

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

In the matter of an application for  
Special Leave to Appeal under Article  
128(2) of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Harischandra Senarathne  
Bulathsinhala,  
No. 311, “Siri Medura”,  
Kotte Road,  
Nugegoda.

**Plaintiff-Petitioner-  
Respondent-Appellant**

**SC Appeal No: 09/2020  
SC (SPL) LA No. 259/2016  
CA (Rev) Application No. 1518/2006  
DC Colombo Case No. 5037/ZL**

**Vs.**

Piyasena Hapuarachchi (Deceased),  
No. 82, Rahula Road,  
Mulleriyawa New Town,  
Angoda.

**4<sup>th</sup> Respondent-Petitioner-  
Respondent**

Dinuka Malith Hapuarachchi,  
No. 92/A, Rahula Road,  
Mulleriyawa New Town,  
Angoda.

**Substituted 4<sup>th</sup> Respondent  
- Petitioner-Respondent**

1. Anthony Didacus Baldsing,  
No. 57,  
Kiththanpahuwa,  
Wellampitiya.

**Defendant-Respondent-  
Respondent**

2. Duruwaththage Swarnalatha Perera  
Baldsing,  
No. 34/3, N.P. Perera Mawatha,  
Mulleriyawa New Town,  
Angoda.

3. Patabendige Sriani Nelumkanthi  
Mohandiram,  
No. 120, Pansala Road,  
Mahabuthgamuwa,  
Angoda.

**2<sup>nd</sup> & 3<sup>rd</sup> Respondents-  
Respondents-Respondents**

**Before:**           **Justice A. L. Shiran Gooneratne**  
                         **Justice K. Priyantha Fernando**  
                         **Justice Sobhitha Rajakaruna**

**Counsel:**       Rohan Sahabandu, PC with Chathurika Elvitigala and S.  
                         Senanayake instructed by Sarath Welgamage for the  
                         **Plaintiff-Petitioner-Respondent-Appellant.**

Navin Marapana, PC Uchitha Wickremasinghe and Saumya  
Hettiarachchi instructed by Srimal Weerakkody for the **4<sup>th</sup>**  
**Respondent-Petitioner-Respondent.**

**Argued on:**     11/09/2025

**Decided on:**   17/10/2025

## **A. L. Shiran Gooneratne J.**

1. By Plaint dated 09.08.1985, the Plaintiff–Respondent–Appellant (hereinafter referred to as the “Plaintiff”) instituted action No. 5037/ZL in the District Court of Colombo against the Defendant–Respondent–Respondent (hereinafter referred to as the “Defendant”), seeking a declaration of title to the land known as *Poththekumbura alias Kosgahakumbura*, depicted in Plan No. 124 dated 17.02.1947 prepared by T. I. A. Anandappa, Licensed Surveyor, and more fully described in the schedule to the Plaint. The Plaintiff further prayed for the ejectment of the Defendant and all persons holding under him from the said land.
2. By Answer dated 12.03.1986, the Defendant denied the Plaintiff’s right and title to the land and instead claimed title to the allotment of land described in the schedule to the Answer. The Defendant accordingly prayed for the dismissal of the Plaintiff’s action.
3. Upon conclusion of trial, the learned District Judge, by Judgment dated 03.07.1990, dismissed the Plaintiff’s action. The Plaintiff thereafter preferred an Appeal to the Court of Appeal. By Judgment dated 21.06.2000, the Court of Appeal set aside the Judgment of the District Court and entered Judgment in favour of the Plaintiff as prayed for in the Plaint. An application for Special Leave to Appeal to this Court against the said Judgment was refused.
4. Consequent to the said Judgment, the Plaintiff sought execution of the decree. When the Fiscal proceeded to execute the writ, the 4<sup>th</sup> Respondent–Petitioner–Respondent, one Piyasena Hapuarachchi (hereinafter referred to as the “4<sup>th</sup> Respondent”), who was not made a Defendant in the original action instituted in the District Court, resisted and obstructed execution. Since the 4<sup>th</sup> Respondent resisted the Fiscal in the execution of the decree, the Plaintiff moved the District Court under Section 325 of the Civil

Procedure Code seeking the delivery of possession of the land described in the schedule to the Plaintiff.

