

1943

Present : Howard C.J. and Jayetileke J.

NAVARATNE, Appellant, and JAYATUNGE, Respondent.

329—D. C. Chilaw, 10,411.

*Prescription—Occupation of property with permission of owner—Overt act—
Adverse possession—Licensee.*

Where a person enters into occupation of property belonging to another with the latter's permission he cannot acquire title to such property by prescription unless he gets rid of his character of licensee by doing some overt act showing an intention to possess adversely.

Nagūda Marikar v. Mohammedu (7 N. L. R. 96) followed.

A PPEAL from a judgment of the District Judge of Chilaw.

H. V. Perera, K.C. (with him C. V. Ranawake and H. A. Kottagoda), for the defendant, appellant.

N. E. Weerasooria, K.C. (with him D. W. Fernando), for the plaintiff, respondent.

Cur adv. vult.

October 6, 1943. HOWARD C.J.

This is an appeal from a decision of the District Judge of Chilaw giving judgment for the plaintiff for the sum of Rs. 2,266.66 together with costs. The plaintiff in his plaint claimed certain lands as the administrator of the estate of one Iseris Appuhamy. When the case came to trial, it was discovered that the defendant had transferred her interests in these lands to certain Chettiars. These Chettiars were added as defendants, but subsequently struck out on the plaintiff consenting to restrict his claim to damages for wrongful possession by the defendant of two lands called Millagahahena and Welangahayays, belonging to the estate. The plaintiff contended that these two lands formed part of the estate of the said Iseris Appuhamy and that the defendant had been in possession of them since 1930. The defendant on the other hand averred that the two lands formed part of the Wandura Eba Estate which Iseris by deed P 1 of January 16, 1917, gifted to her father, that she has been in possession of the two lands and acquired a title thereto by prescription. At the trial it was admitted that the two lands in question were not included in P 1. The title thereto remained in Iseris unless the defendant could make good her claim by virtue of prescription. The learned Judge has on this issue found against the defendant. The other issues being answered in favour of the plaintiff the learned Judge gave judgment accordingly.

The only point taken on appeal was whether the learned Judge was right in the conclusion at which he arrived on the question of prescription. It was established that by P 1 executed in 1907 Iseris made a gift of several lands to his son Juanis, the father of the defendant, reserving a life-interest in himself and his wife Mangohamy and subject to a *fidei commissum* in favour of the children of Juanis. The defendant married in 1911 and on that date Iseris placed her and her husband in possession of several allotments of land which included the two lands in dispute. The two lands were, therefore, included in what came to be known as the Wandura Eba Estate. No doubt the defendant thought that the two lands were included in P 1. In 1929 it was discovered that they were not so included. Iseris had died in 1922, but his wife Mangohamy was still alive. In 1930 Mangohamy and Juanis, the father of the defendant, entered into a deed P 7 dated February 24, 1930, by which they transferred to the defendant all their interests in the two lands in dispute. When the plaintiff heard of this he claimed to have the two lands included in the inventory of Iseris' estate.

In contending that the learned Judge was wrong on the issue of prescription, Mr. H. V. Perera has laid stress on the fact that the defendant has been in possession of these lands for a period of over thirty years, that is to say from the year 1911. Further that during this period she took the produce, paid no rent and possessed *ut dominus*. The burden was, therefore, on the plaintiff to prove that the defendant was a licensee. In this connection Mr. Perera maintains that the evidence establishes that Iseris gave the defendants the land and at no time reclaimed the property. Also that P 7 does not interrupt the running of prescription. After careful consideration I have come to the conclusion that the evidence does not establish an absolute gift of the Wandura Eba Estate by Iseris

to the defendant. She was merely given possession of the lands included in P 1. At the time it was thought that P 1 included also the lands in dispute. She was, therefore, put in possession of these lands. Her occupation was as a licensee by permission of Iseris and not in assertion of any independent right. On the death of Iseris there was the life interest of Mangohamy still outstanding. P 7 executed by Mangohamy and Juanis in favour of the defendant, accepted by the defendant and pleaded by her in her answer to the plaintiff in this case, is an indication that she did not regard herself as possessing "*ut dominus*". The defendant entered into possession of the lands in dispute with the consent and permission of Iseris. Being a licensee she cannot get rid of this character unless she does some overt act showing an intention to possess adversely, vide *Orloff v. Grebe*¹ and *Naguda Marikar v. Mohammedu*². There is no evidence of any such overt act. In fact P 7 is a recognition of the rights of Mangohamy and Juanis.

The appeal must, therefore, be dismissed with costs.

JAYETILEKE J.—I agree.

Appeal dismissed.
