

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

In the matter of an Appeal to the Supreme Court from a Judgment of the Provincial High Court of the Western Province holden in Avissawella (Exercising Civil Appellate Jurisdiction) in terms of Article 128 read with Section 5(c) of the High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006.

SC. APPEAL No. 05/2017

SC/HCCA/LA No. 344/2015

WP/HCCA/AV/1143/2010(F)

D.C. Homagama Case No. 10290/Spl.

Jayasundera Mudalige Maxi Perera
No. 106, Vijithapura Mawatha,
Walpola,
Angoda.

1st Respondent-Appellant-Petitioner

-Vs-

1. Sathyaka Haren Samarasekera
“Advantage,”
Nowera Road,
Singapore.

Appearing by his Attorney

Somawathie Perera
No.43,
Sri Mahinda Mawatha,
Homagama.

Presently at:

No.552,
Westbury Park,
Akuregoda Road,
Battaramulla.

2. Somawathie Perera
No.43,
Sri Mahinda Mawatha,
Homagama.

Presently at:

No.552,
Westbury Park,
Akuregoda Road,
Battaramulla.

Petitioner-Respondent-Respondents

Registrar of Lands
Land Registry,
Homagama.

Respondent-Respondent-Respondent

BEFORE : **YASANTHA KODAGODA, PC, J.**
ACHALA WENGAPPULI, J. &
MENAKA WIJESUNDERA, J.

COUNSEL : Uditha Collure for the 1st Respondent-Appellant-Appellant.
Samantha Vithana with Samudika de Silva instructed by Hiranga Fernando for the 1st & 2nd Petitioner-Respondent-Respondents.

ARGUED & DECIDED ON : 31st October 2025

JUDGMENT

YASANTHA KODAGODA, PC, J.

Learned Counsel for the Respondent draws the attention of this Court to proceedings dated 16th January 2017, on which day the corresponding Petition had been supported and this Court had been pleased to grant Leave to Appeal. He submits that there are two errors in the question of law raised on behalf of the Respondents. They are -

- (i) the date of the settlement referred to in the question raised which presently reads as 12.10.1994, should in fact be corrected as a reference to 12.10.2009, and
- (ii) the reference to the date of Plan No.752 referred to in the same question which presently reads as 31.08.1995, should in fact be corrected as a reference to 13.08.1995.

Therefore, learned counsel for the Respondent moves that the proceedings be corrected to that effect. Learned Counsel for the Appellant submits that the proceedings should in fact be corrected as suggested by learned Counsel for the

Respondent. Accordingly, the Registrar is directed to correct the proceedings of 16th January 2017 in the manner stated above.

Thereafter, this matter was taken up for hearing.

We have heard learned Counsel for the Appellant and the learned Counsel for the Respondent. Following the conclusion of the hearing, Court indicated to learned Counsel that the Court will deliver Judgment *ex-tempore*. Accordingly, delivery of the Judgment was postponed till the end of today's Court sessions, and the Court proceeded to hear other matters on the list.

At 12.40 p.m., this matter was once again taken up for delivery of the Judgment. On that occasion, learned Counsel, who had during the intervening period received fresh instructions from the 1st and 2nd Respondents, submitted to Court that he is willing to concede that the impugned Judgment of the High Court of Civil Appeals should be set aside, if the Appellant tenders through Counsel an apology to the Respondents. In response, learned Counsel for the Appellant submitted to Court that she is in a position to tender such apology on behalf of the Appellant to the two Respondents through their Counsel. Accordingly, such apology was tendered, and learned Counsel for the Respondents accepted the apology on behalf of his clients.

Court observes that the course of action adopted by learned Counsel before this Court is most desirable, given the precipitating factors which led to litigation before this Court. Furthermore, this Court notes the redundancy of terms 1 and 2 of the terms of settlement entered in the High Court of Civil Appeals dated 12.10.2009, which in the opinion of the Court did not warrant the activation of clause 4 of the terms of settlement on the premise that there had been breach by the Appellant.

In the circumstances referred to above, the impugned judgment of the High Court of Civil Appeals dated 17.09.2015 and the impugned judgment of the District Court

dated 19 01.2010 are both set aside. In other words, the *status quo* pertaining to the property in issue as at the date of filing of the District Court action will prevail.

Accordingly, the Appeal is allowed. Proceedings are terminated.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT

MENAKA WIJESUNDERA, J.

I agree.

JUDGE OF THE SUPREME COURT