

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

In the matter of an application for
Appeal under and in terms of Section 5C
of the High Court of the Provinces
(Special Provisions) Act No. 19 of 1990
as amended by Act No. 54 of 2006.

Ambuldeniyage Don Edwin
No. 142/6C, Salawa Road, Mirihana,
Nugegoda.

Plaintiff

**SC/Appeal No. 101/2013
H.C. Mount Lavinia No. 85/06
D.C. Mount Lavinia No. 1308/L**

Vs.

Ranasinghe Arachchige Sarath Perera
No. 58/2, 3rd Lane, Pegiriwatta Road,
Gangodawila,
Nugegoda.

Defendant

And

Ranasinghe Arachchige Sarath Perera
No. 58/2, 3rd Lane, Pegiriwatta Road,
Gangodawila,
Nugegoda.

Defendant – Appellant

Vs.

Ambuldeniyage Don Edwin
No. 142/6C, Salawa Road, Mirihana,
Nugegoda.

Plaintiff – Respondent

And Now Between

Ranasinghe Arachchige Sarath Perera

No. 58/2, 3rd Lane, Pegiriwatta Road,
Gangodawila,
Nugegoda.

Defendant – Appellant- Appellant
Vs.

Ambuldeniyage Don Edwin
No. 142/6C, Salawa Road, Mirihana,
Nugegoda.

Plaintiff – Respondent- Respondent

1. (A) Ambuldeniyage Dayawathi
2. (B) Ambuldeniyage Bandularatne
3. (C) Ambuldeniyage Dona Kamalawathie
4. (D) Ambuldeniyage Mitraratne
5. (E) Ambuldeniyage Samanlatha
6. (F) Ambuldeniyage Don

Chandranrathne

All of:

No. 142/6C, Salawa Road, Mirihana,
Nugegoda

Substituted Plaintiff – Respondent –
Respondents

Before : **Janak De Silva, J.**
K. Priyantha Fernando, J.
Sampath Abayakoon, J.

Counsel : Dr. Sunil Coorey instructed by K.L.D. Manoj Neel
Sanjeewa for the Defendant-Appellant-Appellant

Chathura Galhena with Ms. Viduri Sulakkana
instructed by Asela K. Sumanasuriya for the
Substituted Plaintiff-Respondent-Respondents

Argued on : 20.03.2025

Decided on : 30.05.2025

K. PRIYANTHA FERNANDO, J

1. The Defendant-Appellant-Appellant (hereinafter referred to as the Appellant), appealed to this Court seeking to, *inter alia*, set aside the judgment dated 21.03.2013 of the Provincial High Court of Civil Appeal holden in *Mount Lavinia* and the judgment dated 18.08.2006 of the District Court of *Mount Lavinia*.

Facts in Brief

2. The land in issue is described in the 2nd schedule to the plaint. There is no dispute among the parties that the corpus is depicted as lot “A1” in plan no. 10836 prepared by licensed surveyor *J. Jayawickrema*.
3. The Appellant has submitted that the dispute he had with regard to possession of the land with the Plaintiff – Respondent- Respondent (hereinafter referred to as the Respondent) was referred to the Primary Court by the *Mirihana* Police in terms of **Section 66** of the **Primary Courts Procedure Act No. 44 of 1979**. The Magistrate Court of *Gangodawila* ordered the parties involved to resolve the dispute instituting a civil action in the District Court.
4. In the action in District Court of *Mount Lavinia* bearing no. 1308/00/L, the Respondent sought for a declaration of title in respect of the said land, to remove the Appellant and all his agents from the said land, and, requested that an interim injunction be issued against the Appellant and his agents pertaining to the building and the well being constructed in the said property. The Respondent further requested that an enjoining order be issued regarding the same

against the Appellant. Title by prescription, although not prayed for, was also claimed by the Respondent in his plaint.

