

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

In the matter of an appeal

Athukoralage Mary Nona  
Mahena, Horana.  
(Deceased) Plaintiff.  
Millawage Samarasinghe Wickramaarachchi  
No. 197, Nandana,  
Mahena, Horana.

**Substituted Plaintiff.**

SC Appeal 100/2016  
SC/(HC) CALA No.125/2015  
WP/HCCA/ KAL/74/2008(F)  
DC Horana Case No.3474/L

Vs

1. Jayapala Athukorala
2. Chandrasiri Athukorala
3. Kulapala Athukorala all of Mahena,  
Horana.

**Defendants**

**AND BETWEEN**

Millawage Samarasinghe Wickramaarachchi  
No.197, Nandana,  
Mahena, Horana.

**Substituted Plaintiff-Appellant**

Vs

1. Jayapala Athukorala

2. Chandrasiri Athukorala
3. Kulapala Athukorala all of Mahena,  
Horana.

**Defendant-Respondents**

**AND NOW BETWEEN**

Millawage Samarasinghe Wickramaarachchi  
No.197, Nandana,  
Mahena, Horana.

**Substituted Plaintiff-Appellant-Petitioner-Appellant**

Vs

1. Jayapala Athukorala
2. Chandrasiri Athukorala
3. Kulapala Athukorala all of Mahena, Horana

**Defendant-Respondent-Respondent-Respondents**

Before : Sisira J de Abrew J  
V.K. Malalgoda PC J  
P.Padman Surasena J

Counsel : H.Peiris for the Substituted Plaintiff-Appellant-Petitioner-Appellant  
Thishy Weragoda with Sanjaya Marambe, Prathap Welikumbura  
and Sewwandi Marambe for the Defendant-Respondent-  
Respondent-Respondents

Argued on : 21.2.2019

Written Submission

Tendered on : 3.6.2016 by the Substituted Plaintiff-Appellant-Petitioner-  
Appellant.

14.7.2016 by the Defendant-Respondent-  
Respondent-Respondent.

Decided on : 3.4.2019

Sisira J de Abrew J

The Plaintiff-Appellant-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) instituted action against the Defendant-Respondent-Respondents (hereinafter referred to as the Defendant-Respondents) seeking, inter alia, a declaration that the Plaintiff-Appellant is the sole owner of the road described in the schedule to the plaint; for a declaration that the Defendant-Respondents have no rights to use the said road; and for an order preventing the Defendant-Respondents from using the said road. After trial the learned District Judge by his judgment dated 4.7.2008, dismissed the plaint. Being aggrieved by the said judgment of the learned District Judge, the Plaintiff-Appellant appealed to the Civil Appellate High Court. The Civil Appellate High Court by its judgment dated 26.2.2015, dismissed the appeal and entered judgment in favour of the Defendant-Respondents permitting them (the Defendant-Respondents) to use the road in dispute on the ground of necessity. Being aggrieved by the said judgment of the Civil Appellate High Court, the Plaintiff-Appellant has appealed to this court. This court by its order dated 20.5.2016 granted leave to appeal on questions of law stated in paragraphs 9(i) to 9(iv) of the petition of appeal dated 22.3.2015 which are set out below.

1. Did the District Court and the High Court erroneously hold that the action in D.C Horana case No.3474/L is bad in law because it was a 'right of way action' where the Plaintiff was obliged to establish the ownership of the dominant tenement in order to succeed?

2. Have the District Court and the High Court failed to realize that this was a vindicatory action in respect of Lot 5 in plan P1?
3. Has the High Court failed to realize that there was no cross appeal by the defendants to enable them to question the findings of the learned District Judge rejecting their claims in reconvention based on prescription and necessity?
4. In any event has the High Court erred in holding in favour of the defendants on the grounds of prescription and in the alternative, necessity?

The road in dispute is shown as Lot 5 in final partition Plan No.1793 in case No.10303/P in DC Panadura marked P1. As a result of Partition Decree (case No.10303/P in DC Panadura) the Defendant-Respondents became the owner of Lot 4 of the said Plan No.1793. Although the Plaintiff-Appellant became the owner of Lot 5 of Plan No.1793 as a result of the said Partition Decree, the said Partition Decree has not excluded the use of the road by others. There is no access road to Lot 4 of the said Plan No.1793 other than the road in dispute which is the Lot 5 in Plan No.1793. The Plaintiff-Appellant herself at page 116 of the brief has admitted that there was no other road to go to Lot 4 of plan No 1793 other than the disputed road.

When I consider all the above matters, I hold that the only access road to Lot 4 of the said Plan No.1793 is the disputed road which is shown as Lot 5 of the said Plan No.1793. The Defendant-Respondents are the owners of Lot 4 of the said Plan. Therefore I hold that the Defendant-Respondents are entitled to use the disputed road shown as Lot 5 in Plan No 1793 on the basis of necessity.

For the above reasons, I hold that the learned Judges of the Civil Appellate High Court were correct when they dismissed the appeal of the Plaintiff-Appellant and held that the Defendant-Respondents were entitled to use the disputed road.

For the above reasons, I answer the above questions of law in the negative. I affirm the judgment of the Civil Appellate High Court dated 26.2.2015 and dismiss the appeal of the Plaintiff-Appellant with costs.

*Appeal dismissed.*

Judge of the Supreme Court.

V.K. Malalgoda PC J

I agree.

Judge of the Supreme Court.

P. Padman Surasena J

I agree.

Judge of the Supreme Court.