

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

Ven. Habarakada Soratha Thero,  
The Chief Incumbent,  
Sri Wardhanarama Purana Viharaya,  
Kaluwella, Galle.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/76/2021**

**SC LA NO: SC/HCCA/LA/313/2019**

**CA NO: SP/HCCA/GA/0104/2012 (F)**

**DC GALLE NO: 14252/Land**

Vs.

1. Palpola Kankanamge  
Gunadasa (Deceased)
  - 1A. Maddekandegge Lilawathie
  - 1B. Palpola Kankanamge Jayawathie
  - 1C. Palpola Kankanamge Sunila
  - 1D. Palpola Kankanamge Mangalika  
All of Unnanse Liyadda,  
Paragaha Owita, Kirimatimulla,  
Godakanda, Galle.
  
2. Game Kankanamge Daya alias  
Dayawathie,

Godakanda, Galle.

Defendants

AND BETWEEN

Ven. Habarakada Soratha Thero,  
The Chief Incumbent,  
Sri Wardhanarama Purana Viharaya,  
Kaluwella, Galle.

Plaintiff-Appellant

Vs.

- 1A. Maddekandegge Lilawathie
- 1B. Palpola Kankanamge Jayawathie
- 1C. Palpola Kankanamge Sunila
- 1D. Palpola Kankanamge Mangalika  
All of Unnansege Liyadda,  
Paragaha Owita, Kirimatimulla,  
Godakanda, Galle.

2. Game Kankanamge Daya alias  
Dayawathie,  
Godakanda, Galle.

1A, 1B, 1C, 1D & 2<sup>nd</sup> Defendant-  
Respondents

AND NOW BETWEEN

- 1A. Maddekandegge Lilawathie

- 1B. Palpola Kankanamge Jayawathie
- 1C. Palpola Kankanamge Sunila
- 1D. Palpola Kankanamge Mangalika  
All of Unnansege Liyadda,  
Paragaha Owita, Kirimatimulla,  
Godakanda, Galle.

Correctly,  
All of Unnansege Liyadda,  
Karapitiya, Godakanda, Galle.  
1A, 1B, 1C, 1D Defendant-  
Respondent-Appellants

Vs.

- 1. Ven. Habarakada Soratha Thero,  
The Chief Incumbent,  
Sri Wardhanarama Purana Viharaya,  
Kaluwella, Galle.  
Plaintiff-Appellant-Respondent
- 2. Game Kankanamge Daya alias  
Dayawathie,  
Godakanda, Galle.  
2<sup>nd</sup> Defendant-Respondents-  
Respondent

Before: P. Padman Surasena, J.  
Achala Wengappuli, J.  
Mahinda Samayawardhena, J.

Counsel: Ranjan Suwandarathne, P.C., with Anil Rajakaruna for the Substituted Defendant-Respondent-Appellants.  
Sarath Vidanapathirana for the Plaintiff-Appellant-Respondent.

Argued on : 26.11.2021

Written submissions:

by Plaintiff-Appellant-Respondent on 17.11.2021.

by Defendant-Respondent-Appellants on 21.10.2021.

Decided on: 16.12.2022

Mahinda Samayawardhena, J.

The plaintiff (a Buddhist monk) filed this action in the District Court of Galle against the two defendants seeking a declaration that the land described in the second paragraph of the plaint belongs to the Sri Wardhanarama Purana Viharaya of Galle, a declaration that he is the controlling Viharadhipati of this temple, ejection of the 1<sup>st</sup> defendant from the land and damages. The plan marked P1 was prepared to depict the land for the purpose of this case. The 1<sup>st</sup> defendant filed answer seeking prescriptive title to the land. After trial, the District Court dismissed the plaintiff's action on the basis that the plaintiff had not proved title to the land, and entered judgment for the defendant on the basis that the 1<sup>st</sup> defendant had acquired prescriptive title to it. On appeal, the High Court of Civil Appeal set aside the judgment of the District Court and entered judgment for the plaintiff except damages. Being aggrieved by the judgment of the High Court of Civil Appeal, the 1<sup>st</sup> defendant filed this appeal with leave obtained from this Court on the following questions of law:

1. *Did the High Court of Civil Appeal err in law by failing to consider that the plaintiff has failed to identify the land described in the second paragraph of the plaint as required by law?*
2. *Did the High Court of Civil Appeal err in law by failing to consider that the land referred to in deed marked P2 is different from the land referred to in the second paragraph of the plaint?*
3. *Did the High Court of Civil Appeal err in law by failing to consider that the plaintiff has failed to strictly prove title to the land described in the second paragraph of the plaint?*

The 1<sup>st</sup> question of law in my view cannot be a contentious issue because the learned District Judge in the judgment has rightly accepted that the land described in the second schedule to the plaint is depicted in the plan marked P1. The High Court did not disturb that finding. As I stated earlier, the District Court dismissed the plaintiff's action on the basis that the plaintiff did not prove title to the land depicted in P1, which is in the possession of the 1<sup>st</sup> defendant.

The title deed of the plaintiff is the deed marked P2, which has been executed in 1838 (184 years ago). This was marked without any objection. The transferee is Navungala Samanera Unnanse who had been the Viharadhipathi of this temple. The land is described as Kirimatimulle Owita alias Paragaha Owita and the extent is given as 20 Kurunis of paddy sowing extent. The land had not been identified by way of a survey plan, which was not uncommon at that time. The boundaries are not given in the deed.

According to the plaintiff, this land had been given on lease/mortgage by succeeding Viharadhipathies to the 2<sup>nd</sup> defendant's father (Babunhamy), mother (Karoline) and the 2<sup>nd</sup> defendant. These deeds P8-P14 were marked without any objection and they have been executed successively in 1937, 1951, 1961, 1971, 1977, 1978 and 1999. In these deeds, P2 is not referred to but boundaries are given, which tally with the boundaries in plan P1.

The learned District Judge in the judgment states that the nexus between these deeds and the title deed of the plaintiff marked P1 is not established.

The 2<sup>nd</sup> defendant in her evidence states that, after the death of her father, the 1<sup>st</sup> defendant was employed to look after the land, to pluck coconuts, but he thereafter continued to possess the temple land. It is significant to note that not a single question has been asked from the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant during the cross-examination controverting or challenging this position.

The 1<sup>st</sup> defendant did not give evidence. Instead, her daughter gave evidence. She denied that her father came to this land as a licensee of either the 2<sup>nd</sup> defendant or the Viharadhipathi of the temple.

The name of the land described in the deeds P8-P14 is Kirimatimulle Paragahaowita. The land described in the second paragraph of the plaint is Kirimatimulle Paragahaowita alias Unnansege Liyadda. The daughter of the 1<sup>st</sup> defendant in her evidence admits that this land is known by villagers in the area as Unnansege Liyadda. But she says this land was at one time owned by a village headman and because of that the land is known as Unnansege Liyadda. On the facts and circumstances of this case, in my view, this is a false position. There is no evidence to say that this land was at one time owned by a village headman and that he was called Unnanse by the villagers; villagers call Buddhist priests Unnanse or Unwahanse. It is the position of the plaintiff that since this land belongs to the temple, it is called Unnansege Liyadda, which is acceptable.

The land has been sufficiently identified and the title to the land has been sufficiently proved. In a *rei vindicatio* action the plaintiff need not prove identification of the land and the title to the land beyond reasonable doubt but on a balance of probability. This needs to be properly understood. This duty has satisfactorily been discharged by the plaintiff in this case.

*Banda v. Soyza* [1998] 1 Sri LR 255 is a *rei vindicatio* action filed by a trustee of a temple seeking a declaration of title, the ejectment of the defendant and damages. The facts are similar although not identical. The Court of Appeal set aside the judgment of the District Court and the plaintiff's action was dismissed on the ground that the plaintiff had failed to establish title to the subject matter of the action or even to identify the land in suit. But the Supreme Court set aside the judgment of the Court of Appeal and restored the judgment of the District Court on the basis that there was "sufficient evidence led on behalf of the plaintiff to prove the title and the identity of the lots in dispute." Chief Justice G.P.S. de Silva, at page 259, laid down the criterion to be adopted in a *rei vindicatio* action in respect of the onus of proof in the following manner:

*In a case such as this, the true question that a court has to consider on the question of title is, who has the superior title? The answer has to be reached upon a consideration of the totality of the evidence led in the case.*

The evidence of the daughter of the 1<sup>st</sup> defendant is that her father had come to a no-man's-land and acquired the land by prescriptive possession. This position has been accepted by the learned District Judge. As Chief Justice G.P.S. de Silva held in *Sarajudeen v. Abbas* [1994] 2 Sri LR 365 "A facile story of walking into abandoned premises after the Japanese air raid constitutes material far too slender to found a claim based on prescriptive title."

In any event, in terms of section 34 of the Buddhist Temporalities Ordinance, no prescription operates against temple properties.

*In the case of any claim for the recovery of any property, movable or immovable, belonging or alleged to belong to any temple, or for the*

*assertion of title to any such property, the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance:*

*Provided that this section shall not affect rights acquired prior to the commencement of this Ordinance.*

*Vide* the judgment of Chief Justice Samarakoon in *Waharaka alias Moratota Sobhita Thero v. Amunugama Ratnapala Thero* [1981] 1 Sri LR 201.

I answer the questions of law upon which leave to appeal was granted in the negative, affirm the judgment of the High Court of Civil Appeal and dismiss the appeal but without costs.

The District Judge will enter judgment as prayed for only in paragraphs (i), (iii) and (iv) of the prayer to the amended plaint dated 19.03.2004.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court