BANDA
v.
SOYSA

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WIJETUNGA, J. AND
GUNASEKERA, J.
S.C. APPEAL NO. 68/96
C.A. APEEAL NO. 157/84 (F)
D.C. KURUNEGALA NO. 2603/L
24TH, 25TH NOVEMBER 1997
13TH, JANUARY 1998, 24TH, FEBRUARY 1998.

Declaratory action – Temple lands – Praveni and Bandara lands – Right of trustee to claim Bandara lands – Service tenure register – Service Tenures Ordinance.

Plaintiff as the trustee of Ginikarawa Vihara sued the defendant for a declaration of title to 17A. 2R.31P. of land depicted in Plan P2 and for ejectment and damages. The plaintiff's claim was based on a Royal Grant or Sannasa P1 registered under the Temple Lands Registration Ordinance, 1856. As per the title plan P4 prepared by the Surveyor-General the total land covered by the Sannasa is 414 acres in extent. According to the Register prepared under the Service Tenures Ordinance P3 approximately 126 acres of this land consisted of Praveni lands. Such land vested in the Praveni Nilakarayas whilst Bandara or Maruwena lands vested in the trustee of the temple.

Held:

1. When a temple land is not entered in the list of Praveni lands of the temple the necessary inference, at any rate unless some adequate explanation is given for the omission, is that the Commissioner had determined that the tenure of such lands was not Praveni but Maruwena. Accordingly the balance 288 acres of the entire extent of 414 acres shown in P4 were Bandara lands.

2. The land in dispute depicted in Plan P2 fell within an extent of 300 acres more or less which had been leased to one Herat on a notarially executed lease bond in 1906 by the trustees of the Vihara at that time. There was thus sufficient evidence led on behalf of the plaintiff to prove the title and identity of the land in dispute.

Per G. P. S. de Silva, CJ.

> "In a case such as this the true question that a court has to consider on the question of title is, who has the superior title?"

Cases referred to:

1. *Hewavitarana v. Dangan Rubber Co., Ltd.,* 17 NLR 49 at 52.

2. *Tikiri Banda v. Ranasinghe Mudalige Appuhamy* (1912) S.C. Minutes of 5th March, 1912.

APPEAL from the judgment of the Court of Appeal.

P. A. D. Samarasekera, PC with *S. C. B. Walgampaya* for substituted plaintiff-appellant.

R. K. W. Goonesekera with *Rohan Sahabandu* for defendants-respondents.

Cur. adv. vult.

March 5, 1998.

G. P. S. DE SILVA, CJ.

The plaintiff as the trustee of the Ginikarawa Vihara instituted these proceedings against the defendants for a declaration of title to lots 1 to 4 and 7 to 11 in plan No. 895 dated 6/15th July, 1968 (P2) made by Perimpanayagam, Licensed Surveyor, for ejectment of the defendants and for damages. The extent of the lots 1 to 4 and 7 to 11 in the said plan P2 is 17A. 2R. 31P. The plaintiff's claim was based on a Royal Grant or a Sannasa (P1) which was registered under the Temple Lands Registration Ordinance of 1856. The land covered by the Sannasa (P1) is shown in title plan No. 92451 of 1867 prepared by the Surveyor-General in terms of the Temple Lands Registration Ordinance and is in extent 414 acres. The title plan 92451 was produced marked P4. At the conclusion of the trial before the District Court, judgment was entered in favour of the plaintiff as prayed for. The defendants preferred an appeal to the Court of Appeal and the judgment of the District Court was set aside and the plaintiff's action was dismissed. The plaintiff has now preferred an appeal to this court.

The ground upon which the Court of Appeal dismissed the plaintiff's action is that the plaintiff failed to establish title to the subject matter of the action, or even to identify the land in suit. In the absence of

proof of title, the Court of Appeal stated that the question of examining the title of the defendants did not arise.

Upon a consideration of the entirety of the evidence it is clear that there is no dispute in regard to the following facts :

(1) that the land covered by the Sannasa (P1) is the property of the Ginikarawa Vihara ;
(2) that the land gifted on the Sannasa (P1) is shown in the title plan P4:
(3) that the lots in dispute, namely, 1 to 4 and 7 to 11 shown in plan P2 fall within the title plan P4 and are situated in the North-West boundary of the land shown in P4.

The crux of the case of the plaintiff on the crucial issue of title is that the lots in dispute are the absolute property of the Vihara. Such property is known as the Bandara lands of the temple. Admittedly, the 414 acres shown in the title plan P4 consisted of both Praveni lands and Bandara lands. In the case of Praveni lands, the land is vested in the Praveni Nilakarayas who are obliged to render specific services to the temple or to pay commuted dues. On the other hand, if the land is Bandara land (also called as Maruvena pangu or muttetu) it is vested in the trustee of the temple. The case for the plaintiff is that out of the 414 acres of temple land shown in P4, about 126 acres are Praveni lands and that the balance 288 acres are Bandara lands and that the lots in dispute fall within the 288 acres of Bandara lands.

