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

In the matter of an Application for Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006, against Judgment of the Provincial High Court of Western Province dated 08.02.2021 in Case No. WP/HCCA/GPH/23/2020 (LA); D.C. Gampaha Case No 3499/L

IN THE DISTRICT COURT

Galle Arachchige Amaradasa, of No. 174,
Temple Road, Bangalawatte, Kottawa

Plaintiff

SC/APPEAL/155/2022
SC/HCCA/LA/No.135/21
WP/HCCA/GPH/23/2020 (LA)
D.C. Gampaha Case No. 3499/L

V.

1. Paththapperuma Arachchige Neville Arunasiri Paththaperuma
   No.198, Ihala Yagoda
   Gampaha

2. Gallage Anil Chandradasa
No. 56/1, Raenagala Road
Imbulgoda

Defendants

AND BETWEEN IN THE HIGH COURT

1. Paththapperuma Arachchige Neville
Arunasiri Paththaperuma,
No. 198, Ihala Yagoda,
Gampaha.

2. Gallage Anil Chandradasa,
No. 56/1, Raenagala Road,
Imbulgoda.

Defendant – Petitioners

V.

1. Galle Acharige Amaradasa
No. 174, Temple Road
Bangalawatte
Kottawa

Plaintiff – Respondent

AND NOW BETWEEN IN THE SUPREME COURT

2. Gallage Anil Chandradasa
No. 56/1, Raenagala Road
Imbulgoda

2nd Defendant-Petitioner-Appellant

V.

Galle Acharige Amaradasa
No. 174, Temple Road
Bangalawatte
Kottawa

Plaintiff – Respondent- Respondent

1 a) Sankapala Acharige Greta, of No. 174, Temple Road, Bangalawatte, Kottawa
1 b) Gallege Chandrika Amaradasa, of No. 210, Olympus, Millenium City, Oruwela, Athurugiriya
1 c) Gallage Senpathi Ameradasa
1 d) Gallage Dulipa Shyamali Ameradasa
1 e) Gallege Yasala Rangani Ameradasa
All of No.174, Temple Road, Bangalawatte, Kottawa

Substituted 1a), 1b), 1c), 1d), 1e) Plaintiff-Respondent-Respondents

1. Paththaperuma Arachchilage Neville Arunasiri Paththaperuma
No. 198, Ihala Yagoda
Gampaha

1st Defendant Petitioner-Respondent

Before : **Achala Wengappuli J.**
K. Priyantha Fernando, J.
Sobhitha Rajakaruna, J.

Counsel : Sudarshani Cooray instructed by Diana Stephanie Rodrigo for the 2nd Defendant-Petitioner-Appellant

S.A.D.S Suraweera with Ashnika Perera instructed by S.R. Weerasinghe for the Plaintiff-Respondent-Respondent

Argued on : 17.09.2025

Decided on : 17.10.2025

K. PRIYANTHA FERNANDO, J

1. The 2nd Defendant-Petitioner-Appellant (hereinafter referred to as the as 2nd Defendant- Appellant), appealed to this Court seeking to, *inter alia*, set aside the judgment dated 08.02.2021 of the Provincial High Court of Western Province holden in *Gampaha* and the order dated 24.07.2020 by the District Court of *Gampaha*.

The Facts

2. The Plaintiff-Respondent-Respondent (hereinafter referred to as Plaintiff - Respondent) by his plaint dated 27.04.2018 instituted action in the District Court against the 1st and 2nd Defendants to eject the Defendants and all those holding under them from the premises in suit, alongside the payment of arrears of rent, damages, continuing damages, for an enjoining order and an interim injunction preventing the defendants from carrying out constructions on the land.

3. Plaintiff- Respondent stated that he became the owner of land described in the 1st schedule to the plaint under the final decree of Case No.

19457/P, and that the 2nd Defendant – Appellant became the owner of the land described in the 2nd schedule.

4. The 1st Defendant – Appellant – Respondent (hereinafter referred to as 1st Defendant - Respondent) has entered into a lease agreement with the Plaintiff – Respondent in 2013 in respect of the land described in the 1st schedule subject to the conditions in the agreement. The Plaintiff – Respondent has alleged that the 1st Defendant – Respondent was in breach of some conditions and had acted in collusion with the 2nd Defendant – Appellant in attempting constructions on the land in suit. For these reasons the Plaintiff – Respondent has informed the 1st Defendant – Respondent to vacate the premises and handover the possession to Plaintiff – Respondent, which the 1st Defendant – Respondent had refused to do whereby cause for action has arisen.

