

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

In the matter of an application for leave to appeal against the judgment dated 08/11/2011 of the Civil Appeal High Court of Kurunegala in the case No. NWP/HCCA/KUR/120/2004(F)

01.Hitihamy Mudiyanselage Tilakaratna  
Banda  
Waraddana, Wellawa.

02.Hitihamy Mudiyanselage Punchiralage  
Ran Banda  
Waraddana, Wellawa.

**S.C. Appeal No. 105/2012**

**Plaintiffs**

**S.C.(HC) CALA Application**

**Vs.**

**No. 532/11**

**Civil Appeal, High Court of NWP**

01.Hitihamy Mudiyanselage Subarath

**Kurunegala Appeal No.**

Menike

**NWP/HCCA/KUR/120/2004(F)**

Rangama, Wellawa.

**DC Kurunegala Case No.**

02.Hitihamy Mudiyanselage Punchi Menike  
Hunupola.

**5094/L/96**

03.Hithihamy Mudiyanselage Sittamma

Basnayake

“Mawatte”, Deliwala, Rambukkana.

04.Hithihamy Mudiyanselage Pemawathi

Wickremaratne

No. 121, Municipal Road,

Matale

05.Alkegama Alahakoon Mudiyanselage  
Wimala Panamaldeniya Kaluhendiwela  
No.119, Wadakada, Pothuhera

**Defendants**

**And between**

01.Hitihamy Mudiyanselage Subarath  
Menike  
Rangama, Wellawa.

02.Hitihamy Mudiyanselage Punchi Menike  
Hunupola.

03.Hithihamy Mudiyanselage Sittamma  
Basnayake  
“Mawatte”, Deliwala, Rambukkana.

04.Hithihamy Mudiyanselage Pemawathi  
Wickremaratne  
No. 121, Municipal Road,  
Matale

**1<sup>st</sup> to 4<sup>th</sup> Defendants-Appellants**

**Vs.**

01.Hitihamy Mudiyanselage Tilakaratna  
Banda  
Waraddana, Wellawa.

02.Hitihamy Mudiyanselage Punchiralage  
Ran Banda  
Waraddana, Wellawa.

**Plaintiff-Respondents**

05.Alkegama Alahakoon Mudiyanselage  
Wimala Panamaldeniya Kaluhendiwela  
No.119, Wadakada, Pothuhera

**5<sup>th</sup> Defendant-Respondent**

**AND NOW BETWEEN**

01.Hitihamy Mudiyanselage Tilakaratna  
Banda  
Waraddana, Wellawa.

**1<sup>st</sup> Plaintiff-Respondent-**  
**Appellant**

02.Hitihamy Mudiyanselage Punchiralage  
Ran Banda (Deceased)  
Waraddana, Wallawa.

02(A). Jayasundara Mudiyanselage  
Podimenika (Deceased)  
Waraddana, Wellawa.

02(A)(1). Hitihamy Mudiyanselage  
Abeyratne Bandara  
Waraddana, Wellawa.

**Substituted 2<sup>nd</sup> Plaintiff-Respondent-**  
**Appellant**

**Vs.**

01.Hitihamy Mudiyanselage Subarath  
Menike  
Rangama, Wellava.

02.Hitihamy Mudiyanselage Punchi Menike  
Hunupola.

03.Hithihamy Mudiyanselage Sittamma  
Basnayake  
“Mawatte”, Deliwala, Rambukkana.

04.Hithihamy Mudiyanselage Pemawathi  
Wickremaratne  
No. 121, Municipal Road,  
Matale

**1-4 Defendant-Appellant-  
Respondents**

05.Alkegama Alahakoon Mudiyanselage  
Wimala Panamaldeniya Kuluhendiwela  
No.119, Wadakada, Pothuhera.