Praveni pangu lands are set out in the Service Tenures Register prepared under the provisions of the Service Tenures Ordinance. The register relating to Praveni Pangu was produced marked P3 (also marked as 1D3). According to P3, there are 10 Praveni Nila Pangu comprising fields and gardens and in terms of the computation adopted by the Land Settlement Department the total extent of Praveni Nila Pangu is approximately 126 acres. "The entry of any land in the register prepared under the Service Tenures Ordinance 1870 as a praveni land belonging to a specific tenant is conclusive evidence as to the nature of the tenure (section 11) and relevant . . ." *Hewavitarana v. Dangan Rubber Co., Ltd.*[1] at 52.

'When a temple land is not entered in the list of praveni lands of the temple, the necessary inference, at any rate unless some adequate explanation is given for the omission, is that the Commissioners had

determined that the tenure of the lands was not praveni, but maruwena". per Lascles, CJ. and Grenier, J. in *Tikiri Banda v. Ranasinghe Mudalige Appuhamy*[2] cited with approval in *Hewavitarana v. Dangan Rubber Co., Ltd* (supra). Thus the District Court concluded that since 126 acres were praveni lands having regard to the contents of P3 that the balance 288 acres (out of the entire extent of 414 acres shown in P4) were Bandara lands. It seems to me that this conclusion is not unreasonable on the facts and circumstances of this case.

The next question that arises for consideration is where this extent of 288 acres of Bandara lands is situated. On this point the plaintiff relied very strongly on the lease bond P6. P6 is a notarially executed document dated 23.11.1906 whereby the trustee of the Vihara at that time had given a lease of 300 acres more or less to one Herat for a period of 50 years. Mr. R. K. W. Goonesekera for the defendants-respondents stressed the fact that there was no evidence whatsoever to show that P6 was acted upon and that possession followed upon P6. While it is true that there is no such evidence, yet P6 is a lease bond executed as far back as the year 1906 and its execution was with the approval of the President of the Provincial Committee appointed under the Buddhist Temporalities Ordinance and, what is more, it was approved by the District Court – vide the formal application made by Herat to the President BTO Kurunegala P6 (*a*) and the approval of the District Court P6 (*b*). In regard to the location of the land which was the subject matter of the lease, the schedule in P6 is relevant and is in the following terms : "An allotment of high land in extent 300 acres towards the Northern and Western direction of the temple land belonging to Ginikarawa Vihara containing in extent 414 acres on the whole according to the figure of survey No. 92451 dated at Survey-General's Office, Colombo, on 25th September 1873". It is to be noted further that the schedule gives Kiribath Ela as a boundary on the North-West and North. The superimposed plan P2 which was prepared for the purpose of this case on a Commission issued by Court shows Kiribath Ela as the North-Western boundary of the lots in dispute. It is therefore reasonable to infer that the disputed lots fell within the 300 acres more or less which was the subject matter of the lease. The 300 acres could have been leased, as rightly submitted by Mr. Samarasekera for the plaintiff-appellant, only on the basis that the land was in the possession of the trustee of the temple, for if it was praveni land it would have been in the possession of the Praveni Nilakarayas.

On a consideration of the above facts I am of the view that the District Court correctly concluded that lots 1 to 4 and 7 to 11 shown in P2 fell within the 300 acres leased to Herat in 1906. I hold therefore that there was sufficient evidence led on behalf of the plaintiff to prove the title and the identity of the lots in dispute.

In a case such as this, the true question that a court has to consider on the question of title is, who has the superior title? The answer has to be reached upon a consideration of the totality of the evidence led in the case.

The defendants claim title from one Menikdurayalage Poola. But the name of the original Praveni Nilakaraya as described in the service tenure register P3 (1D3) is Dangolla Durayalage Poola. The defendants do not claim any rights from Dangolla Durayalage Poola. The defendants therefore do not derive title from a Praveni Nilakaraya. In short, the paper title of the defendants is not linked to any Praveni Nila Pangu. Although the defendants trace their paper title to a fiscal's conveyance, the fiscal's plan was not produced. The identity of the land is thus not established. The District Judge has further held that the deeds of the defendants do not apply to the lots in dispute. I am therefore of the view that the defendants claim of title was rightly rejected by the District Court.

The Court of Appeal in its judgment did not consider P6 upon which the plaintiff relied heavily in support of his title. Indeed, not even a bare reference was made to P6. Consequently the Court of Appeal was in grave error in its evaluation of the evidence placed before the District Court.

For these reasons the appeal is allowed, the judgment of the Court of Appeal is set aside and the judgment of the District Court is restored. The plaintiff (substituted plaintiff-appellant) is entitled to costs fixed at Rs. 1,000 from the defendants.

WIJETUNGA, J – I agree.

GUNASEKERA, J – I agree.

Appeal allowed.