

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

SC/APPEAL/143/2016

EP/HCCA/KAL/294/2013 (F)

DC Akkaraipattu Case No.L302/2009

In the matter of an application for leave to appeal under and in terms of Section 127 and 128 of the Constitution read with Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

1. Salithamby Mohammed Shareef
2. Mohammed Shareef Perosa
Both are
No. 250, AVV Road, Akkaraipattu

Plaintiffs

Vs.

1. Mohammed Iqbal Sithy Hinaya
2. Mohammed Sareef Alavudeen
Both are
No. 07, Sub Post Office Road,
Akkaraipattu

Defendants

AND BETWEEN

1. Salithamby Mohammed Shareef
2. Mohammed Shareef Perosa
Both are
No. 250, AVV Road, Akkaraipattu

Plaintiff-Appellants

Vs.

1. Mohammed Iqbal Sithy Hinaya
2. Mohammed Sareef Alavudeen
Both are
No. 07, Sub Post Office Road,
Akkaraipattu

Defendant-Respondents

AND NOW BETWEEN

1. Mohammed Iqbal Sithy Hinaya
2. Mohammed Sareef Alavudeen
Both are
No. 07, Sub Post Office Road,
Akkaraipattu

Defendant-Respondent-
Petitioners

Vs.

1. Salithamby Mohammed Shareef
2. Mohammed Shareef Perosa
Both are

Plaintiff-Appellant-
Respondents

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

Counsel : Ali Sabry, PC with Naamiq Nafath and Akash Rafeek
instructed by Anusha Wickramasinghe for the
Defendant-Respondent-Appellants.
Manohara De Silva, PC with Harithriya Kumarage and
Dilmini De Silva instructed by Anusha Perusinghe for the
Plaintiff- Appellant- Respondents.

Written

Submissions : Written submissions on behalf of the Plaintiff-
Appellant-Respondents on 10th of September, 2018.
Written submissions on behalf of the Defendant-
Respondent-Petitioners on 22nd of September, 2016.
Further written submissions on behalf of the Defendant-
Respondent-Appellants on 1st of October, 2025.
Further written submissions on behalf of the Plaintiff-
Appellant-Respondents on 1st of October, 2025.

Argued on : 28.08.2025

Decided on : 30.01.2026

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgment dated 17.09.2014 of the Civil Appellate High Court of the Western province.

At the time this matter was supported for leave to proceed on 14.07.2016, this Court has granted leave on the following questions of law,

1. The said judgment is contrary to the law governing the subject matter, more particularly State Lands Ordinance No. 8 of 1947, Land Development Ordinance and other law
2. Their Lordships Judges of the High Court have misdirected in law and thereby erred in law in failing to identify the real dispute in action, and more particularly the Respondents could not have obtained an Annual Permit when the previous permit had not been cancelled according to law.
3. Their Lordships Judges of the High Court have erred in law in failing to appreciate the fact that the Respondents have failed to discharge their burden of proof in the District Court.

The Plaintiff-Appellant-Respondents, hereinafter referred to as the "respondents", filed action in the District Court of Akkaraipattu that they be declared entitled to use and possess the land described in the schedule to the plaint. The Defendant-Respondent-Appellants, hereinafter referred to as the "appellants".

The parties to the action in the District Court were the 1st respondent and his daughter, the 2nd respondent. The 1st appellant is the former wife of the 1st respondent and the mother of the 2nd respondent. The 2nd appellant is the present husband of the 1st appellant. The dispute before Court therefore arises within the context of close familial relationships between the parties.

The 1st respondent had claimed that he became entitled to the land described in the schedule to the plaint by Permit No. RB/1200 dated 10.06.1982 issued by the Government Agent of Akkaraipattu and he had nominated the 2nd respondent as the successor in 1993.

The land described in the schedule to the plaint had been identified as Lot 93 of Plan No. PP (AM) 757 dated 12.07.1982, marked and produced as P1.

The 1st respondent namely Salithamby Mohamed Shareef had been married to the 1st appellant namely Mohamed Iqbal Sithy Hinaya, who had divorced each other in 1990, and the 2nd respondent namely Mohamed Shareef Perosa is the daughter of the said marriage.

The 2nd appellant is married to the 1st appellant at the time of litigation.

At the time the action was filed the 1st and the 2nd appellants have been in occupation of the property in question and the 2nd respondent who had been nominated by the 1st respondent had been ousted by the appellants.

The 1st appellant, in her answer, had claimed that the original permit holder had been her aunt and she had transferred it to her father by deed bearing No. 1644 dated 08.06.1978.

She alleges that the 1st respondent's name was never added to the permit in place of her aunt and that it had been done fraudulently and she had complained to the Divisional secretary of Akkaraipattu.