5. The Appellant in his answer denied both the paper title and prescriptive title claimed by the Respondent and stated that the Appellant has both paper title and prescriptive title to the land in question. He stated that the well “in construction” was in fact constructed back in time and that there was a hut in the property as well. He further denied that there was a building in construction in the land. He stated that assessment tax in respect of the land was paid by the Appellant and his predecessors and document proof for such was presented to the Court. The Appellant therefore sought for a declaration of title and the dismissal of the plaint.
6. The learned District Judge, by judgment dated 18.08.2006, held in favour of the Respondent holding that the Respondent has proved his title. Further, the learned District Court Judge granted an enjoining order which, however, following tendering the objections of the Appellant, was vacated, and the interim injunction was dismissed. The learned District Judge upon addressing the question of prescription held that the Appellant was unable to prove prescriptive title to the land as there was no sufficient evidence to prove such.
7. Aggrieved by the said judgment of the learned District Court Judge, the Appellant of the instant case preferred an appeal to the High Court of Civil Appeal of *Colombo* Holden at *Mount Lavinia* to set aside the judgment of the District Court dated 18.08.2006. The learned Judges of the High Court dismissed the appeal and held in favour of the Respondent.
8. Being aggrieved by the decision of the High Court, the Appellant preferred the instant appeal to this Court. This Court granted leave to

appeal on the question of law set out in subparagraph (a) of paragraph 24 of the petition dated 02.05.2012.

Question of Law

24 (a) In the circumstances pleaded has the defendant proved his prescriptive rights before the Court?

9. The principal legal instrument governing the area of prescription is the **Prescription Ordinance of 1871 (as amended)**, of which **Section 3** provides as follows:

*“ Proof of the **undisturbed and uninterrupted possession** by a defendant in any action, **or by those under whom he claims**, of lands or immovable property, by a title **adverse to or independent of** that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) **for ten years previous to the bringing of such action**, shall entitle the defendant to a decree in his favour with costs...”*

(emphasis mine)

10. The burden of proof in a case of prescriptive title falls on the party who claims prescriptive title as per Gratiaen J. in **Chelliah v. Wijenathan [1951] 54 NLR 337 at 342:**

“...Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests

fairly and squarely on him to establish a starting point for his or her acquisition of prescriptive rights....”

11. In light of the above, I will take into account the following positions furthered by the Appellant by way of the arguments placed before this Court to determine if title by prescription has been successfully established.
12. The principal premise of the Appellant’s case is the occupation of his predecessor *E.R. Gunawathie* in the corpus from 1974 – 1990, prior to the occupation of the Appellant. To substantiate this position, the Appellant has furthered both documentary and oral evidence. In terms of documentary evidence, the extracts from the Electoral Register from 1985 – 1990 were provided marked “V17A” to “V17F” (pages 450 – 455 of the brief). Further, the document marked “V10” notes *E.R. Gunawathie* as the previous assessment taxpayer concerning this property (page 410 of the brief). The Appellant has also presented proof of their assessment tax payment for the years 1899 – 2000 by documents marked “V 7 A -D” (pages 400 – 403 of the brief)
13. In terms of oral evidence, at the District Court trial, *E.R. Gunawathie* has admitted to physically possessing the property in question from the years 1974 – 1990. “1974 - 1990 වෙනකන් මෙම ඉඩමේ දේපල මම බුක්ති වින්දා. පොඩි නිවසක් ඇතුලත පදිංචි වෙලා සිටියා”. (Vide page 245 of the brief).
14. She further testified that her possession was uninterrupted. “ඇඩ්වින් හෝ වෙන යම් තැනැත්තෙක් මෙම ඉඩමට ආරවුල් කලේ නැහැ. වි 8 හි දැක්වෙන දේපලේ අයිතිය පිළිබඳව නඩුවකට හෝ පොලිසියකට ගිහින් නැහැ මම බුක්ති වින්ද කාලේ ” (Page 247 of the brief).

