

JAYASEKERA
v.
BISHOP OF KANDY

COURT OF APPEAL
UDALAGAMA, J. AND
NANAYAKKARA, J.
CALA NO. 145/2001
DC KANDY NO. 18914/L
NOVEMBER 21 AND 29, 2001

Rei Vindicatio Action – Title admitted – Who has the right to begin.

The plaintiff-respondent instituted action seeking a declaration of title to the land in question and also ejectment of the defendant-petitioner from the said land. The defendant-petitioner admitted the title of the plaintiff-respondent but claimed that she had succeeded to the tenancy rights of the original tenant.

Held:

- (1) The trial Judge was correct when he determined that the burden was cast on the defendant-petitioner to prove that he was in lawful possession as he has admitted the title of the plaintiff-respondent.
- (2) The defendant-petitioner should begin the case, however if the plaintiff-respondent insists on his claim for damages – he should begin.

APPLICATION for Leave to Appeal from an Order of the learned District Judge, Kandy.

Case referred to :

Gunasekare v. Latiff – 1999 – 1 Sri LR 65.

S. C. B. Walgampaya with *S. A. D. A. Suraweera* for defendant-petitioner.
Collin Amarasinghe for plaintiff-respondent.

cur. adv. vult.

January 29, 2002

NANAYAKKARA, J.

The issue that has to be addressed in this case is on which party¹ the right to begin by leading evidence lies.

The plaintiff-respondent instituted proceedings in the District Court seeking a declaration of title to the land and premises described in the schedule to the plaint and also ejection of the defendant-petitioner from the said land and premises, accrued and continuing damages.

The defendant-petitioner admitted the title of the respondent, but claimed she had succeeded to the tenancy rights of the original tenant in terms of the provisions of the Rent Act, No. 7 of 1977 in her answer.¹⁰

After the issues were formulated the respondent moved that as the petitioner has admitted the title of the respondent, and the right to begin rests with the petitioner, he should be called upon to lead evidence first.

On this matter parties were directed to file their written submissions on the basis of which the learned District Judge by an order made on 25. 04. 2001 directed the petitioner to begin the case by leading evidence first.

Being dissatisfied with the order of the learned District Judge the petitioner has made this application for leave to appeal praying for²⁰ reliefs set out in it.

The question that has to be determined is whether the learned Judge's order whereby he directed the petitioner to begin the case by leading evidence first is a valid order in the light of the submissions made by both parties.

Having given careful consideration to the submissions made by both parties it is my considered view, that the learned Judge was correct when he determined that, that the burden was cast on the petitioner to prove that he was in lawful possession of the premises in suit as he has admitted the title of the respondent. This determination is clearly in keeping with the reasoning adopted in the case of *Gunasekera v. Latiff*.⁽¹⁾ Therefore, as far as the present case is concerned, I am of the view that the petitioner should begin the case, by leading evidence first unless the respondent insists on his claim for damages, in which event the respondent should begin the case, as his evidence in regard to damages would be necessary for the purpose of evaluation of the quantum of damages. ³⁰

The fact that the issue regarding the right to begin was raised several dates after the formulation of issues and admissions and also several dates after the postponement of trial in this case has no bearing on the determination reached by the learned District Judge. ⁴⁰

In view of the foregoing reasons, I hold that the defendant-petitioner should begin subject to the qualification mentioned above, I dismiss this application of the petitioner and the petitioner is cast in cost in a sum of Rs. 5,000.

UDALAGAMA, J. – I agree.

Application dismissed.