

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 Mudiyanseelage Tilakaratna
Banda
Waraddana, Wellawa.

02.Hitihamy Mudiyanseelage Punchiralage
Ran Banda
Waraddana, Wellawa.

S.C. Appeal No. 105/2012

S.C.(HC) CALA Application

No. 532/11

**Civil Appeal, High Court of NWP
Kurunegala Appeal No.**

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

DC Kurunegala Case No.

5094/L/96

Plaintiffs

Vs.

01.Hitihamy Mudiyanseelage Subarath
Menike
Rangama, Wellawa.

02.Hitihamy Mudiyanseelage Punchi Menike
Hunupola.

03.Hithihamy Mudiyanseelage Sittamma
Basnayake
"Mawatte", Deliwala, Rambukkana.

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

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

Defendants

And between

01.Hitihamy Mudiyansele Subarath
Menike
Rangama, Wellawa.

02.Hitihamy Mudiyansele Punchi Menike
Hunupola.

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

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

1st to 4th Defendants-Appellants

Vs.

01.Hitihamy Mudiyansele Tilakaratna
Banda
Waraddana, Wellawa.

02.Hitihamy Mudiyansele Punchirale
Ran Banda
Waraddana, Wellawa.

Plaintiff-Respondents

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

5th Defendant-Respondent

AND NOW BETWEEN

01.Hitihamy Mudiyansele Tilakaratna
Banda
Waraddana, Wellawa.

1st Plaintiff-Respondent-
Appellant

02.Hitihamy Mudiyansele Punchirale
Ran Banda (Deceased)
Waraddana, Wallawa.

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

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

Substituted 2nd Plaintiff-Respondent-
Appellant

Vs.

01.Hitihamy Mudiyansele Subarath
Menike
Rangama, Wellawa.

02.Hitihamy Mudiyansele Punchi Menike
Hunupola.

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

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

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

05.Allegama Alahakoon Mudiyansele
Wimala Panamaldeniya Kuluhendiwele
No.119, Wadakada, Pothuhera.

**5th Defendant-Respondent-
Respondent**

Before: Hon. S. Thirairaja, 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 1st Defendant–
Appellant-Respondent Instructed by Niluka Dissanayake

Written 08.08.2012 and 30.08.2024 by the Plaintiff-Respondent-Appellant

Submissions: 16.08.2012 and 12.08.2024 by the 1st Defendant-Appellant Respondent

Argued on: 26.07.2024

Decided on: 07.11.2025

Janak De Silva, J.

The 1st Plaintiff-Respondent-Appellant and Substituted 2nd Plaintiff-Respondent-Appellant (Plaintiffs) instituted this action against the 1st to 4th 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 1st to 4th 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 1st to 4th 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 1st to 4th 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 ආරවුලට සම්බන්ධ ඉඩම වේබර් මානක තැන විසින් මැන සාදන ලද අංක 1247/කුරු දරණ පිඹුරේ නිරූපනය කර ඇති බව පමණක් පිළි ගනී.”

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

“මේ අවස්ථාවේදී 99.03.19 දින කර ඇති පිළිගැනීමට මූලික පිඹුර අදාළ බවත්, එයින් අදහස් කරන්නේ ආරවුලට අදාළව දෙපාර්ශවය අතර භෞතිකව මෙම පිඹුරෙන් නිරූපනය වන බව පමණක් නීතිඥ ජයසේකර මහතා දන්වා 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/කුරු 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 1st to 4th Defendants could not have challenged the identity of the corpus.

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

ඉහත කී උපලේඛනය

“වයඹ පළාතේ කුරුණෑගල දිස්ත්‍රික්කයේ වැලඬ විල්ලි හත්පත්තුවේ මහගල්බොඩ මෙහොඩ කෝරළේ වරද්දන පිහිටි බටුගොල්ලවත්ත නමැති අක්කර එකක් (අ.1. රූ .0 පර් .0) විශාල දේපළට මායිම්ව උතුරට - එච් .එම් උක්කුබංඩාට අයිති ඉඩමද, නැගෙනහිරට - රත්නාමි කෝරාලට අයිති කුඹුර ද, දකුණට - වැබොඩේ කුඹුරද, බස්නාහිරට - පුංචි රාලගේ ඉඩම යන මායිම් තුළ පිහිටි දේපළ හා එය තුළ පිහිටි ගහකොළ පලතුරු ආදී සියලු දේත් ඇතුළු දේපළ වේ.

