

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

1. K.A. Piyadasa  
373, Dikhenapura,  
Horana.

2. G. Garlis Singho,  
373, Dikhenapura,  
Horana.

**DEFENDANT APPELLANTS**

**C. A NO. 1194/96(F)**  
**D.C. Horana 5306/L**

**Vs**

H. Publis Perera,  
Illembakanda,  
Horana.

**PLAINTIFF - RESPONDENT**

General Manager,  
Co-operative Society Limited,  
No.60, Main Street,  
Horana.

**3<sup>RD</sup> DEFENDANT-RESPONDENT**

Before : A.W.A. SALAM, J.

Counsel : Daya Guruge with L.M. Ariyadasa for the  
Defendants-Appellants and Dr. Jayatissa de  
Costa P.C. with Lahiru N. Silva for the  
Plaintiff-Respondent.

Argued on : 12.01.2011

Written Submissions tendered on: 14.02.2011.

Decided on: 28.04.2011

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A W A Salam,J

This appeal arises on the Judgment dated 01.07.96 of the learned District Judge holding inter alia that the plaintiff is the owner of the subject matter and the 1<sup>st</sup> and 2<sup>nd</sup> defendants are liable to be ejected therefrom. Admittedly the parents of the 1<sup>st</sup> and 2<sup>nd</sup> defendants had occupied the house situated on the subject matter as the employees of the predecessor in title of the plaintiff. The contesting defendants took up the position that they had acquired a prescriptive title having possessed a subject matter for a period of more than 10 years after their parents had ceased to be the employees of the plaintiff's predecessor in title. The learned District Judge having considered the law applicable on the matter held that the defendants had not acquired any prescriptive title as claimed by them and directed that the contesting defendants be ejected as they have not established the alleged prescriptive rights.

As far as the facts narrated by the defendants are concerned it is quite clear that their predecessor had entered into occupation of the house with the leave and licence of the plaintiff's predecessor and without proving an overt act the contesting defendants cannot in law acquire a prescriptive title.

The contesting defendants have also emphasized that the plaintiff is not entitled to a declaration of title as no such relief has been prayed for in the plaint. In this respect one has to be mindful of the principle that once issues are

framed the pleadings recede to the back ground. In this case the 1<sup>st</sup> issue raised by the plaintiff is whether the plaintiff is the owner of the subject matter by virtue of deed No. 15389. As such the contention of the contesting defendants as to the plaintiff's right to obtain a declaration of title appears for me as baseless.

On a reading of the evidence led at the trial and upon consideration of the basis on which the learned district judge has arrived at the conclusion I am in no way satisfied that there has been an error, defect or irregularity in the impugned judgment.

For reasons stated above, I am of the firm opinion that the appeal of the contesting defendants merits no favourable consideration. Hence the judgment of the learned District Judge under appeal is affirmed and the appeal preferred by the 1<sup>st</sup> and the 2<sup>nd</sup> defendants stands dismissed subject to costs.

Judge of the Court of Appeal

NT/-