

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

*In the matter of an Appeal against
a judgment of learned Judges of
the High Court of Civil Appellate
Sabaragamuwa Province (Holden
in Kegalle) dated 28-08-2020,
under and in terms of section 5(c)
of the High Court of the Provinces
(Special Provisions) Amendment
Act No. 54 of 2006 read with Article
128 of the Constitution of the
Democratic Socialist Republic Sri
Lanka.*

S.C. Appeal No:
135/2023

SC Case No:
SC/HCCA/LA/296/2020

Civil Appellate Case No:
SP/HCCA.84/18(F)

DC Case No:
DC/Kegalle/7342/L

Brahmana Arachchilage Dingiri
Amma *alias* Sumanawathi,
Nelundeniya, Maampita.

PLAINTIFF

Vs.

Kuruppu Arachchilage
Thilakarathne,
Nelundeniya, Maampita.

DEFENDANT

AND BETWEEN

Kuruppu Arachchilage
Thilakarathne
Nelundeniya, Maampita.

DEFENDANT-APPELLANT

Vs.

Brahmana Arachchilage Dingiri
Amma *alias* Sumanawathi
Nelundeniya, Maampita.

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

Kuruppu Arachchilage
Thilakarathne,
Nelundeniya, Maampita.

**DEFENDANT-APPELLANT-
APPELLANT**

Vs.

Brahmana Arachchilage Dingiri
Amma *alias* Sumanawathi
Nelundeniya, Maampita.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

Before

: Janak De Silva, J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

Counsel

: J.M. Wijebandara with Dimithri Pandiwita

instructed by Dushmanthi Porogama for the
Defendant-Appellant-Appellant.

: D. Jayasinghe instructed by Ganga Disanayake for
the Plaintiff-Respondent-Respondent.

Argued on : 09-07-2025

Written Submissions : 17-04-2024 (By the Plaintiff-Respondent-Respondent)

: 02-05-2024 (By the Defendant-Appellant-Appellant)

Decided on : 03-11-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the defendant-appellant-appellant (hereinafter referred to as the defendant) on the basis of being aggrieved of the judgment pronounced on 28-08-2020 by the learned Judges of the Provincial High Court of the Sabaragamuwa Province holden in Kegalle (hereinafter referred to as the High Court), while exercising its civil appellate jurisdiction.

From the impugned judgment the High Court has affirmed the judgment pronounced by the learned District Judge of Kegalle on 26-07-2018 in District Court of Kegalle Case No. 7342/L, which was a judgment pronounced in favour of the plaintiff in the said case.

When this matter was considered by this Court on 18-09-2023 for the purpose of granting leave to appeal from the impugned judgment, this Court granted leave on the questions of law as set out in paragraph 15(a), (b) and (h) of the petition dated 09-10-2020.

The said questions of law read as follows,

1. Has the High Court of Civil Appeal erred in law in applying the principle of estoppel against the defendant in the circumstances of this case?
2. Has the High Court of Civil Appeal erred in law by holding that the plaintiff could succeed without proving prayed licenseeship?
3. Has the High Court of Civil Appeal erred in law in coming to the conclusion that plaintiff has proved title to obtain relief prayed for in the plaint?

At the hearing of this appeal, this Court had the privilege of listening to the oral submissions of the learned Counsel for the defendant, and that of the learned Counsel for the plaintiff-respondent-respondent. This Court also had the opportunity to consider the written submissions tendered by the parties in relation to their respective contentions in deciding this appeal.

The facts that led to the judgment of the High Court can be summarized in the following manner.

The plaintiff-respondent-respondent (hereinafter referred to as the plaintiff) instituted an action before the District Court of Kegalle by her plaint dated 24-08-2006. The plaintiff has prayed for a declaration of title to the effect that she is the owner of the land morefully described in the schedule of the plaint and also for a declaration that the defendant's possession of the land is only as a licensee caretaker.

It has also been prayed for the ejectment of the defendant from the land, as well as for damages and other reliefs. The plaintiff has averred her title based on number of deeds as stated in her plaint.

The defendant in his answer has denied the title pleaded by the plaintiff and her claim that he is a licensee under her and her predecessors in title. The defendant has pleaded a separate title to the land mentioned in the plaint based on the deeds submitted by him, and also has claimed prescriptive title to the same.

At the trial, there had been no admissions between the parties and the case has proceeded to trial on 14 issues settled by the plaintiff, and the 15th to 25th issue settled by the defendant.

The plaintiff has raised her 14th issue to identify the subject matter of the action as the land shown in plan No. 2187 dated 22-11-2007, prepared for the purposes of the action by the licensed surveyor K. Wijeratne.

After trial, pronouncing his judgment on 26-07-2018, the learned District Judge has determined that although this is an action for a declaration of title, this is also an action to eject a licensee from the land mentioned in the plaint.

Having considered the corpus of the action, the learned District Judge has determined that it is the land depicted in the earlier mentioned plan, which has been marked and produced as 'X' for the purposes of the action.

The learned District Judge, having considered the title to the land as pleaded by the plaintiff and also the contesting title by the defendant, has determined that the plaintiff has proved her paper title to the land.

Having considered the prescriptive claim to the land preferred by the defendant, it has been determined that the defendant has failed to prove the prescriptive title as claimed. The learned District Judge has accepted the evidence by the plaintiff that the nexus between the defendant and his claimed predecessors and that of the plaintiff and her predecessors was that of a licensor and a licensee.

Having considered the evidence in its totality as he should have, the learned District Judge has decided that the plaintiff has proved her case in the balance of probability and had granted reliefs as sought by her.

After having considered the appeal preferred by the defendant challenging the said judgment of the learned District Judge, the High Court has pronounced the impugned judgment on 28-08-2020. It has been determined that although the learned District Judge has concluded that the action before the District Court was primarily for the purpose of ejecting a licensee, it was not. It has been decided that the action was in fact a *rei vindicatio* action.

The learned Judges of the High Court have agreed that the plaintiff has proved her title to the land and the corpus has also been correctly identified.

Having considered the title pleaded by the defendant, it has been determined that he has failed to establish the paper title and also prescriptive rights as claimed by him. It has also been determined that the possession of the land by the defendant has been on the basis of a licensee.

However, the learned Judges of the High Court have recognized that the learned District Judge has failed to provide proper answers to the issues framed before the District Court and has proceeded to re-answer the issues.

Accordingly, the appeal preferred by the defendant has been dismissed on the basis that it has no merit.

At the hearing of this appeal, the position taken up by the learned Counsel for the defendant was that there had been no dispute that the subject matter of this action is in the possession of the defendant. It was his contention that there was no evidence before the Court to establish that the defendant was a licensee as claimed by the plaintiff or that the said license was terminated. It was submitted that the learned District Judge too has correctly determined that there was no evidence as to the defendant being a licensee, but wrongly decided the action in favour of the plaintiff.

It was also submitted that the paper title pleaded by the plaintiff had not been established as claimed. It was the position of the learned Counsel that the learned Judges of the High Court had failed to consider the evidence placed before the District Court in its correct perspective when deciding to re-answer the issues and dismiss the appeal preferred by the defendant.

The learned Counsel for the plaintiff took up the position that the claimed predecessor in title of the defendant was a caretaker under the predecessor in title of the plaintiff, and the plaintiff came to the Court for a declaration of title and ejectment. It was his position that the plaintiff proved her title to the land, whereas the defendant's claimed paper title or the prescriptive title has not been established to the satisfaction of the Court.

Arguing that there is no basis before this Court to disturb the findings of the learned Judges of the High Court, as well as that of the learned District Judge of Kegalle, the learned Counsel moved for the dismissal of the action.

Having considered the pleadings before the District Court, the facts, the circumstances and the relevant law, I am in agreement with the view of the learned Judges of the High Court that the action before the District Court was in fact a *rei vindicatio* action, although the plaintiff has claimed that the defendant was a licensee in the capacity of a caretaker.

I am in total agreement with the said determination as it is manifestly clear that the action of the plaintiff was an action to vindicate her title and to eject the defendant from the land based on her title.

In this process, the plaintiff has averred as to the manner under which the claimed predecessor of the defendant and the defendant are in possession of the land. It is clear from the averments of the plaint that her intention had been not to eject the defendant only on the basis of an over holding licensee.

