

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

Mapalagama Acharige Jane Nona,  
Dikhena, Amugoda.

Plaintiff

**SC/APPEAL/105/2015**

**SP/HCCA/GA/0063 B/2002(F)**

**DC ALPITITYA 1668/P**

Vs.

1. Kanthi Gunaratne,  
Dikhena, Amugoda.
2. Walawedurage Eladin Wimalasiri,  
Dikhena, Amugoda.
- 2A. Walawedurage Sunil Wijesuriya.
3. Walawedurage Champa Shyamini  
Wimalasiri,  
“Sisila”, Amugoda.
4. Suduwadewa Ariyaratne alias  
Dissanayake Ariyaratna,  
“Sisira” Dikhena, Amugoda.

Defendants

AND NOW

4. Suduwadewa Ariyaratne alias  
Dissanayake Ariyaratna,  
“Sisira” Dikhena, Amugoda.

4<sup>th</sup> Defendant-Appellant

Vs.

Mapalagama Acharige Jane Nona,  
Dikhena, Amugoda.

Plaintiff-Respondent

1. Kanthi Gunaratne,  
Dikhena, Amugoda.
2. Walawedurage Eladin Wimalasiri,  
Dikhena, Amugoda.
- 2A. Walawedurage Sunil Wijesuriya.
3. Walawedurage Champa Shyamini  
Wimalasiri,  
“Sisila”, Amugoda.

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondents

AND NOW BETWEEN

Suduwadewa Ariyaratne alias  
Dissanayake Ariyaratna,  
“Sisira”, Dikhena,  
Amugoda.

4<sup>th</sup> Defendant-Appellant-Appellant

Vs.

Mapalagama Acharige Jane Nona,  
Dikhena,  
Amugoda.

Plaintiff-Respondent-Respondent

- 1a. Thenuwara Acharige Gunaseeli
  - 1b. Thenuwara Acharige Thungeratne
  - 1c. Thenuwara Acharige Chandrani
  - 1d. Thenuwara Acharige Piyathilake
  - 1e. Thenuwara Acharige Nihal Thenuwara
- Substituted Plaintiff-Respondent-  
Respondents

1. Kanthi Gunaratne,  
Dikhena, Amugoda.

2. Walawedurage Eladin Wimalasiri,  
Dikhena, Amugoda.

2A. Walawedurage Sunil Wijesuriya.

3. Walawedurage Champa Shyamini  
Wimalasiri,  
“Sisila”, Amugoda.

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondent-  
Respondents

Before: Hon. Justice S. Thurairaja, P.C.  
Hon. Justice Kumudini Wickremasinghe  
Hon. Justice Mahinda Samayawardhena

Counsel: Dr. Sunil Abeyratne for the 4<sup>th</sup> Defendant-Appellant-  
Appellant.

Dr. Sunil Cooray with Ms. Sudarshani Cooray for the  
Substituted Plaintiff-Respondent-Respondent.

Argued on: 12.01.2026

Written submissions:

By the Plaintiff-Respondent-Respondent on 25.07.2024.

By the 4<sup>th</sup> Defendant-Appellant-Appellant on 21.01.2026.

Decided on: 13.02.2026

### **Samayawardhena, J.**

The plaintiff instituted this action naming three defendants, seeking partition of the land known as *Tukkiniyagodawatta*, in extent of one acre, as depicted in Surveyor General's Plan No. 185141 marked X2, between the plaintiff and the 3<sup>rd</sup> defendant. Preliminary Plan No. 600 marked X was prepared by superimposition of Plan X2. The 4<sup>th</sup> defendant, who claimed Lot 2 of the Preliminary Plan, was subsequently added as a party. He filed a statement of claim seeking the exclusion of Lot 2, in extent of 5.25 perches, on the basis of prescriptive possession.

After trial, the District Court entered judgment partitioning the entire land depicted in the Preliminary Plan, including Lot 2, among the plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, and declined to exclude Lot 2 from the corpus. Being dissatisfied with that judgment, the 4<sup>th</sup> defendant preferred an appeal to the High Court, which was dismissed. This appeal, with leave obtained, is against the judgment of the High Court. Leave to appeal was granted on the question whether the District Court and the High Court erred in law and in fact in refusing to exclude Lot 2 from the corpus in favour of the 4<sup>th</sup> defendant.

The land claimed by the 4<sup>th</sup> defendant, namely *Pattiyakandakaratura*, lies to the north of the land sought to be partitioned. The contention of the 4<sup>th</sup> defendant is that Lot B, which forms part of the land depicted in Plan X2 and of *Tukkiniyagodawatta* as shown in the Preliminary Plan, had been possessed by him as part of his land and thereby acquired prescriptive title to that portion. This contention was rejected by both the District Court and the High Court.

According to the statement of claim of the 4<sup>th</sup> defendant, he purchased *Pattiyakandakaratura* by Deed No. 1034 dated 06.03.1987. The present action was instituted on 01.09.1988. Having regard to this time frame, the 4<sup>th</sup> defendant could not, on the basis of his own possession, have acquired prescriptive title unless he was able to establish that his predecessors in title had also possessed that portion in the manner set out by section 3 of the Prescription Ordinance. However, no such acceptable evidence was led before the District Court.

The 4<sup>th</sup> defendant sought to trace his title to *Pattiyakandakaratura* to a decree entered in another case, namely Case No. 613/L. However, he failed to produce the decree, the survey Plan prepared in that case, or even his own title deed, for the Court to understand with certainty the southern boundary of his land.

The 4<sup>th</sup> defendant placed heavy reliance on a purported live fence between Lots A and B of the Preliminary Plan. According to the evidence of the

surveyor, this live fence could not be considered an old boundary fence. His evidence was that there were only a few trees, none of which were of considerable age. As correctly observed by the High Court, even the existence of a live fence between Lots A and B would not, by itself, establish that the 4<sup>th</sup> defendant had acquired prescriptive title to Lot B.

At the argument, learned Counsel for the 4<sup>th</sup> defendant submitted that the 4<sup>th</sup> defendant had used Lot B as a roadway to gain access to his land, *Pattiyakandakaratura*. This contention cannot be accepted, as the western boundary of the 4<sup>th</sup> defendant's land abuts the Alpitiya-Pitigala main road, providing him with direct access thereto.

In these circumstances, I see no basis to interfere with the judgment of the High Court. I accordingly answer the question of law on which leave to appeal was granted in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court