IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

SC/APPEAL/09/2017
SC/HC/CA/LA APP No. 204/2016
CP/HCCA/KANDY/16/2014 [FA]
DC Nuwara Eliya No. L/1504

Venerable Banagala Upatissa Nayaka Thero
Yoshida Educational and Social Services,
Foundation,
Takiko Yoshida Mawatha,
Sapugaskanda.

Plaintiff

Vs.

Dewatage Chandrawathie,
No. 54, Unique view road, Nuwara Eliya.

Defendant

AND BETWEEN

Venerable Banagala Upatissa Nayaka Thero
Yoshida Educational and Social Services,
Foundation,
Takiko Yoshida Mawatha,
Sapugaskanda.

Plaintiff – Appellant

Vs.

Dewatage Chandrawathie,
No. 54, Unique view road, Nuwara Eliya.

Defendant-Respondent

AND NOW BETWEEN

Dewatage Chandrawathie,
No. 54, Unique view road, Nuwara Eliya.

Defendant-Respondent-Appellant

Venerable Banagala Upatissa Nayaka Thero,
Yoshida Educational and Social Services,
Foundation,
Takiko Yoshida Mawatha,
Sapugaskanda.

Plaintiff - Appellant - Respondent

Before : Kumudini Wickremasinghe, J.
Achala Wengappuli, J.
Menaka Wijesundera, J.

Counsel : Upendra Walgampaya instructed by Ms. Niluka Dissanayake for the Defendant-Respondent-Appellant
Ranil Samarasooriya with Madhawa Wijayasiriwardena instructed by Mrs. Sandareka Manchanayake for the Plaintiff-Appellant-Respondent.

Written Submissions : Written submissions on behalf of the Defendant -

Respondent - Appellant on 28th February, 2017.

Written submissions on behalf of the Plaintiff - Appellant-Respondent on 24th April, 2017.

Further Written submissions on behalf of the Defendant-Respondent-Appellant on 12th June, 2025.

Argued on : 03.06.2025

Decided on : 31.07.2025

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 24.03.2016 of the Civil Appellate High Court of Kandy.

The plaintiff-appellant-respondent (plaintiff-respondent) filed the plaint in the District Court (DC) of Nuwara-Eliya against the defendant-respondent-appellant (defendant-appellant) seeking a declaration of title to the land described in the 3rd schedule to the plaint, ejectment of the defendant-appellant and for damages.

In the plaint, the plaintiff-respondent has pleaded his deeds to claim title to the land in suit, which had been marked in evidence as P1 to P6 from the year 1913 and that the defendant-appellant has been in possession since 2002.

The defendant has filed answer and has denied the title of the plaintiff-respondent and has claimed title on the basis of prescription, claiming uninterrupted possession since 1978, while seeking a dismissal of the plaint.

The trial in the DC commenced and both parties recorded admissions on the issues of jurisdiction and the identity of the corpus and both parties raised their respective issues with regard to the matters in dispute.

The plaintiff-respondent, along with other witnesses, had given evidence and the plaintiff had marked in evidence, title deeds from P1 to P6 and had admitted in evidence that even at the time the plaintiff purchased the property, the defendant-respondent had been in possession (page 76, 78 and 82). The plaintiff-respondent had further admitted at page 76 that he and even his predecessor had tried to persuade the defendant-appellant to leave the property but it had not taken place.

The caretaker of the plaintiff had given evidence and he has contradicted the plaintiff by stating that the defendant-appellant had been in possession only after the plaintiff-respondent had purchased the property, but the official from the Urban development authority had stated that in the year 1999, the defendant-respondent had informed of her possession of the property and had applied for a permit.

The defendant-appellant in evidence had said that she had been in possession since 1978.04.06. She also has produced a certificate by the Grama Niladhari, who had said that she had been in possession of the property for 31 years and the said certificate had been marked as V10.

The Grama Niladhari had substantiated her position.

The Trial Judge had held that the title of the plaintiff-respondent has been established, although the deeds marked had not been produced in Court, as the defendant-appellant has not challenged the same. But he has held that although the plaintiff has established the paper title, he has not established sufficiently that he had the possession of the property and that the defendant-appellant had established that she has had the possession of the property, as such, he has awarded the prescriptive title to the defendant-appellant of the land in suit.

Being aggrieved by the said finding, the plaintiff-respondent had lodged an appeal to the Civil Appellate High Court and the said Court has held that the trial judge had erred in law because if he has concluded that the plaintiff-respondent had paper title, as per that, he need not prove his prior possession and ouster and such the burden shifts to the defendant-appellant to show that she had independent rights in the form of prescription, as claimed by her.

The reasons set out by the learned judges of the Civil Appellate High Court is that the defendant-appellant has come in to the land after her marriage to the first husband in 1978. But according to her evidence the said husband had been on leave and license of the said land from one Kavidasa Mudalali.