When considering the evidence in that context, it is settled law that the person who claims title must establish his title as well as the identity of the land to which such a party claims title.

As correctly determined by the learned District Judge as well as the learned Judges of the High Court, there had been no dispute as to the identity of the land. Both the plaintiff and the defendant have claimed the same land as stated in the schedule of the plaint, although there had been no admission as such.

The evidence led before the Court has clearly established that the subject matter of this action has been depicted in plan No. 2189 dated 22-11-2007 marked 'X', which is the plan prepared for the purposes of this action.

When it comes to the title to the said land, the plaintiff has claimed title based on the deed marked P-01, namely deed No. 20394 dated 28-05-1920. In the said deed of transfer, the transferor has recited his title as a title obtained through the fiscal sale No. 10684 of Court of Request in Kegalle.

Based on the said title, the heirs of the said transferee, namely R. P. P. Weerasooriya, have transferred their inherited rights by the deed marked P-02 to R. C. P. P. Weerasooriya. The said Weerasooriya had transferred his right to the land to Kapuralalage Dharmawardhana by the deed No. 2212 dated 07-10-1985 (the deed marked P-03). The said Dharmawardhana by deed No. 3647 dated 06-02-2003 has transferred his acquired rights to the plaintiff of this action. (the deed marked P-06). The said deed is a deed executed subject to a pending partition action.

The evidence adduced in the action has established that the said partition action No. 27142 was an action instituted by Kuruppu Arachchilage Manthriratna, who is a brother of the defendant, against the defendant in order to partition the subject matter of this action. The earlier mentioned Dharmawardhana, who was the predecessor in title of the plaintiff, has intervened in the said partition action and has claimed the entirety of the land sought to be partitioned based on his title deed. The said partition action has been withdrawn on 31-07-2006, which has resulted in the dismissal of the said action.

In view of the said dismissal, the plaintiff has claimed title to the subject matter of this action based on the deed marked P-06 and for the ejectment of the defendant as pleaded in her plaint.

As against this title, the defendant has claimed title through one Mohotti Appuhami, who is his grandfather, and has claimed that he was born on the land and lived there for more than 56 years. It has been claimed that the said Mohotti Appuhami possessed the entire land and is the original owner. It has been his position that upon his death, his father Appuhami, being the youngest son of Mohotti Appuhami, held and possessed the entire land, and he transferred his right to him and his brother Manthriratna by deed No. 119 dated 01-11-1995. The said deed has been marked as V-01(අ).

It has been stated that he obtained the rights of Manthriratna by deed No. 441 dated 17-03-2006 marked V-05. Although he has claimed that the predecessors of the plaintiff have previously filed partition case No. 27142 and it was dismissed, it is clear that the defendant has not told the truth to the Court in that regard.

The documents marked and produced as P-04 and P-05 by the plaintiff establish the fact that the said case was a partition action filed by Kuruppu Arachchilage Manthriratna, the brother of the defendant, who executed the deed marked V-05 in favour of him. The said case had been filed against the defendant to get the land partitioned between themselves. I find that the evidence of the plaintiff has established that the plaintiff of that action or the

1st defendant, namely the defendant in this action, has failed to prosecute the partition action, and the added defendant, the predecessor in title of the plaintiff, has been allowed to proceed with the partition action.

The said action has been withdrawn because the said predecessor, namely Kapuralalage Dharmawardhana, has claimed title to the entire land upon his title deed which requires no partitioning of the land.

It is clear from the evidence of the defendant that he has claimed paper title to the land. Although he has given evidence to the effect that he and his forefathers had possession of the land for over 50 years, interestingly, he has not given evidence claiming prescriptive title to the land. He has also failed to give evidence as against whom and when the mentioned grandfather of him, namely Mohotti Appuhami, started to possess the land adverse to the rights of the actual title holder of the land.

