

DHARMADASA
v.
JAYASENA

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
PERERA, J. AND
SHIRANI A. BANDARANAYAKE, J.
S.C. APPEAL NO. 52/94
C.A. NO. 213/85 (F)
D. C. ANURADHAPURA NO. 11075
SEPTEMBER 15, 1997.

Vindictory action – Claim of title – Burden of establishing plaintiff's title.

The plaintiff sued the defendant for a declaration of title and ejection. The plaintiff based his claim on a grant from the Urban Council, Anuradhapura.

Held:

In a *rei vindicatio* action the burden is on the plaintiff to establish the title pleaded and relied on by him. The defendant need not prove anything. The grant relied upon by the plaintiff was invalid. Hence the plaintiff has failed to establish his title.

Cases referred to:

1. *De Silva v. Goonetilleke* (1931) 32 N.L.R. 217, 219.
2. *Wanigaratne v. Juwanis Appuhamy* (1964) 65 N.L.R. 167.

APPEAL from the Judgment of the Court of Appeal.

P. A. D. Samarasekera, P.C. with *Ran Banda Seveviratne* for Plaintiff-Appellant.

D. R. P. Gunatillake for defendant-respondent.

Cur. adv. vult.

October 1, 1997.

G. P. S. DE SILVA, C. J.,

The plaintiff instituted these proceedings against the defendant seeking a declaration of title to the premises in suit, ejection of the

defendant, and damages. At the conclusion of the trial, the District Court dismissed the plaintiff's action. His appeal to the Court of Appeal too was unsuccessful. Hence the present appeal to this court.

The plaintiff's claim of title was based upon a grant from the Urban Council of Anuradhapura. The grant is dated **21st February 1983** and was marked as P1 at the trial. The defendant in his answer pleaded that P1 was fraudulently obtained by the plaintiff and that the plaintiff failed to disclose the fact that the defendant's father had filed case No. 9886 in the District Court of Anuradhapura against the plaintiff for ejection from the premises in suit. It is in evidence that the decision in the said case No. 9886 was in favour of the defendant's father; the District Court expressly held in that case that the plaintiff in the present case "had no right whatever" to remain in occupation of the premises in suit and ordered that he be ejected. The judgment of the District Court was delivered on 1.8.74. The Court of Appeal on 7.3.83 affirmed the judgment of the District Court. It is to be noted that the Court of Appeal held that "the defendant (i.e. the plaintiff in the present case) had no right whatever to enter into occupation of the premises on 1.1.68". Pursuant to the decree in the aforesaid case No. 9886 the defendant was placed in possession of the premises by the Fiscal on 10.2.84. The defendant is not in unlawful occupation of the premises from 10.2.84 as averred in paragraph 3 of the plaint.

As rightly submitted by Mr. Samarasekera for the plaintiff-appellant, the short point that arises for decision in this case "is one relating to title". Admittedly, the Urban Council of Anuradhapura was the previous owner of the premises. The contention advanced on behalf of the appellant is that the grant P1 was made in terms of section 5A(2) of the Local Authorities Housing (Amendment) Act No. 63 of 1979 which reads thus:-

"5A(2) where prior to the date of coming into force of this section, a house to which this Act applies has been let to any person otherwise than under the provisions of section 3(1) and the monthly rental of that house does not exceed twenty-five rupees, the local authority within the administrative limits of which that

house is situated shall, by an instrument of disposition, transfer, free of charge, that house –

- (a) to the tenant of that house who is in occupation thereof on the date of coming into force of this section; or
- (b) to the person in occupation of that house on the date of coming into force of this section, where the tenant of that house is not in occupation thereof on that date,

if, and only if, the Advisory Board constituted for that local authority is satisfied that –

- (i) such tenant or person in occupation, as the case may be, is in need of housing accommodation,
- (ii) such tenant or person in occupation, as the case may be, is a citizen of Sri Lanka, and
- (iii) the name of such tenant or person in occupation, as the case may be, appears in the electoral list prepared for the general election of members of that local authority.”

There is no evidence to show that the plaintiff was the tenant of the premises. Could it be said that he was a person “in occupation of the house” within the meaning of section 5A(2) (b)? I think not. The finding of the District Court in case No. 9886 referred to above was that he was a trespasser, a finding which was affirmed in appeal. It seems to me that a trespasser does not fall within the meaning of the expression “a person in occupation.”

What is more, it is a condition precedent to the issue of the grant that the Advisory Board should be satisfied in regard to the three matters set out in the section. The relevant decision of the Advisory Board was marked in evidence as D4 by the Revenue Inspector of the Urban Council. There can be no doubt that D4 is dated **16.3.83**. The District Court has so held upon the oral and documentary evidence on record. On the other hand, the grant P1 is dated

21.2.83. It is thus manifest that the grant P1 was issued prior to the decision of the Advisory Board. P1 therefore is of no force or avail in law as it was issued in contravention of the express provisions of section 5A(2) of the Act. The defendant had raised a specific issue on this point and the District Court had rightly answered the issue in the defendant's favour.

The next submission of Mr. Samarasekera was, that in any event, the defendant has no legal right whatever to these premises for he is "not the owner, not the tenant, not even a licensee." But the point is that this is a *rei vindicatio* action and the burden is clearly on the plaintiff to establish the title pleaded and relied on by him. "The authorities unite in holding that the plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie" per *Macdonall C.J., De Silva v. Goonetilake*⁽¹⁾ at 219. The principle was lucidly stated by Herat J., in *Wanigaratne v. Juwanis Appuhamy*⁽²⁾ in the following terms "The defendant in a *rei vindicatio* action need not prove anything, still less his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established. The plaintiff must prove and establish his title." This the plaintiff has failed to do, and his action must therefore fail.

For these reasons the appeal is dismissed with costs fixed at Rs. 500/-.

PERERA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal dismissed.