15. She has testified that she paid assessment tax to the Municipal Council of *Maharagama* for four years and further, that she acted in the capacity of the owner in selling the land marked as “A1” in 1980 by deed bearing no. 4278 marked “V14 b”. The land has been transferred back to her in the year 1981 through a deed bearing no. 4761 (marked “V15”). In 1990, she submitted that she sold the land to the Appellant of the instant case through a deed bearing no. 1556 (marked “V9” at page 406 of the brief). (*vide* pages 245, 246 of the brief).
16. The learned counsel for the Appellant, at the hearing of the case further submitted that the oral evidence of *E.R. Gunawathie* was never contested by the Respondents. Further, that the learned District Court Judge did not appraise the aforementioned oral evidence in coming to his decision relying solely on the documents whereby contending that such alone is insufficient to establish possession.
17. In response to the above averments, the Respondents furthered two positions primarily. First, concerning the oral evidence, the learned counsel submitted that, the mere statements of possession are not sufficient to establish title by prescription. The judgment of ***Sirajudeen and Others v. Abbas [1994] 2 SLR 365*** was cited in this regard.
18. Second, in response to the documentary evidence, it was the position of the Respondents that the payment of rates on its own does not substantiate a claim of possession in a claim of prescriptive title. The judgment of ***Hassan v. Romanishamy 66 CLW 112*** was cited in support.
19. In these circumstances, I will first consider the legal position on this area to then consider whether the evidence placed before the

Court are in fact satisfactory to establish the claim of prescriptive title of the Appellant.

20. The facts *prima facie* compel a discussion on the question of whether the defendant in a case of prescription of land could claim possession by relying on the period of possession by a predecessor. In this regard, reading into **Section 3** of the Ordinance, it is apparent that such is legitimate as it requires proof “*of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims*” (emphasis mine). The same was affirmed in the case ***Wijesundera and Others v. Constantine Dasa and Another [1987] 2 SLR 66***. Therefore, I hold that the Appellant of the instant case can rely on the period of 17 years from 1974 – 1990 his predecessor *E.R. Gunawathie* claims to have possessed the land in question to claim prescription.

21. Having established that prescriptive title could be claimed through the possession of the land or immovable property by a predecessor, I will now consider whether the occupation of the land by *E.R. Gunawathie* fulfils the requirements of “possession” for the purposes of the **Section 3** of the **Prescription Ordinance of 1871 (as amended)**.

22. In the same judgment ***Sirajudeen and Others v. Abbas [1994] 2 SLR 365*** cited by the Respondents, De Silva CJ quoted from the text of Walter Pereira’s ***Laws of Ceylon***, 2nd Edition, at page 396, where it is stated that:

“As regards the mode of proof of prescriptive possession, mere general statement of witnesses that the plaintiff “possessed” the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is

necessary that the witnesses should speak to specific facts, and the question of possession has to be decided thereupon by the Court”

23. In the instant case, taking into consideration the way the land has been possessed by *E.R. Gunawathie*, at the cross-examination at the District Court trial, she has admitted to physically possessing the property in question from the years 1974 – 1990. There is also evidence of there being a hut in the land. "1974 - 1990 වෙනකන් මෙම ඉඩමේ දේපල මම බුක්කි වින්දා. පොඩි නිවසක් ඇතුළත පදිංචි වෙලා සිටියා". (Page 245 of the brief).

“ප්‍ර: යෝජනා කරනවා තමුන් කියන ලෙස මෙම වී 8 සැලැස්මේ සහ වී 9 ඔප්පුවේ උප ලේඛනයේ සඳහන් ඉඩමේ නිවසක් තිබුනේ නෑ කියා
උ: නිවසක් තිබුනා. මම ඉන්නේ ළමයි එක්ක.”

24. In the cross examination of *Wickremasena Jeromanis Edirisinghe* (predecessor of the Respondent) also, the existence of this hut is noted.

“ප්‍ර: මෙහි නිවසක් තිබුනේ නැද්ද?
උ: තිබුනා
ප්‍ර: එහි පදිංචි වෙලා සිටියේ කවුද?
උ: ඒ කාලේ මම මතක නෑ හරියට කියන්න”
(*Vide* page 251 of the brief)

25. She has also acted in the capacity of the owner of the corpus in question “A1” by selling it in 1980 and transferring it back to herself in 1981 (*vide* pages 245, 246 of the brief). She has stated that she paid assessment tax to the Municipal Council of *Maharagama* for four years as well (pages 248, 249 of the brief). It is further evidenced through the cross-examination of the Respondent at the District Court that there is no proof of payment of assessment tax by him.