5. Both the 1st and 2nd Defendants then filed their answers. The 1st Defendant - Respondent denied most averments, stating that the Plaintiff had no valid cause of action, and that the Plaint was not in line with Section 46 of the Civil Procedure Code. The 1st Defendant - Respondent has further claimed the Plaintiff – Respondent fraudulently induced him to enter into the lease agreement over land that he had no rights to, which also had no access road. The 1st Defendant – Respondent has also sought a refund of his advance payment but the Plaintiff – Respondent had failed to return it.

6. The 1st Defendant - Respondent also stated that the 2nd Defendant owns the amalgamated land described in the 3rd schedule to the plaint that he has allegedly acquired prescriptive rights over. The 1st Defendant - Respondent, states that he has been operating a spare parts business in the land described in the 3rd schedule as a tenant under the 2nd Defendant- Appellant. The 1st Defendant – Respondent has alleged that the Plaintiff – Respondent breached the terms of the lease agreement, causing him a financial loss of about Rs. 200,000. Therefore, as a cross-

claim, the 1st Defendant - Respondent has sought a declaration of lawful leasehold rights for the land described in the 3rd schedule to the plaint under the 2nd Defendant, recovery of Rs. 200,000 in damages, and Rs. 36,000 already paid to the Plaintiff - Respondent. He has further prayed that the causes of action be heard together under Section 35 of the Civil Procedure Code.

7. The 2nd Defendant – Appellant has filed a separate answer denying most of the averments in the plaint, further stating that as per the final decree in Case No. 19457/P in 1995, the 2nd Defendant – Appellant became entitled to the lands described in the 1st and 2nd schedules to the plaint which the 2nd Defendant – Appellant has later amalgamated into one land which is described in the 3rd schedule to the plaint. He has also claimed to have acquired prescriptive rights over the said land.

8. The 2nd Defendant – Appellant, denying that any damage had been caused to the Plaintiff – Respondent claimed Rs. 100,000 for maliciously instituting this action. Further he claimed a declaration of title in respect of the land described in the 2nd schedule to the answer, declaration that the 1st Defendant – Respondent holds leasehold rights under the 2nd Defendant – Appellant, for damages and for a commission to survey and prepare a plan regarding the land described in the 3rd schedule.

9. Thereafter, the Plaintiff – Respondent by motion dated 29.08.2019 has filed a draft amended plaint whereby the 2nd Defendant – Appellant states that major changes to the plaint were made. He states that it changed the nature and character of the action and sought certain reliefs such as a declaration of title to the land described in the 1st schedule to the amended plaint.

10. Defendants have objected to the amendments stating the Plaintiff – Respondent is guilty of laches and attempting to change the nature of the action to a *rei vindicatio* action. This matter has then been fixed for inquiry. The learned District Judge by order dated 24.07.2020 allowed the amended plaint as both plaints sought for the ejection of the Defendants and as it did not change the nature of the action. It was further held that Court was entitled to exercise the discretion granted by section 93 (1) of the Civil Procedure Code and that the Defendants too were able to amend their answers if necessary.

11. Being aggrieved by the aforementioned order dated 24.07.2020, the 2nd Defendant – Appellant has filed a Leave to Appeal application to the High Court which was taken for support for leave on 08.02.2020 and was dismissed on the same day with costs.

12. Being aggrieved by the decision of the High Court, the 2nd Defendant- Appellant preferred the instant appeal to this Court. This Court granted leave to appeal on the questions of law set out in subparagraphs (a) and (d) of paragraph 15 of the petition dated 18.03.2021.

Questions of Law

"(a) *Did the Learned High Court Judges of the High Court had erred in failing to appreciate that the Original Plaint is in the nature of an action which only seeks ejectment of the 1st and 2nd Defendants and does not seek any declaration in respect of the rights for the land and the Amended Plaint seeks to change the nature of the action to a rei vindicatio action*;

(d) *did the Learned High Court Judges of the High Court err in failing to appreciate that grave prejudice would be caused to the 1st and 2nd Defendants in the event the proposed amendments are allowed and the*

plaint will be back dated with the amendments and the 2nd Defendant's plea of prescription would be at disadvantage"

13. Given the nature of the grievances of the 2nd Defendant in the instant case, I am of the opinion that both questions of law mentioned above ultimately lead to the question of whether amending the plaint could cause any prejudice to the 2nd Defendant - Appellant's plea of prescription and whether it changes the nature of the action as claimed by the 2nd Defendant – Appellant.

14. Notwithstanding the above, concerning the question of law raised in subparagraph a), I must first note that the original plaint and the amended plaint both sought to eject the defendants and all their agents from the land in suit whereby I do not see sufficient reason to conclude that a change of the nature of action has occurred by the amendment.

