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

In the matter of an Application for Appeal in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1996 as amended by (amendment) Act No. 54 of 2006.

SC/APPEAL/56/2023

SC/HCCA/LA/NO:290/2018

WP/HCCA/G.P.H/NO/147/2011/F

DC Gampaha Case: No: 39805/L

IN THE DISTRICT COURT

1. Minatul Fakariya Kalid
2. Najmul Ashara Sherif
3. Mumthas Asgari Shais
4. Shahul Hameed Riswi Kuddus (Deceased)

4. (a) Ummu Sashila Kuddus Narmila Apsari Jerin (Power of Attorney holder)
4. (b) Pinas Kuddus
4. (c) Saima Kuddus
4. (d) Raifana Kuddus (minor)
4. (e) Karim Matheen Kalid
5. Fatima Farshana Sheeb
6. Ifthikar Alavi Kuddus (Deceased)

6. (a) Ushana Kuddus
6. (b) Ibrahim Kuddus
6. (c) Yusuf Kuddus
6. (d)Munisan Kuddus
6. (e) Karim Mathin Khalid
7. Ayisha Sherin Sherif

All of
No. 28, Clifford Place,
Colombo 04

Plaintiffs

V.

Bopitige Amaradasa (Deceased)

Kumudu Chanda Amaradasa,
No.455/27,
Waragodawaththa,
Kelaniya.

Substituted Defendant

AND BETWEEN IN THE HIGH COURT

Kumudu Chanda Amaradasa,
No.455/27,
Waragodawaththa,
Kelaniya.

Substituted Defendant-Appellant

V.

1.Minatul Fakariya Kalid
2. Najmul Ashara Sherif
3. Mumthas Asgari Shais
4. Shahul Hameed Riswi Kuddus
(Deceased)
4. (a) Ummu Sashila Kuddus Narmila
Apsari Jerin (Power of Attorney holder)
4. (b) Pinas Kuddus
4. (c) Saima Kuddus
4. (d) Raifana Kuddus (minor)
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6. (d)Munisan Kuddus
6. (e) Karim Mathin Khalid
7. Ayisha Sherin Sherif
All of
No. 28, Clifford Place,
Colombo 04

Plaintiffs – Respondents

AND NOW BETWEEN IN THE SUPREME COURT

Kumudu Chanda Amaradasa,
No.455/27,
Waragodawaththa,
Kelaniya.

Presently at,
No. 125,
Uplands Road (Woodford Green, Essex IG8 8JP, United Kingdom)

Appearing by his Power of Attorney
Leela Amaradasa,
No. 455/27,
Waragodawaththa,
Kelaniya.

Substituted Defendant – Appellant - Petitioner

V.

1.Minatul Fakariya Kalid
2. Najmul Ashara Sherif
3. Mumthas Asgari Shais
4. (a) Ummu Sashila Kuddus Narmila Apsari Jerin (Power of Attorney holder)
4. (b) Pinas Kuddus
4. (c) Saima Kuddus
4. (d) Raifana Kuddus (minor)
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6. (d)Munisan Kuddus
6. (e) Karim Mathin Khalid
7. Ayisha Sherin Sherif
All of
No. 28, Clifford Place,
Colombo 04

Plaintiffs – Respondent - Respondents

Before : **Mahinda Samayawardhena, J.**
K. Priyantha Fernando, J.
Menaka Wijesundera, J.

