

DHARMASIRI
v.
WICKREMATUNGA

COURT OF APPEAL
WEERASURIYA, J. (P/CA) AND
DISSANAYAKE, J.
CA NO. 1143/95 (F)
DC COLOMBO NO. 6061/ZL
MAY 14, 2001 AND
JUNE 27, 2001

Plaint – Prayer for ejectment – No plea for declaration of title – Maintainability – Is it a possessory action? – Issue raised on title pleaded.

Held:

- (1) Once issues are framed and accepted, pleadings recede to the background.
- (2) Even though the plaintiff has not asked for a declaration of title it does not prevent him from seeking the relief for ejectment.
- (3) Absence in the prayer for a declaration of title causes no prejudice, if in the body of the plaint, the title is pleaded and issues were framed and accepted by Court on the title so pleaded. It cannot be overlooked that title pleaded in the body of the plaint formed the basis for the issues raised at the trial and the question of title was examined by the trial Judge before arriving at a finding that the plaintiff-respondent has obtained title.

APPEAL from the judgment of the District Court of Colombo.

Cases referred to :

1. *Haniffi v. Nalamma* – 1998 1 SRI LR 73.
2. *Pathirana v. Jayasundera* – 58 NLR 169.
3. *Jayasinghe v. Tikiri Banda* – 1988 2 CALR 24.

D. M. G. Dasanayake for defendant-appellant.

T. B. Dillimuni with *Tissa Bandara* for plaintiff-respondent.

August 24, 2001

WEERASURIYA, J. (P/CA)

The plaintiff-respondent instituted this action against the defendant-appellant, seeking his ejectment from the land described in the schedule to the plaint and damages. The defendant-appellant whilst denying averments in the plaint, prayed for dismissal of the action on the basis of having acquired prescriptive rights to this land. 1

The trial in this case proceeded on 18 issues and the learned District Judge by his judgment dated 03. 07.1995, entered judgment for the plaintiff-respondent. It is from the aforesaid judgment that this appeal has been preferred.

The main submission of learned counsel for the defendant-appellant was that, this action being a possessory action, the plaintiff-respondent has failed to file it within one year from the alleged date of ouster. 10

The plaintiff-respondent in his plaint claimed that he obtained title to this land from Dona Wimala Beatrice Perera and Pitipana Arachchige Senaka Kumara on deed of Transfer bearing No. 677, dated 02. 06. 1982, attested by Mervyn Samaraweera, N.P.

The defendant-appellant whilst denying averments in the plaint relating to the manner of obtaining title by the plaintiff-respondent averred the following :

- (a) That his father M. M. Kiri Banda came into occupation of the premises bearing No. 120/118 as a tenant under P. E. Perera and continued to pay rent upto 1975. 20
- (b) That from 1975 Kiri Banda ceased to pay rent to P. E. Perera upto his death in 1977; and

- (c) That the defendant-appellant since his death occupied the premises in suit by a title adverse to and independent of any person and thereby acquired a prescriptive title.

The evidence of the plaintiff-respondent revealed that P. E. Perera was the husband of Beatrice Perera and Senaka Kumara was the son of P. E. Perera. The defendant-appellant too, accepted this position, despite his earlier position of pleading ignorance of the relationship. 30

The plaint disclosed the manner of obtaining title by the plaintiff-respondent and contained a plea for the ejection of the defendant-appellant without a plea for declaration of title. The absence of a plea for a declaration of title may have been the reason for learned counsel to submit that this was a possessory action.

It is necessary to emphasize that the issues Nos. 1, 2 and 3 had been formulated on the basis of 'acquisition title' by the plaintiff-respondent. The learned District Judge having answered the said issues in the affirmative entered judgment for the plaintiff-respondent. In the circumstances, this action could be properly classified as an action for declaration of title. 40

It is no doubt correct to state that prayer to the plaint did not contain a plea for declaration of title. However, it cannot be overlooked that title pleaded in the body of the plaint formed the basis for the issues raised at the trial and the question of title was examined by the District Judge before arriving at a finding that the plaintiff-respondent has obtained title from deed No. 677, dated 02. 06. 1982. It is well-settled law that once issues are framed and accepted by Court, pleadings recede to the background. (*vide Haniffi v. Nalamma.*)⁽¹⁾ 50

In *Pathirana v. Jayasundera*⁽²⁾ at 173 it was observed that a decree for a declaration of title may be obtained by way of additional relief either in a *rei vindicatio* action proper or in lessor's action against his overholding tenant.

In *Jayasinghe v. Tikiri Banda*⁽³⁾ it was held that although plaintiff has not asked for a declaration of title it does not prevent him from seeking the relief for ejection. Thus, it would be manifest that absence in the prayer, for a declaration of title causes no prejudice, if in the body of the plaint, the title is pleaded and issues were framed⁶⁰ and accepted by Court on the title so pleaded.

Therefore, the submission of learned counsel for the defendant-appellant that this action was a possessory action is unacceptable.

The plaintiff-respondent has placed evidence to establish the identity of the land and his title to the land in suit. The evidence of the defendant-appellant in respect of his claim for prescriptive rights in both evasive and unconvincing.

Having examined the evidence, it seems to me that there is no basis to interfere with the findings of the District Judge. Therefore, this appeal is dismissed with costs.⁷⁰

DISSANAYAKE, J. – I agree.

Appeal dismissed.