

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

3. Yapa Arachchige Amarasiri *alias*
Wijenayakage Amarapala
Udahawatta, Thiriwanagoda, Katuwana.
 4. Yapa Arachchige Malhami,
Udahawatta, Thiriwanagoda,
Katuwana. (Deceased)
 - 4A. Yapa Arachchige Amarasiri *alias*
Wijenayakage Amarapala
Udahawatta, Thiriwanagoda,
Katuwana.
- Defendant-Respondent-Appellants

SC/APPEAL/169/2018

WP/HCCA/TA/35/2008 (F)

DC WALASMULLA 1006/P

Vs.

Wijenayakage Albert,
Kajjugahakoratuwa,
Thiriwanagoda, Katuwana.

Plaintiff-Appellant-Respondent

1. Wijenayakage Dayawathie,
Udagahawatte,
Thiriwanagoda, Katuwana.
2. Wijenayakage Kusumawathie,
C/O Gambara Kade,
Haburugala, Sooriyawewa.

Defendant-Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando, J.
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Shantha Jayawardena with Hirannya Damunupola for the Defendant-Respondent-Appellants.
Harshana Ananda with Lahiru Widushanka for the Plaintiff-Appellant-Respondent.
Saman Liyanage with Nuwan Hewawitharana for the 1st Defendant-Respondent-Respondent.
Saman Liyanage with Krishantha Elpitiya for the 2nd Defendant-Respondent-Respondent.

Argued on: 29.09.2025

Written submissions:

By the 3rd and 4A Defendant-Respondent-Appellants on 31.10.2025.

By the 1st and 2nd Defendant-Respondent-Respondents on 31.10.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The plaintiff instituted this action naming two defendants, seeking partition of the land described in the schedule to the plaint in the proportion of ½ share to the plaintiff and ¼ share each to the 1st and 2nd defendants. The 3rd and 4th defendants made claims at the preliminary survey, and on that basis, they were added as parties. There is no contest among the plaintiff and the 1st and 2nd defendants. The contest is between the plaintiff and the 1st and 2nd defendants, on the one hand, and the 3rd and 4th defendants, on the other. The plaintiff and the 1st and 2nd defendants claim title to the land on the basis of deeds, whereas the 3rd and 4th defendants claim title by prescription.

After trial, the District Court dismissed the action on the ground of non-identification of the corpus. On appeal, the High Court of Civil Appeal reversed the judgment of the District Court and ordered partition as prayed for in the plaint. While rejecting the prescriptive claim of the 3rd and 4th defendants, the High Court held that they were nevertheless entitled to compensation for improvements as claimed before the surveyor. Hence, this appeal by the 3rd and 4th defendants. This Court granted leave to appeal on the question whether the High Court erred in rejecting the prescriptive title claimed by the 3rd and 4th defendants.

The original owner of the land was Andriyas. He gifted an undivided ½ share of the land to his wife, Balahamy, by deed P2. Balahamy thereafter gifted that ½ share to their son, the plaintiff, by deed P3. Andriyas also lived with his wife's younger sister, Malhamy, as husband and wife. Malhamy was the 4th defendant, and the 1st to 3rd defendants are the children born of that union. The 1st and 2nd defendants are daughters and the 3rd defendant is a son. Andriyas gifted the remaining ½ share of the land to the 1st and 2nd defendants by deed 1V1, subject to the life interest of Balahamy. Balahamy subsequently renounced her life interest in favour of the 1st and 2nd defendants by deed 1V2 to enable them to obtain a bank loan by offering the property as security.

According to the surveyor's report, Balahamy also presented herself as a claimant, although she was not added as a party to the action. These circumstances demonstrate that all parties acted as one family, without discord, for a considerable period of time. The 4th defendant, Malhamy, died pending this appeal, and her son, the 3rd defendant, was substituted in her place. Malhamy did not give evidence at the trial due to her advanced age. In this backdrop, it would be an uphill task for the 3rd and 4th defendants to establish prescriptive title to the entire land, unless there is cogent evidence for adverse possession to the exclusion of all others.

When did the 3rd and 4th defendants commence prescriptive possession? What was the overt act that changed the character of their possession from subordinate to adverse? Learned counsel for the 3rd and 4th defendants submitted, both in oral argument and in the post-argument written submissions, that the 3rd defendant, in his evidence, stated that he constructed a new house on the land in or about 1985-1986 after demolishing the old house built by their common father, Andriyas, and that this constituted a clear overt act changing the character of the 3rd defendant.

I carefully examined the evidence of the 3rd defendant. He does not state that he deliberately demolished the old house as part of an assertion of adverse possession and thereafter constructed a new one. The old house was not a solid house. It was a wattle and daub house consisting of two rooms and a verandah (ලේ ගෙය කාමර දෙකක් සහ ඉස්තෙප්පුවක් තිබේ වූ ගෙයක්. පොල් අතු භොයල පස්ටියන් ගෙයක්). What the 3rd defendant states is that this house collapsed or broke down, most probably due to its temporary nature and age, and that the present house was constructed thereafter (ලේ ගෙය කැඩිනා. දැන් තියන ගෙය හැඳුවේ 85 අදාළයි).

The evidence further reveals that the house was not constructed in a single day, and that no objection was raised by any of the other parties at the time. The present action was instituted in the year 2000. There is no long possession since the construction of the new house to give rise to a counter presumption of ouster.

Given the close relationship, marked by mutual tolerance and co-existence, among the parties as members of the same family, the nature of the possession of the 3rd and 4th defendants, and all the attendant circumstances, I am unable to accept that the construction of a new house constitutes an overt act sufficient in law to alter the character of the 3rd

defendant's possession so as to found a claim of prescriptive title to the entirety of the land.

There is no need to interfere with the judgment of the High Court. The question of law on which leave to appeal was granted is answered in the negative and the appeal is dismissed. I make no order as to costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijerathne, J.

I agree.

Judge of the Supreme Court