of the land is handed over to the Plaintiff.

The Defendant denying the averments in the Plaint stated inter alia that he married the granddaughter of the Plaintiff and at the time of the said marriage the Plaintiff and his daughter had gifted the said property to the Defendant's wife as a dowry and thereafter with the consent of the Plaintiff and his daughter, he had constructed a house by spending of about Rs. 300,000 /-.

The Defendant further submitted that there was no agreement, the perusal of which would cause the Plaintiff to hand over the vacant possession of the land to the Plaintiff.

The Defendant bases his counter argument on the following;

- a. The premises in suit was given in dowry to the Defendant's wife by the Plaintiff and his daughter;
- b. The house standing on the land in dispute was constructed by him with the consent and knowledge of the Plaintiff and his daughter;
- c. There was no agreement whatsoever to suggest that the Defendant was willing to quit the premises in suit whenever demanded by the Plaintiff.

The Defendant based on the aforesaid three arguments, submitted that there is no cause of action accrued to the Plaintiff to sue him. The Defendant further stated that, he is entitled to recover Rs. 300,000/= which he solely incurred for and on behalf of the improvements to the premises from the Plaintiff if the case is decided in favor of the Plaintiff.

In the circumstances aforesaid, the Defendant sought the dismissal of the plaint and also sought Rs.300,00/= as compensation for the improvements he had made in the land.

Thereafter Learned District Judge delivered the Judgment on 13.3.1998 and had granted the reliefs as prayed for by the Plaintiff. The present appeal is against the said Judgment.

The main standpoint introduced by the Defendant is that the permit granted to the Plaintiff is not a Permit issued under in terms of the provisions in Crown Lands Ordinance No. 8 of 1947. The Defendant claims that it is only a personal Permit given to the Plaintiff. The Plaintiff's entire case is based on the grounds of the validity of the permit granted to him.

The Defendant further submits that in the present case the plaint, the issues, the evidence refer to a Permit issued under the provisions in Land Development Ordinance. However, the Defendant states that there is no Permit produced in the case issued under the provisions in Land Development Ordinance. The basis upon which the Defendant claims that the permit granted to the Plaintiff is not one issued under the provisions of the aforesaid ordinance is as follows;

The Defendant states that the Plaintiff K.H. Charlis Silva had died on 22.05.1998, which is after the filing of the Petition of appeal against the Judgment of the District Court dated 30.03.1998.

K.D. Wimalawathi the wife of deceased original Plaintiff by her application dated 04.09.2001 had made an application to substitute herself in the room of deceased original Plaintiff. Thereafter said K.D. Wimalawathi also had died and in her place her children were substituted as 1st to 5th Substituted-Substituted-Plaintiff-Respondent.

In the circumstances aforesaid, the Defendant argues that as per section 16 of the Crown Lands Ordinance, upon the death of the Permit Holder all rights in respect of the land shall

vest with the State and no person claiming through from or under the grantee shall have any interest in such land or be entitled to any compensation for such improvements.

Section 16 of the Crown Land Ordinance No.8 of 1947 is as follows,

16 (1) Where it is provided in any permit or, license that such permit or license is personal to the Grantee thereof, all rights under such Permit or license shall be finally determined by the death of grantee.

(2)Where it is provided in any permit or license that such permit or license shall be personal to the grantee thereof, the land in respect of which such permit or license was issued and all improvements effected thereon shall, on the death of the grantee, be the property of the Crown, and no person claiming through, from or under the grantee shall have any interest in such land or be entitled to any compensation for any such improvements.

Therefore, the Defendant claims that the said substitution is improper in terms of the Provisions in Section 16 of the Crown Lands Ordinance. In respect of a Permit personal to the Permit Holder, there is no succession in terms of Section 16 of the Crown Lands Ordinance. The Defendant therefore argues that the property in dispute, now has vested with the State.

The Defendant in his submissions distinguishes the current case from that in Walpola Liyanage Belin Perera v. N.K. Kiribandu CA 1164/2000 DC Polonnaruwa 1676/ L CA. This is the case where Permit had been granted in terms of the Land Development Ordinance.

On the contrary the present action present action is in terms of provisions in section 16 of the Crown Land Ordinance the Substituted -Substituted -Plaintiff Respondent has no rights whatsoever to claim the premises upon the death of original Plaintiff. No further steps could be made in the present case in terms of the Permit granted under the Provisions in Crown land Ordinance as upon the death of the original Plaintiff said land had vested in the State.

To this argument of the Defendant, the Plaintiff states *inter alia* that he had permitted the Defendant to reside in the premises in suit for a short stay in 1983 and upon the receipt of the Permit in 1985, he had requested the Defendant to handover vacant possession of the premises in suit.

The Plaintiff in his evidence had further stated that the Defendant had attempt to assault him when vacant possession of the premises in suit was demanded by him and that the Plaintiff had lodged a complaint to the Police regarding the same consequent to which proceedings under Section 66 of the Primary Courts Procedure Code was instituted by the Police.

The Plaintiff further states that;

The Defendant commencing his evidence on 20.03.1997 in his evidence in chief had stated *inter alia* that neither did the Plaintiff involve in proposing his granddaughter to the Defendant nor did he partake in the occasion of their marriage. The Defendant claims that the Plaintiff had promised to build a house and a shop for him in a vacant block of land owned by the Plaintiff for the Plaintiff's granddaughter.

It is my opinion that it is highly unlikely that the Plaintiff who did not get involved in the affairs of the marriage, had promised the Defendant that he would gift the disputed block of land with a house and a shop built on it.

On the basis of the aforementioned evidence itself it is profusely clear that the Plaintiff had no motive to gift the premises in suit as dowry and it is manifested that the Defendant was only a licensee of the Plaintiff.

I note that the Plaintiff is only asking for a declaration that he is the lawful allottee of the land. He is not claiming a declaration of title.

In conclusion, on the basis of the aforementioned reasons, I believe that the appeal of the Defendant must be dismissed with costs. The judgment of the Learned District Judge dated 13.03.1998 is affirmed.

Appeal dismissed with cost.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal