

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

Wanigasinghe Arachchige Abeynanda
“Chandana”
Godellawella,
Tangalle.

SC Appeal No. 37A/ 2010

Plaintiff

SC/HCCA/LA/33/2009

SP/HCCA/MA/236/2004(F)

Vs.

DC Tangalle Case No. 2933/P

1. Magamadakalapuwage Newton

Parakrama Road,
Tangalle.

2. Sangadasa Wanigasinghe

Polommaruwa,
Indipokunagoda Road,
Tangalle.

3. Hewa Ihalamullage Sirisena

Indipokunagoda Road,
Tangalle.

4. Wewahamanduwe Wachiswara Thero

Kudavihara
Polommaruwa,
Tangalle.

Defendants

AND BETWEEN

Wanigasinghe Arachchige Abeynanda
“Chandana”
Godellawella,
Tangalle.

Plaintiff-Appellant

Vs.

1. Magamadakalapuwage Newton
Parakrama Road,
Tangalle.
2. Sangadasa Wanigasinghe
Polommaruwa,
Indipokunagoda Road,
Tangalle.
3. Hewa Ihalamullage Sirisena
Indipokunagoda Road,
Tangalle.
4. Wewahamanduwe Wachiswara Thero
Kudavihara
Polommaruwa,
Tangalle.

Defendants-Respondents

AND NOW BETWEEN

Rev. Wewahamanduwe Wachiswara Thero
Kudavihara
Polommaruwa,
Tangalle.
(deceased)

Rev. Mandaduwe Dheerananda Thero
Kudavihara
Polommaruwa,
Tangalle.

4th Defendant-Respondent-Appellant

Vs.

Wanigasinghe Arachchige Abeynanda
“Chandana”
Godellawella,
Tangalle.

Plaintiff-Appellant-Respondent

1. Magamadakalapuwage Newton
Parakrama Road,
Tangalle.
(deceased)

1A. Amarawathie Baduge
1B. Mahamadakalapuwage Ruchika
1C. Mahamadakalapuwage Rushani
1D. Mahamadakalapuwage Ruwini
1E. Mahamadakalapuwage Rushanga

All of Parakrama Road,
Tangalle.

1st Defendant-Respondent-Respondents

2. Sangadasa Wanigasinghe
Polommaruwa,
Indipokunagoda Road,
Tangalle.

2nd Defendant-Respondent-Respondent

3. Hewa Ihalamullage Sirisena
Indipokunagoda Road,
Tangalle.
(deceased)

3A. Hewa Ihalamullage Indra Rohini
No. 25/1, Indipokunagoda Road,
Boraluwala,
Tangalle.

3rd Defendant-Respondent-Respondent

Before: Yasantha Kodagoda PC. J.

Dr. Sobhitha Rajakaruna J.

Menaka Wijesundera J.

Counsel: Manohara de Silva PC. with Ms. Harithriya Kumarage and Ms. Dilmini De Silva for the 4th Defendant-Respondent-Appellant.

Rasika Dissanayake with Himal Hewage and Shabir Huzair for the Plaintiff-Appellant-Respondent.

Hirosha Munasinghe for the Substituted 3A Defendant-Respondent-Respondent.

Written Submissions: Substituted 4A Defendant-Respondent-Appellant - 20.08.2010 &

14.08.2025

Plaintiff-Appellant-Respondent - 25.01.2010 and 28.11.2014 &
18.08.2025

Substituted 3A Defendant-Respondent-Respondent - 05.03.2021

Argued on: 03.07.2025

Decided on: 05.12.2025

Dr. Sobhitha Rajakaruna J.

This Court granted Leave to Appeal on 06.05.2010 from the Judgement of the Provincial High Court of the Southern Province holden in Matara ('High Court') dated 17.12.2009. At that stage, no specific question of law had been identified by this Court, beyond the general questions described in the Petition that need to be addressed in the instant Application.

