

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

In the matter of an appeal under Section 5(C) of the High Court of the Provinces (Special Provinces) (Amendment) Act No 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC Appeal No: 241/2016**

SC/HCCA/LA No: 41/2016

NWP/HCCA/KUR/Appeal No:  
173/2010 F

D.C. Chilaw Case No: 24257/L

Wijesinghe Mudiyanselage  
Jinadasa,  
Mulleriyawa, New Town,  
Angoda.

**Plaintiff**

**Vs.**

1. Liyanage Bandaappuhamy,  
Bangadeniya.
2. Kirindawa Liyanage Nimal  
Jayapala,  
Weherakele,  
Bangadeniya.
3. Liyanage Somawathie,  
Weherakele,  
Bangadeniya.
4. Wasala Mudalige  
Kusumalatha,

Jaya Mawatha, Natthandiya  
Road,  
Marawila.

**Defendants**

**AND BETWEEN**

1. Liyanage Bandaappuhamy,  
Bangadeniya. (Deceased)
2. Kirindawa Liyanage Nimal  
Jayapala,  
Weherakele,  
Bangadeniya.
3. Liyanage Somwathi,  
Weherakele,  
Bangadeniya.
4. Wasala Mudalige  
Kusumalatha,  
Jaya Mawatha, Natthandiya  
Road,  
Marawila.

**Defendants- Appellants**

**Vs.**

Wijesinghe Mudiyanselage  
Jinadasa,  
Mulleriyawa, New Town,  
Angoda. (Deceased)

**Plaintiff- Respondent**

W.A. Jayantha Thamel,  
Galmuruwa Depot,  
Madampe.

**Added Plaintiff- Respondent**

**AND NOW BETWEEN**

W.A. Jayantha Thamel,  
Galmuruwa Depot,  
Madampe.

**Added Plaintiff-Respondent-**  
**Appellant**

**Vs.**

1. Liyanage Bandaappuhamy,  
Bangadeniya. (Deceased)
2. Kirindawa Liyanage Nimal  
Jayapala,  
Weherakele,  
Bangadeniya.
3. Liyanage Somwathi,  
Weherakele,  
Bangadeniya.
4. Wasala Mudalige  
Kusumalatha,  
Jaya Mawatha, Natthandiya  
Road,  
Marawila.

**Defendants- Appellants-**  
**Respondents**

**BEFORE:**

**S. THURAIRAJA, PC, J.**  
**K. KUMUDINI WICKREMASINGHE, J.**  
**ACHALA WENGAPPULI, J.**

**COUNSEL:** W. Dayaratne,  
PC with Ms. R. Jayawardena for the Added  
Plaintiff-Respondent-Appellant.

Shyamal A. Collure with Prabath S.  
Amarasinghe and A.P. Jayaweera for the 2<sup>nd</sup>  
and 3<sup>rd</sup> Defendants-Appellant-Respondents

**WRITTEN SUBMISSIONS:** By the  
Plaintiff-Respondent-Appellant on  
23.08.2024.

By the Defendant-Appellant-Respondent on  
30.07.2024.

**ARGUED ON:** 01.07.2024

**DECIDED ON:** 03.02.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an appeal from a judgment of the Civil Appellate High Court of Kurunegala, case bearing No. 173/2010 F, dated 15.12.2015 which set aside the judgment of the District Court of Chilaw, case bearing No: 24257/L dated 20.09.2010.

This Court, by Order dated 14.12.2016, granted Leave to Appeal on the questions of law stated in paragraph 24(b), (c), (d), (f) and (h) of the Petition.

However, at the hearing of the appeal, both Counsel confined their submissions to three questions of law, which are as follows:-

1. Have their Lordships of the Civil Appellate High Court failed to consider that the Plaintiff- Respondent- Appellant proved title and identity of the corpus?
2. Have their Lordships of the Civil Appellate High Court misdirected themselves both in facts and law by holding that the judgment of the Learned District Court Judge is untenable and devoid of facts?
3. Did their Lordships of the Civil Appellate High Court err in law in arriving at the finding by disregarding onus of proof as set out in section 101 and 103 of the Evidence Ordinance?

