

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

In the matter of an application, seeking
the inherent powers of the Hon. Supreme
Court pertaining to the Appeal bearing
No. SC Appeal 153/2018.

Pathirana Arachchige Vipulasiri
Ariyawansa,
No. 27/3, Naramminiya Road,
Kelaniya.

Plaintiff

**SC Appeal No: 153/2018
SC/HCCA/LA 200/2017
WP/HCCA/MT/90/2008(F)
DC Mt. Lavinia Case No:
1435/01/L**

Vs.

Matarage Dona Kusumawathie,
Administratrix of the estate of deceased
Pinidiya Pathirage Ariyadasa Perera,
No. 337/1, High Level Road,
Navinna,
Maharagama.

Defendant

AND

Pathirana Arachchige Vipulasiri
Ariyawansa,
No. 27/3, Naramminiya Road,
Kelaniya.

Presently at:

No. 770/6, Samagi Mawatha,
Arawwala,
Pannipitiya.

Plaintiff-Appellant

Vs.

Matarage Dona Kusumawathie,
Administratrix of the estate of deceased
Pinidiya Pathirage Ariyadasa Perera,
No. 337/1, High Level Road,
Navinna,
Maharagama.

Defendant-Respondent

AND BETWEEN

Matarage Dona Kusumawathie,
Administratrix of the estate of deceased
Pinidiya Pathirage Ariyadasa Perera,
No. 337/1, High Level Road,
Navinna,
Maharagama.

Defendant-Respondent-Appellant

Vs.

Pathirana Arachchige Vipulasiri
Ariyawansa,
No. 27/3, Naramminiya Road,
Kelaniya.

Presently at:

No. 770/6, Samagi Mawatha,
Arawwala,
Pannipitiya.

Plaintiff-Appellant-Respondent

AND NOW BETWEEN

Pathirana Arachchige Vipulasiri
Ariyawansa,
No. 27/3, Naramminiya Road,
Kelaniya.

Presently at:

No. 770/6, Samagi Mawatha,
Arawwala,
Pannipitiya.

**Plaintiff-Appellant-Respondent-
Petitioner**

Vs.

Matarage Dona Kusumawathie,
Administratrix of the estate of deceased
Pinidiya Pathirage Ariyadasa Perera,
No. 337/1, High Level Road,
Navinna,
Maharagama.

Defendant-Respondent-Appellant-
Respondent

Before: **Justice A.L. Shiran Gooneratne**
Justice Janak De Silva
Justice Sampath B. Abayakoon

Counsel: W. Dayaratne, PC with Ranjika Jayawardena instructed by C.
Dayaratne for the **Defendant-Respondent-Appellant.**

Thishya Weragoda with Prathap Welikumbura and Kalani
Dassanayake instructed by Thamila Dinushi Perera for the
Plaintiff-Appellant-Respondent.

Argued on: 19/03/2025

Decided on: 11/09/2025

A.L. Shiran Gooneratne J.

- [1] By Plaint dated 22/04/2001, the Plaintiff-Appellant-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed Case No. 1435/01/L in the District Court of Mt. Lavinia against the Defendant-Respondent-Appellant (hereinafter referred to as the Defendant-Appellant). The Plaintiff-Respondent sought *inter alia*, a declaration that the Defendant is holding the land described in the schedule of the Plaint as a Constructive Trust on behalf of the Plaintiff and for ejectment of the Defendant-Appellant, her agents, and all holding under her from the said property.

As an alternate cause of action, the Plaintiff sought an Enjoining Order in the first instance, then an Interim Injunction and a Permanent Injunction restraining the Defendant and her agents and all persons holding under her from selling, mortgaging, or leasing the said property.

- [2] In paragraphs 3, 4, 5, 6 and 7 of the Plaint, the Plaintiff states that upon the death of the original owner of the land, one Kanakanige Johanahami, her husband Pinidiya Pathirage Sugathan Perera, became entitled to the land. The Plaintiff-Respondent, by Deed of Transfer No. 4455, dated 28/06/1969, marked as 'P1', purchased the land for a valuable consideration from Sugathan Perera. The Plaintiff had thereafter permitted the Defendant's husband, one Ariyadasa Perera, to possess the said land under his leave and license. Sugathan Perera had passed away on 29/08/1982.
- [3] In paragraphs 12 and 13 of the Plaint, the Plaintiff states that he came to know that the husband of the Defendant (now deceased), by Deed No. 20499 dated 09/05/1973, had purchased the said land from Sugathan Perera, which the Plaintiff claims to have been executed illegally and fraudulently and contrary to law.

- [4] The Plaintiff's position is that by the Deed of Transfer No. 4455 dated 28/06/1969, Sugathan Perera transferred the disputed property to him. Therefore, on 09/05/1973, when Sugathan Perera transferred the property, he did not possess legal title to transfer the property to the deceased husband of the Defendant.
- [5] The Defendant, by answer dated 08/06/2001, stated that she had filed Case No. 548/SPL against parties who claimed to be the lessees of the Plaintiff, Respondent, in which the Court had given the Judgment and writ executed in her favor. Defendant-Appellant sought a dismissal of the Plaintiff's action.
- [6] At the conclusion of the trial, the learned District Judge by Judgment dated 29/08/2008 decided in favor of the Defendant and dismissed the Plaintiff's action.
- [7] Being aggrieved by the said Judgment, the Defendant filed an Appeal in the Civil Appellate High Court of the Western Province exercising Civil Appellate jurisdiction holden in Mt. Lavinia ("the Appellate Court") by Petition of Appeal dated 23/10/2008.
- [8] After hearing and considering the submissions of both parties, the Appellate Court, by its Judgment dated 28/02/2017, set aside the Judgment of the District Court, allowed the Appeal, and directed the learned District Judge to enter the Judgment in favor of the Plaintiff, granting the relief for ejectment of the Defendant-Appellant from the disputed property as set out in paragraph (b) of the prayer to the Plaint.
- [9] When this case was taken up for hearing on 19/03/2025, both parties agreed that the hearing should proceed on the Questions of Law raised on 25/09/2018. The questions of Law on which leave was granted are as follows:

- I. Did their lordships of the Civil Appellate High Court misdirected themselves when they held that the learned District Judge having accepted the title of the Plaintiff-Respondent by proving Deed No. 4455, erred in law when they dismissed the plaint on the basis that the cause of action was constructive trust.
- II. Did Their Lordships err in law in holding that the Plaintiff-Respondent was entitled to the ejectment of the Defendant-Petitioner, although he had failed to pray for a declaration of title in his favor and failed to realize that the Plaintiff was estopped from claiming the said relief since his cause of action was based on constructive trust.
- III. In view of the findings of the learned District Judge in the judgement can the relief (A) to the prayer of the Plaint be granted in terms of Section 96 of the Trust Ordinance.

Findings of the District Court.

- [10] The learned District Judge in his Judgement has analyzed the evidence relating to the Defendant's title in extensive detail, and has determined that Sugathan Perera sold the property in dispute to the Plaintiff and therefore, by the subsequent deed of Transfer No. 20499, Sugathan Perera had no title to convey the same to the deceased husband of the Defendant. The learned District Judge has observed that the Deed of Transfer No. 4455, dated 28/06/1969 (marked P1), was executed nearly three years before Deed No. 20499.
- [11] Having considered the two deeds executed and duly registered by Sugathan Perera bearing Nos. 4455 dated 28/06/1969 and 20499 dated 09/09/1973, the Court, based on prior registration, made a categorical finding that the Deed No.

4455 had priority over the Deed No. 20499 and therefore Deed No. 20499 is not a valid deed.

[12] The District Court answered the issues on title in favour of the Plaintiff-Respondent. It also noted that no issues had been raised by either party on the claim of a Constructive Trust. The Court dismissed the action on the ground that the Plaintiff-Respondent had failed to establish that the property was held by the Defendant-Appellant on a Constructive Trust, and held that ejectment could not be granted as the Plaint was framed on that basis.

[13] The Court held that the title to the property in dispute has passed to the Plaintiff-Respondent, and such has been established. However, since no declaration of title was prayed for as a substantial relief, no order for ejectment can be granted. The Court relied on the Judgment in ***Surangi vs. Rodrigo***¹, where it was held that “*no court is entitled to or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the Plaint*”

Findings of the Civil Appellate High Court

[14] In the Civil Appellate High Court, the Defendant-Appellant took up the position that the Plaintiff-Respondent did not establish his title on the said Deed No. 4455 dated 28/06/1969, and therefore, the District Court erred in answering issues No. 1, 8, 9, 13 and 14, on the title to the property in favour of the Plaintiff-Respondent. The Civil Appellate Court, in its findings, held;

“However, the Defendant filed no appeal challenging such findings of the learned trial judge unfavourable to her, and no steps taken to file cross appeal

¹ 2003 (3) SLR 35

or objections in terms of section 772 of the Civil Procedure Code at least. Therefore, I am of the view that the Defendant is not entitled to challenge such findings by way of submissions at this stage without adhering to the provisions of the section 772 of the Civil Procedure Code or filing a separate Appeal.”