Upon the perusal of the deed No. 119, where Appuhami has transferred the land to the defendant and his brother Manthrirathna, it is clear that the said vendor has not pleaded his title other than saying that he held and possessed the land. The defendant's evidence was to the effect that his father Appuhami inherited the land from his father Mohotti Appuhami. However, it has been admitted in evidence that Mohotti Appuhami had three sons, the defendant's father being the youngest. Therefore, even if it is to believe that Mohotti Appuhami had any title to the land, the defendant's father could have only inherited an undivided 1/3rd of the land. Therefore, for him to transfer the entire land to the defendant and his brother, he should spell out as to how he became entitled to the entire land in the deed he executed in favour of his sons.

The above factual matrix clearly shows that it was the plaintiff who had established a clear title to the corpus of this action as against the claimed rights of the defendant.

The case of **Leisa and Another Vs. Simon and Another (2002) 1 SLR 148** was a case where the plaintiff-appellants instituted action seeking declaration of title and ejectment of the defendants from the premises in question. The defendants claimed prescriptive rights. The plaintiff's action was dismissed.

On appeal it was held:

1. The contest is between the right of dominium of the plaintiffs and the declaration of adverse possession amounting to prescription by the defendants.
2. The moment title is proved the right to possess it, is presumed.
- ...
5. For the Court to have come to its decision as to whether the plaintiff has dominium the proving of paper title is sufficient.
- ...
7. Once paper title became undisputed the burden shifts to the defendants to show that they had independent rights in the form of prescription as claimed by them.
- ...

Per Wigneswaran, J.,

“Wille in his book ‘Principles of South African Law’ (3rd edition) at page 190 states as follows:

“The absolute owner of a thing has the following rights in the thing:

- 1. To possess it;*
- 2. To use and enjoy it; and*
- 3. To destroy; and*
- 4. To alienate it.*

In discussing the right to possession, he states, (...) “The absolute owner of a thing is entitled to claim the possession of it; or, if he has the possession he may retain it. If he is illegally deprived of

his possession, he may by means of vindicatio or reclaim recover the possession from any person in whose possession the thing is found. In a vindicatory action the claimant need merely prove two facts, namely, that he is the owner of the thing and that the thing is in the possession of the defendant.”

His Lordship has discussed the effects of longstanding possession by a defendant at page 157 in the following manner,

“As stated, earlier occupation from 1947 has no relevance. Possession and occupation must be distinguished. What is referred to as possession by the learned Counsel was in fact occupation by the 1st defendant. So long as such occupation was as a brother of the 1st plaintiff and therefore as a licensee of the 1st plaintiff, the long period of occupation would not make it adverse possession unless there had been an overt act of ouster as in the case of prescription among co-owners.”

It is clear from the judgment of the learned District Judge that he was mindful as to the principles of law that should be considered in a vindicatory suit. He has well considered whether the claimed occupation of the land by the defendant and his claimed predecessors would amount to an overt act, which amounts to an ouster as required in law.

It is my considered view that executing deeds without referring to any title would not amount to an overt act that ousts the title holder of a property. The learned District Judge has found evidence where the plaintiff's immediate predecessor in title has enjoyed the fruits of the land after he became the owner. As such, I am unable to find anything wrong in the learned District Judge's conclusion that the defendant and his claimed predecessors in title were licensees under the plaintiff and her predecessors of title, and the defendant had failed to establish that the said status has been changed so that the defendant would succeed in proving prescriptive title, and the defendant's claimed paper title was also not proved.

After the matter was argued in appeal before the learned Judges of the High Court, it is clear that the learned High Court Judges too had considered the paper titles pleaded by the parties as well as the claimed apparent prescriptive title of the defendant. The High Court has drawn its attention to the fact that the paper title claimed by the plaintiff commencing with the deed marked P-01, which was a deed executed in 1920 by one Ukkubanda, and the argument that since the said Ukkubanda has pleaded his title in relation to a fiscal sale where there was no evidence that a fiscal's conveyance had been executed, and hence, no title would have been passed to the claimed original owner.

It has been decided that in view of the findings in the case of **Abubucker Vs. Fernando (1987) 2 SLR 225**, although a fiscal's conveyance may not have been executed after the fiscal's sale, there is clear evidence that the said Ukkubanda held and possessed the land after the sale and it can be reasonably inferred that he and his subsequent transferees of the land held and possessed it and had acquired prescriptive title before alienating the same to the plaintiff.

