

C-11 G-2

A, 1957

31302 No. 15 of 1950.

# In the Privy Council.

<p><b>ON APPEAL</b></p> <p>FROM THE SUPREME COURT OF CEYLON 1953</p>	<p>UNIVERSITY OF LONDON</p> <p>W.C.L.</p> <p>1953</p> <p>LEGAL STUDIES</p>
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BETWEEN

KUDA MADANAGE SIYANERIS of Unawatuna in Galle *Plaintiff-Appellant*

AND

JAYASINGHE ARACHCHIGE UNDENIS DE SILVA  
10 of Walliwala in Weligama - - - - - *Defendant-Respondent.*

## Case for the Appellant

RECORD.

1. This is an appeal from a judgment of the Supreme Court of the Island of Ceylon dated 1st October, 1948, reversing a judgment of the District Court of Matara dated 12th March, 1946, in favour of the Appellant.

2. The action was commenced on 23rd October, 1944, by the Appellant as Plaintiff against the Respondent as Defendant claiming a declaration of title to certain land known as Palugahawatta at Weligama p. 9.  
20 in the Weligam Korale of Matara District, Southern Province, possession of the land and damages. The value of the land in question was stated to be Rs.20,000.

3. The land in dispute was, in 1919, the property of one David Samaraweera. It was mortgaged to secure Rs.700 to one Appuhamy. By a Deed dated 10th October, 1919, David Samaraweera sold and conveyed the land to Appuhamy for the consideration expressed in the Deed of Rs.5,500. Of this consideration Rs.4,630 was paid in cash to the Vendor, and the remainder (Rs.870) was set off against a mortgage debt, secured on other property of the Vendor by a Deed dated 22nd November, 1918, owing to Appuhamy. The Appellant acquired the land on 28th June, 1944, by conveyance from the said Appuhamy for the consideration of Rs.20,000. These documents were not disputed and effectively establish the documentary title of the Appellant. Moreover, although the Defendant Exhibit P.1, p. 112.  
Exhibit P.13, p. 106.  
Exhibit P.10, p. 166.

p. 165. had registered a caveat with the Registrar of Lands on 21st March, 1944, he did not, when he was served with notice, on the 11th July, 1944, by the Registrar that the Deed of Transfer to the Plaintiff had been tendered for registration, take any step to file an action to have the Deed set aside, or to safeguard his alleged interest in the land.

Exhibit D.25,  
p. 171.

pp. 11-12.

4. The Respondent contended that the land was conveyed to Appuhamy as nominee for the Respondent: that the Respondent had provided the purchase price: that the conveyance was taken in the name of Appuhamy in order to give him a property qualification which would enable him to contract an advantageous marriage and that Appuhamy agreed to hold the land as trustee for the Respondent. The Respondent further alleged that he had acquired a title to the land by prescription through uninterrupted possession since 1919: that he had spent considerable sums of money on the land by erecting buildings and planting trees and was accordingly entitled to a *ius retentionis* in respect of this expenditure and finally that the Appellant bought the land as a speculation and with full knowledge that Appuhamy had no beneficial interest in it. 10

pp. 13-14.

5. The Appellant in reply pleaded that he was a bona fide purchaser for value without notice and that the Respondent was not a bona fide possessor and therefore was not entitled to compensation for improvements. 20

pp. 55-59.  
pp. 60-72.  
pp. 53-55.

6. The case came on for trial on 31st July, 1945, before District Judge N. Krishnadasan. For the Appellant evidence was given by the Appellant himself, by Appuhamy, and by a Mr. Bleakley a lecturer at the Training College, Colombo, to show that Appuhamy was in a position to provide and did provide the purchase price for the property out of profits which he had made by running a tuck shop at the Training College. For the Respondent evidence was given by the Respondent himself and by other witnesses to show that the Respondent provided the purchase price, as well as all the money spent on improving the property: that the Respondent was in possession of the property through himself or his tenants and that he was recognised as owner both by his tenants and by the local authority. One of the Respondent's witnesses was a Mr. E. H. de Silva, Secretary of the Urban Council of Weligama, who had been a student at the Training College. Under cross-examination he admitted that Appuhamy, as "tuck shop keeper" did a roaring trade, "used to fleece us all" and was evidently making very much more than his salary. 30

pp. 18-35.  
pp. 35-52.

p. 37, l. 26.

p. 73.

7. The learned District Judge gave judgment on 12th March, 1946.

He dealt first with the question whether the purchase price had been provided by Appuhamy or the Respondent. After criticising the Respondent's evidence on this issue, and after observing that in fact Appuhamy did not marry until 1943, he referred to the evidence of Mr. Bleakley a "disinterested witness" that Appuhamy ran a tuck shop at the Training College and had opportunities of making money. He then stated that he preferred to accept the evidence of Appuhamy that he paid for the land in question and that the Respondent acted as his agent in having the Deed executed and in getting possession. 40

p. 74, l. 25

p. 74, l. 29.

Next, he dealt with the question of possession. After referring to the assessment books kept by the Urban Council, to certain building applications, and to correspondence with the Urban Council, in all of which the Respondent's name appeared as proprietor, and to the evidence of certain tenants that they paid rent to the Respondent, he stated that "all these show that the defendant was in possession of this property from the time of its purchase from Samaraweera and that he was looked upon as owner by many people." He referred to the close relationship between Appuhamy and the Respondent's family and to the Respondent's expectation to inherit from him and came to the conclusion that the possession of the Respondent was that of a relative who was occupying without paying rent, and who expected this land to devolve on him or on his children on the death of the owner. Accordingly the Respondent did not by long possession prescribe to the land.

