

[IN THE PRIVY COUNCIL]

1951 *Present*: Lord Oaksey, Lord Radcliffe, Lord Tucker, Sir John
Beaumont, Sir Lionel Leach

SIYANERIS, Appellant, and JAYASINGHE UDENIS DE SILVA,
Respondent

Privy Council Appeal No. 15 of 1950

S. C. 347—D. C. Matara, 16,621

Actio rei vindicatio—Burden of proof—Principal and agent—Prescription—Adverse possession.

In an action for declaration of title to property, where the legal title is in the plaintiff but the property is in the possession of the defendant, the burden of proof is on the defendant.

If a person goes into possession of land as an agent for another, prescription does not begin to run until he has made it manifest that he is holding adversely to his principal.

APPPEAL from a judgment of the Supreme Court.

R. O. Wilberforce, with *M. L. S. Jayasekera*, for the plaintiff appellant.

Stephen Chapman, for the defendant respondent.

February 8, 1951. [*Delivered by SIR LIONEL LEACH*]—

This is an appeal from a judgment of the Supreme Court of Ceylon, dated the 1st October, 1948, reversing a judgment of the District Court of Matara, dated the 12th March, 1946. The action out of which it arises was brought by the appellant in the District Court for a declaration of title to some five acres of land in the Matara District and for consequential relief. The respondent (the defendant) was in possession and claimed to be the true owner of the property. The appellant succeeded in the trial Court, but the Supreme Court disagreed with its material findings and dismissed the action. As the appeal to His Majesty in Council involves questions of fact it is necessary for their Lordships to examine the evidence in some detail.

In 1919 the land in dispute belonged to one David Samaraweera. By a deed dated the 10th October, 1919, Samaraweera conveyed it to one Appuhamy for the sum of Rs. 5,500, of which Rs. 4,630 was paid in cash and the balance of Rs. 870 was set off against a mortgage debt due to Appuhamy and secured on other property belonging to the vendor. Appuhamy sold the land to the appellant and conveyed it to him by a deed dated the 28th June, 1944.

Appuhamy was adopted in his infancy by the mother-in-law of the respondent and was brought up as a member of her family. The respondent's explanation of the fact that the land was purchased in Appuhamy's

name was that Appuhamy wished to contract an advantageous marriage, but could not do so without being able to show that he was possessed of immovable property. The respondent alleged that he had arranged to buy the property for himself, but in order to help Appuhamy to secure a suitable bride he caused the conveyance to be drawn up in Appuhamy's name, Appuhamy having agreed to hold the property for the respondent's benefit. The respondent also averred that he had acquired a prescriptive title to the land by being in possession thereof adverse to Appuhamy since the 10th October, 1919, that the appellant was not a *bona fide* purchaser for value without notice of the respondent's claim and that in any event he was entitled to recover from the appellant the sum of Rs. 35,000 in respect of improvements which he said he had caused to be made to the property, and to a *jus retentionis* until the compensation was paid. On all these pleas the appellant joined issue. He maintained that Appuhamy had bought the property out of his own resources, that the respondent had acted as Appuhamy's agent in the transaction, that Appuhamy had himself paid for the improvements and that the respondent had remained in possession as a mere licensee of Appuhamy. Appuhamy gave evidence for the appellant and supported these contentions.

The District Judge held that Appuhamy had provided the money for the purchase of the property, that the respondent had acted as his agent in carrying the transaction through and in obtaining possession and that he had remained in possession ever since as a licensee of Appuhamy. The District Judge did not decide who had provided the money for the improvements which admittedly had been made to the property, but he held that the respondent could have no claim for compensation against the appellant. He accepted the respondent's plea that the appellant could not be treated as a purchaser without notice of the respondent's claim to be the true owner, but in view of his findings on the other issues this did not affect the result. He granted the appellant a declaration of title and directed that the respondent should be ejected from the premises. He further ordered the respondent to pay to the appellant damages at the rate of Rs. 40 a month from the 16th September, 1944, until possession was given.

The Supreme Court preferred the respondent's version of the transaction. It considered that the District Court had wrongly thrown the burden of proof on the respondent and as the result of this it had arrived at a conclusion unfavourable to him. It also held that the respondent had established a prescriptive title to the land. It agreed with the District Court that the appellant had bought with notice of the respondent's claim. In accordance with these findings it allowed the appeal and dismissed the action with costs in both Courts.

The main question in the case is whether Appuhamy had the means to provide the Rs. 4,630, which was paid in cash to Samaraweera. Appuhamy started life as a personal servant to the principal of the Training College at Colombo. At first his salary was only Rs. 15 a month, but it was increased from time to time until it became Rs. 30 a month. But his salary did not constitute his only source of income. The college was a

residential one and attached to it was a large English school for boys, to which some of the wealthiest families in Ceylon sent their sons. Appuhamy bought the provisions for the catering at the College and from 1912 to 1918 he ran the tuck shop, the profits of which he took. Evidence was given on behalf of the appellant by Mr. James Bleakley, a former lecturer and vice-principal of the College, who was associated with it from 1912 to 1943. Mr. Bleakley stated that Appuhamy had much opportunity of making money in this connection, so much so that the principal of the College had changed the system and had put the catering on a contract basis. While Mr. Bleakley was at the College Appuhamy was taken seriously ill and as he was afraid that his relations would raid his residence he asked Mr. Bleakley to take charge of his movable property and supply him with an inventory. Mr. Bleakley did so and was amazed at the quantity of jewellery and gold coins which Appuhamy possessed. Corroboration of Mr. Bleakley's evidence, if corroboration be needed, is to be found in the testimony of Mr. E. H. de Silva, the secretary of the Urban Council of Weligama, within whose jurisdiction the disputed land lies. Mr. de Silva, who was called as a witness by the respondent, attended the English school attached to the Training College at the time Appuhamy was running the tuck shop. He stated that it was quite evident that Appuhamy was making very much more than his salary.

