

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
W.C.1.
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN—

KUDA MADANAGE SIYANERIS of
Unawatuna in Galle (Plaintiff) *Appellant*

— AND —

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JAYASINGHE ARACHCHIGE UDENIS DE
SILVA of Walliwala in Weligama (Defendant)
Respondent.

CASE FOR THE RESPONDENT.

RECORD.

1. This is an appeal from judgment and decree of the Supreme Court of Ceylon (Canekeratne and Nagalingam J.J.) dated the 1st October, 1948, reversing a judgment and decree of the District Court of Matera (Krishnadasan A.D.J.) dated the 12th March, 1946, in proceedings for a declaration of title to certain landed property known as Palugahawatta at Weligama in the Matera District, Southern Province, Ceylon.

p. 83.
p. 88.
p. 73.
p. 76.

2. The basic question at issue on the appeal is as to the status of the Appellant's immediate predecessor in title, one Appuhamy. The land had been conveyed in 1919 to Appuhamy and he maintained, and the District Judge held, that he acquired the full beneficial ownership as well as the legal title. On the other hand the Supreme Court upheld the Respondent's contentions, first that he having paid the consideration for the transfer, Appuhamy held as trustee for him; secondly that, he having received the rent for the property while it was let and having himself occupied it when it was not let, for over twenty years without any objection or even query from Appuhamy, a valid prescriptive title has been created.

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p. 75, l. 33.
p. 87, l. 30.

3. As far as the Appellant himself was concerned it was held in both Courts that when he bought from Appuhamy in 1944, he was not a *bona fide* purchaser without notice of the Respondent's equitable interest.

p. 9.

p. 9, l. 32.

p. 10, l. 1.
p. 10, l. 4.

p. 10, ll. 12-21.

4. The proceedings were begun by Plaint in the District Court of Matera on the 23rd October, 1944. By this Plaint the Appellant recounted the early devolution of the property, all of which was admitted. He then set up a deed No. 260 dated the 10th October, 1919 (hereinafter called P.1) by which the property had been conveyed to Appuhamy, and a deed dated the 28th June, 1944 by which Appuhamy had conveyed the property to him. He then added a somewhat curious plea that he and his predecessors in title had been in undisturbed and uninterrupted possession of the property for over ten years. The relief he claimed comprised a declaration of title, an order for the ejectment of the Respondent and damages for trespass at the rate of Rs.60 per mensem from the 16th September, 1944. 10

p. 11.
p. 11, l. 11.
p. 11, l. 14-
p. 12, l. 9.

5. By his Answer dated the 12th January, 1945, the Respondent, after admitting the early devolution of the property, set up the affirmative case that Appuhamy had been adopted in infancy and since brought up by his (the Respondent's) mother-in-law, that in 1919 Appuhamy was anxious to contract an advantageous marriage but lacked the important qualification of landed property, and that it was accordingly arranged that the property in question, which the Respondent had already agreed to buy from the then owner, should be conveyed into the name of Appuhamy, that he (the Respondent) had paid the full consideration of Rs.5,500 for the purchase and had on completion entered into possession of the property and had held it uninterruptedly by title adverse ever since. He alleged further that Appuhamy at all times knew and agreed that he was not to have any beneficial interest in the property but was to be a mere trustee for the Respondent, and that the subsequent conveyance to the Appellant was a speculative transaction, the Appellant knowing full well that Appuhamy had no beneficial interest to convey. By way of further answer he claimed prescription to be based on uninterrupted possession since 1919. He also set up that he the Respondent had effected considerable improvements to the property by erecting buildings and planting fruit trees and coconuts. He accordingly claimed a declaration of title to the property, and, in the alternative, compensation for improvements and a *jus retetitionis* until compensation was paid. 20 30 40

p. 12, l. 10.

p. 12, l. 23.

p. 12, l. 33.
p. 12, l. 38.

p. 13, ll. 4-14.

p. 13.

p. 14, l. 1.

6. By his Replication dated the 30th January, 1945, the Appellant joined issue and specifically denied that Appuhamy's rights were those of a mere trustee and also asserted in terms that the Appellant was not bound by any trust as he was a *bona fide* purchaser for value without notice.