Counsel : Manohara de Silva, PC with Hirosha Munasinghe for Substituted Defendant – Appellant – Appellant

W. Dayaratna, PC with Ranjika Jayawardene instructed Chandrani Dayaratne for 1st and 5th Plaintiffs – Respondents - Respondents

Argued on : 27.08.2025

Decided on : 07.11.2025

1. The Plaintiffs- Respondents-Respondents (hereinafter referred to as the Plaintiffs – Respondents) have instituted this action against the Defendant – Appellant – Appellant (hereinafter referred to as Defendant - Appellant) and later substituted by his son (hereinafter referred to as Substituted Defendant- Appellant) in the District Court of Gampaha by plaint dated 10.07.1996 seeking a declaration of title in the name of the Plaintiffs – Respondents to the property described in the 3rd schedule to the Plaint, the ejectment of the Defendant - Appellant from the said land, to recover the undisturbed and uninterrupted possession of the corpus and a sum of Rupees 75,000 as damages from the date of the plaint until the Plaintiffs – Respondents recover possession.

The Facts

2. In the plaint to the District Court of Gampaha, the following has been stated *inter alia*. K.L.M.J.S. Kadeeja Umma and J.M.M. Alavi became entitled to the land described in the 2nd schedule to the plaint by deeds bearing Nos. 1441 and 1442 executed by S.M. Saheed Notary Public on 22.04.1927. K.L.M.J.S. Kadeeja Umma has temporarily transferred her title to B. Daniel Fernando (father of the Defendant - Appellant) by deed bearing No.10159 (marked "P7") executed by K.D.P.S. Gonathilake Notary Public on 04.07.1957 to obtain a loan facility.

3. The land was then divided between K.L.M.J.S. Kadeeja Umma and J.M.M. Alavi through plan bearing No.1553 made by S. Perera licensed surveyor dated 07.07.1961 whereby K.L.M.J.S. Kadeeja Umma has become entitled to the land described in the 3rd schedule to the plaint. She has possessed this land for over ten years.

4. Following the demise of K.L.M.J.S. Kadeeja Umma in 1985, her children, the 1st – 7th Respondents have become entitled to the land in question. They maintain that possession of the land in suit was never handed over to B. Daniel Fernando and that following the death of their mother, they have possessed the land in suit.

5. In his answer, the Defendant – Appellant maintained the position that upon the failure of K.L.M.J.S. Kadeeja Umma to pay the loan or the interest, B. Daniel Fernando, the father of the Defendant – Appellant became entitled to the land in suit and that K.L.M.J.S. Kadeeja Umma never retransferred the land back to her. He has submitted that B. Daniel Fernando has possessed the land in suit for over ten years. He further stated that on 01.07.1964 B. Daniel Fernando transferred an undivided share of the land to him by deed bearing No. 148 executed by Notary Public P. Alwaas. The Defendant – Appellant has then occupied this land for ten years and had rubber plantations in the land.

6. Therefore, denying the averments of the Plaintiffs – Respondents, the Defendant - Appellant has prayed for the dismissal of the plaint, a declaration that the defendant is a co-owner to the land described in the 3rd schedule to the plaint and the ejectment of the Plaintiffs - Respondents and anyone holding under them from the land and to handover the peaceful, uninterrupted possession of the corpus to the defendant.

7. The learned District Judge has held in favor of the Plaintiffs – Respondents in the Judgment dated 03.03.2011, granting the reliefs prayed for in the Plaint. Aggrieved, the Substituted Defendant - Appellant has appealed to the High Court of the Western Province holden in Gampaha to set aside the Judgment dated 03.03.2011. The appeal was dismissed by the Lordships of the High Court on 16.07.2018 on the basis that the Plaintiffs – Respondents have acquired prescriptive title to the land in suit.

8. Being aggrieved by the decision of the High Court, the Substituted Defendant - Appellant preferred the instant appeal to this Court. This Court granted leave to appeal on the question of law set out in subparagraph (b) of paragraph 15 of the petition dated 27.08.2018.

Question of Law

"Did the Civil Appellate High Court err in law by failing to consider that in order to obtain a decree on prescription, adverse, independent and

continuous possession for ten years previous to the bringing of the action was a mandatory requirement and in the instance case the Plaintiffs-Respondents had not established such possession?"

