RANCHAGODA
v.
VIOLA

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WIJETUNGA, J. AND
GUNASEKERA, J.
S.C. APPEAL NO. 133/96
C.A. NO. 129/88 (F)
D.C. BALAPITIYA NO. 2076/L
DECEMBER 07, 1998

Rei vindicatio action – Misdirection by the District Court on the primary facts – Order for retrial.

In an action for declaration of title to lots 1 and 2 of the Survey Plan filed of record, it was the case for the plaintiff that her father Pelis Appuhamy "asweddumized" and cultivated the said lots for a continuous period of 40 years and acquired a prescriptive title thereto. Those lots which constituted the subject-matter of the action were cultivated with cinnamon and vegetable. Lot 3 in the same plan was a paddy field cultivated by Pelis Appuhamy as a tenant cultivator. The District Judge who dismissed the action stated "the petitioner's father was a tenant cultivator. A tenant cultivator cannot acquire title by prescription".

Held:

> The District Judge had failed to appreciate that according to the plaintiff, lots 1 and 2 which formed the subject-matter of the action were not paddy lands. This was a serious misdirection on the primary facts which vitiates the judgment of the District Court. The interests of justice demand a fresh trial.

APPEAL from the judgment of the Court of Appeal.

Rohan Sahabandu for the 1st defendant-appellant.

R. K. S. Sureshchandra for the plaintiff-respondent.

Cur. adv. vult.

January 18, 1999.

G. P. S. DE SILVA, CJ.

The plaintiff instituted these proceedings against the original defendant for a declaration of title to the land described in the schedule to the plaint, ejectment therefrom, and damages. According to the plaintiff, the subject-matter of the action is shown as lots 1 and 2 plan No. 200 made by D. G. Mendis, Licensed Surveyor and filed of record marked "X". It is important to note that lot 3 in plan "X" does not form a part of the subject-matter of the action.

It is the case for the plaintiff that her father Pelis Appuhamy cultivated lots 1 and 2 in plan "X" for a continuous period of over 40 years in his own right, and had thus acquired a prescriptive title thereto. Lots 1 and 2 were unoccupied and uncultivated land which Pelis Appuhamy "asweddumized" and cultivated with cinnamon and vegetables. On the other hand, lot 3 in plan "X" was a paddy field and was cultivated by Pelis Appuhamy as the *tenant cultivator* of one Samaranayake and his predcessors in title.

The original defendant denied the plaintiff's claim of prescriptive possession and sought to claim title, *inter alia,* on two deeds marked V7 and V8. I do not wish to make any comments on the merits of the case of either the plaintiff or the defendant in view of the order I propose to make.

After trial, the District Court dismissed the plaintiff's action. The plaintiff preferred an appeal to the Court of Appeal against the judgment of the District Court. The Court of Appeal held that the District Court had failed to analyse the oral evidence on prescriptive possession and sent the case back for a trial *de novo.* The present appeal to this court is by the defendant against the judgment of the Court of Appeal.

On a reading of the judgment of the District Court I find that besides the failure to adequately consider the oral evidence in regard to the claim of prescriptive possession, the District Judge has misunderstood

the case for the plaintiff as presented at the trial. In the course of his judgment he states that the extracts of the Paddy Lands Register for the period 1966 to 1971 do not show that the plaintiff's father was the "owner cultivator" of any part of the subject-matter of the action. He further states that "the plaintiff's father was a tenant cultivator. A tenant cultivator cannot acquire title by prescription". The District Judge has failed to appreciate that according to the plaintiff lots 1 and 2 which form the subject-matter of the action were not paddy lands. These two lots were cultivated with cinnamon and vegetables. The entries in the Paddy Lands Register therefore have no relevance at all to lots 1 and 2. There is here a serious misdirection on the primary facts.

This alone, in my view, vitiates the judgment of the District Court.

In the facts and circumstances of this case, the interests of justice demand that the case be remitted to the District Court for a fresh trial. The judgment of the Court of Appeal is accordingly affirmed and the appeal is dismissed, but without costs.

I direct the District Court to give priority to the hearing of this case and to ensure that the trial is speedily concluded.

WIJETUNGA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal dismissed.

Case remitted to the District Court for a fresh trial.