7. On these pleadings issues were framed which are set out in full in the Record. pp. 16-18.
8. The trial began before Additional District Judge Krishnadasan on the 31st July, 1945, and, the onus being on the Respondent, his evidence was taken first. He himself stated that the property in 1919 belonged to one David Samaraweera, the vendor on the Deed P.1; that the consideration on the purchase was paid by himself and was his own money; that delivery of possession was given to him and that he had been in possession ever since. He produced the assessment register from 1920 to 1943 which showed him as registered throughout that period as the owner and he averred that the taxes had been paid throughout by him. He also produced a considerable body of documentary evidence in the form of applications for licences to carry out building work and the like and from all these it appeared that the local authority had dealt with him as the owner of the property. p. 18, l. 22.
p. 18, l. 32.
p. 18, l. 33.
p. 18, l. 38.
p. 18, l. 39.
pp. 115-120.
p. 19, ll. 1-38.
- 10 According to the Respondent the property in the first instance was occupied by him and later let out at a rent—from 1920 to 1924 to one Abeyratna; from 1924 to 1929 to one W. J. Coomerasinghe; thereafter until 1935 to Mrs. Wickremeratna and subsequently to a Mr. Narayana and a Mr. Manuel. Later the Respondent occupied it again himself. All these tenants, he said, had paid the rent to him and he had not accounted for it, or been called upon to account for it, to anyone. The first intimation of any challenge to his title was a proctor's letter dated the 16th March, 1944 (D.22) stating that Appuhamy "wishes to sell the above land and premises belonging to him. As he has had two offers from people who are interested in the above property I am asked to find out from you whether you have any intention of purchasing the same. If so, kindly let me know what your offer is". The Respondent promptly on the 21st March, 1944 entered a caveat under the Registration of Documents Ordinance (D.24) and in due course through his proctor replied to Appuhamy's proctor that "your client's claim to sell the property in question as his own is absurd. This property is the sole property of my client purchased with my client's money. Your client is fully aware of the circumstances under which the deed came to be written in his favour and my client is prepared to prove these circumstances at the proper time and place". (D.23). p. 19, l. 39.
p. 19, l. 40.
p. 19, l. 42.
p. 20, l. 1.
p. 20, l. 3.
p. 20, l. 17.
p. 19, l. 41-
p. 20, l. 7.
p. 165.
- 20 Those circumstances as detailed in the Respondent's evidence were that Appuhamy had been adopted by the mother of the Respondent's wife whom the Respondent had married in 1904 and had been treated as his wife's brother, that he was by occupation in 1919 a cook at the Training College and that the deed had been made out in his name because he had to show a property qualification to get married. In fact apparently Appuhamy did not get married until 1943 when he was aged 60, but according to the Respondent p. 175.
p. 166.
- 30 p. 18, l. 35.
- 40 p. 20, l. 43.
p. 18, l. 37.
p. 23, ll. 11-43.
p. 21, l. 13.

p. 23, l. 17.

p. 23, l. 29.

there had been in 1919 a proposal from Gampaha for a marriage to be celebrated in 1921, and it was at the request of his mother-in-law that the property was put into his name so that Appuhamy could show that he was possessed of property.

p. 22, ll. 22-40.

p. 22, l. 23.

p. 22, l. 27.

p. 22, l. 45.

p. 20, l. 41.

p. 26, l. 20-

p. 27, l. 3.

9. In cross examination the Respondent was asked about the outstanding mortgage on the land in question for the sum of Rs.750 pursuant to a deed dated the 22nd November, 1918, in favour of Appuhamy. At first the Respondent seems to have stated that it was his money which had been lent to Samaraweera and that as he could not recover interest from a friend the deed was written in the name of Appuhamy. He immediately corrected this however and explained that he had agreed to lend the money to Samaraweera but he was then approached by his mother-in-law who had set apart Rs.750 for Appuhamy and wanted that money to be invested in the mortgage and the Respondent had acceded to this request and advanced the money which his mother-in-law handed to him for Appuhamy. On the sale in 1919 the amount outstanding on the mortgage was deducted and handed to Appuhamy personally by the Respondent in Colombo, the balance being paid to Samaraweera

10. On the issue as to improvements the Respondent gave detailed evidence as to spending about Rs.15,000 on improvements the post war value of which according to him was Rs.35,000. The work included not only putting up a wall and fences but also the complete rebuilding of the house in about 1935 or 1936. In the view which they took of the case neither Court in Ceylon made any findings as to these improvements or their value.

p. 35.

p. 35, ll. 36-8

11. The next witness was Narayana who became tenant of the property in 1937. He said he was the Respondent's tenant and always paid the rent to him. He had never had any dealings with Appuhamy who never came to the house at all.

p. 36.

p. 36, l. 10.