**5<sup>th</sup> Defendant-Respondent-  
Respondent**

**Before:** Hon. S. Thurairaja, PC, J.  
Hon. A.H.M.D. Nawaz, J.  
Hon. Janak De Silva, J.

**Counsel:** Chula Bandara with Lakmini Edirisinghe for the Plaintiff-Respondent-Appellants  
Lakshman Perera P.C. with Tharika Jinadasa for the 1<sup>st</sup> Defendant-Appellant-Respondent Instructed by Niluka Dissanayake

**Written Submissions:** 08.08.2012 and 30.08.2024 by the Plaintiff-Respondent-Appellant  
16.08.2012 and 12.08.2024 by the 1<sup>st</sup> Defendant-Appellant Respondent

**Argued on:** 26.07.2024

**Decided on:** 07.11.2025

**Janak De Silva, J.**

The 1<sup>st</sup> Plaintiff-Respondent-Appellant and Substituted 2<sup>nd</sup> Plaintiff-Respondent-Appellant (Plaintiffs) instituted this action against the 1<sup>st</sup> to 4<sup>th</sup> Defendants-Appellants-Respondents (Defendants), seeking a declaration that the Plaintiffs are the lawful owners of the land described in the schedule to the plaint, delivery of vacant possession thereof to the Plaintiffs and damages until possession is delivered.

The District Court entered judgment as prayed for by the Plaintiffs. The 1<sup>st</sup> to 4<sup>th</sup> Defendants appealed.

The Civil Appellate High Court allowed the appeal and set aside the judgment of the District Court. It was held that the Plaintiffs had failed to identify the corpus as required in a *rei vindicatio action*.

Leave to appeal has been granted on the following questions of law:

- (1) Did the Honorable Judges of the Civil Appeal High Court of Kurunegala err in law by coming to the conclusion that "the land in dispute has sufficiently been identified by the Plaintiff-Respondent-Respondents is based completely on an assumption which is not sustainable in law"?
- (2) Did the Honorable Judges of the Civil Appeal High Court of Kurunegala err in law by allowing the appeal on the basis that the corpus had not been properly identified?

In *Latheef v. Mansoor* [(2010) 2 Sri LR 333 at 378], Marsoof, J. held:

***"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..."* (emphasis added)

Thus, it is well established that to succeed in a *rei vindicatio* action, the owner must prove on a balance of probabilities, not only his or her ownership in the property, but also that the property exists and is clearly identifiable.

The learned President's Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Defendants submitted that the Plaintiffs had failed to establish the identity of the corpus and that the learned High Court Judges were correct in dismissing the Plaintiffs' action.

The learned President's Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Defendants submitted that whereas the land claimed by the Plaintiffs is identified as "Kongolle Hena", the Defendants claimed a portion of the land called "Batugollawatta".

I observe that on 19.03.1999, when admissions and issues were framed, the following admission was recorded:

"දෙපාර්ශවයේ ආරඩුලට සම්බන්ධ ඉඩම වේබර මානක තැන විසින් මැන සාදන ලද අංක 1247/කුරු දරණ පිහුරේ නිරුපනය කර ඇති බව පමණක් පිළි ගනී."

Moreover, on 05.01.2001, learned Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Defendants made the following admission:

"මෙම අවස්ථාවේදී 99.03.19 දින කර ඇති පිළිගැනීමට මූලික පිහුර අදාළ බවත්, එසින් අදහස් කරන්නේ ආරඩුලට අදාළව දෙපාර්ශවය අතර භෞතිකව මෙම පිහුරෙන් නිරුපනය වන බව පමණක් නීතිඥ ජයසේකර මහතා ද්‍රැව්‍ය සිටී."

Thus, it is clear that both parties have expressly admitted that the land in dispute is the land described in Plan No. 1247/කුරු made by A.B.M. Webber, which is the plan specifically described in the Second Schedule to the plaint.

According to Section 58 of the Evidence Ordinance:

*"No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*

*Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

In this case, the admission regarding the identification of the land in dispute was made at the beginning of the trial. Thus, it is admissible under Section 58 of the Evidence Ordinance, and there is no necessity to adduce further evidence to establish that fact.

