

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

In the matter of an Application for  
*restitutio-in-integrum* and revision under  
and in terms of Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA Case No: RII/44/2024**  
**DC-Nuwara Eliya**  
**Case No: 1446/99/L**

Walpola Arachchige Premarathne  
(deceased),  
No. 131/1, Udamadura,  
Talawa.

**Plaintiff**

Galagedara Muthukuda  
Wickramasinghe Mudiyanse  
Karunawathie,  
No. 48, Udamadura,  
Talawa, Nildandahinna.

**Substituted Plaintiff**

**Vs.**

Abeydeera Arachchige Chalet  
Kamalawathie,  
No. 15,  
Nildandahinna.

**Defendant**

**AND**

Abeydeera Arachchige Chalet  
Kamalawathie,  
No. 15,  
Nildandahinna.

**Defendant -Petitioner**

**Vs.**

Galagedara Muthukuda  
Wickramasinghe Mudiyanse  
Karunawathie,

No. 48, Udamadura,  
Talawa, Nildandahinna.

**Substituted Plaintiff- Respondent**

**AND NOW**

Abeydeera Arachchige Chalet  
Kamalawathie,  
No. 15, Nildandahinna.

**Defendant –Petitioner-Petitioner**

**Vs.**

Galagedara Muthukuda  
Wickramasinghe Mudiyanseelage  
Karunawathie,  
No. 48, Udamadura,  
Talawa, Nildandahinna.

**Substituted Plaintiff- Respondent-  
Respondent**

**Before:** **R. Gurusinghe J.**

**&**

**M.C.B.S. Morais J.**

**Counsel:** Gamini Hettiarachchi instructed by Krishantha Senarathne  
for the Petitioner.

Respondent is absent and unrepresented.

**Written Submissions:** By the Petitioner – on 25.09.2024

**Argued on:** 03.09.2024

**Decided On:** **24.10.2024**

## **JUDGMENT**

**M.C.B.S. Morais J.**

Notices were duly issued on the Respondent on two separate occasions via registered post and on both occasions, the notices were not returned undelivered. Therefore, it is assumed that the Respondent having duly received notice, does not wish to partake in this proceedings. In light of this and there being no evidence to suggest the Respondent has not received the notices, the court had no option but to proceed with hearing the Petitioner in absence of the Respondent.

The Defendant-Petitioner-Petitioner (hereinafter referred to as the Petitioner) named 'Abeydeera Arachchige Chalet Kamalawathie' is praying for following reliefs from us in the petition dated 28<sup>th</sup> of March 2024.

- a. Issue notice on the Substituted Plaintiff-Respondent-Respondent
- b. Allow this application
- c. Set-aside the Order dated 05.12.2023 of the action bearing No. 1446/L in the district court of Nuwara Eliya
- d. Invalidate the eviction of the Petitioner from the land more fully described in the first schedule to this petition on 07.11/2023 by executing the writ in the action bearing No. D.C.Nuwara Eliya
- e. Restore the Petitioner of the possession of the land more fully described in the first schedule to this petition
- f. Grant costs, and;
- g. Such other and further reliefs as your Lordships' shall deem meet.

We heard the submissions made on behalf of the Petitioner and duly considered the available material. The Petitioner asserts that an individual named 'Hewawalpitage Medawattegedara Appuhami' (hereinafter referred to as the Appuhami) was the original owner of a parcel of land known as 'Wataweltanna,' also referred to as 'Watawelakele,' which comprises an extent of 24.06 perches, as more fully described in the First Schedule to this Petition. Appuhami

subsequently conveyed an undivided portion of this land, measuring 40 feet in width and 40 feet in length, and as more fully detailed in the Second Schedule to this Petition, to 'Abeydeera Arachchige John Sinno' (hereinafter referred to as the John Sinno) by the deed bearing No. 6275 dated 07<sup>th</sup> of May 1946, the father of the Petitioner.