12. The Chairman of the Urban Council, Weligama was then called and produced a certified copy of the Assessment Register showing the Respondent as owner and also certified copies of the documents relating to building licences and the like. Further documents of this nature were produced by the Secretary of the Urban Council, E. H. De Silva. All these documents showed that throughout the period covered by them the Respondent had been at any rate purporting to act as absolute owner of the property and was accepted by the Council as the owner.

p. 36, l. 23-

p. 37, l. 10.

p. 38.

p. 38, l. 25.

p. 39, l. 33.

13. The next witness was a retired village headman named W. W. A. P. Ago Singho. He knew Samaraweera who was a proctor and had in fact acted on his behalf in negotiating the sale of the property in 1919. All his negotiations were with the Respondent, and at the execution of the deed the consideration was paid by the Respondent and Appuhamy was not present at all. After execution of the document possession was given to the Respondent.

p. 38, l. 26.

p. 38, l. 33.

p. 38, l. 30.

- Appuhamy's name was on the deed because the Respondent had asked for this to be done but what he had all along told Samaraweera was that the Respondent was buying the property. In fact when told to find a purchaser for the property he conceived it to be his duty to approach someone who had money and he went to the Respondent because he knew him to be a man of means. p. 39, l. 4
p. 39, l. 18.
p. 40, l. 10.
- 10 14. The next witness was the proctor consulted by the Respondent when Appuhamy's proctor wrote D.22 on the 16th March, 1944. He had been vice-chairman of the Urban Council from 1938 to 1941 and gave evidence of summoning the Respondent on account of a deviation of a building on the property from a plan submitted. Throughout his time on the Council he had never come into contact with the Appellant. He also gave evidence of an aunt of his having been a tenant of the property from the Respondent. He was cross examined about his reply to D.22 and said that he was not told the circumstances under which the deed came to be written in favour of Appuhamy. The Respondent had told him that he had made a mistake, the mistake being in getting the deed written in favour of Appuhamy and had said that his son-in-law would bring a draft 20 reply to D.22. This he did and the witnesses letter followed the draft. p. 40.
p. 40, l. 25.
p. 40, l. 35.
p. 40, l. 32.
p. 41, l. 26.
p. 41, l. 30.
p. 41, l. 28.
p. 41, l. 40.
15. The next witness G. M. Perera was a relative of Samaraweera and his grandmother had lived on the property. He had been against the sale, regarding it as family property. He had never heard of Appuhamy but knew that the Respondent came into possession after the sale and as a member of the Council all his dealings thereafter had been with the Respondent. p. 42.
p. 42, l. 35.
p. 42, l. 42.
p. 42, l. 44.
p. 42, l. 38.
- 30 16. Mrs. Mabel Wickremaratna then gave evidence as to being a tenant of the property from 1929 to 1931, being succeeded by her parents when she left to get married. She had never heard of Appuhamy. She was a tenant of the Respondent and paid rent to him and he was the person who did the repairs. p. 43.
p. 43, l. 33.
p. 43, l. 39.
p. 43, l. 37.
17. Alfred Samaraweera was an adoptive brother of the vendor of the property in 1919. He was not present at the execution of the deed but was in charge of the land and responsible for delivering up possession after the deed had been executed. On the instructions which he had he delivered possession to the Respondent and whenever he came back to the land afterwards it was the Respondent who was in possession. p. 44.
p. 44, ll. 11-14.
p. 44, l. 41.
- 40 18. W. A. P. Abeyratna said he was the occupant of the property from 1921 to 1924. He took the house from the Respondent and paid the rent to him, and it was the Respondent who repaired the property before he leased it. He did not know anyone of the name of Appuhamy and no one with that name had ever come to the house. There was no suggestion that the Respondent was collecting rent for anyone else and no one else ever claimed the rent. p. 45.
p. 45, ll. 38-44.
p. 45, l. 43.
p. 46, l. 36.

p. 47.