5. At the inquiry under Section 325, the 4<sup>th</sup> Respondent filed a Statement of Objections, contending that he was in possession of a portion of the land under a title independent of the Judgment Debtor, and therefore not liable to ejectment. By Order dated 05.10.2006, the learned District Judge rejected the objection and placed the Plaintiff in possession of the decreed land.
6. Being dissatisfied with the said order, the 4<sup>th</sup> Respondent preferred a Revision application to the Court of Appeal. By Judgment dated 29.10.2016, the Court of Appeal set aside the Order of the District Judge and allowed the application of the 4<sup>th</sup> Respondent.
7. Aggrieved by the Judgment of the Court of Appeal, the Plaintiff invoked the jurisdiction of this Court by way of Leave to Appeal. By Order dated 27.01.2020, Special Leave to Appeal was granted on two questions of law.
8. At the hearing, the learned President's Counsel for the Plaintiff confined his submissions to the second question of law, namely:

***“Has the learned Judge of the Court of Appeal committed a grave error of law in setting aside the order of the learned District Judge, which included the order to evict the judgment debtor?”***

9. Section 325 of the Civil Procedure Code empowers the Court, upon obstruction to the execution of a decree, to inquire into the matter and determine whether such obstruction is occasioned by a person claiming under the judgment debtor, or by a person asserting an independent right. Where the obstruction is found to be by a person claiming under the judgment debtor, the Court is empowered to remove such obstruction and place the decree-holder in possession.

10. Section 325 (1) of the Civil Procedure Code reads thus;

*325. (1) Where in the execution of a decree for the possession of movable or immovable property the Fiscal is resisted or obstructed by the judgment-debtor or any other person, or where after the officer has delivered possession, the judgment-creditor is hindered or ousted by the judgment-debtor or any other person in taking complete and effectual possession thereof, and in the case of immovable property, where the judgment-creditor has been so hindered or ousted within a period of one year and one day, the judgment-creditor may at any time within one month from the date of such resistance or obstruction or hindrance or ouster, complain thereof to the court by a petition in which the judgment-debtor and the person, if any, resisting or obstructing or hindering or ousting shall be named respondents. The court shall thereupon serve a copy of such petition on the parties named therein as respondents and require such respondents to file objections, if any, within such time as they may be directed by court.*

11. The 4<sup>th</sup> Respondent, who had not been made a Defendant in the original action instituted in the District Court, objected to the application made under Section 325 of the Civil Procedure Code on the ground that he was in possession of a portion of the land under a title independent of the judgment debtor. The Plaintiff, however, contended that there was no statutory obligation to have the 4<sup>th</sup> Respondent joined as a party to the original action, as he was not in actual occupation at the time the cause of action arose.

12. At the inquiry, reliance was placed on the Surveyor's Report marked X7, pursuant to a commission dated 31.05.1987. The Report disclosed that the 4<sup>th</sup> Respondent was in possession of Lot 2 in Plan X9, as claimed by his sister, who had asserted possession at the time of the survey. It was admitted in evidence that the Plaintiff was aware of this fact but failed to add the 4<sup>th</sup> Respondent as a defendant. In the circumstances, it is

contended that the learned District Judge did not have adequate disclosure to consider the title or possession of the 4<sup>th</sup> Respondent.

13. Despite the disclosure made by the sister of the 4<sup>th</sup> Respondent before the Court Commissioner, the Plaintiff, in his Complaint dated 09.08.1985 filed in the District Court, named only A.D. Bolsing as the sole Defendant, and sought the ejectment of the said Defendant and all persons claiming under him from the entirety of the land OA OR 38.36P in extent. However, at the inquiry, the Plaintiff admitted that the 4<sup>th</sup> Respondent was in possession of Lot 2 depicted in Plan No. 641.
14. In the revision application, the 4<sup>th</sup> Respondent relied on the Report of Court Commissioner S. Rasappah, Licensed Surveyor, who, in Plan No. 641 clearly depicted Lot 1 as belonging to the Defendant A. D. Bolsing and Lot 2 as occupied by one Piyasena Hapuarachchi, the 4<sup>th</sup> Respondent. The 4<sup>th</sup> Respondent maintained that he possessed Lot 2 not under the judgment debtor but on an independent title, and therefore could not lawfully be ejected in execution.
15. The Court of Appeal observed that the 4<sup>th</sup> Respondent's entitlement was derived from Deed No. 263 dated 06.12.1920, and that the 4<sup>th</sup> Respondent had been in possession from 06.09.1987, acquiring prescriptive title to the land. The Survey Report corroborated that Lot 2 was in the possession of the 4<sup>th</sup> Respondent. The Court further noted that the learned District Judge had not considered the 4<sup>th</sup> Respondent's claim of title or possession.
16. It is thus evident that a direct conflict exists between the claims of the Plaintiff and the 4<sup>th</sup> Respondent concerning the land subject to execution. In such circumstances, it is observed that irreparable prejudice would be caused if the 4<sup>th</sup> Respondent was dispossessed on execution of the writ without adjudication of his independent claim.

17. Accordingly, we see no reason to interfere with the Judgment of the Court of Appeal. The second question of law, on which leave to appeal was granted, is answered in the negative.

18. For these reasons, the Judgment of the Court of Appeal dated 28.10.2016 is affirmed. This Appeal is dismissed. No order as to costs.

**Appeal dismissed.**

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree

**Judge of the Supreme Court**

**Sobhitha Rajakaruna, J.**

I agree

**Judge of the Supreme Court**