### **Factual Matrix**

The Added Plaintiff-Respondent-Appellant (hereinafter referred to as the Appellant) was added to this case which was initially instituted by the deceased original Plaintiff before the District Court of Chilaw against the Defendants-Appellants-Respondents (hereinafter referred to as the Respondents). The Appellant stated that he was added as a party following a petition dated 04.11.1995, as he had purchased the subject land from the Original Plaintiff on 07.07.1995 under Deed No. 2094.

The Appellant stated that the Original Plaintiff had sought a declaration of title to two allotments of land called "Welendakulam Kele." He stated that the lands were respectively in extent of 3 acres and 1 acre and 2 roods, as shown in Plans No. 877 and 1194 prepared by Vernon Perera, Licensed Surveyor and were more fully described in the schedules to the plaint.

The Appellant stated that the original Plaintiff disclosed the devolution of title in the amended plaint. He stated that Nanayakkara Pattambiralalage Don Joseph Aloysius, Kalugamage Mosiyas Fernando, K. Peduru Fernando and K. Francis Fernando became entitled to the land called "Welendakulam Kele" under Deed No. 36670 dated 27.08.1952.

The Appellant stated that portions of the land were subsequently transferred. He stated that a portion measuring 3 acres was transferred to K. Manual Joseph Anthony Fernando under Deed No. 1372 dated 16.12.1957 and another portion measuring 1 acre and 2 roods was transferred to the same person under Plan No. 871 dated 02.08.1955.

The Appellant stated that K. Manual Joseph Anthony Fernando subsequently transferred the lands to K. Dona Catherine Perera under Deed No. 1395 dated 10.03.1958. He stated that K. Dona Catherine Perera later transferred the lands back to K. Joseph Anthony Manual Fernando under Deed No. 94 dated 28.05.1964. Thereafter, K. Joseph Anthony Manual Fernando transferred the lands to the original Plaintiff under Deed No. 1547 dated 07.08.1964.

The Appellant stated that after acquiring the lands, the original Plaintiff entered into possession and began extracting clay for the manufacture of tiles. He stated that through such possession, the Original Plaintiff acquired prescriptive title over the lands.

The Appellant stated that the 1st Defendant unlawfully entered the lands in or about 1994 and subsequently transferred them to the 2nd to 4th Respondents under Deed No. 12 dated 06.05.1994. He stated that a complaint was lodged with the Chilaw Police regarding the unlawful possession and proceedings were initiated in the Primary Court.

The Appellant stated that the Respondents denied the original Plaintiff's claims and sought to declare themselves owners of the lands. He stated that the Respondents claimed to have acquired prescriptive title by uninterrupted possession for over ten years.

The Appellant stated that the case proceeded to trial on twenty issues, with issues 1 to 14 raised on behalf of the original Plaintiff and issues 15 to 20 raised on behalf of the Respondents. He stated that during the trial, the original Plaintiff testified that he had been excavating clay from the land for twenty years until 1991. He further stated that the 1st Defendant resided on an adjoining land measuring 1½ acres.

The Appellant stated that the original Plaintiff admitted that he had sold the land to the Appellant, who was subsequently added as a party to the case. He stated that a witness, Kuruvitage Don Rathnasekera, testified that he had transported clay from the original Plaintiff's land to Kalyana Tile Mill for about ten years since 1965.

The Appellant stated that the 3rd Defendant testified that the 1st Defendant was her father and had cultivated paddy and coconut on the land. She stated that her father had transferred the land to her and to the 2nd and 4th Respondents under Deed No. 12.

The Appellant stated that a Grama Niladhari, Gunaherath Chandrasekera Sugath Chandrasekera, testified that the 1st Defendant had been in possession of the land from 1990 to 1994. He stated that a Divisional Secretary, Nelumdeniya Pathirennelage Kularatne Nelumdeniya, testified that at the time of his inspection, the land had no fence or coconut cultivation and holes for clay excavation were visible.