19. V. G. Manuel said that when he was electrical engineer to the Weligama Council he had lived on the property as tenant of the Respondent from 1936 to 1938. He paid his rent to the Respondent and never had any claim from any person called Appuhamy. Constructional work had been done to the house while he was there and this was carried out by the Respondent.

p. 47, l. 19.

p. 47, l. 21.

p. 47, ll. 23,
30-35.

p. 48.

p. 48, l. 5.

20. A. G. Henry Silva had been village headman for 20 years and had had to visit the property in his official capacity. The Respondent according to him had been in possession of the property for 20 to 25 years and throughout that time Appuhamy had not exercised any right to the property. To his personal knowledge the property belonged to the Respondent. 10

p. 48, l. 13.

p. 48.

p. 48, l. 34.

p. 48, l. 39.

p. 48, l. 41.

p. 48, l. 42.

21. W. J. Coomerasinghe, a native doctor of Walliwala, said that he had obtained permission from the Respondent in 1925 to use the house as an Arvarsaya for some Buddhist priests, he being dayakayar of the temple. He had known the property for a long time, since, indeed, it had belonged to Samaraweera whom he described as the original owner. When Samaraweera left, the Respondent had started living on the property and was still there. He said he knew Appuhamy but he did not possess the property and had never put forward any claim throughout the period when the Buddhist priests were there. 20

p. 49, l. 21.

p. 49, l. 22.

p. 49, l. 23.

p. 49, l. 24.

p. 49, ll. 36, 43.

22. An important witness was Don Alwis Ranaweera who had signed P.1 as a witness. He said he saw money being paid at the transfer and the person who paid it was the Respondent. He knew Appuhamy, but he was not present when the deed was executed. To his knowledge, from that time on the Respondent had been in possession of the land. In cross examination he said that he knew the deed was written in Appuhamy's name, but did not know or ask why. 30

p. 50, l. 12.

23. The remaining evidence for the Respondent dealt with the question of improvements. A mason who had been paid Rs.1950 was called and he said that the work he took on contract was the demolishing of the whole house and rebuilding and plastering it. He received his instructions from the Respondent and had not heard of Appuhamy. A carpenter who had similarly been paid Rs.2,100 described the work he did for the roof and the doors of the house. He received instructions from the Respondent and his work was supervised by the Respondent. He also had never heard of Appuhamy. Finally the valuer A. H. Felsingher who produced his report. On the basis of the Respondent's version of the work he had done Mr. Felsingher said that constructional work to the house at 1936 rates would have cost Rs.12,000 to Rs.15,000. Sundry items such as copra sheds, a well, fencing and cultivations amounted to a further sum of Rs.2,783. The value of the house alone in 1945 he assessed at Rs.37,000 and for the whole of the buildings he gave a figure of Rs.39,783. 40

p. 51, l. 2.

p. 51.

p. 178.

p. 52, l. 24.

p. 179, l. 23.

24. The evidence for the Appellant opened with Mr. James Bleakley, a lecturer at the Training College from 1922 until two years before the trial. He described Appuhamy as more or less a personal servant of Mr. Evans the principal. Mr. Evans did the catering, and Appuhamy went out to buy provisions for him and also ran the tuck shop. Apparently the Government allowed Mr. Evans a certain amount for the catering, but his successor in 1920, a Mr. Harrison, found it quite inadequate. There were some 80 resident students in the College and a very few non-residents.
- 10 Mr. Bleakley did not state what salary Appuhamy was paid and did not know whether he was paid by the Government or Mr. Evans. He agreed that a Government servant was not allowed to purchase property without permission. He had no personal knowledge as to whether Appuhamy was possessed of means or not but thought he had much opportunity for making money. He said he had made an inventory and taken charge of goods in Appuhamy's possession when he was ill and afraid his relations would raid his place. Mr. Bleakley said he was amazed at the amount of stuff he had, mainly jewellery and gold coins the value of which he did not know.
- 20 One of the Respondent's witnesses, the Secretary of the Urban Council, had described him as doing a roaring trade at the tuck shop and fleecing the students while he was there.
25. The Appellant himself gave evidence next as to the circumstances of his purchase from Appuhamy in 1944. In view of the concurrent findings recorded in paragraphs 30 and 35 hereof it is not considered necessary to analyse his evidence.
26. Finally came Appuhamy, who described himself as a Government pensioner with a pension of Rs.41 a month. He said in his evidence in chief that his first employment was in the hospital at Madukelle at a salary of Rs.22.50 a month and in 1909 he went to the Training College where he saw to the catering, supervised the servants and arranged the place for examinations. He said he ran a tuck shop, keeping a man to run it while he took the profits. This went on for six years from 1912 to 1918 when the tuck shop was closed. Later for three years from 1921 he ran a tuck shop at the Royal College. By 1918 according to him he had saved about Rs. 15,000 to Rs.18,000. What his salary was during this time is not at all clear. At one time he said it was Rs.30 a month, but later admitted that he had sent petitions to the Government complaining
- 40 that his salary was only Rs.16 a month and then stated that some of the statements in his petitions were false though some were true. In re-examination he said his salary was Rs.30 a month and that he was paid by Mr. Evans, adding that he drew a salary from the Government as peon at the rate of Rs.16 a month. The tuck shop itself was also somewhat mysterious because after his statement in chief which has been quoted he said in cross examination that it

