

1960 Present : Weerasooriya, J., and H. N. G. Fernando, J.

P. M. DINGIRIMAHATMAYA, Appellant, and D. A. RATNASEKERA,  
Respondent

S. C. 469—D. C. Ratnapura, 783

*Prescription—Transfer of land—Portion of land not mentioned in conveyance—  
Right of transferee to avail himself of the earlier possession of the transferor—  
Scope—Prescription Ordinance, s. 3.*

A person was in possession of Lot 2 for many years in the belief that it formed part of the very much larger Lot 1 to which he clearly had title. He subsequently donated to his son a land which corresponded with Lot 1 only. In other words, even though the donor had been in possession of Lot 2, the deed of gift did not purport to transfer title to that Lot to the donee. In the present action the donee, as plaintiff, claimed title to Lot 2 as against a third party.

*Held*, that, for the purposes of section 3 of the Prescription Ordinance, the plaintiff was not entitled to avail himself of the earlier possession of the donor in respect of Lot 2.

**A**PPEAL from a judgment of the District Court, Ratnapura.

*H. W. Jayewardene, Q.C.*, with *J. G. Jayatilleke* and *C. P. Fernando*, for the defendant-appellant.

*N. E. Weerasooria, Q.C.*, with *W. D. Gunasekera*, for the plaintiff-respondent.

*Cur. adv. vult.*

March 23, 1960. H. N. G. FERNANDO, J.—

This is an action for declaration of title to the land shown as Lot 2, in extent 1R. 17P., in the Plan No. 264 filed of record. The plaintiff is the owner of Lot 1 shown in that Plan and the defendant is the owner of the adjacent Lot 3. It is admitted that the plaintiff has no documentary title to Lot 2, and on the other hand that the documentary title is with the defendant, Lot 2 and 3 together having been at an earlier stage one land belonging to the defendant and his predecessors in title.

It is clear from the evidence that the plaintiff's father one D. A. Appuhamy had been in possession of Lot 2 for many years in the belief that it formed part of the very much larger Lot 1 to which he clearly had title. A Plan prepared in 1939 at the instance of Appuhamy bears out the position that Lot 2 had been regarded as a part of Paddadeniya Estate owned by Appuhamy and consisting of several allotments of land including *inter alia* the land described as Lot 1 in the Plan No. 264. It would seem therefore that, had Appuhamy continued to be in possession of the Estate, his own claim to a decree under section 3 of the Prescription Ordinance in respect of Lot 2 would have been unanswerable.

But the plaintiff is not in the same position. The deed of gift in his favour from his father Appuhamy was executed on 3rd June 1946 and what was conveyed to him was title to a land described in the deed as Lot 18 AR in Final Village Plan No. 67 which land corresponds with Lot 1 in Plan No. 264. In other words, even though Appuhamy had been in possession of Lot 2, the deed of gift did not purport to transfer title to that Lot to the plaintiff.

The facts of the present case are very similar to those in the unreported case D. C. Kandy No. 48783, S.C. 90/91 (S. C. M. 11th November, 1940). There the plaintiff sued for a declaration of title to a block of land described as Lot A in a Plan Y. The original owner had obtained a Crown grant for a tract of 607 acres and of this an extent of 304 acres was sold under writ of execution against the owner. This extent of 304 acres was ultimately sold to the plaintiff. The District Judge found that Lot A for which the plaintiff sued had not been included in the Crown grant and did not form part of the 304 acre extent which the plaintiff had acquired. Wijeyewardene, J., in his judgment in appeal made the following observations :—

“ After a careful study of the evidence of the surveyors and the plans, I find it difficult to reverse the finding of the learned District Judge that the Lot A was not included in the grant P1 or in the 304 acre block. That finding of the District Judge necessarily means that under P12 the plaintiff company did not get the land A. The vendors of P12 cannot therefore be regarded as the predecessors in title of the plaintiff company with regard to Lot A. The plaintiff company could, therefore, rely only on its own possession of A in order to support its claim to have acquired title by prescriptive possession (*Vide Fernando v. Podi Sinno*<sup>1</sup>). As the action was filed in July 1937 the company have not possessed the land for ten years. ”

In the present case the plaintiff has had possession of the disputed Lot 2 only from 3rd June 1946, so that at the time of the filing of the plaint, on 31st December, 1953, he has not had possession for ten years. Since the deed of 1946 in his favour did not purport to transfer to him title to Lot 2, he is not, for the purposes of section 3 of the Prescription Ordinance, a person who claims the Lot under Appuhamy, whose earlier possession is therefore of no avail to him.

I would accordingly hold that the plaintiff's action was not entitled to succeed. The appeal is allowed and the plaintiff's action is dismissed with costs in both Courts.

WEERASOORIYA, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1925) 6 Ceylon Law Recorder 73.