The Appellant stated that after the conclusion of the trial, the Learned Additional District Judge delivered judgment on 20.09.2010 in favor of the original Plaintiff. He stated that the District Court found that the Original Plaintiff had proved title on the balance of probabilities and that the Respondents had failed to establish prescriptive title.

The Appellant stated that the 1st to 4th Respondents appealed to the Civil Appellate High Court of the North Western Province. He stated that on 16.12.2015, the High Court allowed the appeal and set aside the District Court judgment.

The Appellant stated that the Civil Appellate High Court erred in law by holding that the original Plaintiff failed to establish title and that the lands were not identified. He stated that the original Plaintiff had produced uncontested documents proving devolution of title and possession with definite metes and bounds.

The Appellant stated that the Civil Appellate High Court failed to consider that the Respondents had not proved adverse possession. He stated that the High Court misdirected itself by disregarding procedural law, the concept of onus of proof and the law relating to prescriptive possession.

The Respondents in this case were the 1st to 4th Defendants in the District Court of Chilaw. The 1st Defendant was the father of the 3rd Defendant and had been in possession of the land called “*Velandikulam Kele*” since 1951. The 2nd, 3rd and 4th Defendants were the children and successors-in-title of the 1st Defendant. The 3rd Defendant resided on the land until her marriage. The 2nd and 4th Defendants were siblings of the 3rd Defendant. The Respondents claimed ownership of the land by virtue of

long and uninterrupted possession and through transfers from the 1st Defendant.

The Respondents stated that the original Plaintiff instituted action in the District Court of Chilaw on 09.05.1995 against the 1st to 4th Defendants seeking a declaration of title to two allotments of land called "*Velandikulam Kele*", described in the First and Second Schedules to the plaint, together with damages, costs and other relief. The Respondents stated that, according to the schedules, the said allotments were depicted in Plans Nos. 1194 and 971 prepared by Vernon Perera, Licensed Surveyor and were alleged to be in extents of 3 acres and 1 acre and 2 roods respectively.

The Respondents stated that by petition dated 04.11.1995 and affidavit dated 29.11.1995, the original Plaintiff sought leave to add the present Appellant as a party on the basis that the original Plaintiff had conveyed the alleged rights to the land by Deed No. 2094 dated 07.07.1995. The Respondents stated that the District Court allowed the said application on 20.05.1996 and added the Appellant as the 2nd Plaintiff.

The Respondents stated that by an undated amended plaint, the original Plaintiff and the Added Plaintiff sought ejectment of the Defendants from the lands described in the schedules in addition to the reliefs originally prayed for.

Further the Respondents stated that in the answer dated 17.03.1997, the 1st Defendant pleaded long, uninterrupted and adverse possession of the land known as "*Velandikulam Kele*". The Respondents stated that the 1st Defendant claimed to have acquired prescriptive title to the land. The Respondents stated that the 1st Defendant had conveyed ownership of the land to the 2nd, 3rd and 4th Defendants by Deed No. 12 dated 06.05.1994.

The Respondents stated that the Defendants prayed for the dismissal of the Plaintiffs' action and for a declaration that the 2nd, 3rd and 4th Defendants were the lawful owners of the land.

The Respondents stated that when the case was taken up for trial on 08.06.1998, fourteen issues were framed on behalf of the Plaintiffs and six issues were framed on behalf of the Defendants.

The Respondents stated that the Plaintiffs closed the case on 20.10.2004. The Respondents stated that evidence was led by the original Plaintiff and by Kuruvitage Don Rathnasekera. The Respondents stated that documents marked P1 to P8 were produced in evidence.

The Respondents stated that the original Plaintiff testified that the original Plaintiff purchased the land in 1964. The Respondents stated that the original Plaintiff testified that clay was extracted from an area of about one acre of the land until about 1990. The Respondents stated that the original Plaintiff admitted that, from about 1975 onwards, the original Plaintiff merely inspected the land from time to time. The Respondents stated that the original Plaintiff admitted that the land was sold to the Added Plaintiff. The Respondents stated that no independent evidence of possession was led by the Plaintiffs for the period from 1975 to 1993.