Moreover, no attempt was made to withdraw the admission as to the identity of the corpus. In the absence of such an attempt, the admission by both parties on the identity of the corpus as the land identified in Plan No. 1247/കുർ of A.B.M. Webber, conclusively settles the issue on the identity of the corpus, and no further proof is necessary.

There are further reasons why the 1<sup>st</sup> to 4<sup>th</sup> Defendants could not have challenged the identity of the corpus.

In their answer dated 19.08.1998, 1<sup>st</sup> to 4<sup>th</sup> Defendants pleaded prescriptive title to the following land identified in the schedule to the answer:

#### ഇഹത കീ ഉപലേഖനയ്

"വയച്ച പലാട്ടേ കുരുക്കുള ദിസ്ത്രിക്കയേ വൈലി വില്ലേ ഹഫ്പസ്റ്റിലേ മഹഗല്ലോചി മേഖലാ കോർലേ വരദ്ദേശ പിളിവി എവ്വേണ്ടില്ലവെന്ന നമൈനി അക്കര ലിക്ക് (അ.1. റൂ.0 പറ.0) വികാല ദേപലാഡ മാറ്റി ഉത്തരവാദി - ശ്രീ .എം എക്സ്കുബംബാട അദ്ദെഹി ഉചിമും, നാഗേനഹിരാ - രജുംബാമി കോർലാഡ അദ്ദെഹി കുള്ളിര ദി, ദക്ഷാടി - വൈലാബേ കുള്ളിര ദി, ലജ്ജാഹിരാ - പ്രംബി റാലഗേ ഉചിമും ധന മാറ്റി തുല പിളിവി ദേപല ഹാ ലിയ തുല പിളിവി ഗഹക്കാല പലതുര ആഡി സിയലു ദേപല ദേപല വെ.

මෙම දේපල දැනට ඒ.ඩී.එම. වෙබර මානක නිලධාරී තුන විසින් ඔහුගේ වර්ෂ 1986.10.27 දින හා අංක 1247/කුරු දරන පිළුමේ දක්වා ඇති අතර එහි පිළුර ප්‍රකාරව එම දේපලට මායිම උතුරට-රන්හාම් කෝරාලට අයිතිව තිබේ දැනට මූත් බන්ධාට සහ රන්බන්ධාට අයිති කුමුරද, නැගෙනහිරට-බංධා කෝරාලට සහ තවත් අයට අයිතිව තිබේ දැනට එස්.ඩී.එම.බංධාට හා විකිර බංධාට අයිති කුමුරද, දකුණු බස්නාහිරට - ඩිජිරිබංධාට සහ තවත් අයට අයිතිව තිබේ දැනට එව්.එම් ප්‍රංචිරාලට අයිති ඉඩම, උතුරු බස්නාහිරට-කළු බන්ධාට සහ තවත් අයට අයිතිව තිබේ දැනට උක්කු බන්ධාට අයිති බවුගොල්ලේහේන දැනට වත්ත යන මායිම තුළ පිහිටි රුඩි තුනකුත් පර්වස් විසිහය( අ0 රු3 පර.26) විගාල හා එහි තුළ පිහිටි සියලුදේන් ඇතුළු දේපල වේ."

Accordingly, this expressly refers to the Plan No. 1247/කුරු made by A.B.M. Webber.