9. Prior to examining the claim of prescription, I must note that the deed bearing No.10159 which was instrumental in the conditional transfer of land to the land described in the 2nd schedule to B. Daniel Fernando by K.L.M.J.S. Kadeeja Umma specifically states that it is conditionally transferred (see pages 432 – 435) whereby I see no intention of transferring possession or title to B. Daniel Fernando, who handed over an undivided share of the same land to the Defendant –Appellant.

Question of Prescription

10. Having established such, I will address the claim of prescription. As per section 3 of the **Prescription Ordinance of 1871 (as amended)**, a plea of prescription requires ten years of uninterrupted and undisturbed possession:

11. *" 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)

12. 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...."*

13. In my opinion in the case at hand, the question of law ultimately leads to the issue of whether the Plaintiffs – Respondents can establish

continuous, undisturbed and uninterrupted possession for ten years prior to instituting this action. Thereby, the Plaintiffs – Respondents would have to prove to this Court such continuous adverse possession from 10.07.1986 – 10.07.1996 since action was instituted on 10.07.1996.

14. The nature in which possession ought to be held in order to establish a claim of prescription is discussed by Justice Canekeratne in ***Fernando v. Wijesooriya (1947) 48 NLR 320 at 325***, where it was held:

> *"…There must be a corporeal occupation of land attended with a manifest intention to hold and continue it and when the intent plainly is to hold the land against the claim of all other persons, the possession is hostile or adverse to the rights of the true owner. It is the intention to claim the title which makes the possession of the holder of the land adverse; if it be clear that there is no such intention there can be no pretence of an adverse possession. 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. But it was otherwise if he held in a character compatible with the claimant's title—his possession may be on behalf of the claimant or may be the possession of the claimant (p. 396 of 40 NLR) or from the conduct of the party's possession an acknowledgment of a right existing in the claimant could fairly and naturally be inferred."*

15. In this regard, the Plaintiffs – Respondents have made the following submissions in asserting their possession and provided supporting evidence. It is their position that Kadija Umma had been in possession throughout and had acquired prescriptive title even after the date of reconvention marked in the conditional transfer which is 07.04.1963. They submit that although she did not retransfer the land in suit back to her name, she had commenced adverse possession from 07.04.1963 and held such possession until 1986 and that upon her death, her children (the Plaintiffs - Respondents) had then continued such prescriptive possession. Therefore, they maintain the position that they had possessed the land in suit and have also asserted such possession each time it was disturbed by another revealing the intention to hold the land against the claim of all other persons.

16. In objecting to the disturbances made by the Substituted Defendant- Appellant, I observe that the Plaintiffs – Respondents have made complaints to the police each time there has been a disturbance by the Defendant – Appellant to their possession. On 27.03.1986, the first instance of disturbance as per Plaintiffs – Respondents, they have made a complaint to the police whereby the hut has been removed by the Substituted Defendant – Appellant. This police complaint is marked "P 9"

17. The next disturbance to their possession as per the Plaintiffs – Respondents was on 14.12.1995 where the Defendant – Appellant had forcefully attempted to divide the land. A complaint regarding the same was made to the Police whereby the attempt has been abandoned. This police complaint is marked "P 10".

18. The document marked "P 11" is a further police complaint made by the Plaintiffs – Respondents to the Mirigama Police when the Defendants had attempted to fence a portion of the property on 27.01.1996. These complaints demonstrate that the Plaintiffs – Respondents have intended to possess the land as their own and have objected any disturbance by the Substituted Defendant – Appellant in years 1986, 1995, and 1996 thereby asserting their possession.

19. The Substituted Defendant – Appellant has also alleged of such disturbances to his alleged possession in his answer to the Plaint where he has stated that the Plaintiffs – Respondents have forcefully entered into his land and destroyed plantations causing damages amounting to Rupees 285000/-. However, I am unable to find any material to conclude that there was any objection by way of complaints to Police by the Substituted Defendant – Appellant to assert his ownership vis-à-vis this disturbance, which is an anomalous position for someone allegedly in possession, more so given the extent of damages allegedly suffered.