The Respondents stated that Kuruvitage Don Rathnasekera testified that clay was transported from the land said to belong to the original Plaintiff to tile mills between 1965 and 1975. The Respondents stated that Kuruvitage Don Rathnasekera testified that payment for the clay was made to Wimalatissa, who was stated to have supervised the land.

The Respondents stated that evidence on behalf of the Defendants was led by the 3rd Defendant, Gunaherath Chandrasekera Sugath

Chandrasekera, who served as Grama Niladhari and Nelumdeniya Pathirannehelage Kularatne Nelumdeniya, who served as Divisional Secretary of Arachchikattuwa in 1993.

The Respondents stated that the 3rd Defendant testified that the deceased 1st Defendant was the father of the 3rd Defendant. The Respondents stated that the 3rd Defendant testified that the land was about 6½ acres in extent. The Respondents stated that the 3rd Defendant testified that the deceased 1st Defendant resided on the land, cultivated paddy and coconut, extracted clay and enjoyed the produce of the land for more than 30 years. The Respondents stated that the 3rd Defendant testified that the original Plaintiff never entered the land during the period of residence of the 3rd Defendant. The Respondents stated that the 3rd Defendant testified that portions of the land were sold on three occasions and that the remaining extent thereafter was about 4½ acres.

The Respondents stated that Gunaherath Chandrasekera Sugath Chandrasekera testified that service as Grama Niladhari of Kusala Grama Sevaka Division No. 583 was from late 1990 to 1994. The Respondents stated that Gunaherath Chandrasekera Sugath Chandrasekera testified that during that period the 1st Defendant was in possession of the land known as “*Velandikulam Kele*”, which was about 6 acres in extent. The Respondents stated that the 1st Defendant resided in a small thatched house on the land.

The Respondents stated that Nelumdeniya Pathirannehelage Kularatne Nelumdeniya testified that an inspection of the land was carried out on 22.10.1993 pursuant to a complaint made by the 1st Defendant. The Respondents stated that the land inspected was about 5 acres in extent. The Respondents stated that only the 1st Defendant was in occupation at

the time of inspection. The Respondents stated that there was no barbed-wire fence demarcating separate allotments. The Respondents stated that the land appeared to be a single undivided block notwithstanding the survey plans produced by the Plaintiffs.

The Respondents stated that although the 1st Defendant had passed away prior to the commencement of the trial, a certified copy of the record in Chilaw Primary Court Case No. 37756 was produced and marked. The Respondents stated that the record contained a statement made by the 1st Defendant to the police on 04.06.1994, an affidavit dated 12.07.1994 and a cross-affidavit dated 29.07.1994. The Respondents stated that the said affidavits recorded that the 1st Defendant had been in uninterrupted possession of the land, which was about 6 acres in extent, since 1951. The Respondents stated that coconut and paddy cultivations were maintained on the land until damage occurred due to salt-water intrusion from neighbouring prawn-farming activities.

The Respondents stated that the police notes produced in evidence described the land in dispute as a single block of about 6 acres, indicating that the land had not been divided into separate allotments even as at June 1994.

The Respondents stated that the learned Additional District Judge delivered judgment on 20.09.2010 in favour of the original Plaintiff. The Respondents stated that the learned Judge observed that certified copies of the title deeds and plans had not been produced. The Respondents stated that the learned Judge further observed that evidence of possession from 1975 to 1993 was weak. The Respondents stated that uncertainty remained as to whether the lands claimed by the Plaintiffs and the land possessed by the 1st Defendant constituted one land or separate lands.

The Respondents stated that an appeal was preferred to the Civil Appellate High Court of the North Western Province. The Respondents stated that by judgment dated 16.12.2015, the Civil Appellate High Court allowed the appeal with costs, set aside the judgment of the District Court of Chilaw and dismissed the Plaintiffs' action.