The Plaintiff-Appellant-Respondent ('Plaintiff') instituted a Partition Action against the Defendants-Respondents-Respondents ('Defendants'), including the 4th Defendant-Respondent-Appellant ('4th Defendant'), seeking a declaration that he is entitled to an undivided portion (146.33 Perches) of the subject land and also to get the said land partitioned among the parties. The District Court decided that the Plaintiff is not entitled to the title as described in the Plaintiff, and the subject property belongs to the 4th Defendant. However, in the High Court, the Appeal lodged by the Plaintiff was allowed, and he was granted the relief as prayed for in the prayer of the Plaintiff.

The 4th Defendant asserts that the land in question has long been held in possession as property belonging to the *Polommaruwa Raja Maha Viharaya* in Tangalle, spanning many centuries. The Chief Incumbent of the said *Viharaya* has given the property to the Plaintiff's father, Sawundias Wanigasingha, for cultivation under the Planting Agreement '4V1' (Deed No. 561 dated 26.11.1939). He states that the buildings on Lot No. 3 were constructed by the 2nd and 3rd Defendants respectively, with the leave and license of the 4th Defendant Thera. The 2nd and 3rd Defendants were supposed to possess the land after constructing their residences with the permission of the said 4th Defendant.

Nevertheless, the Plaintiff maintains that his mother, Leelawathie, obtained prescriptive ownership over the property in dispute. Citing the Plaintiff's cross-examination, the 4th Defendant highlights that the Plaintiff's mother secured her claim through cultivation, though the Plaintiff admitted ignorance regarding how she (Leelawathie) initially gained access to the land for planting. Drawing on the available evidence, the 4th Defendant underscores that Leelawathie never acquired the land, via purchase from any party. Furthermore, the 4th Defendant argues that during cross-examination, the Plaintiff acknowledged his mother's possession of the property commencing in 1939, the same year the Planting Agreement '4V1' was executed. Notably, the said Planting Agreement appoints the Plaintiff's father, Sawundias Wanigasingha, as the individual responsible for the planting.

The 4th Defendant highlights the multiple contradictions on the part of the evidence in the Plaintiff's testimony. It is contended that the position taken up by the Plaintiff in his pleadings was contradicted during cross-examination, when the Plaintiff acknowledged the disputed property as State Land. Upon being questioned, during cross-examination as to why his father entered into the Planting Agreement given his mother's alleged ownership, the Plaintiff offered no reply and refrained from disputing the validity of the aforesaid Planting Agreement. The 4th Defendant, drawing attention of this Court to the Plaintiff's testimony, contends that at the outset of the District Court Trial, the Plaintiff asserted prescriptive title for both himself and his predecessor over the disputed property. Yet, during cross-examination he shifted his stance, claiming instead that his mother obtained the title through an informal deed in exchange for valuable consideration.

The 4th Defendant further contends that the Plaintiff thereafter adopted an entirely different position that the subject matter is State Land. Thus, the 4th Respondent asserts that the Plaintiff is precluded from prevailing on his claim for a declaration of prescriptive title, given these successive and inconsistent assertions regarding his alleged ownership. The learned High Court Judge proceeded on the premise that the Plaintiff had indeed acquired title by prescription, whereas the learned District Judge rejected the Plaintiff's credibility owing to several inconsistencies in his evidence.

The 4th Defendant places comparable emphasis on the absence of any documentary proof submitted to the District Court to validate the Plaintiff's alleged prescriptive title, apart from his Deed No. 1016 (marked 'P1'). Nonetheless, the 4th Defendant maintains that this Deed 'P1' fails to bolster the Plaintiff's prescriptive claim, since Leelawathie, as the wife, and the Plaintiff, as the son of Sawundias Wanigasingha (Planter), are constrained as his heirs, executors, and administrators by the terms of the said Planting Agreement marked as '4V1'.

