

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

In the matter of an Application for Leave
to Appeal in terms of Section 5C of the
High Court of the Provinces (Special
Provisions) (Amendment) Act No. 54 of
2006 read with Article 128 of the
Constitution

SC Appeal No. 191/2025
SC/HCCA/LA No. 211/2024
Kalutara Civil Appellate High Court Case
No: WP/HCCA/KAL/62A/2021 (F)
Horana DC No. 9778/L

Hewa Mahawattage Dona Sandya
Harshani Karunarathne
No. 34, Gothami Road,
2nd Lane,
Colombo 08

PLAINTIFF

Vs.

Hewa Mahawattage Dona Manori
Jeewani Karunarathne
No. 55,
Sri Somananda Mawatha,
Horana

DEFENDANT

AND BETWEEN

Hewa Mahawattage Dona Sandya
Harshani Karunarathne
No. 34, Gothami Road,
2nd Lane,

Colombo 08

PLAINTIFF-APPELLANT

Vs.

Hewa Mahawattage Dona Manori
Jeewani Karunarathne
No. 55,
Sri Somananda Mawatha,
Horana

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Hewa Mahawattage Dona Sandya
Harshani Karunarathne
No. 34, Gothami Road,
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PLAINTIFF-APPELLANT-
APPELLANT

Vs.

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Jeewani Karunarathne
No. 55,
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Horana

DEFENDANT-RESPONDENT-
RESPONDENT

In the matter of an Application for Leave to Appeal in terms of Section 5C of the high Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006 read with Article 128 of the Constitution.

SC APPEAL No: 192/2025

SC/HCCA/LA No. 210/2024

Kalutara Civil Appellate High Court No.

WP/HCCA/KAL/62/2021(F)

Horana District court: 9778/L

Hewa Mahawattage Dona Sandya
Harshani Karunaratne
No. 34, Gothami Road,
02nd Lane, Colombo 08

PLAINTIFF

Vs.

Hewa Mahawattage Dona Manori
Jeewani Karunaratne
No. 55, Sri Somananda Mawatha,
Horana.

DEFENDANTS

AND BETWEEN

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PLAINTIFF-RESPONDENT-
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Vs.

Hewa Mahawattage Dona Manori
Jeewani Karunaratne
No. 55, Sri Somananda Mawatha,
Horana.

DEFENDANT-APPELLANT-
RESPONDENT

Before: **Justice Yasantha Kodagoda, PC**
Justice A.L. Shiran Gooneratne
Justice K. Priyantha Fernando

Counsel: Kamal Suneth Perera instructed by P.S.A Fernando for the
Plaintiff-Respondent-Petitioner

Varuna De Saram instructed by Udara Perera for the
Defendant-Appellant-Respondent

Argued on: 23/09/2025

Decided on: 05/12/2025

A.L. Shiran Gooneratne J.

Factual Background

By Plaintiff dated 12/3/2017, the Plaintiff–Appellant-Appellant instituted Case No. 9778/L in the District Court of Horana against the Defendant–Respondent-Respondent, seeking, *inter alia*, a declaration of title to the land described in the schedule to the Plaintiff, ejectment of the Defendant from the said land, and damages.

In paragraphs 3, 4, and 5 of the Plaintiff, the Plaintiff avers that by Deed of Transfer No. 3354 dated 17/7/1961, her mother, P. Amarawathi Gunerasekara, became the lawful owner of Lot D, an extent of oA oR 12.13P, as depicted in Plan No. 216 dated 12/08/1950, prepared by J. S. Rodrigo, Licensed Surveyor. The Plaintiff further states that by Deed of Gift No. 3467 dated 05/09/2003, the said P. Amarawathi Gunerasekara became the lawful owner of Lot C, containing an extent of oA oR 39P, depicted in Plan No. 65 dated 30/7/1919, prepared by Lucus de Mel, Licensed Surveyor, comprising a house of approximately 55 square feet, both being portions of the larger land known as *Udawatta*.

The Plaintiff further avers that by Deed of deed of partition no.3909, her mother also became the lawful owner of Lot C2, an extent of oA oR 6P, depicted in Plan No. 4067 dated 18/02/2006, prepared by B. A. P. Jayasooriya, Licensed Surveyor, being a portion of the larger land known as *Kahatagahawatta*, more fully described in the Schedule to the Plaintiff.

In paragraph 6 of the Plaintiff, the Plaintiff claims that the lands described in paragraphs 3, 4, and 5 were subsequently amalgamated and subdivided into four lots, as depicted in Plan No. 4069 prepared by B.A.P. Jayasuriya, Liensed Surveyor, wherein Lot 2 depicts the land and premises presently in dispute.

The Plaintiff further states that on 9/11/2007, by Deed of Gift No. 4016, marked P4, the said P. Amarawathi Gunerasekara gifted to her Lot 2, an extent of oA oR 24P, depicted in Plan No. 4069 prepared by B.A.P. Jayasuriya, and was permanently residing in the adjoining house. The Plaintiff alleges that the Defendant is presently in forcible and unlawful occupation of the said land and premises.

The Defendant, by Answer dated 09/02/2018, claimed that before the demise of her mother, P. Amarawathi Gunerasekara, and thereafter, continued to be in possession of the said premises, that she is completely unaware of the said Deed of Gift No. 4016. The Defendant prayed for a dismissal of the Plaintiff.

At the conclusion of the trial, the learned District Judge by Judgment dated 12/11/2021, decided in favour of the Plaintiff, however, rejected the claim for damages.

Being aggrieved by the said Judgment, the Plaintiff and the Defendant filed two separate actions in the Civil Appeal High Court of the Western Province holden in Kalutara, (“the Appellate Court”), challenging the Judgment dated 12/11/2021, delivered by the District Court of Horana.

After hearing and considering the submissions of both parties, the Appellate Court, by two separate Judgments delivered on 29/04/2024, allowed the appeal filed by the Defendant-Appellant and dismissed the claim for damages in the appeal filed by the Plaintiff-Appellant. Being aggrieved by the two separate Judgments delivered by the Appellate Court dated 29/04/2024, the Plaintiff, as Plaintiff–Respondent–Petitioner and as Plaintiff–Appellant–Petitioner (hereinafter sometimes known as the Plaintiff-Appellant), filed two separate applications bearing SC/Appeal/No.192/2025 and SC/Appeal/No. 191/2025, respectively, before this Court.

When the two actions, SC/Appeal/No. 192/2025 and SC/Appeal/No. 191/2025, were taken up for argument on 23/09/2025, the respective parties agreed that a single Judgment be delivered in both matters. On a consideration of submissions

made by both parties, the Court decided to grant leave to appeal on the following questions of law.

Did the Civil Appeal High Court err in law by holding that the deed “P7” has not been proved?

Did the Civil Appellate High Court fail to observe that the Plaintiff is entitled for damages as prayed for in the Plaintiff?

Analysis

The Plaintiff, in her testimony before the trial court, produced Deed of Gift No. 4016, the deed by which the mother of the plaintiff has gifted the subject matter of this action, marked subject to proof as P7. The document was marked subject to proof by the Defendant at the time of its production.

The law relating to the proof of documents has been laid down in the Civil Procedure Code (Amendment) Act, No. 17 of 2022. Section 2 of this Act introduces section 154A to be immediately inserted after section 154 of the principal enactment, which provides that when a deed or any document required by law to be attested is tendered in evidence, it shall be admissible without requiring formal proof, unless its execution or genuineness is impeached in the pleadings and raised as an issue, or the court otherwise requires proof.

The transitional provision of the amendment act provides an exception to the general rule in Section 154A as follows.

- “3. Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act –*
- a. (i) if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence;*

or

*(ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence **but not objected at the close of a case when such document is read in evidence,***

*the court **shall admit** such deed or document as evidence without requiring further proof;” (emphasis added)*

Upon examination of the record, I observe that while the document marked P7 was objected to at the time it was tendered, no objection was raised at the stage of closing the Plaintiff’s case. Furthermore, on the date when the Plaintiff closed her case (vide page 149 of the appeal brief), as well as on the subsequent date when proceedings were amended (vide page 151 of the appeal brief), at no stage prior to the commencement of the Defendant’s case, the documents in question were read in evidence.

In practice, it was customary for the documents that had been marked during the trial to be formally “read in evidence” at the close of a party’s case. This was to confirm that such documents were to be treated as part of the record. However, this was not a statutory requirement of the Civil Procedure Code, it was a matter of *cursus curiae*.

In **Sri Lanka Ports Authority and Another v. Jugolinija – Boal East [1981] 1 SLR 18**, Samarakoon C.J. observed as follows:

“If no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the cursus curiae of the original civil courts.”

The facts of this case do not fall within the literal wording of Section 3(a)(ii) of the Amendment Act because the document in question was not “read in evidence” at the close of the case.

Transitional provisions are enacted to aid the courts to move from one statutory regime to another. As discussed in '***Understanding Common Law Legislation***' (2001) by F.A.R. Bennion

"Where an Act contains substantive, amending or repealing enactments, it should also include transitional provisions which regulate the coming into operation of those enactments and where necessary modify their effect during the period of transition. If the drafter has forgotten to include such provisions expressly, the court is required to draw such inferences as to the transitional arrangements as, in the light of the applicable interpretative criteria, it considers that Parliament should be taken to have intended."

The Amendment Act of 2022 created a shift in the procedural law relating to the proof of attested documents. The Legislature has departed from the previous evidentiary standard of requiring formal proof in every instance, to presuming the authenticity unless the execution or genuineness of the document is specifically challenged in the pleadings.

As held in ***Thennakoon Mudiyanselage Kusalanthi vs. Liyanage Don Dharmasena and Others [SC Appeal No. 53/2014, decided on 07.11.2022]***

"It is observable that this amendment to the Civil Procedure Code, has directly impacted upon the principles of law which are contained in the earlier mentioned judgments. The amendment seems to have given statutory recognition to the cursus curiae of original courts pertaining to the production and proof of documents such as deeds required by law to be attested. When legislative provisions are inconsistent with legal principles contained in previous judicial precedent, courts are obliged to apply subsequent legislative provisions which may have impliedly repealed legal principles contained in such previous judicial precedent. That is a fundamental legal principle recognized in common law jurisdictions including Sri Lanka."

This has been affirmed in ***K. Dona Nimalawathie and Others vs. P. H. Dayananda, SC Appeal No. 49/2020, decided on 22.05.2025***

“The Act No. 17 of 2022 has specifically stated that the above provision of law shall apply to the appeals pending on the date of coming into operation of that Act. Moreover, it has stated that it shall apply notwithstanding anything contained in the provisions of the Evidence Ordinance. Therefore, although there is a reference to Section 68 of the Evidence Ordinance in the first two questions of law, Section 154A (3) (a) (ii) of the Civil Procedure Code as amended by the Act No. 17 of 2022 shall apply to this appeal.”

The purpose of this amendment is to ensure that focus of the court is directed to matters that are genuinely in dispute and to prevent the courts spending excessive amount of time on technical proof where no real controversy exists.

It is also evident that at the time the amendment was introduced, Parliament was mindful that a considerable number of actions and appeals were already pending before the Courts. These proceedings had been conducted under the earlier procedural law, wherein the practice of objecting to documents was developed through *cursus curiae* and judicial precedent.

Without the implementation of a transitional mechanism, this new procedure under Section 154A could not have been applied uniformly to those cases without giving rise to inconsistency. Therefore, the Legislature has enacted Section 3 of the Amendment Act to provide a proper transition from the former practice to the new statutory regime.

Thus, Section 3 gives immediate effect to the intention of the legislature contained in Section 154A and aids the litigants to derive the benefits of its purpose from the date of commencement rather than being delayed until the final disposal of all pre-existing actions.

The Defendant in the present case has failed to object to the documents at the end of the trial, and the Plaintiff has failed to read them as evidence at the close of his case. On a purposive construction of Section 3, it is the absence of an objection at closing, as opposed to the formality of reading, that attracts the statutory consequences. Accordingly, P7, having been challenged at the time of production

and thereafter left unchallenged at the close of the Plaintiff's case, must be treated as duly admitted in evidence.

On the question of damages, both the learned District Judge and the Appellate Court have concurrently found that the Plaintiff failed to adduce either oral or documentary evidence establishing the loss alleged to have been sustained. In the absence of any material demonstrating error in those findings, I see no basis upon which this Court should interfere.

Accordingly, I answer Question of Law No. 1 in the affirmative and Question of Law No. 2 in the negative.

For the foregoing reasons, the Judgment of the Civil Appellate High Court of Kalutara in SC/Appeal/No.192/2025 is set aside, and the Judgment in the Civil Appellate High Court of Kalutara in SC/Appeal/No. 191/2025 relating to the damages claim is affirmed for the reasons set out above.

The parties shall bear their own costs.

Judge of the Supreme Court

Yasantha Kodagoda, PC, J.

I agree

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree

Judge of the Supreme Court