The Respondents stated that the present proceedings arose from the application filed by the Added Plaintiff seeking leave to appeal from the judgment of the Civil Appellate High Court.

### **Legal analysis of questions of law**

#### **(1) Title and Identity of the Corpus:-**

The first question of law in this appeal is whether the Civil Appellate High Court failed to consider that Appellant proved the title and the identity of the corpus. This issue requires a careful examination of the evidence adduced at the trial, including deeds, survey plans, Land Registry extracts and witness testimony regarding possession. It also requires a review of the findings of the Learned District Judge to determine whether the High Court correctly applied the law relating to **rei vindicatio** action.

A **rei vindicatio** action is essentially an action in rem, founded on ownership of property. The Plaintiff seeks to recover possession of property from a person in unlawful possession. To succeed, the Plaintiff must establish two fundamental elements: first, legal ownership or title to the property; second, the proper identification of the property claimed. Without establishing both, the Defendant is not obliged to prove any right or defense. The burden of proof in such an action lies squarely on the Plaintiff. **Section 101** of the Evidence Ordinance provides that a person asserting a fact must prove it and **Section 103** clarifies that the burden

of proof lies on the person legally obliged to prove a fact. In a rei vindicatio, the Plaintiff must prove title and clearly identify the corpus; the Defendant only needs to respond if a specific defense, such as prescriptive or adverse possession is raised.

The Appellant relied on a series of deeds (**P1 to P8**) to establish title. **Deed P4 (No. 36670, 27.08.1952)** shows the original owners, N.S. Don Joseph Aloysius, K. Moises Fernando, K. Peduru Fernando and K. Francis Fernando, becoming entitled to 4 acres and 2 roods. **Deed P8 (No. 1372, 16.12.1957)** purports to transfer 3 acres to Manuel Joseph Antony Fernando, executed by only three co-owners, excluding N.S. Don Joseph Aloysius. This omission creates a legal gap because an undivided share remained with the absent co-owner, meaning the Plaintiff could not acquire full ownership. The 1-acre and 2-roods land depicted in **Plan P2 (Plan No. 871, 02.08.1955)** was also transferred by the same three co-owners, but the deeds do not show that N.S. Don Joseph Aloysius' interest was included. **Deeds P6 and P7** document conditional transfers between Antony Fernando and K. Dona Catherine Perera and finally **Deed P1 (No. 1547, 07.08.1964)** transfers the lands to the Plaintiff. The Plaintiff claimed possession through clay extraction activities until 1993.

A close examination of the deeds reveals deficiencies in establishing clear title. First, the failure of all co-owners to sign critical deeds means the Plaintiff only acquired an undivided interest, not absolute ownership. Second, some deeds relied on conditional transfers and photocopies without certified originals, interrupting the chain of title. Third, there is no evidence showing that the smaller land's undivided owner consented to transfer, which undermines the Plaintiff's claim of full ownership. These

issues are significant because in a rei vindicatio action, partial or unclear ownership cannot support a claim for recovery of the corpus.

The second requirement is the identification of the corpus. The Plaintiff relied on plans P2 and P3 to show the land's boundaries and extent. However, the lands were never surveyed or superimposed on the ground by the court. The Plaintiff failed to establish whether the two parcels adjoined each other or the Defendant's land and the deeds themselves lacked sufficient description to precisely identify the property. Without clear identification, the property is legally unascertainable, which is fatal to a claim in a rei vindicatio action. Ownership of non-identifiable land cannot be vindicated.

Possession and control are also relevant. The Plaintiff testified to cutting clay on the land until 1993. However, corroborating evidence confirms clay was extracted only until 1975. From 1975 onwards, the only evidence of possession comes from the Plaintiff himself, consisting of occasional visits. Continuous and exclusive possession, necessary to support ownership claims, is therefore lacking. The 1st Defendant and witnesses testified that the Defendant occupied parts of the land and cultivated coconut trees. These facts further weaken the Plaintiff's claim to having exercised factual control over the entirety of the corpus.