p. 53.
p. 53, l. 20.

p. 53, l. 21.
p. 55, l. 15.

p. 55, l. 5.

p. 54, l. 35.
p. 54, l. 40.
p. 53, l. 30.

p. 53, l. 37.

p. 37, l. 26.

p. 55.

p. 60.
p. 60, l. 3.

p. 60, l. 13.
p. 60, l. 15.
p. 60, l. 17.
p. 60, l. 18.

p. 60, l. 22.

p. 60, l. 25.
p. 62, l. 26.
p. 62, l. 30.

p. 64, l. 17.
p. 71, l. 25.

p. 71, l. 27.

p. 68, l. 41.

- p. 69, l. 13. was the principal who put up the tuck shop and ordered him to run it and that he did not provide the food for it. He was reminded of what Mr. Bleakley had said, that permission would be necessary and that any permission would be in his personal file and agreed that there was nothing in his personal file about the tuck shop. The whole story hardly fitted with his petitions to the Government stating that "as head peon and butler my duties involved me in long "hours of work and kept me fully occupied even on Sundays" and that even "the holidays were a very difficult matter". Meanwhile he talked about having a tuck shop in a different place run by a man Dionis who was not called and whom he had made no effort to trace. He also suddenly announced in cross examination that he had been keeping five cows at the Training College and had the produce of the garden, bringing in an income of Rs.250 a month. The largest amount he had ever had in the Ceylon Savings Bank was Rs.1,000, apparently preferring to keep coins and notes and jewellery in his almirah. 10
- p. 64, l. 21.
- p. 64, l. 26.
- p. 63, l. 24.
- p. 62, l. 32.
- p. 62, l. 47.
- p. 61, l. 11.
- p. 61, l. 17.
- p. 61, l. 1.
- p. 70, l. 42.
- p. 71, l. 1.
- p. 71, l. 4.
- p. 71, l. 6.
- p. 71, l. 5.
- p. 66, l. 34.
- p. 66, l. 19.
- p. 61, l. 38.
- p. 66, l. 12.
27. Dealing more specifically with the transaction in question Appuhamy's account was that he told the Respondent that he wanted to buy some land and the Respondent said he would enquire and find out a suitable property to purchase. Later the Respondent, he said, went to the Training College and told him he could buy the property in question. His evidence then proceeded "I purchased the property for Rs.5,500. I paid Rs.4,650 in cash to the Respondent. The balance was set off against the mortgage account. I was not present at the execution of the transfer. I left the transaction in the hands of the Respondent. I had implicit confidence in him." With regard to the existing mortgage on the property he said that he gave the money to be lent to Samaraweera to the Respondent at the Training College, but how or in what circumstances the transaction arose he did not explain. The Respondent's version about his mother-in-law wanting to give money to Appuhamy and asking him to lend that money to Samaraweera was, he said, untrue, but when the purchase took place he said he did not discharge the mortgage bond. In the next breath he said that he did discharge it, then again said that he did not. The Respondent, he said, did everything, but the money on the bond was not, he said, paid to him by the Respondent in Colombo. After the execution of the deed of transfer according to his evidence "delivery of possession was handed over to the Defendant. I did not come to take possession. Possession was not given to me, Samaraweera gave possession of the land to the Defendant." He agreed further that the Defendant never paid him any of the rent he collected giving the somewhat lame excuse that he had sufficient money and did not want the rent—an excuse completely in conflict with his pressing appeals to the Government to increase his pay. He disputed what 20 30 40

