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

In the matter of an Appeal under 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 Republic of Sri Lanka.

SC/Appeal No. 74/2017

SC/HCCA/LA/No. 412/2015

SP/HCCA/TA/16/2012F

D.C. Tangalle 2092/P

Jasin Basthiyan Arachchige
Chandrawathie **(Deceased)**,
Kudaheela, Beliatta.

PLAINTIFF

Thirimamuni Badra Wattegama
Godakumbura, Beliatta.

SUBSTITUTED PLAINTIFF

Vs.

1. Jasin Basthiyan Arachchige
   Karunawathie
   No. 5B, Palliya Road, Pelawatta,
   Battaramulla.

2. Jasin Basthiyan Arachchige
   Gunawathie
   Wadumaduwa, Thalalle North,
   Kekanadura.

3. Widana Pathiranage Sunny.
   (Deceased)

3A. Widana Pathiranage Seetha

Egodahawatta, Kambussawela,
Beliatta.

DEFENDANTS

And Then Between

3A. Widana Pathiranage Seetha
Egodahawatta, Kambussawela,
Beliatta.

3A DEFENDANT-APPELLANT

Vs.

Thirimamuni Badra Wattegama
Godakumbura, Beliatta.

SUBSTITUTED PLAINTIFF–RESPONDENT

1. Jasin Basthiyan Arachchige
Karunawathie
No. 5B, Palliya Road, Pelawatta,
Battaramulla.

1st DEFENDANT-RESPONDENT

2. Jasin Basthiyan Arachchige
Gunawathie
Wadumaduwa, Thalalle North,
Kekanadura.

2nd DEFENDANT-RESPONDENT

And Now Between

Thirimamuni Badra Wattegama
Godakumbura, Beliatta.

SUBSTITUTED PLAINTIFF-RESPONDENT-APPELLANT

Vs.

1. Jasin Basthiyan Arachchige
   Karunawathie
   No. 5B, Palliya Road, Pelawatta,
   Battaramulla.

1st DEFENDANT-RESPONDENT-RESPONDENT

2. Jasin Basthiyan Arachchige
   Gunawathie
   Wadumaduwa, Thalalle North,
   Kekanadura.

2nd DEFENDANT-RESPONDENT-RESPONDENT

3A. Widana Pathiranage Seetha
Egodahawatta, Kambussawela,
Beliatta.

3A DEFENDANT-APPELLANT-RESPONDENT

BEFORE : **P. PADMAN SURASENA, J**
ACHALA WENGAPPULI, J &
K. PRIYANTHA FERNANDO, J

COUNSEL : W. Dayaratne, PC with Ms. R. Jayawardena, Ms. M. Dissanayake and Ms. G. Wickremarachchi for the Plaintiff-Respondent-Appellant instructed by Ms. C. Dayaratne.

Dr. Sunil Cooray with Ms. Sudarshani Cooray for the Defendant-Appellant-Respondent.

ARGUED &
DECIDED ON: 20th September 2023

P. PADMAN SURASENA, J

Court heard the submissions of the learned President's Counsel for the substituted Plaintiff-Respondent-Appellant and also the submissions of the learned Counsel for the substituted 3rd Defendant-Appellant-Respondent and concluded the argument of the case.

During the course of the hearing, it was brought to the notice of Court that the questions of law set out in Paragraph 31 (b), (c), (f) and (g) of the petition dated 06-12-2015, in respect of which this court had granted Leave to Appeal are not clear enough to proceed with the argument on the facts and circumstances prevailing in this case. This fact was admitted by the learned Counsel for both parties who urged the Court to reframe afresh, questions of law upon which the argument could effectively proceed. Accordingly, the Court decided that the question of law upon which the argument should proceed to be as follows.

"Whether the 3rd Defendant in the present partition action has prescribed to the corpus of the instant partition action?

Learned Counsel for both parties agree that the corpus relevant to the instant case is Lot 2 in Plan No. 1730 dated 21-01-1962 which is the Final Plan in the Partition Action bearing No. DC Tangalle P 376.

By virtue of the said Final Partition Decree (dated 19-03-1962) in DC Tangalle case No. P 376, four persons namely; the Plaintiff Jasin Bastian Arachchige Chandrawathie; the 1st Defendant

Jasin Bastian Arachchige Karunawathie; the 2nd Defendant Jasin Bastian Arachchige Gunawathie; and another person by the name of Jasin Bastian Arachchige Betin Nona; had become entitled to said Lot 2 in the Final Plan No. 1730 dated 21-01-1962.

Subsequently said Jasin Bastian Arachchige Betin Nona by virtue of Deed No. 2051 dated 16-12-1975, had transferred her entitlement (i.e., ¼ share of Lot 02) to the 3rd Defendant Vidana Pathiranage Sunny.

It was on the above basis that the Plaintiff in this case had filed the Plaint against the afore-mentioned three Defendants praying for an order of Court to partition the corpus relevant to this case amongst them in equal shares.