The Civil Appellate High Court noted the absence of signatures by all co-owners, missing certified deeds, incomplete transfers and lack of clear identification of the land. Its conclusion that the Plaintiff failed to prove title and identity of the corpus is thus supported by the law and evidence. The Learned District Judge may have viewed the evidence more leniently, but upon proper analysis, the gaps in title and identification were legally significant.

Sri Lankan authorities consistently emphasise that identification of the land is indispensable in a **rei vindicatio** action. In ***Peeris v. Savunhamy (1951) 54 NLR 207***, it was held that a Plaintiff must not only prove dominium over the land but also its boundaries by evidence admissible in law. In ***Hettiarachchi v. Gunapala [2008] 2 ALR 70 at 79***, the Court held that if the Plaintiff fails to identify the land on the ground, his action must fail. **Marsoof, J., in Latheef v. Mansoor [2010] 2 Sri LR 333 at 378**, explained in greater detail that:

*"The identity of the subject matter is of paramount importance in a rei vindicatio action because the object of such an action is to determine ownership of the property, which objective cannot be achieved without the property being clearly identified. Where the property sought to be vindicated consists of land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method. It is obvious that ownership cannot be ascribed without clear identification of the property that is subjected to such ownership and furthermore, the ultimate objective of a person seeking to vindicate immovable property by obtaining a writ of execution in terms of Section 323 of the Civil Procedure Code will be frustrated if the fiscal to whom the writ is addressed cannot clearly identify the property by reference to the decree for the purpose of giving effect to it. It is therefore essential in a vindictory action, as much as in a partition action, for the corpus to be identified with precision."*

It is also important to note the principle highlighted by **Professor G.L. Peiris** in ***Law of Property in Sri Lanka, Vol I, at page 304***: "It must be emphasized, however, that the observations in these cases to the effect that the plaintiff's title must be strictly proved in a *rei vindicatio*, cannot be

*accepted as containing the implication that a standard of exceptional stringency applies in this context. An extremely exacting standard is insisted upon in certain categories of action such as partition actions. ... It is clear that a standard characterized by this degree of severity does not apply to the proof of a plaintiff's title in a rei vindicatory action."* This principle clarifies that, while the Plaintiff must establish title and identify the corpus, the law does not require the exceptionally stringent proof demanded in partition actions.

While the Plaintiff is not required to meet an impossible or excessively strict standard, he must still establish both ownership and the identity of the property. In this case, the Plaintiff failed to do so. The chain of title is incomplete, some deeds were not executed by all co-owners and the land was not clearly identified on the ground. Possession was intermittent and limited and independent evidence confirmed that the Defendant occupied and used the land.

It is also settled that undivided or partial ownership cannot support a rei vindicatio claim. In ***De Silva v. Goonetilleke [1960] 32 NLR 217 at 219***, a Full Bench held that "*in a rei vindicatio Action, The authorities unite in holding that plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie.*" Similarly, in ***Wanigarathne v. Juwanis Appuhamy [1962] 65 NLR 167***, Justice Herat observed that "*In an action rei vindicatio the plaintiff must prove and establish his title. He cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established.*"

Furthermore, in ***Karunadasa v. Abdul Hameed [1958] 60 NLR 352***, Sansoni J. held that "*In a rei vindication action it is highly dangerous to adjudicate on an issue of prescription without first going into and examining*

*the documentary title of the parties.”* More recently, in ***Ballantuda Achchige Don Wasantha v. Morawakage Premawathie and Others [SC/Appeal/176/2014] decided on 17.05.2021***, Justice Mahinda Samayawardhena noted that “*the stringent proof of chain of title, which is the norm in a partition action to prove the pedigree, is not required in a rei vindicatio action*”, but the plaintiff must still show clear ownership over the specific property claimed.