the tenants had said as to never having had anything to do with him, saying that he had come into contact with them and spoken to them when he went to work on the land, but said that he had not told that to the Appellant's lawyers: certainly there was no cross examination to that effect. With regard to building work on the property he said "I wanted to improve the building on this land. "I told the Defendant about it. I provided the money. Whenever "he wanted money for the work I gave him the money. I gave him "the money and got the work done . . . I spent a sum of Rs.5,000
 10 "in repairs." In cross examination he asserted that he had effected the repairs while the Respondent was actually in residence in the house. When confronted with the evidence of the mason and carpenter who had done the major work of reconstruction, he said that their evidence as to not seeing him was false, although he had not told that to the Appellant's lawyers: again there was no cross examination to that effect.

28. The Respondent submits that the whole of this account is not worthy of credence. No rational explanation whatever was offered of a large number of striking features. For example why,
 20 if it was his own personal purchase, had he carried out none of the negotiations? Why had he never had any direct dealings at all with the vendor or his agent? Why had he not himself attended at the execution of the deed and handed over the purchase money? Why had he allowed possession to be handed over to the Respondent and even allowed the Respondent to live there rent free? Why, when the property was let, had he allowed the Respondent to keep the rent it earned, amounting apparently to the equivalent of his total salary? Why, above all, had he allowed a period of twenty-four years to elapse without any hint of a suggestion that the
 30 property belonged to him? Why had he never taken any steps to get himself registered with the local authority as the proprietor? What did he think was happening about the rates? And if he did the building work, how came it that not a single application for the necessary licences was in his name?

Similarly when it came to the question as to where the money for the purchase came from, his account was utterly unreliable. Faced as he was with the well established fact that the Respondent had all along been a man of means, while he was a very humble Government employee always pleading for a rise, he pinned his faith
 40 in the first instance on the tuck shop. When pressed with the absence of the necessary Government permission, he suddenly produced the story of the cows and the garden produce of which no hint had been given before.

On the other hand the Respondent's version had been corroborated on every point where corroboration could be expected. The tenants, the local authority, the vendor's agent, the witness at the

time of execution, the builders who had worked there, had all confirmed his own account of being the person responsible for the purchase and thereafter for doing everything which an absolute owner might be expected to do.

p. 73.

p. 74, l. 23.

29. On the 12th March, 1946, the Additional District Judge delivered his judgment. On the first question, namely whether P.1 was executed in trust, he said "I find it difficult to accept the "evidence led for the Defence that the Defendant (Respondent) paid "Samaraweera for the land and that he got it written in the name "of Appuhamy." Unfortunately, however, he failed to draw any distinction between two fundamentally different questions, namely 10

p. 73, l. 28.

who paid the money over, and whose money was it. Thus at the beginning of his judgment he said "the only evidence adduced by "the Defendant to prove that he gave the Rs.5,500 to Samaraweera "for the land was his statement in the box that the money was his" whereas in fact it was virtually uncontested that it was the Respondent who handed over the money. Ranaweera (whom the Additional Judge never mentioned) said so and Appuhamy himself did not deny it. The Additional Judge proceeded that "Ago Singho, the "only other witness who was called to speak about this purchase 20

p. 73, l. 37.

"said that he did not know with whose money the land was bought." That he said so was quite correct, but to say he was the only other witness apart from the Respondent called to speak about the purchase was a grave error. There was Ranaweera, Alfred Samaraweera, G. M. Perera, and to a lesser degree Henry Silva. One would have expected also on this issue some mention of the members of the local Council, the tenants and the workpeople, but the Additional Judge entirely ignored them. He mentioned what he described as the Respondent's conflicting statements about the existing mortgage without referring to their reconciliation, but 30

p. 74, l. 4

p. 74, l. 25.

nowhere did he state that he disbelieved the Respondent. On the other side he said "Mr. Bleakley is a disinterested witness: he said "that Appuhamy ran the tuck shop at the Royal College. He also "said that Mr. Evans did the catering for the resident students and "that Appuhamy bought the premises." Mr. Bleakley had said no such thing. He had talked about Appuhamy going out to buy the provisions for the tuck shop, but never mentioned his having bought any premises. In fact there was no substantial ground for asserting that Mr. Bleakley was disinterested, still less for supposing, as the Additional Judge seems to have supposed, that he was the only 40

p. 74, l. 28.

witness who could be described as disinterested. The Additional Judge proceeded: "Appuhamy had opportunities of making money "and he must have made much more than his salary. I prefer to "accept his evidence that he paid for the land in question and that "the Defendant acted as his agent in having the deed executed and "in getting possession from Samaraweera."