Let me now refer to Lot No. 3 in that plan. It must be noted that Lot 2 and Lot 3 are adjoining lots in the Final Plan No. 1730 dated 21-01-1962. By virtue of the same Partition Decree in DC Tangalle case No. P 376, Lot No. 3 in that plan had been allotted in DC Tangalle case No. P 376, to the 3rd Defendant of the present action and to another. Thus, the 3rd Defendant had become a co-owner of Lot 3 since 1963 (by virtue of the said Partition Decree in DC Tangalle case No. P 376) and a co-owner of Lot 2 since 1975 (by virtue of Deed No. 2051 dated 16-12-1975).

Subsequent to the partition decree being entered, the Fiscal is reported to have handed over the possession of Lot 2 to the afore-mentioned four persons who became entitled to that Lot in 1963 (i.e., by virtue of the Partition Decree in DC Tangalle case No. P 376). Thus, by the year 1963, each of those persons who became entitled to Lot 2 by virtue of the partition decree in DC. Tangalle Case No. P 376 had become entitled to shares of Lot 2.

The 3rd Defendant (Vidana Pathiranage Sunny) in the present action in his Statement of Claim had taken up the position that he had prescribed to the corpus (Lot 2) in the instant Partition Action. However, the learned District Judge by her judgment dated 06-03-2012 had ordered the partition of the corpus.

Being aggrieved by the said Judgment pronounced by the District Court, the 3rd Defendant had appealed to the Provincial High Court of Civil Appeals holden at Tangalle. The Provincial High Court of Civil Appeals by its judgment dated 29-10-2015 had concluded that the 3rd Defendant has prescribed to the corpus and it was on that basis that the Provincial High Court

of Civil Appeals had proceeded to direct that the action of the Plaintiff be dismissed. The Plaintiff-Respondent-Appellant in this appeal has challenged the said judgment pronounced by the Provincial High Court of Civil Appeals.

As has already been mentioned above, although this Court had earlier granted Leave to Appeal in respect of four questions of law, in the course of the hearing, with the concurrence of the learned Counsel for both parties, Court has now formulated the question as to whether the 3rd Defendant in the present partition action has prescribed to the corpus of the instant partition action. Thus, that is the sole question we have to decide in this case.

At the outset, it must be noted that the Plaintiff had only led the evidence of one witness. The said witness is the daughter of the original Plaintiff who now stands as the substituted Plaintiff.

From the evidence adduced in this case, it is not the case of the Plaintiff that they had ever been in possession of the corpus of this action. To the contrary, the witnesses for the Plaintiff under cross examination has admitted that neither she nor her mother was permitted to enter into the corpus and indeed were prevented by the 3rd Defendant since March 1963. She also has admitted that her mother (the original Plaintiff) had attempted to take the possession of the corpus from the 3rd Defendant through some previous litigations. Therefore, it is clear that the Plaintiff has never been in possession of this land since 1963. This is after the Fiscal had handed over the possession of this land to the four persons who became entitled to that land in 1963 by virtue of the Partition Decree in DC Tangalle case No. P 376.

Learned President's Counsel for the Plaintiff relied on an averment in the answer filed in a different case (Case No. L/1189) by the 3rd Defendant in the instant case. It transpired during the hearing that the original plaintiff Chandrawathi had executed a lease for three years in favour of Thanthirige John in respect of the corpus of this case and it was said Thanthirige John who had filed the afore-said case No. L/1189 against the 3rd Defendant seeking to recover the possession of the corpus of the present action in his capacity as the lessee. According to the Paragraph 3 of the Plaint of Thanthirige John in case No. L/1189, this Deed of Lease No. 10518 had been executed on 29-10-1963.
The following averment No. 3) could be found in the afore-said answer filed in that case (Case No. L/ 1189) by the 3rd Defendant in the instant case.

> *"answering Paragraph 3 of the plaint the Defendant denies that Chandrawathi referred to therein has any right to lease both lots 1 and 2 as she is entitled to*

> *1/4th share of lot 2 only and without paying the sum of Rs. 88 due to this Defendant and his wife as compensation in partition case No. P/376 of this Court."*

Mr. W. Dayaratne, PC for the Plaintiff advanced the argument that the above averment No. 3 in Case No. L/ 1189, amounts to an admission of ownership of the Plaintiff made by the 3rd Defendant.

I observe that the learned District Judge had concluded that the 3rd Defendant had maintained an uninterrupted possession of Lot 2 adverse to the Plaintiff and 1st and 2nd Defendants since 1963. However, the learned District Judge had refused to accept that the 3rd Defendant had prescribed to Lot 2 because the 3rd Defendant had thereafter proceeded to purchase 1/4th share of Lot 2 from Jasin Bastian Arachchige Betin Nona by virtue of Deed No. 2051 dated 16-12-1975.

However, Dr. Sunil Cooray appearing for the 3A Defendant (3A Defendant was substituted in place of the 3rd Defendant upon the demise of the 3rd Defendant during the pendency of the trial in the District Court) relying on the judgment of this Court in Silva Vs. Zoysa[1] argued that any subsequent purchase of title by a party claiming prescription to the same land, does not negate the prescriptive title acquired by such party to such land.

