

**PIERIS  
vs  
PIERIS**

COURT OF APPEAL  
WIJAYARATNE, J.,  
CA 57/2000 (F)  
D. C. COLOMBO 17054/L  
FEBRUARY 20, AND  
MARCH 15, 2004

*Evidence Ordinance, sections 62, 74, 76 and 77 – Disposition by Commissioner of National Housing – Original produced in court – Should the executant be called to prove it? – Public document – Presumption to be drawn?*

**Held :**

- (i) In view of the presumption to be drawn in respect of public documents in terms of the provisions of the Evidence Ordinance, there is no requirement of evidence of the executants of such document being placed before court.
- (ii) Whether a particular document is a public document is a matter to be determined by court and not on the evidence of the executant or an officer of the Department concerned but on the nature of the document as explicit on the face of it.
- (iii) When the rules of evidence require that the court should presume the genuineness of the public document, the burden of rebutting such such presumption is with the party who challenges same.

**APPEAL** from the judgment of the District Court of Colombo.

*Padmasiri Nanayakkara* with *Indika de Alwis* for defendant appellant

*J. C. Boange* with *Laxman Amerasinghe* for plaintiff respondent

April 26, 2004

**WIJAYARATNE, J.**

This is an appeal preferred by the defendant - appellant from the judgment of the learned Additional District Judge of Colombo dated 27. 01. 2000 granting the relief claimed by the plaintiff and entering judgment in plaintiff - respondent's favour.

The plaintiff - respondent instituted action in the District Court of Colombo seeking declaration of title to the land in suit described in the schedule to the plaint, and she is entitled to construct a house thereon to eject the defendant from the premises in suit and to recover damages, as estimated, from the defendant and to enjoin the defendant from obstructing the plaintiff. The defendant answering the plaint claimed long continued possession of the property and premises described in the plaint and disputed that plaintiff ever had any possession thereof. In answer to the plaintiff's claim of title deriving from a disposition given by the Commissioner of National Housing the defendant pleaded ignorance of any document as referred to in the plaint and further stated that if there is any document as averred in the plaint, it is a forgery and that the plaintiff should prove the existence of a legally valid document as referred to in the plaint.

At the commencement of the trial the parties' plaintiff and the defendants have suggested several issues numbering 16. The issue No. 2 suggested by the plaintiff relates to her having acquired title to the premises in suit from a disposition by the Commissioner of National Housing and issue No. 13 suggested by the defendant appellant as to the effect whether the document No. 4146 (later marked in evidence as 9) was a forgery.

At the conclusion of the evidence, having had the benefit of submissions made by both parties the learned trial judge answered issues No. 1 to 10 suggested by the plaintiff in the affirmative and issues Nos. 13 to 16 in the negative. The learned trial judge also answered issues Nos. 11 and 12 in the affirmative holding that the plaintiff had the possession of the premises in suit and she is entitled to build thereon. Having so answered the issues, the learned trial judge gave judgment and entered decree in favour of the plaintiff as prayed for in the plaint.

Aggrieved by such judgment, the defendant preferred this appeal on several grounds urged in this petition of appeal. However at the hearing of the appeal, arguments were confined to the main issue of the document property to be a disposition by the Commissioner of National Housing was accepted as evidence contrary to law and without proof of due execution of such document and it is a misdirection of law on the part of the trial judge to have accepted the document P9 as evidence and to act upon it to hold that the plaintiff derived title to the property in suit upon the same. It was the contention of the defendant - appellant that document P 9 (disposition 4146) should have been proved by the evidence of the executants thereof or any other officer of the department, specially in the absence of a seal of office present on the document, before the same could have been accepted as evidence and acted upon, and even if it is to be considered a public document.

I am unable to agree with the arguments of the learned counsel for the defendant - appellant in view of specific provisions of the Evidence Ordinance Section 74 subsection (a) (iii) of the Evidence Ordinance which describes

“ (a) documents forming the acts, or record of the acts-  
 (iii) Of public officers,..... as a public document .

In terms of the provisions of section 62 of the Evidence Ordinance the production of the document itself is the primary evidence and in terms of sections 76 and 77 the production of the original document itself is the proof of the contents thereof. The disposition No. 4146 marked P 9 is the original of the purported disposition of the premises in suit in favour of the plaintiff - respondent. In terms of the provisions of section 79 of the Evidence Ordinance the court is bound to presume the genuineness of the document and the officer who purported to execute the same was the Commissioner of National Housing as described therein. Accordingly the learned trial judge correctly admitted the document P 9 as evidence and acted upon it to decide the matter of title to the premises claimed by the plaintiff - respondent.

In view of the presumption to be drawn in respect of public documents in terms of the provisions of the Evidence Ordinance there is no requirement of evidence of the executants of such document being placed before the court. Whether a particular document is a public document is a matter to be determined by the court, not on evidence of the executants or an officer of the department concerned but on the nature of the document as explicit on the face of it. When the rule of evidence require that the court should presume the genuineness of the public document, the burden of rebutting such presumption was with the party who challenged same.

In the instant case the defendant - appellant whose burden it was to rebut such presumption especially in view of the fact that he put the same in issue (issue 13), has failed to lead any evidence of rebuttal. Accordingly his arguments should fail.

Upon examination of the judgment, the learned trial judge appears to have reasoned that document P9 should be accepted as it has been duly registered. Although it is not the correct basis of admission of such

document, the fact that the document P9 is a document admissible in terms of the provisions of the Evidence Ordinance, justify the conclusion of the learned trial judge that the plaintiff - respondent acquired title to the premises in suit on such document marked P9. The decision of the learned trial judge to grant the relief claimed by the plaintiff - respondent stems from his conclusion and finding that plaintiff is the lawful owner of the premises in terms of P9. I see no reason to interfere with the judgment appealed from.

In the result the appeal of the defendant - appellant is dismissed with costs.

*Appeal dismissed.*

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