26. To establish title by prescription, it is also required that the possession is held as “*a title adverse to or independent of that of the claimant or plaintiff*”. The terms “*adverse*” or “*independent*” have been interpreted to mean holding possession in a way that is incompatible with the title of the paper title holder. Canekeratne J. in **Fernando v. Wijesooriya [1947] 48 NLR 320 at 325** stated the following:

“...It is necessary to inquire in what manner the person who had been in possession during the time held it, if he held in a character incompatible with the idea that the title remained in the claimant to the property it would follow that the possession in such character was adverse....”

27. It is further required that the possession be uninterrupted as per Section 3 of the Prescription Ordinance. In the case **I.L.M. Cadija Umma and Another v. Manis Appu and Others [1938] 40 NLR 392 at page 396**, it was stated:

*“...Their Lordships are unable to doubt that the purpose—perhaps the somewhat ambitious purpose—of the parenthetical clause is to explain the character of the possession which, **if held without disturbance or interruption for ten years, will result in prescription....**”*

(emphasis mine)

28. In the case at hand, similarly, the oral evidence of E.R. Gunawathie asserted that the Respondent had visited the land during her occupation and did not interrupt or disturb her possession, whereby the evidence points to possession that is adverse as possession has been held incompatible with the title of the plaintiff.

29. I will also consider the police reports filed by both parties here. In the police report dated 19.01. 2000 marked “V3”, the Appellant has

reported to the police about the construction of a fence by the Respondent in the corpus. The police report dated 20.01.2000 marked “X7” mentions the threats the Appellant is alleged to have made against the Respondent upon the Respondent attempting to enter into the land. These actions are further proof such evidence to conclude that the Appellant himself also did, in fact, hold possession of the land in a way that was incompatible with the title of the plaintiff.

30. Therefore I am inclined to hold that the possession of the corpus for 16 years by *E.R. Gunawathie* is capable of falling within the standard of proof required to establish possession for the purposes of **S.3 of the Prescription Ordinance**, and therefore, that the learned District Court Judge has erred in law by failing to take into account the oral evidence presented by *E.R. Gunawathie* in deciding on the issue of prescription.
31. The learned counsel for the Respondent contented that the Appellant of the instant case has no sufficient evidence to establish possession during his period 1990 – 2000. I am of the view that this position need not be considered as the title to the land was already prescribed by the predecessor during her possession of 17 years.
32. At the hearing, the learned counsel for the Appellant furthered the following argument in favour of the Appellant as well. It was submitted to the Court that in the case 674/1994/L which was instituted in the District Court of *Mount Lavinia*, concerning a different corpus but the same Respondent as of the instant case, the licensed surveyor, *J. Jayawickrema* in presenting the plan numbered 744, identifies the land in question of the current case and submits that the Respondent is not in possession of that plot of land. (See page 396 of the brief). The case 674/1994/L has subsequently been withdrawn by the Respondent’s Attorney.

33. Therefore, I hold that the Appellant has successfully established a prescriptive title over the property described in the second schedule to the plaint marked A1 in extent 23.75 perches in plan 10836, answering the question set in subparagraph (a) of paragraph 24 of the petition dated 02.05.2012 in the affirmative.

34. The Judgments of the High Court and the District Court are therefore set aside and the Appellant (the Defendant in the District Court) is entitled to a judgment in his favour as prayed for in the District Court

35. The Learned District Judge of the District Court of *Mount Lavinia* is directed to enter the decree in accordance with this judgment.

Appeal Allowed

JUDGE OF THE SUPREME COURT

JUSTICE JANAK DE SILVA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SAMPATH ABAYAKOON

I agree

JUDGE OF THE SUPREME COURT