Thereafter, her first husband had passed away in 1988 and she had then married one Jayasinghe on 10.08.1989, whom she had at one point said was a licensee of a monk.

It had also been considered that at one point, according to the evidence of the defendant-appellant, that she had applied for a license from the state (page 12).

Hence, the Civil Appellate High Court has concluded that the defendant had not been able to prove a starting point of her adverse possession of the land

in suit, neither has she proven that she had adverse and independent possession of the land against the plaintiff-respondent.

Hence, the judgment of the trial judge has been set aside.

Being aggrieved by the said judgment the instant appeal has been filed and the following questions of law has been raised: -

i. **Have Their Lordships of the High Court of Civil Appeals erred in law by overturning the learned Trial Judges findings on prescription in the light of the Plaintiff's admission that the Defendant possessed the subject matter adversely for over ten years preceding the institution of the present action?**
ii. **Have Their Lordships' of the High Court of Civil Appeals erred in law by failing to appreciate that what is required by Section 3 of the Prescription Ordinance, No. 22 of 1871 is proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action for ten years previous to the bringing of such action?**
iii. **Have Their Lordships of the High Court of Civil Appeals erred in law by failing to appreciate that in the absence of the Plaintiff's purported title deeds marked P1 to P5 being filed of record the Plaintiff's title cannot be examined and a declaration of title could be lawfully granted in the favour of the Plaintiff?**
iv. **Have Their Lordships of the High Court of Civil Appeals erred in law by failing to appreciate that issues no. 1 to 8 could not have been answered by the learned Trial Judge in favour of the Plaintiff?**

Upon the consideration of the facts placed before this Court, the Plaintiff-respondent in the instant matter has given evidence on his title to the land and has marked deeds from P1 to P6 but he has failed to produce the same in the Trial Court, hence, the Trial Court has held that because the defendant-appellant has not challenged the title, that it can be concluded that the plaintiff-respondent has proved the title to the land in suit.

The position of the defendant-appellant has been that she has always been in possession of the land and not the plaintiff-respondent, but in the case of ***Leisa and another v Simon and another*** **(2002) 1 SLR page 148** it has been held that,

"Once paper title became undisputed the burden shifted to the defendants to show that they had independent rights in the form of prescription as claimed by them.".

This principle was previously followed by Gratiaen, J. in the case of ***R. W. Pathirana vs. R. E. De S. Jayasundara*** **58 NLR (159 – 177)**.

But if that is so, the defendant-respondent has to prove before the trial court that she had undisturbed possession of the property.

It is a well-accepted principle of law that to establish title on prescription to an immovable property, the claimant must establish an exclusive adverse possession against all other owners.

The above principle of law has been written down under section 3 of the Prescription Ordinance, which has stipulated that the claimant must prove on a balance of probability that he or she had undisturbed and uninterrupted possession for a minimum period of ten years.

In the case of **Alwis vs Perera 21 NLR 321**, it has been held that, when witnesses claim they have possession, the Court must insist on those words being reasonably explained and not by mere statements.

In the instant matter, the defendant-respondent had stated in evidence that she had come in to the property because of her first husband in 1978 and the first husband had been the servant of another party. Thereafter, after his demise, the defendant-appellant had remarried and he had occupied the property as a licensee of a monk.

Hence, the defendant cannot prove as to an exact date on which she had come to the possession and moreover even the two husbands of hers has had no possession or dominium over the property but had been the agent or the licensee of another.

Thereafter, she had proceeded to apply to the state, asking for a permit to occupy the land but this is not state land. Hence, if she believed that she had possession of the land and claimed prescriptive title, how can she apply for a permit from the state because that is admitting state title to the land in suit, which is contrary to her earlier position (page 94 and 93 and the document is P10).

At page 121 of the brief, she had said in cross-examination that no one handed her any possession of any land. Her evidence with regard to P14, which is a police complaint, very clearly states that her 1st husband was the licensee of a Japanese monk but she refuses to admit that it was the plaintiff-respondent.

The plaintiff-respondent also, had marked P16 which is a deed of declaration by the no. 1838 dated 03.10.2003 drawn by the defendant appellant in which she admits that the land in possession was obtained from the original owner.

Her evidence is very well calculated and she appears to be mindful of her claim but I suppose her lack of literacy skills have made her contradict her own evidence at times.

Hence, upon reading of the evidence led at the trial and considering the written submissions filed by the parties, I find that the defendant-appellant has taken various positions with regard to her possession of the property.

Her evidence with regard to her possession of the land in suit is ambiguous and contrary and fails to establish her uninterrupted adverse possession of the land in suit against the plaintiff-respondent.

As such, while answering all the questions of law in the negative, I see no reason to set aside the judgment of the Civil Appellate High Court and the instant appeal is dismissed and the judgment and the reliefs granted by the Civil Appellate High Court is hereby affirmed and no order is made with regard to costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.
I agree.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.
I agree.

JUDGE OF THE SUPREME COURT