මෙම දේපළ දැනට ඒ.බී.එම්.වෙබර් මානක නිලධාරී තැන විසින් ඔහුගේ වර්ෂ 1986.10.27 දින හා අංක 1247/කුරු දරන පිඹුරේ දක්වා ඇති අතර එහි පිඹුර ප්‍රකාරව එම දේපලට මායිම් උතුරට-රත්හාමි කෝරාලට අයිතිව තිබේ දැනට මුතු බන්ධාට සහ රත්බන්ධාට අයිති කුඹුරද, නැගෙනහිරට-බංඩා කෝරාලට සහ තවත් අයට අයිතිව තිබේ දැනට එස්.බී.එම්.බංඩාට හා ටිකිරි බංඩාට අයිති කුඹුරද, දකුණු බස්නාහිරට - ඩිංගිරිබංඩාට සහ තවත් අයට අයිතිව තිබේ දැනට එච්.එම් පුංචිරාලට අයිති ඉඩම, උතුරු බස්නාහිරට-කලු බණ්ඩාට සහ තවත් අයට අයිතිව තිබේ දැනට උක්කු බණ්ඩාට අයිති බටුගොල්ලේහේන දැනට වත්ත යන මායිම් තුළ පිහිටි රූඩ් තුනකුත් පර්වස් විසිහය(අ0 රූ3 පර්.26) විශාල හා එහි තුළ පිහිටි සියලුදේත් ඇතුලු 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 පළාතේ කුරුණෑගල දිස්ත්‍රික්කයේ වැලඬවිල්ලි හත්පත්තුවේ මහගල්බොඩ මෙහොඩ කෝරලේ වරද්දාන පිහිටි කෝන්ගොල්ලේ හේන දැනට වත්ත නැමැති, උතුරට :රත්හාමි කෝරාලගේ ඉඩම කියා ඇතත් දැනට නිවැරදිව කලු බංඩා සහ තවත් අයට අයත් බටුගොල්ලේහේන දැනට වත්තද, නැගෙනහිරට:රත්හාමි කෝරාලගේ කුඹුරද, දකුණට:කලුබංඩාගේ බටුගොල්ලේවත්ත දැනට නිවැරදිව බංඩාකෝරාල සහ තවත් අයට අයත් කුඹුරද, බස්නාහිරට: ඩිංගිරිබංඩා සහ තවත් අයට අයිති ඉඩමද, යන මෙකී මායිම් තුළ පිහිටි කුරක්කන් සේරු තුනක වපසරිය ඇති ඒ 353/155 යටතේ ලියාපදිංචි කර ඇති ඉඩම සහ එහි තුළ පිහිටි ගහකොළ පලතුරු යනාදී සියලු දේත් සමගි ද වේ.

ඉහත කී දෙවන උපලේඛනය

මෙම ඉඩම 1986.10.23 වෙනි දින ඒ.බී.එම් වෙබර් මානක තැන විසින් මැන සාදන ලද අංක 1247 දරන පිඹුරේ සඳහන් ඉහත කී වරද්දාන පිහිටිකෝන්ගොල්ලේ හේන නමැති උතුරට : කලුබණ්ඩා සහ තවත් අයට අයිතිව තිබේ දැනට උක්කුබංඩාට අයිති බටුගොල්ලේ හේන දැනට වත්තද, නැගෙනහිරට:රත්හාමි කෝරාලට අයිතිව තිබේ දැනට මුතුබණ්ඩාට සහ රත්බණ්ඩාට අයිති කුඹුරද, දකුණට: බන්ඩාකෝරාලාට සහ තවත් අයට අයිතිව තිබේ දැනට එස්.බී.එම් බංඩාට සහ ටිකිරි බංඩාට අයිති කුඹුරද(බටුගොල්ලේ හේන දැනට කුඹුර) බස්නාහිරට: ඩිංගිරිබංඩාට සහ තවත් අයට අයිතිව

නිව් දැනට එච්.එම් පුංචිරාලට අයිති ඉඩමද, යන මෙකී මායිම් තුළ පිහිටි රුඩ් තුනයි පර්චස් විසිහයක් (අ,00.රු.03.පාර්.26) විශාල ඉඩම් වේ”

Thus, both parties sought to identify the land they are claiming by reference to Plan No. 1247/කුරු 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 1st to 4th 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 1st to 4th 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. Thuraiaraja, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

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

I agree.

JUDGE OF THE SUPREME COURT