Appuhamy had accounts in two savings banks; in one he had deposited Rs. 1,000 and in the other Rs. 700. In 1918 he made the loan to Samaraweera which was set off when the property with which the appeal is concerned was conveyed to Appuhamy in 1919. The fact that Appuhamy had money to lend on mortgage in 1918 did not fit in with the reason given by the respondent for causing the property to be conveyed to Appuhamy, and in dealing with this matter in the course of his evidence the respondent at first alleged that he himself had made the loan to Samaraweera, but then said that the money lent belonged to his mother-in-law, who asked him to arrange for the mortgage bond to be written in Appuhamy's name. The District Judge disbelieved the respondent's explanation, but the Supreme Court accepted it on the ground that Appuhamy's own testimony corroborated the respondent on the point. The Supreme Court was here under a misapprehension. Appuhamy made no such admission. On the contrary he expressly denied the truth of the respondent's allegation.

It is worthy of note that for two years after the conveyance the title deeds remained with the respondent. He then delivered them to Appuhamy, who held them until he sold the property to the appellant. In 1919 Appuhamy was about 36 years of age, and he remained unmarried until he was 60. He became engaged in 1941 to a woman, who was employed as a seamstress at the Training College, and he married her in 1943, much to the annoyance of the respondent and the members of his family. These facts have naturally been stressed on behalf of the appellant as militating against the respondent's story.

There is ample evidence to support the finding of the District Judge that Appuhamy was the real purchaser of the property. The District

Judge believed the evidence adduced by the appellant and their Lordships see no justification for its rejection by the Supreme Court. The District Judge had the great advantage of seeing the witnesses in the witness box and he did not err on the question of onus of proof, as the Supreme Court has suggested. Admittedly he rightly called upon the respondent to begin, the legal title being in Appuhamy, through whom the appellant claimed. Having considered the evidence led by the respective parties he accepted that given on behalf of the appellant. The Supreme Court considered that it was incredible that Appuhamy could have made between Rs. 15,000 and Rs. 18,000 in six years, as he had stated. Be this as it may, Appuhamy required less than Rs. 5,000 in cash to buy the property from Samaraweera and there is evidence on which the trial Court could with reason hold that he had the money and that he used it for the purchase of the property.

Their Lordships will now turn to the question whether the Supreme Court was justified in its conclusion that the respondent had acquired a title by prescription. It is true that he took possession of the property on its conveyance by Samaraweera in 1919, that he remained in possession thereafter, that he let the property out to tenants and appropriated to himself the rents, that he was assessed to municipal taxes as the owner of the property and treated as such by the tenants and that in 1938, after the dwelling on the land had been rebuilt, he went to live there. It is common ground that, so far as is relevant to this point, the law of Ceylon with regard to adverse possession is the same as it is in England. Consequently if a person goes into possession of land in Ceylon as an agent for another time does not begin to run until he has made it manifest that he is holding adversely to his principal. It is not suggested that the respondent ever expressly set up a claim adverse to Appuhamy until the latter had decided to sell the property, but it is said on his behalf that the facts just stated in themselves are sufficient to justify the conclusion that the respondent was throughout holding adversely to Appuhamy. Their Lordships consider that the facts referred to, viewed in the light of the surrounding circumstances, do not warrant this conclusion.

The property lies some 90 miles from Colombo, where Appuhamy lived and earned his livelihood. Appuhamy regarded the house on the land as the home to which he would go on his retirement. He had installed a safe in the house and had sent there a buggy cart and a bull. While he was living so far away naturally he required someone to look after the property for him. Who could do it better than the respondent who resided in the neighbourhood? He regarded the respondent as his brother-in-law and was on very good terms with him. Apart from the respondent and his family Appuhamy had no relations. He was not in need of the rents which the property brought in. He earned in Colombo more than sufficient for his needs. He was quite content to allow the respondent to enjoy the property until he wanted to live there himself.

The District Judge found that the respondent's possession was that of a relative who was occupying the property without paying rent and he

expected it to devolve on him or his children on Appuhamy's death. The respondent admitted in the witness box that it was understood that whatever Appuhamy had would come to the respondent's family when he died. The happy relations between the respondent and Appuhamy continued until 1941 when Appuhamy became engaged to be married. There can be no doubt that the respondent strongly resented the fact that Appuhamy intended to marry. He did not attend the wedding and he confessed that he had not spoken to Appuhamy or to his wife since the marriage. ,

On the 16th March, 1944, Appuhamy wrote, through his proctor, to the respondent intimating that he contemplated selling the property. He said that he had received two offers for it and he desired to know whether the respondent had any intention of buying it. It is not a letter which a person who was contemplating a fraud would be likely to write. Appuhamy held the title deeds, which stood in his name and had he chosen to do so he could have conveyed the property to the appellant without any reference to the respondent. But it is a letter which a person might well write to a relative who had looked after the property for him in his absence for many years and who was then living in the house.

Their Lordships have said sufficient to indicate their reasons for agreeing with the District Court's finding that the respondent had not acquired a prescriptive title to the property and as the respondent has not established a case for compensation their Lordships consider that the decree of the District Court should be fully restored.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and the judgment of the Supreme Court of Ceylon, dated the 1st October, 1948, be set aside. The respondent will pay the costs incurred in Ceylon and in the appeal to His Majesty in Council.

Appeal allowed.