15. Section 3 of the **Prescription Ordinance of 1871 (as amended)**, a plea of prescription requires merely ten years of uninterrupted and undisturbed possession:

" *Proof of the* ***undisturbed and uninterrupted possession*** *by a defendant in any action,* ***or by those under whom he claims****, of lands or immovable property, by a title* ***adverse to or independent of*** *that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred)* ***for ten years previous to the bringing of such action****, shall entitle the defendant to a decree in his favour with costs…"*

*(*emphasis mine*)*

16. In the instant matter, in the answer filed in the District Court dated 17.01.2019 the 2nd Defendant - Appellant has stated that he has held uninterrupted and undisturbed possession of the land described in the 3rd Schedule since 1995 whereby he has prescriptive rights to the same. In these circumstances, his alleged claim of prescription would be successful by the year 2005 and any added duration of possession would have no significant legal bearing unless his possession was to start any time after 1995 contrary to his answer in the District Court. The plaint was filed in 2018 (23 years from 1995) and amended in the year 2019 whereby I am unable to see any reasonable basis to hold that the 2nd Defendant – Appellant was prejudiced by the amendments, in seeking prescriptive titles as the required ten-year period is well over.

17. I must note that the learned Counsel for the 2nd Defendant – Appellant submits the case of ***Pathirana v. Jayasundara [1956] NLR 169*** to further their position, where it was held at page 172 that:

"…Upon the question of amendment of pleadings generally, Withers J. said in Ratwatte v Owen —" After the plaint has once been accepted, I think as a general rule that it should not be amended till after the issue has been settled. The office of an amendment will generally be at that stage to square the plaint with the issue, if necessary " , thus indicating that the discretionary power to permit an amendment of the plaint should not be exercised unless firstly, a particular issue does arise upon the original plaint and secondly, further pleadings are necessary in order to explain or clarify matters relevant to the particular issue. Subsequent decisions show that the general rule as so stated is not to be regarded as inflexible and that relaxation is permissible in order to secure the more expeditious termination of disputes. But no such relaxation is proper if it would be prejudicial to a plea of prescription available to a Defendant."

18. However, the facts of ***Pathirana v. Jayasundara [1956] NLR 169*** are materially different to the case at hand, *Pathirana v*

Jayasundara concerned a situation where there was an overholding lease between the Plaintiff and the Defendant. The Defendant, the tenant, in that case has in his answer claimed both title and prescriptive rights on his behalf, whereas in the case at hand, the 2nd Defendant is a third party that was never a party to the original contract of leasehold between the Plaintiff- Respondent and the 1st Defendant – Respondent. While the 2nd Defendant - Appellant has claimed ownership both by way of declaration of title and prescriptive rights, there appears to be no such claim of title by the original leaseholder, the 1st Defendant – Respondent in the case at hand. I am of the opinion that the motive in disallowing the amendments in *Pathirana v Jayasundara* is to ensure that a tenant overholding should not lose the protection of prescriptive title by surprise. In a situation where a third party comes in and claims ownership by title or prescription, status quo alters significantly and concerns different to those raised in *Pathirana v Jayasundara* arise whereby the same position cannot be maintained.

19. Further, as the learned District Judge has correctly decided, the Courts could exercise their discretion as per **S. 93 of the Civil Procedure Code Act No. 53 of 1980** in deciding on allowing the amendments. Further, the Defendants had the liberty to amend their answer had they found such was necessary and as stated above, the High Court has affirmed the stance of the learned District Judge.

20. However, I must note that this position is taken giving due regard to the particular circumstances of the case at hand. As per the recent decision in ***Rajapaksha Appuhamilage Lionel Ranjith v. Suraweera Arachchige Dona Leelawathi and others [SC/Appeal/100/2020 S.C. Minutes of 14.05.2025]*** no amendment is to be allowed unless the Court is satisfied that grave and irremediable injustice will be caused if such amendment is not permitted and there will be no laches caused by such amendment.

21. Therefore, I am of the opinion that the learned Judges of the District Court and High Court were correct, and that the nature of the action hasn't changed nor has any prejudice occurred to the claim of prescription by 2nd Defendant – Appellant whereby both questions of law noted in subparagraphs (a) and (d) of paragraph 15 of the petition dated 18.03.2021 are answered in the negative. Therefore, the appeal is dismissed subject to costs.

22. The Registrar is directed to forward the case record to the District Court of *Gampaha* to proceed with the merits of the initial case.

Appeal is Dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE ACHALA WENGAPPULI

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SOBHITHA RAJAKARUNA

I agree

JUDGE OF THE SUPREME COURT