30. On the second issue as to prescription, the Additional Judge said "I accept the evidence of Narayan and Mabel Wickremaratna "that they rented the house from the Defendant (Respondent) and "looked upon him as landlord. Appuhamy admitted that the "Defendant collected rent and that he never got the rent from him. "All these show that the Defendant was in possession of the property "from the time of its purchase from Samaraweera and that he was "looked upon as owner by many people. . . . The question is did "he during this long period acknowledge ownership of these premises
 10 "in anyone else. . . . The evidence of the Defendant shows that he "right through acknowledged Appuhamy to have transferable "interest in this land." With respect, the evidence shows no such thing: it merely showed that the Respondent regarded Appuhamy, quite rightly, as liable to convey to the Respondent the legal title conferred by P.1 on Appuhamy. The Additional Judge's conclusion was that "he (the Defendant) had taken possession from "Samaraweera as the agent of Appuhamy and had remained in it "with Appuhamy's leave and licence." In fact there was not a
 20 shred of evidence of such leave and licence from start to finish, and it was quite illegitimate for the Additional Judge to infer something which the evidence as a whole plainly negatived.
31. With regard to the Appellant the Additional Judge said "I do not think the Plaintiff is an innocent purchaser who did not "know that his claim to the land will be resisted by the Defendant."
32. In accordance with these findings the Additional Judge answered the issues in favour of the Appellant and on the same day a decree of the District Court was entered accordingly.
33. On appeal by the Respondent to the Supreme Court the leading judgment was given on the 1st October, 1948, by
 30 Nagalingam J. (Canejekatne J. agreeing). The learned Judge said "that it was the Defendant who negotiated the purchase of the "property and that it was he who actually handed the consideration "to the vendor at the time of the execution of the deed of transfer, "that it was to him that the vendor delivered possession of the "premises after the sale are all matters which are not in dispute "between the parties. Further that it was the Defendant's name "that was entered in the Urban District Council's and later in the "Urban Council's, books as the owner of the property for purposes "of rating is also conceded by Appuhamy. That the Defendant has
 40 "also since the execution of the Deed P.1 been renting out the "premises from time to time by various tenants and that it was he "who collected the rents and that it was he who appropriated the "rents are also matters which are accepted by Appuhamy as being "true. It was also undisputed by Appuhamy that it was the "Defendant who effected repairs from time to time, the repairs being "of a very extensive nature: the purchase price of the property was

p. 74, l. 41.

p. 75, l. 6.

p. 75, l. 13.

p. 75, l. 18.

p. 75, l. 33.

p. 83.

p. 84, l. 13.