An inquiry had been held in this regard and the said Land officer had issued a report and had given evidence in the District Court and had said that the name of the 1st respondent had been added according to the law and in fact the official seal also had been affixed, but nevertheless the original copy of the permit had not been available but only the office copy had been available and the said witness had been subjected to cross-examination as well.

The position of the 1st respondent is that he became entitled to the land described in the schedule, which is an allotment of state land issued on the Permit by the No. RB/1200 dated 10.06.1982 by the land officer of the Ampara District for Divisional Secretary of Akkaraipattu.

The 2nd respondent, who is the daughter of the 1st respondent, had been nominated as the successor by the 1st respondent for the said land.

The said land had been depicted in Plan No. PP (AM) 757, dated 12.07.1982 Lot 93.

The position of the appellants had been that the land in question has been inherited by the 1st appellant from her father and that she and her second husband, the 2nd appellant, has been living on the said land since their marriage since 1991 along with 2nd respondent.

The learned District Judge found in favour of the appellants. However, upon appeal, the Judges of the Civil Appellate High Court held that the learned District Judge had erred in law in failing to compare the boundaries described in the plaint with those set out in the permit, and further held that, although the defendants claimed to be in possession of the disputed land, they had failed to establish the identity of the land with sufficient precision.

The instant appeal has been filed against the said judgment.

The position of the respondents is that they have established their claim to the land by marking and producing the permit mentioned above and the plan and the ledger pertaining to the same, marked as P1 to P4.

The evidence led at the trial of the land officer namely Ibralebbe Lafeer has revealed that the land described in the schedule to the plaint has been given on permit to one Mohideen Bawa Vathaviya Umma but it had been changed to the 1st respondent in 1982 and the officer had said that the signature of the then land officer and the official seal can be seen on the documents. (at pages 24 to 32 of the brief).

Thereafter, the 1st respondent had nominated the second respondent as his successor in 1993 which also has been pointed out by the above-named land officer in evidence.

The 1st appellant subsequent to the divorce from the 1st respondent had gone abroad and had returned later with the 2nd appellant and had dispossessed the 2nd respondent, who had been named as the successor by the 1st respondent in the permit.

The 1st appellant in her evidence has claimed that she has a deed to the disputed land from her father by the no. 1664, who is supposed to have bought from the original permit holder, above named but in the recital to the said deed it has been stated that it had been a deed of donation.

But during the trial as stated above by the land officers the disputed land has been identified as a state land; hence, it cannot be transferred on a deed of gift to any private person.

Therefore, the claim made by the appellants based on the deed of transfer is illegal.

Then the question arises whether the original permit holder could transfer the land to the 1st respondent.

An extract of the relevant section of the Land Development Ordinance (LDO) is given below;

46.

- (1) Subject to the provisions of subsection (2), no permit-holder shall execute or effect any disposition of the land alienated to him on the permit.**

- (2) With the written consent of the Government Agent, a permit-holder may mortgage his interest in the land alienated to him on the permit to any registered society of which he is a member. nb**
- (3) Any disposition, other than a disposition in accordance with the provisions of subsection (2), of any land alienated on a permit shall be null and void.**

Under section 46(3) of the LDO, any disposition of the land issued on a permit can be done only with the written consent of the Government Agent.

In the instant matter, the said consent is not available according to the land officers, who had given evidence, but the change of name to the 1st respondent is available on the office copy and the land ledger.

Therefore, it can only be presumed that the 1st respondents name had been properly changed in to as the office copies and the land ledger is available and had been produced at the inquiry.

The original copy of the transfer has not been made available to Court but certified copies had been produced and the land officials had given evidence to say that the disputed land has been vested on a permit and thereafter it has been transferred to the 1st respondent. (page 76)

The certified copy marked as P1 is at page 132.

The inquiry report which is at page 152 had concluded that the changes in the permit to the name of the 1st respondent had been made in 1982 and it is quite clear in the land ledger and the officer copy.

The law pertaining to the instant matter as stated above has been laid down under the provisions of the Land Development Ordinance, which provides for systematic development and alienation of state land, primarily for settlement or other matters.

Permits are issued under this ordinance, granting occupation and developmental rights and failure to development can lead to cancellation by the president.

In essence the LDO is the foundational law for managing and distributing state and for development and settlement, a process which has evolved through various amendments to meet national needs.

Accordingly, in the instant matter, the first respondent derived his rights to the land described in the schedule to the plaint under the aforesaid permit. In contrast, the appellant claims title to the same land by virtue of the deed of transfer referred to above. Such a claim is unlawful and dishonest in law, as the

land in dispute constitutes State land and, in terms of the applicable law, a permit holder has no legal authority to transfer such land by deed.

Therefore, I see no merit in the claim made by the appellant and I answer the three questions of law in the negative.

Hence, the instant appeal is dismissed.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J

I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J

I agree.

JUDGE OF THE SUPREME COURT