- [15] Upon careful examination of the District Court Judgment, I am of the view that the Plaintiff-Respondent pleaded his title to the satisfaction of the Court and the findings on title in favor of the Plaintiff-Respondent is supported by an analysis of the available evidence, a reasoning based on prior registration, and the absence of fraud in the execution of the deed. Therefore, I have no reason to disagree with the said finding.
- [16] If then, has the Civil Appellate High Court erred in law in holding that the Plaintiff-Respondent is entitled to an Order of ejectment of the Defendant-Appellant, in terms of the sub-paragraph ‘b’ to the prayer, in the absence of a prayer for a declaration of title?
- [17] The Plaintiff-Respondent contends that the learned District Judge ought not to have dismissed the action, on the basis that the cause of action was on Constructive Trust and that the Plaintiff-Respondent had not prayed for a declaration that he is the owner of the property in dispute. Since the Court heard and determined the relevant issues of title that give rise to an enforceable claim, the Court was not impeded from granting the relief prayed for in prayer (b) for ejectment of the Defendant-Appellant, granting lawful possession of the property to the Plaintiff-Respondent.

- [18] Relying on the dicta laid down in **Surangi Vs. Rodrigo**², the learned Counsel for the Defendant-Appellant, submits that no Court is entitled to grant any relief not prayed for in the Plaint. He also relies on the Judgment in **Dharmasiri vs. Wickramatunga**³, where it was held that although the relief is not prayed for in the prayer, the Plaintiff must plead in the body of the Plaint his cause of action. The Defendant-Appellant submits that there is no cause of action formulated in terms of Section 9 of the Civil Procedure Code as required by Section 40(d), which forms the basis of the action.
- [19] However, as held in **Fonseka vs. Fonseka**⁴ *“If the grievance of the Defendant was that the Plaint does not contain sufficient particulars or a non-disclosure of a cause of action, the correct procedure under section 46(2) of the Civil Procedure Code is to move before pleading to the merits to have the Plaint taken off the file.”* There was no application made by the Defendant-Appellant to have the Plaint taken off the file for want of cause of action in this case.
- [20] Moreover, as de Sampayo A. J. explained in **Lowe vs. Fernando**⁵, *“Cause of action generally imports two things, viz, a right in the Plaintiff and a violation of it by the Defendant and cause of action means the whole cause of action, i.e., all the facts which together constitute the Plaintiff’s right to maintain the action ---”*
- [21] The Plaintiff-Respondent has established a denial of a right by sufficiently pleading, correctly presenting evidence, and raising issues based on his title Deed No. 4455, which has been answered in his favor. Having evaluated the relevant facts in terms of the law, the learned Trial Judge has arrived at a finding

² ibid

³ 2002 02 SLR 218

⁴ 1989 2 SLR 95

⁵ 16 NLR 398

that the Plaintiff-Respondent has proved his title to the property. In that the District Court was satisfied that the Plaintiff-Respondent had proved a right to the property through legal title and a violation of it by the Defendant-Appellant.

[22] The relief prayed for in the Plaint also included an action to eject the Defendant-Appellant from the property on the ground that the Plaintiff-Respondent is the owner thereof and that the Defendant-Appellant is in unlawful possession of it. If so, the Plaintiff-Respondent be denied appropriate redress. The Civil Appellate High Court not only looked at the form but also at the grounds of the Plaint and granted the relief prayed for in sub paragraph (b) to the prayer, which is an Order for ejectment of the Defendant-Appellant and her agents, servants, and all those who are under her, and restore the Plaintiff-Respondent in vacant, undisturbed, and peaceful possession of the subject matter.

[23] As held in ***Aziz et al. vs. Thondaman et al***⁶, “Once the Plaint is presented and the court does not refuse under section 46(2) of the Code to entertain it on any of the grounds stated therein or does not reject it thereunder, the action must be decided by the court in the manner provided for in the code. The judge had no right to refuse to grant a decree in favor of the Plaintiff if he holds that the Plaintiff has established his right to relief.”

[24] The Plaintiff-Respondent, having sought an Order for ejectment of the Defendant-Appellant from the disputed property, outlined in the Plaint, the facts relied on as establishing his title. The District Court answered all issues relevant to the title in favour of the Plaintiff-Respondent. The Civil Appellate High Court considered the evidence and concluded that the Plaintiff-Respondent has discharged the burden on him on the issue as to the entitlement

⁶ 61 NLR 217

of the disputed property and granted the relief prayed for in the said prayer. In such circumstances, I am of the view that the Plaintiff-Respondent had a cause of action which entitled him to maintain an action for an Order of ejectment and to assert his right to the appropriate relief.