These authorities reinforce that in a rei vindicatio action, partial, undivided, or conditional ownership is insufficient to vindicate the corpus and that ownership must be clearly traced and supported by admissible evidence of both title and identification. In the present case, the Plaintiff’s chain of title is incomplete, deeds were not signed by all co-owners and the property was not properly identified on the ground, confirming that the Civil Appellate High Court’s findings are legally sound.

In conclusion, the Appellant did not discharge the burden of proof required to establish full ownership or clearly identify the corpus. The deeds show undivided ownership, the land is not sufficiently identified and possession was not continuous or exclusive. The Civil Appellate High Court therefore correctly held that the Plaintiff failed to prove title and identity of the corpus.

**(2) Whether the Civil Appellate High Court Erred in Law and in Fact in Holding that the District Court Judgment Was Untenable and Devoid of Facts:-**

The second question of law pertains to whether the Civil Appellate High Court misdirected itself, both in law and in fact, by holding that the judgment of the Learned District Court Judge was untenable and devoid

of facts. This question requires an examination of the proper scope of appellate review, particularly the extent to which an appellate court may interfere with findings of fact made by a trial court. It engages the principles governing the evaluation of evidence, the assessment of credibility and the proper application of the law, including the doctrines of *onus probandi* and prescriptive possession. The inquiry involves determining whether the High Court erred in substituting its view for that of the trial court, or whether its conclusion that the District Court judgment was legally and factually unsustainable falls within the bounds of legitimate appellate scrutiny.

The High Court considered whether the District Court had properly applied the law relating to proof of ownership, chain of title and possession. The question was whether the District Court had evaluated the plaintiff's chain of title deeds in conjunction with evidence of possession and whether it had adequately addressed uncertainties regarding the identification and demarcation of the land in dispute. The High Court observed that the trial court relied heavily on documentary evidence of title without sufficiently considering the elements of continuous and adverse possession, as recognized under the law relating to prescriptive rights and *onus of proof*.

Furthermore, the High Court evaluated the District Court's assessment of the identification of the corpus, that is, the specific lands claimed. It found that the trial court did not resolve material ambiguities concerning the boundaries and extent of the land parcels depicted in the submitted plans (**P2 and P3**), or their relation to the land in possession of the Respondents. The High Court held that these uncertainties rendered the District Court's decree vulnerable to challenge, as the law requires that a plaintiff seeking

a declaration of title must demonstrate not only ownership but also the ability to identify the specific subject matter with certainty.

The High Court's review was guided by the established principle that a trial court's judgment is not to be overturned lightly; however, where the evidence before the trial court is inconsistent, incomplete, or fails to establish ownership on a balance of probabilities, an appellate court may intervene to correct a legal error or a manifest misapprehension of facts. The Civil Appellate High Court concluded that the District Court had failed to apply these legal standards appropriately and that its judgment did not adequately address critical issues, such as the continuity of possession, identification of the land and the chain of title. Accordingly, in reviewing whether the High Court misdirected itself, it is evident that its intervention falls squarely within the recognized powers of appellate review. The High Court's finding that the District Court judgment was untenable and devoid of sufficient factual foundation does not constitute misdirection. Rather, it demonstrates adherence to the legal principles governing proof of title, possession and identification of land in civil disputes, ensuring that the decree is grounded in a proper assessment of law and fact.

### **(3)Burden of Proof under Sections 101 and 103 of the Evidence Ordinance:-**

The third question of law requires a careful examination of whether the High Court misapplied the statutory provisions relating to the burden of proof. **Sections 101 and 103 of the Evidence Ordinance** establish that a party asserting a fact must prove its existence and the onus lies on the person legally bound to establish that fact. In the context of a rei vindicatio action, the plaintiff must first prove ownership and identify the corpus of the property claimed, while the defendant is only required to prove

prescriptive or adverse possession once the plaintiff has discharged this threshold burden.