Additionally, the 4th Defendant submits that in terms of Section 34 of the Buddhist Temporalities Ordinance, a claim of prescription cannot be maintained in respect of temple property/*sangika* property. He relies on the Judgement of *Waharaka alias Moratota Sobitha Thero v Amunugama Ratnapala Thero* [1981] 1 Sri LR 201, at 224, in which the Supreme Court held that:

"When a Viharadhipathi sues to be declared entitled to the office of Viharadhipathi of a temple and to eject those disputing his rights or to recover possession of the temple and its endowments he is enforcing a right he has in law and any such claim is exempt from the provisions of the Prescription Ordinance by virtue of the Provisions of S. 34 Cap. 318. [Buddhist Temporalities Ordinance 1931]. Therefore, all cases that have held that such an action is bound by the provisions of either Section 3 or Section 10 of the Prescription Ordinance have been wrongly decided 'and should no longer be considered good law'" (emphasis added)

Meanwhile, the Plaintiff maintains that his mother, Leelawathie, independently held possession of the property for 50 years, securing prescriptive ownership in the process, before conveying the land to him; he in turn, transferred an undivided share of 20 perches to the 1st Defendant. The Plaintiff argues that the 2nd and 3rd Defendants failed to present any credible evidence to dispute the Plaintiff's prescriptive title. He insists that his acquisition of the land stems from Deed No. 1016 (marked 'P1'), a document undisputed by the 2nd to 4th Defendants. On this basis, the Plaintiff asserts that he has duly established the pedigree outlined in the Plaintiff, as well as his rightful title to the disputed property.

The stand taken by the Plaintiff in respect of the '4V1' is that the said Planting Agreement was never registered at the Land Registry. He further argues that the land described in the schedule to that Agreement differs clearly from the property in dispute, as the boundaries and

the extent reflected in the Plaintiff bear no resemblance to those in '4V1'. Additionally, the Plaintiff contends that the Defendants did not comply with Section 18(3) of the Partition Act, having omitted to secure a commission for verifying their claim, since the land apparently subject to partition is distinct from the actual contested property.

Another facet of the arguments raised on behalf of the Plaintiff hinges on the Defendants' purported inability to furnish reliable proof that the property constitutes *sangika* property. In particular, he maintains that the documents tendered by the 4th Defendant, marked as '4V2' to '4V7,' were intended to demonstrate the character of the land as *sangika* property but are inadequate as they furnish no clear identification of the relevant parcel of land by omitting to delineate exact boundaries. It is observed that the 3rd Defendant is the husband of the Plaintiff's sister, and he testified that the disputed property may qualify as *sangika* property. The plaintiff does not hold possession of the land in question, whereas the 2nd and 3rd Defendants do. The 2nd Defendant is reportedly the son of the Plaintiff's sister. In his examination in chief, the 2nd Defendant rejected the assertion that Leelawathie was the original owner of the land, maintaining instead that it belongs to the Temple. After the Plaintiff's evidence, the retired 'Gramasevaka' was summoned as a witness, and during his cross-examination, he clearly conceded he was unaware of the ownership of the land in dispute.

Review of the said Planting Agreement reveals that three boundaries correspond with those specified in Preliminary Plan No. 881101. The southern boundary alone fails to align; nonetheless, the 4th Defendant counters this by suggesting that the surveyor likely overlooked or omitted any reference to the land extending beyond the road shown in that Preliminary Plan. It is therefore reasonable to infer that the Plaintiff's father, Sawundias Wanigasingha, implicitly acknowledged the subject land's ownership by the Chief Incumbent Thera, given his execution of the Planting Agreement '4V1'.

The learned District Judge took the view that, in a partition action, the title of the parties needs to be examined thoroughly and the land to be partitioned should be identified correctly prior to any partition. The District Court decided that the Plaintiff does not own the total extent described in the plan marked 'P1'. Drawing from the Planting Agreement '4V1', the

Trial Judge noted that said '4V1' is very much older than the Deed marked 'P1', rendering it untenable to presume that the Plaintiff has been in possession of the subject land for a long period. The District Court further observed that the 2nd and 3rd Defendants were made parties in its' proceedings because they hold possession of the property. Moreover, the Trial Judge opined that the action could not be dismissed solely for want of evidence regarding the registration of Deed No. '4V1' at the land registry. The learned District Judge has concluded that the Plaintiff failed to prove his case on a balance of probabilities.