[25] In ***Jayawickrama vs. Amarasuriya***⁷ the Privy Council stated that a court must not defeat a claim solely due to the form in which the action is framed. In that case, the Plaintiff had framed her claim on the basis of a “trust,” which was not legally established. However, the evidence proved that a valid agreement had been reached between the parties in settlement of a possible legal dispute. The Privy Council held that the District Judge erred by focusing narrowly on the term “trust” and failing to grant relief despite the Plaintiff having established a good cause of action on the facts

[26] The Code of Civil Procedure discourages multiplicity of action as it places an undue burden on the parties, consume judicial time, and may lead to conflicting decisions. As expressed in the common law *interest reipublicae ut sit finis litium* (it is in the public interest that litigation should come to an end) therefore, Courts must endeavor as much as practicable to dispose the dispute between the parties with a finality.

[27] Section 33 of the Civil Procedure Code provides that every regular action shall, as far as practicable, be framed to afford ground for a final decision upon the subjects in dispute and to prevent further litigation concerning them.

[28] In ***Baban Appu vs. Gunewardene***⁸ Wendt J. held: “*Now our law of res judicata, as laid down in section 207 of the Code of Civil Procedure, is very*

⁷ 20 NLR 289

⁸ 10 NLR 167

strict. The whole object of the Code is to discourage a multiplicity of actions and to make each action, once begun, absolutely decisive of the rights of parties in respect of the subject-matter. Section 207 accordingly makes the judgment of the Court conclusive not only as to matters actually pleaded, put in issue, and tried and decided, but also to matters which might, and (according to the rules of the Code) ought to, have been' pleaded tried, and decided.”

[29] In the above case Wendt J. illustrated the effect of Section 207 CPC with the example of a party holding two titles to the same land. If he sues on one and is defeated, he cannot later sue on the other; equally, if he is sued in ejectment and defends on one title only, he cannot afterwards assert the other. His Lordship explained that the Code requires all claims and defenses relating to the same subject matter to be raised and determined in a single action, so that each case, once begun, is “*absolutely decisive of the rights of parties.*”

[30] The circumstances in the example given in ***Baban Appu*** and in the present case are not identical, but they rest on the same principle. In that, it was the litigant who attempted to divide his rights, withholding one title and then seeking to assert it in a later action. In the present case, the Plaintiff-Respondent pleaded his cause of action on the basis of Constructive Trust. However, the District Court, while accepting that the Plaintiff-Respondent had proved his title by Deed No. 4455 and that the Defendant-Appellant was in unlawful possession, dismissed the action on the ground that the trust as pleaded was not established. The effect of this reasoning is to compel the Plaintiff-Respondent to institute a further action based on title to obtain the relief of ejectment, despite those matters having already been tried and determined. Both situations involve the fragmentation of a single subject matter into multiple suits. Whether the division is attempted by a party who sues or results from the

procedural approach adopted by the Court, the consequence leads to multiplicity of actions, which Baban Appu's case discourages.

[31] The Supreme Court has affirmed this position in ***Mohamed Zarook vs. Tokyo Cement Company***⁹ Aluwihare J. stated:

“Rules of procedure have to be interpreted, keeping in view the concept of justice as well as to see that multiplicity of proceedings is avoided. If Parties were allowed to file distinct actions pertaining to the same subjects in dispute without any restriction, this could definitely lead to multiplicity of litigation concerning the same dispute and might cause inconvenience as far as the administration of Justice is concerned. Permitting separate suits on closely connected claims compels duplication of evidence and proceedings, and amounts to an abuse of the process of Court.”

[32] In the present case, the District Court has determined the title of the Plaintiff-Respondent and the unlawful possession of the Defendant-Appellant. In the circumstances of the Plaintiff respondent should not be denied relief in terms of sub-paragraph 'b' to the prayer granting an order for ejectment for the Defendant-Appellant. To require a fresh action for ejectment would amount to duplication of proceedings.

[33] The 3rd question of law is a consequential issue raised by the Plaintiff-Respondent was not pursued.

⁹ SC CHC Appeal No. 22/2014, S.C. Minutes of 12.01.2023

CONCLUSION

[34] In all the above circumstances, the questions of law Nos. 1 and 2 stated earlier in this Judgment are answered in the negative. The impugned Order dated 28/02/2017 delivered by the Civil Appellate High Court is affirmed, and the Judgment of the District Court is set aside.

[35] The Appeal is dismissed. The Plaintiff-Respondent is entitled to costs in the Civil Appellate High Court and in this Court.

Judge of the Supreme Court

Janak De Silva, J.

I agree

Judge of the Supreme Court

Sampath B. Abayakoon, J.

I agree

Judge of the Supreme Court