The Petitioner avers that John Sinno had been in possession of the entire land described in the First Schedule to the petition and had acquired title to it by prescription. Upon his death, John Sinno's heirs succeeded to his interest in the property and later transferred the land in question to the Petitioner by Deed bearing No. 0292 dated 30<sup>th</sup> of September 1980. Subsequently, the Petitioner transferred/mortgaged the said land to the Plaintiff by Deed bearing No. 3008, dated the 5<sup>th</sup> of May 2008.

According to the Petitioner, the Plaintiff claims in the complaint that the Petitioner has not transferred possession of the property to the Plaintiff, but only mortgaged. In any event this court will not venture into the legality of the judgment as it has finally been decided by the Supreme Court.

According to the Petitioner, the present issue has arisen as the land on which she resides contains an additional piece of land, apart from the portion of the property measuring forty feet in length and forty feet in width, which is the subject matter of this action.

After trial, the learned Additional District Judge of Nuwara Eliya delivered judgment in favor of the Plaintiff on the 31<sup>st</sup> of October 2013. Aggrieved by the judgment, the Petitioner lodged an appeal before the Civil Appellate High Court of Kandy, which was dismissed. The Petitioner then filed an application for leave to appeal against the judgment of the Civil Appellate High Court, and while the Supreme Court granted leave to appeal, the appeal was eventually dismissed.

While the appeal before the Supreme Court was pending, the Plaintiff passed away, and the Substituted Plaintiff-Respondent was substituted in place of the deceased Plaintiff.

The Petitioner further asserts that she was born in the ancestral home situated on the said land, where she resided for the entirety of her 80 years of life, until her eviction by writ

execution in relation to the instant action, bearing No. 1446/L of the District Court of Nuwara Eliya, on the 7<sup>th</sup> of November 2023.

The Petitioner avers that, by virtue of the impugned deed bearing No. 3308, she transferred only a portion of the land detailed in the second schedule of the plaint. She further asserts that both she and her father had been in possession of a larger parcel of land more fully described in the first schedule. The land sought by the Plaintiff, as claimed, remained an undivided part of the original land, and both the schedule to the plaint as well as the schedule to the impugned deed No. 3008 clearly indicate that the northern boundary of the subject land adjoins the remaining portion of the same larger land.

The Petitioner further states that on or about 07.11.2023, the Fiscal Officer of the District Court of Walapane arrived at the premises described in the first schedule of this petition to execute the writ pertaining to the case. Upon the officer's arrival, the Petitioner raised objections to the execution of the writ, specifically opposing her ejectment from the entire land described in the first schedule. Notwithstanding her objections, the writ was executed, resulting in her eviction from the entirety of the larger land.

Aggrieved by what she contends was an unlawful eviction, the Petitioner subsequently sought relief from the District Court of Nuwara Eliya. However, despite her application, the learned District Judge refused to issue notice on the Respondent. The Petitioner, being dissatisfied with the outcome, now seeks appropriate legal recourse to address the injustice caused to her by the said wrongful eviction.

The Petitioner asserts that the writ was executed without the proper identification of the subject matter in question. She further contends that no surveyor was present during the execution of the writ, and no plan or survey was utilized to accurately identify the subject land. This, she argues, has led to a wrongful and unlawful execution of the writ without adequate verification of the boundaries or the specific area subject to the dispute.

Upon examination of the pleadings and the schedule of the plaint, it becomes evident that the Plaintiff is claiming title to a portion of land described in Deed No. 3008, dated 05.05.2008, which is as follows.

