

**IN THE SEYCHELLES COURT OF APPEAL**

**SEYCHELLES DEVELOPMENT CORPORATION**

**APPELLANT**

**versus**

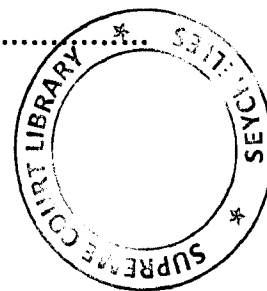
**PETER MOREL**

**RESPONDENT**

Civil Appeal No: 8 of 2002

[Before: *Ayoola. P, De Silva & Matadeen JJ.A*]

Mr. B. Georges for the Appellant  
Mr. S. Rouillon for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by De Silva, JA)*

The plaintiff-respondent (*"the respondent"*) filed this action claiming that he has acquired title to parcel C238 by acquisitive prescription. He sought a declaration to this effect from the Court. The defendant-appellant, (*"the appellant"*) the owner of parcel C238 denied the claim and sought a dismissal of the action.

The case for the respondent was that he was cultivating vegetables like cucumber, pumpkin, tomato, chillies and fruits like bananas for a period of 22 years continuously and without interruption. He deponed that parcel C238 was a vacant plot of land which adjoined parcel C239 which he was cultivating even for a longer period of time. What needs to be stressed and what is of decisive importance in this appeal is that he admitted more than once in the course of his evidence that he obtained the permission of Mr. Schneider who was in charge of Seychelles Development Corporation to enter upon and cultivate parcel C238. In examination in chief he explicitly admitted "*.... I was given permission by Mr. Schneider who was in charge of SDC to do the farming on the land.*"

In cross-examination also he was asked the question, "*And then with Mr. Schneider's permission you went on to C238 to extend the plantation?*" and his reply was in the affirmative. Additionally, the learned trial Judge in the course of his judgment specifically refers to the evidence of the respondent that he had "*obtained permission from the then Manager of the defendant's company one Mr. Schneider so that plaintiff could use the suit-property as his farm land.*"

Having so stated in his judgment, the learned trial Judge failed to appreciate the true significance and import of the admission of the respondent that he sought and obtained the permission of Mr. Schneider to cultivate parcel C238. Once permissive possession was admitted in evidence, the case for the respondent had to fail. It negated the foundation of the claim of the respondent, based as it was on acquisitive prescription. Mr. Bernard Georges for the appellant relevantly referred us to the Articles in the Civil Code of Seychelles which have a direct bearing on the crucial issue which arises for consideration on this appeal.

Article 2229 -

"In order to acquire by prescription, possession must be continuous, and uninterrupted, peaceful, public, unequivocal, and by a person acting in the capacity as owner." (Emphasis added)

It is clear that permissive possession is incompatible with possession as owner. Thus there is no proof of one of the essential elements of the claim of acquisitive prescription.

Article 2231 -

"When a person begins to possess on behalf of another, he shall always be presumed to

possess on the same basis unless there is proof to the contrary" (Emphasis added)

Admittedly, the respondent's initial entry on the land was with the permission of the appellant and there is no evidence whatsoever that there has been a change in the character of his possession. Therefore, Article 2231 applies to the admitted facts.

Article 2232 –

"Purely optional act or acts which are merely permitted shall not give rise to possession or prescription."

This principle too directly removes the foundation of the respondent's case.

Article 2236 –


"Those who possess on behalf of another shall not acquire by prescription however long they may be in possession" (Emphasis added)

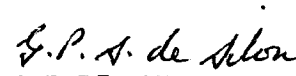
Thus the claim of the respondent that he possessed Parcel C238 for 22 years is of no relevance for the reason that his initial occupation was with the permission of the appellant. On the facts of this case the respondent must establish when his permissive occupation terminated and when his possession as owner commenced. Time begins to run only after he commences to possess the parcel as owner. There is a total lack of evidence on these matters which are essential to support the basis of the respondent's action.

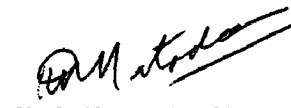
Mr. Rouillon for the respondent submitted that this being a civil case it was incumbent on the defendant to have led evidence but that the defendant failed to lead any evidence whatsoever. Learned Counsel

contended that there was no evidence contrary to the evidence given by the respondent and the learned trial Judge has completely accepted the testimony of the respondent. This submission is not well founded for the respondent failed altogether to make out a prima facie case of acquisition of ownership by prescriptive possession. The evidence of the respondent himself clearly negated the case averred in the plaint.

For these reasons, the appeal is allowed with costs, the judgment of the trial Court is quashed, and the respondent's action is dismissed.

  
**E. O. AYoola**  
**PRESIDENT**

  
**G. P. S DE SILVA**  
**JUSTICE OF APPEAL**

  
**K. P. MATADEEN**  
**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 18<sup>th</sup> day of **December** 2002.