The learned High Court Judge, referring to the schedule of the answer of the 4th Defendant, took the view that the boundaries therein are distinct from the boundaries mentioned in the schedule of the Plaintiff. Further, she has observed that the extent mentioned in the Answer of the 4th Defendant and the Plaintiff's Plaintiff are different. Additionally, the High Court has drawn its attention to the fact that no steps were taken to issue a commission to the Surveyor General. In summation, the learned High Court Judge decided that the Defendants had failed to establish that the land claimed by the Plaintiff and the land subject to the Deed marked as '4V1' are the same. As a result, the High Court granted the Plaintiff the reliefs prayed for in the prayer of the Plaintiff.

At this stage, I need to draw my attention to the dicta in *Gabriel Perera v. Agnes Perera* 43 CLW 82 where Basnayake J. (in agreement with Gratiaen J.), held that:

"It is settled rule of interpretation of deeds that, where the portion conveyed is perfectly described, and can be precisely ascertained, and no difficulty arises except from a subsequent inconsistent statement as to its extent, the inconsistency as to extent should be treated as a mere falsa demonstratio not affecting that which is already sufficiently conveyed. Llewellyn vs. Earl of Jersey (1843) 11 M. and W. 183, 12 L. J. Ex 243."

Therefore, I am satisfied, based on the evidence, that the land described in the said Planting Agreement '4V1' is not a completely different land from the land described in the Plaintiff. Upon careful examination of the overall evidence led in the District Court, I am convinced that the Plaintiff has failed to establish title to the subject property on a balance of probabilities. I arrive at such a conclusion given the serious inconsistencies in his evidence and the binding effect of the Planting Agreement marked '4V1' executed by his father acknowledging the Chief

Incumbent Thera's ownership. The absence of credible evidence supporting a prescriptive title over what is demonstrably *sangika* property is also another reason.

The learned District Judge's conclusions that the Plaintiff does not own the total extent described in the plan marked 'P1' and that the action cannot succeed without thorough examination of the parties' title and precise identification of the land for partition, are correct and unassailable based on the circumstances of this case. Likewise, I am taking the view that the evidence revolves around the execution of the said Planting Agreement '4V1' in favour of the father of the Plaintiff outweighs the ancillary evidence adduced on behalf of the Plaintiff in establishing his alleged title. Hence, I am unable to agree with the conclusions of the learned High Court Judge.

Having examined the evidence and the Judgements of the District Court as well as the High Court, I consider it appropriate, based on the circumstances of this case, to answer the following questions arising from the contents of paragraph 10 of the Petition dated 25.01.2010, in the affirmative;

1. Did the learned Judges of the High Court fail to give due consideration to the evidence led and the documents filed in the Case?
2. Did the learned Judges of the High Court err in holding that the Defence had failed to prove that the land in suit is a *sangika* property?
3. Did the learned Judges of the High Court fail to consider that the Plaintiff had not denied that his predecessors entered the land in suit on the Agreement marked '4V1'?
4. Did the High Court err in holding that the Plaintiff had prescriptive title to the land in suit?
5. Did the learned Judges of the High Court fail to consider that the document marked '4V1', is only a Planting Agreement under which the Plaintiff's father had been allowed to plant coconut trees on the said land and therefore no title to the land can be claimed based on the said Agreement marked '4V1'?

In these circumstances, the Appeal from the Judgment of the learned High Court Judge is allowed. Accordingly, the said Judgment of the High Court dated 17.12.2009 is set aside and the Judgment of the learned District Judge dated 30.07.2004 is affirmed. I order no costs.

Judge of the Supreme Court

Yasantha Kodagoda PC. J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera J.

I agree.

Judge of the Supreme Court