p. 85, l. 3. "Rs.5,500 but according to the Defendant the repairs cost another
 "Rs.5,000. The Defendant has been able to prove that apart from
 "the extensive repairs he completely renovated the building,
 "practically rebuilding it at a cost of about Rs.15,000: the land and
 "premises as they now stand have been valued by a competent
 p. 85, l. 8. "Valuator at about Rs.37,000." He mentioned that Appuhamy
 alleged that it was he who provided the money for the various repairs
 "although he does not go to the extent of saying that in regard to
 "the rebuilding of the property he provided any." He pointed out
 that Appuhamy had not disputed that the Respondent was 10
 pecuniarily well off so as to be able to afford the purchase, and then
 p. 85, l. 12. proceeded to analyse Appuhamy's position since he started in 1909
 as a personal servant of Mr. Evans at a salary of Rs.15 a month,
 increased from time to time until in 1919 it reached the sum of Rs 30
 a month. The learned Judge, rightly it is submitted, described the
 p. 85, l. 21. assertion that he made a profit from the tuck shop of between
 Rs.15,000 and Rs.18,000 as "a most incredible story, and commented
 p. 85, l. 26. "on the late arrival on the scene of the five cows and the garden
 "produce. Generally Appuhamy's financial circumstances coupled
 p. 85, l. 42. "with the fact that Appuhamy according to him had permitted the 20
 "Defendant to receive the rents without raising a question at any
 "time, especially when the rent was in the neighbourhood of Rs.30
 "or Rs.40 a month threw very great doubts on his version that it was
 p. 86, l. 6. "he who provided the consideration." As the learned Judge
 commented "He (the Respondent) was a very well-to-do man and
 "no explanation has been given and never attempted as to why
 "Appuhamy should have permitted the income from all his hard
 "earned savings to be appropriated and utilised by the Defendant,
 "especially when Appuhamy himself was creating a fund of his own
 "out of his savings." 30
 p. 86, l. 26. 34. By way of criticism of the trial judge Nagalingam J. said
 "the learned Judge has approached the determination of the
 "question as to who provided the money for the purchase of the land
 "by throwing the burden of proof on the Defendant. Had the fact
 "that the deed was in favour of Appuhamy stood alone, it would
 "have been correct to presume that it was Appuhamy who provided
 "the consideration. But on the admission of Appuhamy that he
 "himself did not pay the money to the Vendor but that it was the
 "Defendant, the burden at that stage clearly shifted to Appuhamy
 "to establish that he had paid or handed the money to the Defendant. 40
 "Apart from his *ipse dixit* there is no other proof and had the learned
 "Judge approached the question in this way he would have reached
 p. 87, l. 22. "a conclusion opposite to that which he arrived at, as the reasoning
 "underlying his decision would be equally applicable." And later
 "the learned Judge has not disbelieved the Defendant or his
 "witnesses in reaching the conclusion he arrived at, but it was the

“result of throwing the burden of proof wrongly on the Defendant
 “in regard to establishing that it was he who provided the purchase
 “money for the transfer that he arrived at a decision unfavourable
 “to the Defendant. On a consideration of all the evidence in the
 “case I am satisfied that the case presented by the Defendant is
 “substantially true”

35. On the prescription issue Nagalingam J. said “the learned
 “Judge finds that though possession was with the Defendant it was
 “one with the leave and licence of Appuhamy. Appuhamy how-
 10 “ever does not give any express testimony on the point but rather
 “leaves it to be inferred from the circumstances of relationship.”
 Accordingly Nagalingam J. expressed himself as satisfied that the
 Respondent had acquired prescriptive title to the land and premises.
 36. With regard to the Appellant Nagalingam J. said “the
 “learned Judge finds that the Plaintiff is not an innocent purchaser.
 “With this finding I see no reason to disagree.”
 37. In accordance with this judgment the Court ordered that
 the judgment of the District Court should be set aside and the
 Appellant’s action dismissed with costs in the Supreme Court and
 20 below, and a decree of the Supreme Court dated the 1st October, 1948,
 was entered accordingly.

38. The Respondent humbly submits that the judgment and
 decree of the Supreme Court ought to be affirmed and this appeal
 dismissed for the following amongst other

REASONS.

- 30 1. BECAUSE the evidence conclusively established that
 all the negotiations for the purchase in question were
 conducted by the Respondent and that he attended at
 the execution of the deed of transfer and handed over
 the consideration and was put into possession.
2. BECAUSE the onus which was on the Appellant of
 showing that the consideration derived from Appuhamy
 was not discharged.
- 40 3. BECAUSE the whole story told by Appuhamy was
 unworthy of credence and was rightly rejected by the
 Supreme Court.
4. BECAUSE the evidence of the Respondent and his
 witnesses established the case which he had pleaded
 and was rightly accepted by the Supreme Court.
5. BECAUSE the evidence established that the Respon-
 dent had had uninterrupted possession of the property

for over twenty years without acknowledging title in anyone else.

6. BECAUSE there was no evidence that this possession was with the leave or licence of Appuhamy.
7. BECAUSE the judgment of the Supreme Court was right.

STEPHEN CHAPMAN.

No. 15 of 1950.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON.

KUDA MADANAGE SIYANERIS

— AND —

**JAYASINGHE ARACHCHIGE UDENIS
DE SILVA.**

CASE FOR THE RESPONDENT.

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