

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

In the matter of an application for Appeal under and in terms of Article 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5c of the High Court of Provinces (Special Provision) Act No 54 of 2006.

Paragoda Gamage Indrasiri
Poddala,
Mepawala,
Panideniya.

**SC APPEAL 98/2019
SC HCCA LA 127/2018**

Plaintiff

SP/HCCA/GA/31/2011(F)

D.C. Galle Case No. L/14026

Vs.

1. Poddiwala Marage Chandrapala
Poddala,
Walpita South,
Kandagahaduwa.
2. Don Dharmadasa Kalansuriya
(Deceased)
Poddala,
Mepawala.
- 2a. Haththotuwa Gamage
Somawathi
3. Don Chandra Kalansuriya

4. Don Alekxander Kalansuriya
5. Don Sugathadasa Kalansuriya
(Deceased)
No. 26,
E. N. Fernando Road,
Wellawatte.
- 5a. Chanaka Kalansuriya.
6. Don Ariyadasa Kalansuriya
(Deceased)
“Suriya Sewana”
Poddala,
Mepawala,
Panideniya.
- 6a. Lasitha Hemantha Kalansuriya

Defendants

AND BETWEEN

Paragoda Gamage Indrasiri
Poddala,
Mepwala,
Panideniya

Plaintiff-Appellant

Vs.

1. Poddiwala Marage Chandrapala
Poddala,
Walpita South,
Kandagahaduwa.
2. Don Dharmadasa Kalansuriya
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Poddala,
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Poddala,
Mepawala,
Panideniya.
- 6a. Lasitha Hemantha Kalansuriya

Defendants-Respondents

AND NOW BETWEEN

Paragoda Gamage Indrasiri
Poddala,
Mepwala,
Panideniya

**Plaintiff-
Appellant-Appellant**

Vs.

1. Poddiwala Marage Chandrapala
Poddala,
Walpita South,
Kandagahaduwa.

2. Don Dharmadasa Kalansuriya
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Poddala,
Mepawala,
Panideniya.
- 6a. Lasitha Hemantha Kalansuriya

Defendants-Respondents-
Respondents

Before : **S. Thurairaja, PC, J**
Yasantha Kodagoda, PC, J
K. Priyantha Fernando, J

Counsel : Nuwan Bopage with Charith De Silva
for the Plaintiff-Appellant-Appellant.

Dilip Obeysekere with Shamalee Arachchige for the Defendants-Respondents-Respondents.

Argued on : 15.02.2024

Decided on : 02.04.2024

K. PRIYANTHA FERNANDO, J

1. The Plaintiff - Appellant – Appellant (hereinafter referred to as the appellant) instituted action against the 1st to 6th Defendants – Respondents – Respondents in the District Court of Galle, seeking a declaration that the appellant is a co-owner of the property described in the 2nd paragraph of the plaint and ejectment of the 1st defendant (hereinafter referred to as the respondent) from the property.
2. The respondent (1st defendant of the amended plaint) in his answer filed in the District Court, pleaded among other things that he has prescribed to the land in question and that he is entitled to prescriptive title of the land.
3. After trial, the learned District Judge answering the issues in favor of the respondent delivered the judgment in favor of the respondent. Being aggrieved by the said judgment of the learned District Judge, the appellant appealed to the Civil Appellate High Court. The learned Judges of the High Court affirmed the decision of the District Court and dismissed the appeal. The instant appeal was preferred to this Court by the appellant against the said judgment of the Civil Appellate High Court dated 13.03.2018, praying that both the judgments of the Civil Appellate High Court as well as the District Court be set aside and the relief prayed by him in his plaint to the District Court be granted.

4. This Court granted leave to appeal on the following question of law ;

“Did both the learned District Judge as well as the Judges of the High Court of Civil Appeals err in answering the Issue No.25 (Prescription) in the absence of a prayer for prescriptive title?”

5. The above question of law refers to issue No. 25 that was raised at the District Court trial. Accordingly, issue No. 25 is whether the respondent (1st defendant in the District Court case) has gained prescriptive title to the land for having independent possession of the land for more than 10 years against the appellant and all others.
6. However, it is to be noted that the respondent (defendant) in his answer in the District Court, has prayed for the dismissal of the plaint and costs. The prayer to the answer does not mention prescriptive title. After trial, the learned District Judge answered the said issue No. 25 in the affirmative.
7. At the hearing of this appeal, the learned Counsel for the appellant submitted that, upon the framing of the issues the pleadings would rescind to the background. It was the contention of the learned Counsel that the said issue No.25 should not have been answered as no relief was prayed based on that issue in the respondents’ (defendants’) answer.
8. The learned Counsel for the respondent submitted that, in paragraphs 25 and 28 of the answer filed in the District Court, the respondent has clearly stated as to how the respondent gained prescriptive title and issue No.25 was raised based on the said pleadings without any objections. Therefore, it is his contention that the learned District Judge was duty bound to answer the issue raised, although it was not mentioned in the prayer to the answer as the appellant was not taken by surprise. In this regard, the learned Counsel invited the attention of the Court to the case of ***Fernando v. Marshall 2 NLR 257.***
9. ***Fernando v. Marshall (supra)*** considered a similar question as to whether the Court should answer the issues

in an instance where the plaintiff has not expressly claimed. *Bonser CJ* stated ;

“ It is true that the plaintiff did not expressly claim the benefit of the Ordinance No.22 of 1871, but the parties must have had this present in their minds at the trial. For these issues, which I have mentioned, were stated and agreed to by the parties themselves. That being so I think that they must have been stated with a view to the determination of this question. Under these circumstances the defendants cannot justly complain that they are taken by surprise, and that they did not come into Court prepared to discuss the question of possession. ”

10. Concurring with *Bonser CJ*, *Withers J* held ;

“ It is quite true that this plaint does not contain any prayer of a decree of title under our Prescription Ordinance, but the 7th, 8th and 9th paragraphs of the plaint allege the plaintiff’s entry into possession of the one-third share under his judicial purchase, Salgado’s entry into possession under his assignment from the plaintiff trustee in bankruptcy, and plaintiff’s re-entry under his conveyance from Salgado.

Entry into possession imports tenure, and the plaint alleges tenure for a long time.

Possession for ten years and upwards by an adverse title to one-third of the premises was proved to the satisfaction of the Judge. I think his verdict on that point right. Upon that verdict plaintiff was entitled to judgment.”

11. In the instant case, the respondent clearly averred his title on prescription in paragraphs 25 and 28. Based on those averments the issue No.25 was raised without objection. Therefore, it is clear that the appellant cannot be taken as a surprise that the respondent was claiming the title on prescription. Hence, the appellant was not at all prejudiced

by the respondents' omission to pray for title based on prescription.

12. Thus, for the reasons stated above, the question of law is answered in the negative.
13. Hence, the appeal is dismissed with costs. The judgments of the High Court and District Court are affirmed.

Appeal is dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA, PC.

I agree

JUDGE OF THE SUPREME COURT

JUSTICE YASANTHA KODAGODA, PC.

I agree

JUDGE OF THE SUPREME COURT