

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

Ganiatchi Pathirage Chandra Malani,
No. 55, Indigolla, Gampaha,
Plaintiff-Respondent-Appellant

**SC/APPEAL/113/2020
WP/HCCA/GPH/117/2012(F)
DC GAMPAHA 1375/L**

Vs.

J.A. Sarath Chandra Jayasinghe,
No. 56, Indigolla, Gampaha.
Defendant-Appellant-Respondent

Before: Hon. Justice S. Thurairaja, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice Sobhitha Rajakaruna

Counsel: G. Samaranayake with W.G.S. Gunawardana for the Plaintiff-Respondent-Appellant.
Shantha Karunadharma for the Defendant-Appellant-Respondent.

Argued on: 16.07.2025

Written submissions:

By the Plaintiff-Respondent-Appellant on 27.08.2025.
By the Defendant-Appellant-Respondent on 9.9.2025.

Decided on: 16.12.2025

Samayawardhena, J.

The plaintiff filed this action in the District Court of Gampaha seeking a declaration of title to the land described in the schedule to the plaint (Lot 32 of Plan No. 935 prepared by the Surveyor General), ejectment of the defendant from the strip of land along the eastern boundary of the said Lot, and damages. The defendant is in possession of the land lying on the eastern side of Lot 32. The portion allegedly encroached by the defendant along the eastern boundary was depicted as Lot B, in extent of 0.60 perches, in Plan marked X at the trial.

The plaintiff became entitled to Lot 32 by virtue of a Grant issued in 1982 under section 19(4) of the Land Development Ordinance. She complained to the Divisional Secretary of Gampaha regarding the encroachment, but the Divisional Secretary was unable to settle the dispute and directed the parties to seek a resolution through Court.

The defendant claimed prescriptive title to Lot B in Plan X. After trial, the District Court entered judgment in favour of the plaintiff. On appeal, the High Court of Civil Appeal of Gampaha set aside the judgment of the District Court and dismissed the plaintiff's action, holding *inter alia* that the defendant had acquired title to Lot B in Plan X by prescription. Hence this appeal by the plaintiff.

There is no dispute that, on the plaintiff's evidence alone, the defendant's prescriptive claim would ordinarily succeed. The defendant became the owner of the adjoining land by Deed marked V2 in 1991. It is the clear evidence of the plaintiff that, approximately three months after the defendant purchased that land, the defendant erected a barbed-wire fence separating the plaintiff's land from the defendant's land and continued to possess the disputed portion in that manner until this action was filed in the District Court in 2008.

The argument of learned counsel for the plaintiff-appellant is that section 161 of the Land Development Ordinance precludes the defendant from acquiring prescriptive title to the plaintiff's land. This is the principal question of law on which leave to appeal was granted by this Court.

Section 161 of the Land Development Ordinance provides as follows:

No person shall, by possession of any land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State.

It is significant that the Land Development Ordinance expressly recognises, and indeed distinguishes between, a Permit and a Grant. In terms of section 19 of the Ordinance, it is the Permit that matures into a Grant upon the fulfilment of the stipulated conditions. Nevertheless, the Ordinance does not use the two terms interchangeably. On the contrary, section 2, which contains the interpretation provisions, defines "Permit" and "Grant" as two distinct legal concepts, each carrying different rights and obligations. In instances where the same statutory provision is intended to apply to land alienated on a Permit as well as land alienated on a Grant, the Act specifically states so. For instance, sections 39, 40 and 41 of the Land Development Ordinance refer to "land alienated on a permit or grant". Section 161 is confined in its application to land "alienated on a permit". The Legislature has not extended that protection to land alienated on a Grant.

The above position is fortified when considering the legislative history of section 161 of the Land Development Ordinance. Section 161 originally provided that "*No person shall, by possession of any land alienated on a permit or a grant, acquire any prescriptive title thereto against any other person or against the Crown.*" This section was amended by the Land Development (Amendment) Act No. 16 of 1969 by removing the word "grant" from its ambit, so that it now reads: "*No person shall, by possession of any*

land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State." Where the Legislature has chosen to refer specifically to land held on a Permit, and has omitted any reference to land held on a Grant, the Court must give effect to that choice. In the present case, the plaintiff became entitled to her land under a Grant. Accordingly, section 161 of the Land Development Ordinance has no application to this case.

Learned counsel for the plaintiff-appellant also referred to several provisions of the Land Development Ordinance in support of the submission that, notwithstanding the issuance of a Grant, the State continues to retain control over such land and therefore the defendant-respondent cannot acquire any portion of it by prescriptive possession. Whatever the extent of such control may be, it is immaterial to the present dispute. The State is not a party to this action, and the issue before this Court concerns only the competing rights of the plaintiff and the defendant. Any residual powers that the State may possess under the Ordinance are therefore irrelevant to the determination of this case, and in any event the State will not be bound by this judgment. As noted earlier, it was the Divisional Secretary himself who advised the parties to resolve their dispute through Court.

The question of law on which leave was granted is answered against the plaintiff-appellant. The appeal is dismissed. No costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court