In Silva Vs. Zoysa, both the learned Judges who heard the case had pronounced two separate judgments. However, both the learned Judges had come to the same conclusion. Thus, I would reproduce below, one excerpt each from both the said judgments.
Macdonell C.J. in that case has held as follows,

> *This, it seems to me, would be the inference to be drawn from the conveyance of September 9, 1925, even if it stood alone. But it does not; there was the other conveyance which the notary drew but which remained unexecuted because of Sahabandu's departure. It was, then, a conveyance that was to be executed by him at the instance of the second defendant. Then it is a warrantable inference that it was a conveyance making over to the second defendant the legal estate in the land which it was at last in Sahabandu's power to make over now that he had got a conveyance of it from the administratrix*

[1] 32 NLR 199.

vendor. Then every detail in the "act" of the second defendant in regard to these two conveyances is referable to the sale of September, 1916, and to the title the second defendant acquired thereby "adverse to and independent of that of the administratrix vendor and that of Sahabandu; it was an "act" to perfect his own "existing right", and if so it cannot well have been an "acknowledgement of a right existing in some other person". Then it was no "interruption" of his possession of the land in dispute which had commenced some time in 1916. As no other "interruption" has been suggested, that possession matured into a prescriptive title in favour of the second defendant some time in 1926, that is to say, over two years before the conveyance from Sahabandu of June 13, 1929, under which the first defendant claims. The second defendant then has made good his title to the land in dispute, and the plaintiff, his lessee, is entitled to be restored to possession under the lease.

In the same case, Garvin S.P.J. in his judgment has stated as follows,

The argument, as I understand it, is that when the second defendant caused the execution of the deed by the administratrix in Sahabandu's favour he did an act acknowledging the "right" of Sahabandu within the meaning of section 3 of Ordinance No. 22 of 1871.

The words in parenthesis in section 3 - "that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person can fairly and naturally be inferred" have been held to be a definition of "adverse possession". The phrase "by any other act" must I think be read ejusdem generis with "payment of rent or produce or performance of service or duty" and as meaning an act which indicates that the possession is not adverse to but is acknowledged to be subordinate to the right of another to possession of the land. What the second defendant did was to take a step with a view to gathering into his hands the legal title from persons who on the facts proved in this case were under a legal obligation to vest in him the title to the land of which he was in possession and claimed to be in possession as of right. It was not an act done in acknowledgment of any right in them or either of them to the possession of this land but an assertion of his right to be clothed with the legal title as well.

This principle was followed by this Court in Mallika Achchillage Ranhamy Vs. Wellera Achchillage Singha Appuhamy.[2]

In any case, when a person through an overt act claims a possession adverse to its owner, the admission of the ownership at some point of time by the party who is maintaining such adverse possession does not dilute the quality of either the overt act or the possession adverse to its owner if such party had fulfilled the necessary requirements set out in law namely section 3 of the Prescription Ordinance to establish his or her prescriptive title.

As far as the afore-said averment in Paragraph 3 of the answer filed in case No. L/1189 by the 3rd Defendant is concerned, it must be borne in mind that it is an averment in the answer filed in a different case to state that Chandrawathi was entitled to ¼ share of Lot 2 as at 07-11-1966 which is the date of the said answer. On the other hand, the partition decree giving ¼ share of Lot 2 to Chandrawathi coupled with the fact of handing over the possession by fiscal in January 1963, there is no dispute that the plaintiffs became entitled to Lot 2 as at that date. The 3rd Defendant had commenced his possession adverse to the plaintiffs in March 1963. I observe that the Plaintiff had filed the plaint of the instant action on 23-07-1980. Thus, by the time the Plaintiff had filed the plaint in the instant action, the 3rd Defendant had completed his adverse uninterrupted possession for more than 10 years. Similarly, by the time the Plaintiff had thereafter proceeded to purchase 1/4th share of Lot 2 from Jasin Bastian Arachchige Betin Nona by virtue of Deed No. 2051 dated 16-12-1975 also, the 3rd Defendant had completed his adverse uninterrupted possession for more than 10 years. This is because the 3rd Defendant had commenced possessing this land since 1963 which is not in dispute in this case. Thus, in view of these facts, even if the said averment No. 3 in Case No. L/1189 amounts to an admission that Chandrawathi was entitled to ¼ share of Lot 2 by the 3rd Defendant, it makes no difference. It must also be noted that Thanthirige John in Case No. L/1189 in his plaint has stated that it was the 3rd Defendant in the present action who was in possession of Lot 2 at that time. Indeed, said Thanthirige John had filed that action to recover possession of Lot 2 from the 3rd Defendant.

Thus, the above facts show clearly that the learned Judges of the Provincial High Court of Civil Appeals on the available evidence in this case, had come to the correct conclusion that the 3rd Defendant has prescribed to the corpus of the action. Therefore, the learned Judges of the

[2] 46 NLR 279.

Provincial High Court of Civil Appeals had not erred when they directed the dismissal of the action. For the foregoing reasons, I answer the above question of law in the affirmative.

I proceed to dismiss this appeal without costs.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J

I agree,

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J

I agree,

JUDGE OF THE SUPREME COURT