On the question of improvements, the learned Judge did not find whether these were paid for by Appuhamy—as Appuhamy alleged—or whether the Respondent had spent his own money, but decided that in any event the Respondent could have no claim for compensation against the Appellant as a purchaser.

20 On the Appellant's claim to be a purchaser for value without notice, the learned Judge did not think that the Appellant was "an innocent purchaser who did not know that his claim to the land will be resisted by defendants."

8. By the Decree of the District Court dated 12th March, 1946, it was declared that the Appellant was entitled to the land and ordered that the Respondent be ejected and that he pay damages at the rate of Rs.40 a month from 16th September, 1944, until the Appellant should be restored to possession. The Respondent was ordered to pay the costs of the action.

30 9. The Respondent appealed and the appeal came before the Supreme Court on 16th September, 1948. On the 1st October, 1948, the Supreme Court by a judgment of Nagalingam J. in which Canekeratne J. concurred, allowed the appeal and ordered that the Appellant's action be dismissed with costs in both Courts.

40 10. The Supreme Court first examined the question who paid for the property. After referring to the means of the Respondent and the modest position of Appuhamy, Nagalingam J. described Appuhamy's claim to have made the necessary funds out of the profits of the tuck shop (which the learned trial judge had accepted and which had been supported both by Mr. Bleakley, an independent witness and by Mr. E. H. de Silva, one of the Respondent's witnesses) as "a most incredible story." He criticised the learned trial Judge for having approached the determination of the question who provided the money for the purchase of the land, by throwing the burden of proof on the Respondent. In his opinion, the burden was on Appuhamy, and had the learned trial Judge approached the question in this way he "would have reached a conclusion opposite to that which he arrived at." Nagalingam J. accordingly came to the conclusion that the Respondent's version was "more near the truth."

p. 87, l. 27.

On the question of prescription, Nagalingam J. thought that here too the learned District Judge had reached his conclusion by wrongly throwing the burden of proof on the defendant and stated that "on a consideration of all the evidence in the case, I am satisfied that the case presented by the defendant is substantially true and that he has acquired prescriptive title to the land and premises."

p. 87, l. 30.

On the question whether the Appellant was "an innocent purchaser" Nagalingam J. stated that he saw no reason to disagree with the finding of the Trial Judge.

p. 92.

11. On 2nd November, 1948, the Appellant was granted final leave 10 to appeal to His Majesty in Council against the judgment and decree of the Supreme Court dated 1st October, 1948.

12. The Appellant submits that the Supreme Court was wrong to reverse the decision of the trial Judge: the main issue between the parties was a simple and direct issue of fact, namely whether (as Appuhamy alleged) the purchase money was provided by him and the Respondent acted throughout as his agent, or whether (as the Respondent alleged) the purchase money was provided by the Respondent and Appuhamy acted throughout as nominee for the Respondent. The learned trial Judge had both the principal parties concerned before him in the witness box 20 and, after hearing their evidence, decided to accept the story of Appuhamy, and not to accept the story of the Respondent. There was, in the submission of the Appellant, no misdirection by the learned trial Judge, there was clearly evidence to support his findings and they ought not to have been disturbed.

13. In addition the Appellant submits that in any event he should be treated as a purchaser for value without notice of any equitable claim by the Respondent against Appuhamy and the Appellant's title should consequently not be affected by any such claim of the Respondent. The finding of the learned trial Judge did not adequately deal with this 30 submission, which if he had directed his mind to the evidence in support of it, he should have upheld.

14. The Appellant submits that the appeal ought to be allowed, the judgment of the Supreme Court reversed and the judgment of the District Court restored for the following amongst other

## REASONS

- (1) BECAUSE on the two connected issues, whether the purchase money had been provided by Appuhamy and whether the Respondent had acquired a title by prescription the judgment of the District Court was 40 based upon findings of fact on the evidence adduced.
- (2) BECAUSE there was evidence on which the findings of fact of the District Court on the above-mentioned issues could have been made and consequently they should not have been reversed by the Supreme Court, even if there was evidence on which contrary findings could have been made.

- (3) BECAUSE the finding of fact of the District Court on the above-mentioned issues were, in any case, correct upon the evidence which was adduced.
- (4) BECAUSE, in any event, the Appellant should have been treated, upon the evidence, as a purchaser for value without notice and should consequently not have been affected by any claim of the Respondent against Appuhamy.
- (5) BECAUSE the judgment of the District Court was right and ought to be restored and the judgment of the Supreme Court was wrong and ought to be reversed.

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R. O. WILBERFORCE.

In the Privy Council.

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**ON APPEAL**

*from the Supreme Court of Ceylon.*

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BETWEEN

**KUDA MADANAGE SIYANERIS** of  
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**JAYASINGHE ARACHCHIGE UNDENIS  
DE SILVA** of Walliwala in Weligama  
*Defendant-Respondent*

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**Case for the Appellant**

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**WILLIAM A. CRUMP & SON,**

10-11 Lime Street,

London, E.C.3,

*Solicitors for the Appellant.*