20. Further, the action bearing No 32505 instituted by the father of the Defendant – Appellant against one Namasekara for destroying rubber plantation in this land in 1989 too has not been pursued and thereby withdrawn by the father of the Substituted Defendant – Appellant. In these circumstances, I am unable to see any material to hold that the predecessors of Substituted Defendant – Appellant have asserted their possession and or their ownership of the land in suit.

21. Further, I note that the Substituted Defendant – Appellant has submitted the following position to establish his possession in the land in suit. He takes up the stance that his predecessors had rubber plantations in this land. In this regard, the Substituted Defendant – Appellant has submitted documents marked "V3" which is a document granting B. Daniel Fernando (grandfather of the Substituted Defendant - Appellant) to replant rubber in the land in suit (at page 436 of the brief), "V4" which also is a rubber replanting subsidy scheme for the year 1963 (at page 437 of the brief), "V5" and "V6" which are also in relation to rubber plantation in the land. I observe that all these documents are submitted subject to proof (see page 313 of the brief). While it is submitted by the Substituted Defendant – Appellant that documents "V3" and "V4" are presumed to be proved as per S. 90 of the Evidence Ordinance, owing to the fact that all of the documents aforementioned are subject to proof, I find it difficult to accept the Substituted Defendant – Appellant's position.

22. The Substituted Defendant – Appellant has further submitted that Deed No.148 dated 01.07.1964 was executed by Daniel Fernando transferring 1/4th of the land described in the 2nd schedule to the plaint, which they rely on as a further assertion of possession. In response to this, the Plaintiffs- Respondents state that Daniel Fernando did not have a beneficial interest in the land as the evidence of the Substituted Defendant – Appellant in page 264 of the brief states that possession has not been handed over to them by the aforementioned Kadija Umma. Nonetheless, since the question at hand is prescriptive possession from the period of 1986 – 1996, I am of the opinion that this position is complementary evidence at best and is therefore not capable of establishing the Substituted Defendant – Appellant's possession on its own.

23. The Substituted Defendant – Appellant has also submitted document marked "V9" which states that the Substituted Defendant – Appellant had rented out a house situated in the land in suit from March 1994 until August 1994, this document too, is submitted subject to proof.

24. Document "V10" submitted by the Substituted Defendant – Appellant which has been issued by the Regional Office for Rubber Development in Kegalle contains holding details in respect of rubber plantations in the land in suit. The date of registration is noted as 29.08.1991 with a mention of subsidy history in year 1963 for 7 acres. However, with regards to the period that falls within the ambit of the

case at hand, 1986 – 1996, this document only reflects a receipt of a certain amount as a subsidy for replanting of rubber for only 3 acres and 3 roods under Mr. B. Amaradasa, the Defendant – Appellant which this Court cannot take as conclusive evidence of possession. It must be noted that this area amounts to about a half of the extent of land claimed by the Defendant – Appellant as a joint owner in his answer to the Plaint as he has initially prayed to be declared a joint owner of the land described in the 3rd schedule to the plaint which amounts to 7 acres.

25. If this Court is to accept document marked "V - 10" as valid evidence, the required period of possession falling within the scope of the case at hand would shift and start from 1991 and end in 2001 which would be affected by the institution of action by the Plaintiffs – Respondents in 1996. Nonetheless, I am of the opinion that it is irrational to establish prescriptive title merely based on one proved document to the effect that he has received subsidies to replant rubber in the absence of any further affirmative action to assert such possession against outsiders, more so given the circumstances of this case where the Plaintiffs – Respondents have repeatedly asserted their possession.