*Land called 'Watavelthennaya' a part of TP Plan 168557 situated in Nidandahinna, Walapane Yati Palatha Korale, Nuwara Eliya District, Central Province, in extent of forty feet long and forty feet wide, or one thousand six hundred square feet (40x40 + 1600) or one hundred and sixty square meters (160 sqm) bounded to the north by remaining part of the same land, to the East by reserved land strip along the highway to the South by the land belonging to Mr. DP Yapathilaka and to the West by land belonging to Palawatte Appuhami.*

While the Plaintiff relies on Deed No. 3008 to support her claim over the disputed land, it must be emphasized that the deed in question describes a specific portion of the land measuring forty feet in length and forty feet in width—amounting to a total of 1600 square feet. Though the Petitioner also may have bought the land as for the same schedule, she has been in possession of such for 30 years or more even as for the documents submitted by the Plaintiff herself. As it is apparent the larger land which the Petitioner claims to be is an adjoining land which has been enjoyed by the Petitioner on inheritance/prescription or some other right. However, the Plaintiff's legal entitlement under the deed is thus confined to this 1600 square feet of land. This portion, as described in the deed, is valid insofar as it refers to the specific area covered by the deed. However, while the deed grants ownership to the Plaintiff over this defined plot of land, it cannot, by itself, invalidate any rights that may have been acquired by the Petitioner through inheritance/prescriptive possession or in any other manner.

Therefore, it is nothing but proper for the court to obtain the assistance of a qualified surveyor to accurately identify and demarcate the Plaintiff's land as described in Deed No. 3008. The Plaintiff's claim is limited to a plot measuring 40 feet by 40 feet (1600 square feet), and the surveyor must ensure that this portion tallies with the deed's boundaries as much as possible. Given potential discrepancies between textual descriptions and physical markers on the land, the surveyor's role is crucial in reconciling these differences. This ensures that the Plaintiff's claim is properly enforced, while also respecting any right the Petitioner may have acquired over the years. The surveyor's findings will guide the court in fairly resolving the dispute by safeguarding the legal rights of both parties.

Upon careful examination, it is evident that the execution of the writ by the lower court was not in accordance with the applicable legal principles. Specifically, the writ failed to properly

account for the Plaintiff's limited entitlement to the plot of land as described in Deed No. 3008, which measures 40 feet by 40 feet. The enforcement of the writ, in its current form, risks overstepping the bounds of the Plaintiff's legal claim and infringing upon the rights of the Petitioner, particularly in relation to any title she may have acquired, separately.

In light of these concerns, I hereby allow the Petitioner's application and set aside the enforcement of the writ as originally issued. The learned district judge is directed to re-enforce the writ, but with the crucial modification of incorporating the assistance of a surveyor. The surveyor will be tasked with accurately identifying and demarcating the specific portion of land measuring 40 feet by 40 feet (1600 square feet) to which the Plaintiff is entitled under the deed. The surveyor must also ensure, to the greatest extent possible, that this portion aligns with the boundaries provided in the schedule. The Plaintiff's entitlement should be limited to the so identified the plot of land measuring 1600 square feet and the eviction of the Petitioner from the rest should be null and void.

As it is the Plaintiff's duty to properly identify the land described in the deed, it follows that the cost of engaging the surveyor should be borne by the Plaintiff. However, as the Plaintiff-Respondent is absent and unrepresented, the court should not rely on the Plaintiff for such. Accordingly, the cost of the surveyor should be borne by the Petitioner which may be set off against the ordered taxed costs payable by the Petitioner to the Plaintiff in the court below.

The matter that must be particularly emphasized here is that the subject of the appeal, which has been rendered moot by the Supreme Court, and the issue addressed by the present application are two distinct and separate matters. The appeal before the Supreme Court addresses the merits of the impugned judgment while this application pertains to the enforcement of such. These two issues concern different legal points and should not be conflated or treated as identical. While the appeal has come to a final determination due to the Supreme Court's ruling, the RII (present matter) continues to address a separate, relevant issue in the case. Therefore, it is crucial to recognize the distinction between these matters to avoid any confusion or misinterpretation in the legal context.

Ultimately, I find that the original execution of the writ should be set aside, and the district court should proceed with the re-enforcement of the writ in line with these terms. The

surveyor's findings will ensure that the Plaintiff receives possession of the specific plot described in the deed, without exceeding the boundaries of her lawful claim.

Hence, I direct accordingly, and subject to the above limitations, this application is allowed.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**