In the case of **Abubucker Vs. Fernando (supra)**, it was determined that if a fiscal's conveyance is not executed in favour of the purchaser of a land at a fiscal sale, no title passes. If, however, the purchaser enters into possession after the sale and possessed the land for longer than the prescriptive period, title by prescription is established.

I find that this was a correct determination, and hence, the learned Judges of the High Court were correct in determining that the plaintiff had established her title. The learned Judges of the High Court in the appellate judgment too had well considered whether the claimed paper title of the defendant can be accepted as a better title than that of the plaintiff in coming to a finding that it was not, for which I have no reason to disagree as considered earlier.

The High Court judgment clearly shows that the learned Judges had considered whether the defendant can succeed on the basis of prescription, independently of his claim of paper title.

It had been determined that in fact, the defendant's status would be as a licensee, as it had been clearly established that his father and grandfather had been in possession of the land in such capacity after gaining possession under the plaintiff's predecessor in title, namely Weerasooriya, and they have failed to establish an overt act which alters that status.

In the case of **S.K. Chelliah Vs. M. Wijenathan 54 NLR 337, Gratiaen, J.** observed;

“Where a party invokes the provisions of section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests fairly and squarely on him to establish a starting point for his or her acquisition of prescriptive rights. If that onus has prima facie been discharged, the burden shifts to the opposite party, to establish that by reason of some disability recognized under section 13 prescription did not in fact run from the date on which the adverse possession first commenced. Once that has been established, the onus shifts once again to the other side to show that the disability has ceased on subsequent date and that adverse possession relied on had uninterruptedly continued thereafter for a period of 10 years.”

As considered correctly, the plaintiff's immediate predecessor in title has given evidence to establish the fact that he too enjoyed the produce of the land, which showed that he had dominium over the land despite the fact that the defendant being in occupation of the same.

The defendant's own evidence shows that he had failed to establish any overt act of his claimed predecessors in title other than stating that he is living on the land from his birth. Therefore, I am in agreement with the findings of the learned District Judge as well as that of the learned Judges of the High Court that the defendant has failed to establish any character that can be considered adverse to the rights of the plaintiff who has established her title to the land.

Another matter that has drawn the attention of the learned Judges of the High Court had been the defendant's and his brother Manthriratna's role in the partition action.

The said Manthriratna has initiated the partition action after having claimed rights under the deed marked P-05. It has been established, as previously stated by me, that both the plaintiff and the 1st defendant of the partition action, being the two brothers who initiated it, have failed to prosecute the same. This has resulted in the plaintiff's immediate predecessor in title, who intervened as the 2nd defendant of the action, proceeding with the action and withdrawing it on the basis that he owns the entire land sought to be partitioned and not the plaintiff and the 1st defendant in the said partition case.

I am in total agreement with the learned Judges of the High Court that this conduct of the defendant in abandoning the partition action in the manner it occurred is also a clear indication of failure to maintain their prescriptive claim as against the rights of the plaintiff's immediate predecessor in title.

It is clear from the judgment of the learned District Judge that he has come to a correct finding as to the evidence placed before the Court and the law that should have been considered in that regard. I find that the learned Judges of the High Court too had considered the matters placed before the Court in its correct perspective by determining that they had no basis to interfere with the judgment of the learned District Judge.

However, I find that as viewed correctly by the High Court, the learned District Judge, after analyzing the evidence and the law correctly, has failed to answer the issues before the Court in the proper manner.

I am of the view that the High Court has correctly exercised its powers granted in terms of Article 139 of the Constitution where it has been stipulated as to the powers in appeal of the Court of Appeal, which applies to the High Court as well when exercising its appellate jurisdiction.

The relevant Article 139(1) reads as follows:

139. (1) The Court of Appeal may in the exercise of its jurisdiction affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or it may give directions to such court of 1st instance, tribunal or other institution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit.

Accordingly, I find that re-answering of the issues was a thing necessary to align the original Court's findings and render it a proper judgment, which in my view was the correct approach that should be adopted in deciding an appeal by an appellate forum.

For the reasons as considered above, I will now proceed to answer the questions of law under which the leave to appeal was granted in the negative.

The appeal is dismissed for want of merit.

The parties shall bear their own costs of the appeal.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court