In the present case, as mentioned before, the Appellant relied heavily on a chain of title deeds, including P.01, P.02, P.03, P.04, P.06 and P.08, to establish ownership of the disputed lands. However, several of these deeds were incomplete or produced as photocopies, with certified copies never tendered. Deed No. 1372 (P.08) was produced only in cross-examination and Deed No. 1395 (P.06) was conditional and did not clearly convey the 1 1/2-acre land purportedly owned by N. S. Don Joseph Aloysius (P.04). These defects created gaps in the chain of title, rendering the Appellant's claim uncertain and incomplete. Consequently, the initial burden to prove ownership and identify the corpus was not fully discharged.

The Appellant claimed that the original plaintiff was in possession of the land from 1975 to 1993. However, this claim was supported only by his own evidence and the testimony of Kuruwitage Don Rathnasekera (PW 2), a former labourer and a lorry driver, who stated that he worked at the Ambakale tile mill and took part in clay excavation activities only during the time between 1965 and 1970 (extending at most up to 1975).

Furthermore, the Respondent claims prescriptive rights for more than 30 years even before the Appellant occupying the land.

As emphasised in **Bank of Ceylon v. Anura Gamage (SC Appeal 39/2014, 04.07.2023)**, "*The burden of proof in a rei vindicatio action is overwhelmingly shrouded in misconceptions and misconstructions. In order to succeed in a rei vindicatio action, first and foremost, the plaintiff shall prove his ownership to the property. If he fails to prove it, his action shall fail. This principle is based on the Latin maxim 'onus probandi incumbit ei*

*qui agit*', which means, the burden of proof lies with the person who brings the action. Section 101 of the Evidence Ordinance is also to a similar effect."

This principle confirms that until the Appellant established both legal ownership and the precise identification of the land, the Respondents were not obliged to prove any claim of adverse possession. Furthermore, as held in ***In Mansil v. Devaya(1985) 2 Sri LR 46, G.P.S. De Silva J. (later C.J.)*** stated, "*In a rei vindicatio action, on the other hand, ownership is of the essence of the action; the action is founded on ownership.*" This position was reinforced by **Professor George Wille in Wille's Principles of South African Law (9th Ed., 2007, p. 539)**, who noted as follows:

*"To succeed with the rei vindicatio, the owner must prove on a balance of probabilities, first, his or her ownership in the property. If a movable is sought to be recovered, the owner must rebut the presumption that the possessor of the movable is the owner thereof. In the case of immovables, it is sufficient as a rule to show that title in the land is registered in his or her name. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed. Money, in the form of coins and banknotes, is not easily identifiable and thus not easily vindicable. Thirdly, the defendant must be in possession or detention of the thing at the moment the action is instituted. The rationale is to ensure that the defendant is in a position to comply with an order for restoration."*

In applying these principles, it is evident that the Appellant failed to discharge the initial onus imposed by **sections 101 and 103**. The incomplete deeds, uncertified plans and lack of independent corroboration for possession after 1975 meant that ownership and identification of the corpus were not satisfactorily established. The High Court correctly

observed that the District Court erred in accepting this evidence as sufficient to discharge the Appellant's onus. Consequently, the High Court's conclusion that the District Court misapplied the law regarding the burden of proof is legally sound and consistent with the authorities cited above.

Accordingly, the Court finds that the Civil Appellate High Court did not err in law in its assessment of the burden of proof under sections 101 and 103 of the Evidence Ordinance and its reasoning is consistent with established legal principles governing rei vindicatio actions.

In these circumstances, the Appellant has failed to prove title to the land and to establish the identity of the corpus. The Respondent, on the other hand, has claimed prescriptive rights over the said land. It is evident that the Respondent has claimed prescriptive rights for nearly 30 years, even prior to the transfer of the deed to the Appellant (since the inception of the original owner of the land).

In view of the foregoing analysis, it is evident that the Civil Appellate High Court has correctly addressed the questions of law raised in this appeal. Accordingly, the judgment of the Civil Appellate High Court is affirmed.

The questions of law on which leave to appeal was granted are answered in the negative and dismiss the appeal with costs.

**JUDGE OF THE SUPREME COURT**

**S.Thurairaja PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Achala Wengappuli, J.**

I agree.

**JUDGE OF THE SUPREME COURT**