

1962 *Present* : Herat, J., and Abeyesundere, J.

D. A. WANIGARATNE, Appellant, and JUWANIS APPUHAMY
et al., Respondents

S. C. 370/60—D. C. Tangalle, 494/L

Rei vindicatio action—Burden of proof—Duty of plaintiff to establish his own title.

In an action *rei vindicatio* the plaintiff must prove and establish his title. He cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established.

¹ (1900) 4 N.L.R. 1.

² (1945) 46 N.L.R. 553.

APPEAL from a judgment of the District Court, Tangalle.

Nimal Senanayake, for Defendant-Appellant.

A. K. Premadasa, with *D. R. P. Goonetilleke*, for Plaintiffs-Respondents.

October 12, 1962. HERAT, J.—

In this case the plaintiffs-respondents brought an action *rei vindicatio* in respect of a paddy field against the 1st defendant-appellant. They joined as defendants their vendors so as to warrant and defend quiet possession.

It has been laid down now by this Court that in an action *rei vindicatio* the plaintiff should set out his title on the basis on which he claims a declaration of title to the land and must, in Court, prove that title against the defendant in the action. 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.

In this case, the plaintiffs produced a recent deed in their favour and further stated in evidence that they could not take possession of the shares purchased by them because they were resisted by the 1st defendant. No effort was made to call any of the vendors to the plaintiffs to prove the possession or title of the vendors. It is remarkable that one of the witnesses called by the plaintiffs, *Saudiashamy*, in his evidence, stated that the 1st defendant had been in possession of the paddy field and had been taking a share of the paddy, although the evidence of *Saudiashamy* does not clearly establish that the 1st defendant took the paddy or share of paddy for herself, which still shows that she is not just an accidental trespasser, but has been in occupation of some portions of the field for some considerable period of time.

The learned District Judge, in his judgment expatiates on the weakness of the defence case; but unfortunately has failed to examine what title, if any, has been established by the plaintiffs. No evidence of title has been established by the plaintiffs in our opinion.

We therefore allow the appeal with costs and dismiss the plaintiffs-respondents' action in the Court below with costs.

The decree of the lower Court is set aside. 1st defendant-appellant is entitled to costs of appeal and costs in the Court of first instance.

ABEYESUNDERE, J.—I agree.

Appeal allowed.