

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

Aluthge Deeman Appuhamy of
Olaboduwa, Gonapola Junction.

4th Defendant-Appellant (deceased)

C.A. No.1091/95(F)

D.C. Horana Case
No.3743/P

Kalatuwage Alice Nona of Olaboduwa,
Gonapola Junction.

Substituted 4th Defendant-Appellant

Vs.

Jayasuriya Arachchige Jeemon Appuhamy
of Olaboduwa, Gonapola Junction.
(Deceased)

Jayakodi Arachchige Chatlet Nona
No.1, Olaboduwa, Gonapola Junction.

Substituted Plaintiff-Respondent

1. Jayasuriya Arachchige Premawathi of
Olaboduwa, Gonapola Junction.

2. Jayasuriya Arachchige Welenis Perera
(deceased)

2a. Weerakoon Archchige Yasawathi of
Olaboduwa, Gonapola Junction.
(Deceased)

2a1. Samantha Perera,
Olaboduwa, Gonapola Junction.

3. Jayasuriya Arachchige Rupawathi
Perera of No.250,
Kandanhena, Horana.

5. Aluthge Leelawathi Perera
(deceased)

5a. Aluthge Gunawathi of No.250,
Kandanhena, Horana.

6. Aluthge Gunawathi Perera,

7. Aluthge Nandawathi Perera
(deceased)
All of No. No.250,
Kandanhena, Horana.

7a. Aluthge Gunawathi Perera of
No.250,
Kandanhena, Horana.

Defendant-Respondents

BEFORE : M.M.A. GAFFOOR J

COUNSEL : S.A.D.S. Suraweera with Chatura Dilhara
for the Substituted 4th Defendant-Appellant

Manel Gunathilake with Lakni Silva for the
Plaintiff-Respondent

Rohan Sahabandu PC with Surekha Vithanage
for the 1st – 3rd Defendant-Respondents

WRITTEN SUBMISSIONS

TENDERED ON : 31.05.2017 (1st- 3rd Defendant-Respondents)
07.06.2018 (Substituted 4th Defendant-Appellant)

DECIDED ON : 12.06.2018

M.M.A. GAFFOOR J

The plaintiff-respondent instituted this action in the District Court of Horana Case bearing No.3734/P on 27.07.1988 to partition the land called “Manugampitiya” – Lot A in extent of A:0 R:1 P:32 amongst the plaintiff himself and the 1st -7th defendants.

The original owner of the land in question were Mendis Perera, Abiliyon Perera and Doisa Perera. Abiliyon Perera’s 1/3 share was devolved on his wife Bebi Nona and 2 children namely Gunawathei and plaintiff Jeemon Appuhamy. Later Babi Nona and Gunawathei transferred their rights to the plaintiff by virtue of Deed No.64 on 30.09.1983. Therefore, plaintiff-respondent claimed 1/3 share of the aforementioned land. Mendis Perera had 3 children and after his death his 1/3 share devolved to 1st -3rd defendants. Doisa Perera died leaving her 1/3 share to her children namely. Deemon (4th defendant-appellant), Leelawathi, Gunawathi and Nandawathi (5th -7th defendant-respondents).

The 4th defendant claimed that the entire land on the basis of prescriptive right through one Gunawardena who had given him a Deed of Transfer No.1329 on 26.11.1987.

At the trial the 4th defendant called 2 witnesses on behalf of him. One is Gunawardena who sold the land to the 4th defendant and a neighbor called Caldera. According to Gunawardena, who is from another Village entered this land in 1965.

At the end of the trial the learned District Judge gave judgment dated 01.10.1995 holding with the pedigree presented by the plaintiff-respondent and the land to be partitioned accordingly. That the learned District judge also held that, the 4th defendant had not acquired a prescriptive right to the land.

Being aggrieved by the said judgement this appeal was filed by the 4th defendant-appellant praying to set aside the judgment of the learned District Judge dated 01.10.1995.

Legal Issues

1. Whether Gunawardena possessed/acquired the prescriptive title against the co-owners.

According to Gunawardena's evidence he is from a different village and entered this land in 1965.