The corpus was identified in the plaint as follows:

#### ඉහත කී උපලේඛනය

"වයඹ පලාතේ කුරුණෑගල දිස්ත්‍රික්කයේ වැළඩවිල්ලි හත්පත්තුවේ මහගල්ලේඛ මෙගොඩ කෝරලේ වරද්දාන පිහිටි කෝන්ගොල්ලේ හේන දැනට වත්ත නමැති, උතුරට :රන්හාම් කෝරාල්ගේ ඉඩම කියා ඇතන් දැනට නිවැරදිව කළු බංධා සහ තවත් අයට අයත් බවුගොල්ලේහේන දැනට වත්තද, නැගෙනහිරට:රන්හාම් කෝරාල්ගේ කුමුරද, දකුණුව:කළුබංධාගේ බවුගොල්වත්ත දැනට නිවැරදිව බංධාකෝරාල සහ තවත් අයට අයත් කුමුරද, බස්නාහිරට: ඩිජිරිබංධා සහ තවත් අයට අයිති ඉඩමද, යන මෙකි මායිම තුළ පිහිටි කුරක්කන් සේරු තුනක වපසරිය ඇති ඒ 353/155 යටතේ ලියාපදිංචි කර ඇති ඉඩම සහ එහි තුළ පිහිටි ගහකොල පලතුරු යනාදි සියලු දේන් සමගි ද වේ.

#### ඉහත කී දෙවන උපලේඛනය

මෙම ඉඩම 1986.10.23 වෙනි දින ඒ.ඩී.එම් වෙබර මානක තුන විසින් මැත සාදන ලද අංක 1247 දරන පිළුමේ සඳහන් ඉහත කී වරද්දන පිහිටෙකෝන්ගොල්ලේ හේන නමැති උතුරට : කළුබන්ධා සහ තවත් අයට අයිතිව තිබේ දැනට උක්කුබංධාට අයිති බවුගොල්ලේ හේන දැනට වත්තද, නැගෙනහිරට:රන්හාම් කෝරාලට අයිතිව තිබේ දැනට මූත්බන්ධාට සහ රන්බන්ධාට අයිති කුමුරද, දකුණුව: බන්ධාකෝරාලට සහ තවත් අයට අයිතිව තිබේ දැනට එස්.ඩී.එම් බංධාට සහ විකිර බංධාට අයිති කුමුරද(බවුගොල්ලේ හේන දැනට කුමුර) බස්නාහිරට: ඩිජිරිබංධා සහ තවත් අයට අයිතිව

තිබේ දැනට එව්.එම් පුංචිරාලට අයිති ඉඩමදායන මෙකී මායිම් තුළ පිහිටි රුධි තුනයි පර්වස් විසිහයක් (අ.00.රු.03.පාර.26) විගාල ඉඩම වේ"

Thus, both parties sought to identify the land they are claiming by reference to Plan No. 1247/කරු prepared by A.B.M. Webber, which appears at page 209 of the Appeal brief marked as "X".

In these circumstances, the learned High Court judges made a grave error in law by seeking to revisit the question of the identity of the corpus.

Moreover, the 1<sup>st</sup> to 4<sup>th</sup> Defendants pleaded prescriptive title. A person who claims a prescriptive title must demonstrate possession over a specifically identified corpus; failure to do so renders such a claim untenable, as a prescription cannot operate over an uncertain or unidentified land.

Accordingly, when a party claims prescriptive title to a particular corpus, that party cannot thereafter contend that the corpus has not been properly identified. The rationale is that, in order to claim prescriptive title, the land must first be clearly and specifically identified, as only then can the claimant rely on undisturbed and uninterrupted possession to establish ownership by prescription. Therefore, in the present case, the 1<sup>st</sup> to 4<sup>th</sup> Defendants are estopped from asserting that the corpus has not been identified.

For all the foregoing reasons, I answer the two questions of law in the affirmative.

Accordingly, I set aside the judgment of the Civil Appeal High Court of Kurunegala dated 08.11.2011 and affirm the judgment of the learned District Judge of Kurunegala dated 20.09.2004.

The appeal is allowed with costs fixed at Rs. 75,000/=.

**JUDGE OF THE SUPREME COURT**

**S. Thurairaja, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**A.H.M.D. Nawaz, J.**

I agree.

**JUDGE OF THE SUPREME COURT**