26. Looking at cases decided by this Court on similar matters, I observe that the case facts of ***Carolis Appu v. Anagihamy [1949 51 NLR 355]*** are quite identical to the facts of the case at hand. In *Carolis Appu v. Anagihamy (supra)* even after the land of Carolis Appu was mortgaged and thereafter sold by the mortgagee to a third party, Carolis Appu has continued to possess the land up till action was instituted by the third party holding title to the land. The Court has held that although the third party has title by way of deed, Carolis Appu has established prescriptive rights to the land by way of continuous possession.

27. In these circumstances, I am of the opinion that the Plaintiffs-Respondents have held their possession in a way that is incompatible with that of another and have acted in order to assert such possession against any disturbance both during the period of possession by their mother K.L.M.J.S. Kadeeja Umma and after her death in 1985 until the institution of this action.

Further Factual Inconsistencies

28. Further, in examining the evidence provided at the trial, I notice multiple inconsistencies in the version of events by the side of Substituted Defendant – Appellant. Firstly, it is observed that the Substituted Defendant – Appellant was born in 1963 and was abroad from 1989 – 1997 (vide page 292 of the brief). He has admitted to not having personal knowledge of the actualities and to be stating what his father has told him.

29. In this regard, at page 254 of the brief, it is seen that the Substituted Defendant – Appellant has in the cross examination, stated that the building in the land was built in 1997 which he later changes to 1989 (see page 254 of the brief).

30. He has also initially stated that possession was handed over to his grandfather B. Daniel Fernando by the deed bearing No. 10159 marked "V2" (see page 261 of the brief).

"ප්‍ර: තමා මූලික සාක්ෂියේදී කියුවා ඔප්පුව ලියුව අවස්ථාවේ සිටම ඉඩමේ භුක්තිය තමන්ගේ සීයට දුන්න බව

උ: ඔව්"

However, in page 264 he goes on to admit that possession was not in fact handed over to his grandfather by the said deed.

"ප්‍ර: ඒ අනුව බුක්තියක් බාර දුන්නාය කියල කියන කතාව වැරදි කතාවක් නේද ඇත්ත වශයෙන්ම බුක්තියක් බාර දුන්නේ නැහැ

උ: ඔවු පිලිගන්නවා ඒ අවස්ථාවේදීම බාර ගෙන නැහැ ඔප්පුව ලියන අවස්ථාවේදී සීයා බුක්තියක් බාර ගෙන නැහැ"

31. In contrast, I observe that the position maintained by the Plaintiffs – Respondents to be quite consistent. One Don Susilawathi who occupies the neighboring land, giving evidence on behalf of the Plaintiffs – Respondents has stated that B. Daniel Fernando and Defendant – Appellant were not occupying the land in suit and that her brother, one Karunarathna Denipitiya was employed by the Plaintiffs – Respondents to take care of the land in suit and to work on the rubber plantations. I observe that this position is consistently reflected in the police complaint marked "P 10" and further affirmed through the evidence of Delanka Karunadasa (vide page 220 of the brief). Whereby I am inclined to accept the factual version of the Plaintiffs – Respondents.

32. In these circumstances, I observe that the affirmative action taken by the Plaintiffs – Respondents prove that they have held

uninterrupted and undisturbed possession of the land in suit adverse to outsiders. I further observe that the evidence they have submitted in this regard is consistent with their claim and therefore, I am of the opinion that they have acquired prescriptive title to the land in the period 10.07.1986 – 10.07.1996.

33. Therefore, the question of law in subparagraph (b) of paragraph 15 in the Petition dated 27.08.2018 is answered in the negative as this Court is satisfied that the Plaintiffs – Respondents have adversely possessed the land in suit and have asserted such possession repeatedly in the face of any disturbances to the same. The judgment of the District Court dated 03.03.2011 and the High Court judgment dated 16.07.2018 are therefore upheld.

34. Appeal is dismissed, Plaintiffs – Respondents are entitled to costs.

Appeal is Dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MENAKA WIJESUNDERA

I agree

JUDGE OF THE SUPREME COURT