AT Pg.78 of the appeal brief that one Gunawardena testified as,

Q - පළමුවෙන් ඉඩමට කොහොමද ඇතලු වුනේ?

A - නිකම් පාලුවට තිබුන ඉඩම මම ටික ටික එලිකලා කවුරුත් ආවේ නැහැ අයිතිවාසිකම් කියාගෙන.

Q - තමා දැනගෙන සිටියාද කාගේද ඉඩම කියා?

A - මම දන්නේ නැහැ.

When he entered into the questioned land in 1965 he was only 17 – 18 years old. (Pg 81).

In the evidence of Gunawardena he has cultivated the said land without any obstruction from other Co-Owners. And also, he was in the said land for such a long period of time from 1965 – 1983. But he couldn't give exact evidence on the cultivations and the boundaries of the said land.

At Pg.82 of the appeal brief.

Q - පොල් ගස් තිබෙනවද

A - ඔව් දැනුත් තිබෙනවා

Q - කවුද හිටෙව්වේ

A - මම. පොල් ගස් 20 – 25 ක් තිබෙනවා

ගණන් දන්නේ නැහැ

Q - පොල් ගස් කීයක් ද?

A - 15 - 20 පමණ

Q - ගණන දන්නේ නැහැ?

A - නැහැ.

The appellant further Sated in his evidence that: -

(At Pg No. 90 of the appeal brief)

Q - තමා මේ ඉඩමට බලහත්කාරයෙන් ඇතුලු වුණා?

A - හිස් ඉඩමක් තිබුණා. ඒකට ඇතුලු වුණා.

Q - මේ ඉඩමේ මායිම් කොහොමද සොයා ගත්තේ?

A - ඒවා ඩීමන් අප්පුහාමි තමයි සොයාගෙන ආවේ.

Considering all the evidence led at the trial and carefully analyze those evidence it is obvious that Gunawardena did not acquire the prescriptive title against the other co-owners. And also that the learned District Judge correctly has come to the conclusion that Gunawardena has not acquired a prescriptive title against the rights of the co-owners from 1965.

2. Whether the 4th defendant-appellant entitled to the questioned land.

The 4th defendant-appellant is a co-owner to the questioned land. But knowing that he inherits a share of the said land the 4th defendant-appellant had bought the whole land from the stranger – Gunawardena. A person named Caldera was called by the 4th defendant-appellant to corroborate the evidence of Gunawardena. Caldera testified that Gunawardena had possessed the said land for over 10 years and he had given that 4-5 years old coconut trees to him. Caldera further stated that he did not know whether Gunawardena came as a labourer or in any other capacity.

At Pg. 94 of the appeal brief

Q - ඔහු බුක්ති වින්දේ කොයි විදිහටද?

A - ඔහු ගොවිතැන් කරගෙන සිටියා.

Q - කුලී කාරයෙක් හැටියටද, තමන්ගේම ඉඩමක් විදිහටද කොහොමද බුක්ති වින්දේ?

A - එහෙම දන්නේ නැහැ.

At Pg. 102

Q - 1965 ඉදලා අවුරුදු 3ක් විතර ඉඩම සුද්ද කළා?

A - ඉඩම සුද්ද කර කර සිටියේ නැහැ.

Q - ගුණවර්ධන ආචේ කවදා ද, පිටවෙලා ගියේ කවදා ද කියා තමා දන්නේ නැහැ?

A - නැහැ.

According to the evidence of Caldera there is no satisfactory explanation of prescriptive title acquired by Gunawardena on the questioned land. And also the 4th defendant-appellant or Gunawardena has failed to establish a positive act of ouster regarding the other co-owners. Therefore, Gunawardena does not acquired a prescriptive title against the other co-owners the 4th defendant-appellant has no right to the whole land by virtue of Deed No.1329 dated 26.11.1987.

For the foregoing reasons, I see no reason to interfere with the findings of the learned District Judge and therefore, I uphold the judgment dated 01.10.1995 and dismiss the appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL