

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

SC/APPEAL/54/19

SC(HCCA) LA NO: 486/17

WP/HCCA/MT/46/12(F)

D.C. Mount Lavinia Case No: 1637/02/L

Pattiyage Leelawathie Gomes of No: 60/10J,  
Templers Road, Mount Lavinia.

**PLAINTIFF**

**-VS-**

1. Kotagoda Mudiyansele Seneviratne  
Yatigammana,

2. Kotagoda Mudiyansele Swarnamali  
Yatigammana,

3. Kotagoda Mudiyansele Yashodara  
Srima Kumari Yatigammana,

All of No: 53/4, Sri Gunarathana Mawatha,  
Mount Lavinia.

**DEFENDANTS**

***AND BETWEEN***

1. Kotagoda Mudiyansele Seneviratne  
Yatigammana,

2. Kotagoda Mudiyansele Swarnamali  
Yatigammana,

3. Kotagoda Mudiyansele Yashodara  
Srima Kumari Yatigammana,

All of No: 53/4, Sri Gunarathana Mawatha,  
Mount Lavinia.

**DEFENDANTS-APPELLANTS**

**-VS-**

Pattiyage Leelawathie Gomes of No: 60/10J,  
Templers Road, Mount Lavinia.

**PLAINTIFF-RESPONDENT**

**(since deceased)**

1A. Sriya Sepalika Suludagoda of No: 60/10  
M, Templers Road, Mount Lavinia.

1B. Lal Kumara Suludagoda of No: 60/10 K,  
Templers Road, Mount Lavinia. (since  
deceased)

1C. Neetha Kamani Suludagoda of No: 60/10  
J, Templers Road, Mount Lavinia.

1D. Geetha Chandani Suludagoda of No:  
60/10 H, Templers Road, Mount Lavinia.

**SUBSTITUTED PLAINTIFFS-  
RESPONDENTS**

***AND BETWEEN***

1A. Sriya Sepalika Suludagoda of No:60/10  
M, Templers Road, Mount Lavinia.

1B 1. Luwis Widanelage Gimhani Thilini  
Suludagoda

1B 2. Luwis Widanelage Emil Thilanga  
Suludagoda

1B 3. Luwis Widanelage Eshan Thiwanka  
Suludagoda

1B 4. Luwis Widanelage Udaya Bhatiya  
Suludagoda (Minor)

Appearing by his next friend;

Luwis Widanelage Emil Thilanga  
Suludagoda

All of No. 60/10K, Tempers Road, Mount  
Lavinia.

1C. Neetha Karmani Suludagoda of No:  
60/10 J, Templers Road, Mount Lavinia.

1D. Geetha Chandani Suludagoda of No:  
60/10 H, Templers Road, Mount Lavinia.

**SUBSTITUTED PLAINTIFFS-  
RESPONDENTS-PETITIONERS**

**-VS-**

1. Kotagoda Mudiyansele Seneviratne  
Yatigammana,

2. Kotagoda Mudiyansele Swarnamali  
Yatigammana,

3. Kotagoda Mudiyansele Yashodara  
Srima Kumari Yatigammana,

All of No: 53/4, Sri Gunarathana Mawatha,  
Mount Lavinia.

**DEFENDANTS-APPELLANTS-  
RESPONDENTS**

***AND NOW BETWEEN***

1A. Sriya Sepalika Suludagoda of No:60/10  
M, Templers Road, Mount Lavinia.

1B 1. Luwis Widanelage Gimhani Thilini  
Suludagoda

1B 2. Luwis Widanelage Emil Thilanga  
Suludagoda

1B 3. Luwis Widanelage Eshan Thiwanka  
Suludagoda

1B 4. Luwis Widanelage Udaya Bhatiya  
Suludagoda (Minor)

Appearing by his next friend;

Luwis Widanelage Emil Thilanga  
Suludagoda

All of No. 60/10K, Tempers Road, Mount  
Lavinia.

1C. Neetha Karmani Suludagoda of No:  
60/10 J, Templers Road, Mount Lavinia.

1D. Geetha Chandani Suludagoda of No:  
60/10 H, Templers Road, Mount Lavinia.

**SUBSTITUTED PLAINTIFFS-**  
**RESPONDENTS-PETITIONERS-**  
**APPELLANTS**

**-VS-**

1. Kotagoda Mudiyansele Seneviratne  
Yatigammana,

2. Kotagoda Mudiyansele Swarnamali  
Yatigammana,

3. Kotagoda Mudiyansele Yashodara  
Srima Kumari Yatigammana,

All of No: 53/4, Sri Gunarathana Mawatha,  
Mount Lavinia.

**DEFENDANTS-APPELLANTS-**  
**RESPONDENTS- RESPONDENTS**

Before : Priyantha Jayawardena, PC, J.  
E.A.G.R. Amarasekara, J.  
A.L.Shiran Gooneratne, J.

Counsel : J.A.J.Udawatta with Anandha Ponnampereuma instructed by Mrs. Ganga Wanigaratne for the Substituted Plaintiff-Respondent-Petitioner-Appellants

Ikram Mohamed, PC, with S.K. Lankatillak, PC, Tanya Marjan, Charitha Jayawickrema and Vinura Gunawardena for the Defendant-Appellant-Respondents

Argued on : 03.02.2021

Decided on : 27.02.2024

**E. A. G. R. Amarasekara, J.**

This is an appeal by the Plaintiff- Respondent-Appellants (hereinafter sometimes referred to as the Plaintiffs) against the Judgment of the Provincial High Court of the Western Province (exercising Civil Appellate Jurisdiction) Holden in Mount Lavinia (hereinafter sometimes referred to as the High Court) dated 11.10.2017 allowing the appeal of the Defendant-Appellant-Respondents (hereinafter sometimes referred to as the Defendants) by which the said High Court set aside the Judgment of the learned Additional District Judge of Mount Lavinia dated 03.01.2012.

When the leave to appeal application was supported, this Court granted leave on the following question of law.

*“Did the Learned High Court Judges err in law in failing to consider whether the plaintiff was entitled to a declaration of title, in the capacity of the administratrix of the estate of her late husband namely Luwis Widanalage Jagathipala?”*

As per the Plaint filed in the District Court, the cause of action has been described as follows;

- The deceased husband of the original Plaintiff, namely Luwis Anthony Widanelage Jagathipala was the owner of the land described in the schedule to the Plaint as Lot C1 of plan no. 4704 made by Surveyor H.W. Fernando in terms of the Deed of Gift No. 930 attested by C.H. Peiris, N.P.
- Aforesaid Jagathipala gave permission to his sister one L. A. V. Rathnawathie Suludagoda and her offspring, the Defendants to occupy the house bearing assessment no. 52/2 (now 53/4) from on or around 1972 as licensees.

- The said Jagathipala died without leaving a Last will and the heirs to his estate are the Plaintiff, the wife of the deceased and his four offspring.
- For the administration of the said estate, Rathnawathie Suludagoda, the Original Plaintiff, filed the Testamentary action No.318/95/T in the District Court of Mount Lavinia as the Petitioner and obtained limited letters of administration to sue the people who are occupying the premises described in the schedule to the aforesaid Plaint.
- The Plaintiff terminated the aforesaid license to occupy and demanded the peaceful possession of the said premises by letter dated 27.06.2002 sent by her lawyer.
- Irrespective of the said termination of license and demand, the Defendants continued to occupy the premises causing Rs. 5000/- per month as damage.
- The Defendants are estopped from challenging her title.
- A cause of action has arisen to sue for the eviction of the Defendants and to claim damages as aforesaid.

Thus, the Original Plaintiff had prayed for a declaration of title to the property described in the schedule to the Plaint, eviction of the Defendants and damages until the possession is given back to the Plaintiff.

In the answer filed by the Defendants, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants denied the averments contained in the Plaint except the fact that a cause of action had accrued to the Plaintiff and averred that the original owner to the property was one Julias Suludagoda, the grandfather of the Defendants who became entitled to the said property by Deed No.149 dated 09.04.1960. It was further averred that the mother of the Defendants, Rathnawathie Suludagoda who was the daughter of said Julias Suludagoda possessed the said property after said Julias Suludagoda, and said Rathnawathie Suludagoda gave the property described in the schedule to the Plaint to the Defendants to occupy. Thus, the Defendants claimed prescriptive title to the said property and the dismissal of the Plaint.

In the replication, the Original Plaintiff had denied the averments in the answer that are contrary to the averments in the Plaint and stated that the Deed No. 149, referred to in the answer, conveyed title to one L.W. Leelarathne and said Leelarathne by Deed No. 930 referred to in the Plaint transferred the property to Jagathipala, the husband of the Plaintiff. It is reiterated in the replication that said Jagathipala gave permission to his sister, the mother of the Defendants to occupy the property and the Original Plaintiff filed the action after obtaining limited letters of administration.

Contents of the Plaint and the replication clearly indicate that the action filed by the Original Plaintiff was not an action that can be properly described as a *rei vindicatio* action. The cause of action is based on occupation of the property after the termination or expiry of the license, in other words, after the termination of the contractual relationship. This position is fortified by the

avertment in the Plaintiff which states that the Defendants are estopped from challenging the title of the Plaintiff. By stating so, it appears that the Original Plaintiff relied on the provisions of section 116 of the Evidence Ordinance. Thus, prayer for the declaration of title to the property described in the schedule to the Plaintiff has to be understood in that context as on this occasion the declaration of title to the property is prayed not based on ownership but on contractual relationship that was present between the parties. In **Pathirana V Jayasundara 58 N L R 169** a similar situation was explained as follows;

*“A decree for a declaration of title may, of course, be obtained by way of additional relief either in a rei-vindicatio action proper (which is in truth an action in rem) or in a lessor’s action against his over holding tenant (which is an action in personam). But in the former case, the declaration is based on proof of ownership; in the latter, on proof of the contractual relationship which forbids a denial that the lessor is the true owner.”*

If the Original Plaintiff wanted to file this action as an owner or a co-owner based on the title or ownership she got after the death of her husband, she need not have averred with regard to the testamentary case and the limited papers of administration she obtained to file the Plaintiff. She could have directly referred to the title her late husband got through the deeds and her right through succession as the wife. As held in **Silva V Silva 10 N L R 234**, upon a death of a person his/her estate in the absence of a will, passes at once by operation of law to his/her heirs and the *dominium* vests in them. Thus, to eject the trespassers, if it is a cause of action based on the ownership of the Plaintiff, such as in *rei vindicatio* action, it was not necessary to plead issuance of limited letters of administration to sue the Defendants. It is pertinent to note, that in **Mohamed V Public Trustee (1978-79-80) 1 Sri L R 1**, it was held that although the title to the property of a person dying intestate vests on the intestate heirs by operation of law, the property is regarded as vested in the administrator for the purposes of section 472 of the Civil Procedure Code, in strictly limited sense, so as to enable him, in his representative capacity to recover from a third party, what is claimed to be an asset of the intestate estate. [Also see **Chelliah V Wijenathan (1951) 54 N L R 337**]. Thus, this decision focuses on the ability of an administrator of an estate to file an action to recover possession of the property belonging to the estate in his representative capacity, and it also indicates the capacity of the administrator to claim for title on behalf of the estate as the property is vested in him in that limited sense. By indicating in the Plaintiff that she obtained the limited letters of administration, the Plaintiff has indicated that she was filing the case in that capacity. It appears that the learned District Judge correctly understood this position and gave the declaration of title to her as the administrator of the estate- vide answer to issue No.13 in the District Court Judgment.

It is averred that she terminated the license by sending letters through her lawyer. Thus, it is clear that the action was filed in the District Court after obtaining letters of administration from the testamentary case based on a cause of action that alleges the occupation of the scheduled property after the termination of license or contractual relationship. Due to the reference to the fact that she obtained limited letters of administration to sue the Defendants clearly shows that she filed the

action as the administrator after obtaining limited letters of administration to recover the property that belongs to the estate of the deceased husband. Thus, the Plaint clearly indicates that the action in the District Court was filed in pursuance of the duties she was entrusted with as the administrator as per the limited letters of administration. As per the decision in **Haniffa V Cader 42 N L R 403**, it appears that such letters of administration cannot be challenged in a different action on the ground of an irregularity.

Hence, the scope of the case before the learned District Judge was dependent on the following facts namely, whether the Defendants were illegally occupying the land after termination or expiry of the license or whether the Defendants have prescriptive title to the property. The issues had been raised focusing the aforesaid scope and in fact, the Original Plaintiff had raised an issue in relation to the issuance of limited letters of administration to sue the Defendants. As explained above, if this was a *rei vindicatio* action based on her ownership, she need not had raised such issue relating to the issuance of limited letters of administration. It must be observed that no issue had been raised questioning the *locus standi* or the ability of the Original Plaintiff to sue the Defendants.

The learned District Judge delivered his judgment in favour of the Plaintiff granting relief as prayed for in the Plaint- vide answer to issue No.9, and further stated that the Plaintiff has a legal right to the property as the Administrator of the property- vide answer to the issue No.13. In coming to his conclusions, the learned District Judge has considered the certified copy of the Deed No.149 dated 09.04.1960 tendered by the Plaintiff (marked as P2 at the trial), the evidence given by the land registry officer confirming that it was a true copy as against the photo copy of the Deed No.149 tendered by the Defendants (marked as V1 at the trial) and the fact relating to the time of death of the alleged predecessor in title of the Defendants who as per the Defendants was the Donee of the said deed. As per the true copy, the Donee was L.W. Leelarathne, one who donated the land to Jagathipala, the Original Plaintiff's husband and for whose estate the Original Plaintiff was given limited letters of administration. Further, the learned District Judge has given reasons to state why he cannot accept the prescriptive claim to the property by the Defendants. On the other hand, as per the chain of title presented by the Defendants, Julius Suludagoda was the original owner who got title through Deed No.149. If so, the deceased Jagathipala who appears to be the brother of the mother of the Defendants should have also become a co-owner with the demise of said Julius Suludagoda. Then to claim prescriptive title, the Defendants must have proved an overt act and adverse possession for ten years from that overt act against the co-owners. The action before the District Court was filed in 2002. As per the Judgment of the learned District Judge, the evidence of the 1<sup>st</sup> Defendant only refers to a chasing away of the Plaintiff in 1969, when she tried to claim the land. The Plaintiff had marked necessary documents to prove that she obtained limited letters of administration to sue the occupiers in the property described in the schedule to the plaint as well as letters sent as the administrator through her lawyer to terminate license given to the Defendants. It must be noted, when the claim for prescriptive title of the Defendants failed, it is only the licensor – licensee relationship averred in the plaint that explains the occupation of the Defendants in the property. Hence, there was sufficient material before the learned District Judge



to establish on balance of probability that the property in question is part of the estate of the deceased Jagathipala; that the Defendants were licensees and that license was terminated by the administrator; and that she obtained the authority from the testamentary case to sue the Defendants. It must be noted, that evaluation of facts by the learned District Judge has not been challenged as perverse through a question of law raised when the leave was granted.

Being aggrieved by the Judgment of the learned District Judge, the Defendants appealed to the High Court. The learned High Court Judges allowed the appeal and set aside the Judgment of District Court. When perusing the Judgment of the High Court dated 11.10.2017, it is clear the learned High Court Judges considered the action before the District Court as an action in the nature of *rei vindicatio* proper which needs strict proof of title; Thus, as an action based on proof of title in its strict sense. In this regard I prefer to quote the following part from the High Court Judgment.

“ .....Therefore, it is to be understood that she filed the action being a co-owner and not in any other capacity.... ”

The learned High Court Judges have failed to observe correctly that the action filed before the District Court was based on a termination of license and if the license was proved, as per section 116 of the evidence ordinance, the Defendants are estopped from challenging the ownership of the licensor. Further, the learned High Court Judges have failed to appreciate that the Plaintiff had specifically pleaded in the Complaint that the Defendants are estopped from challenging the title. The learned High Court Judges have also failed to observe that if the Plaintiff filed the action on the basis of her title as a co-owner or owner, she need not have pleaded with regard to the testamentary case or the issuance of limited letters of administration to sue the Defendants nor she had any necessity to lead evidence in relation to the obtaining of limited letters of administration to sue the Defendants. Thus, the learned High Court Judges have failed to recognize that the declaration of title that was prayed in the prayer had been prayed in the limited capacity of an administrator as well as it was prayed with regard to a situation of terminated or expired license where section 116 of the Evidence Ordinance is relevant.

In addition to above, it must be stated that even if the action before the District Court is considered as one in the nature of *rei vindicatio*, the conclusion reached by the learned High Court Judges referring to **Hariette V Pathmasiri (1996) 1 Sri L R 358, Dharmasiri V Wickrematunga (2002) 2 Sri L R 218** and **Hevawitarane V Dangan Rubber Co.Ltd. 17 NLR 49** is incorrect as this Court after considering those decisions and decisions made in **Jayasinghe V Tikiri Banda (1988) 2 CALR 24, Unus Lebbe V Zayee (1893) 3 S C R 56, Arnolisa V Dissan 4 N L R 163, Geeta V Fernando (1905) 4 Bal. 100, Rockland Distilleries V Azeez 52 N L R 490, Allis V Seneviratne and Others (1989) 2 Sri L R 335** and **Attanayake V Ramyawathie (2003) 1 Sri L R 401** has held in **Gallage Saummehammy alias Somawathie V A.Dharmapala SC Appeal**

**184/14 Supreme Court minutes dated 08.09.2022**, that a co-owner can maintain an action to eject a trespasser without making other co-owners parties to the action, and that even if the co-owner claims ownership to the entire land, lesser relief declaring that he is only a co-owner can be granted by a Court. It was also held that prayer for a declaration is not a must in a vindicatory action if the title is averred and proved. Thus, even a co-owner is entitled to obtain the relief of ejectment of a trespasser as per our law. Even if the prayer for declaration of title is not there or defective for some reason, if the title is proved the prayer for ejectment can be granted. It is pertinent to note that a co-owner has a right to every grain of sand or every part and portion of the land in dispute to the extent of his share where a trespasser has no right or interest.

As per the reasons given above, it is clear that the learned High Court Judges erred in many aspects by failing to consider,

- that the action was based on the occupation by licensees after termination of license,
- that the action was filed after obtaining limited letters of administration in the relevant testamentary case,
- that even it was considered as an action filed in the nature of a *rei vindicatio*, as the title was proved as co-owner she was entitled to a lesser relief even if she has prayed relief for a declaration of ownership for the entirety.

Before answering the question of law, it is necessary to examine the section 42 of the Civil Procedure Code which states as follows;

*“42. When the Plaintiff sues in a representative character, the plaintiff should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute an action concerning it.”*

The relevant illustration (b) is as follows;

*“(b) A sues as C’s administrator. The Plaintiff must state that A has taken out administration to C’s estate.”*

In the Plaintiff relevant to the case at hand, the Plaintiff had averred that she was given limited letters of administration to sue the Defendants. Further, there are sufficient facts revealed to show that the relevant property was part of the estate which indicates that the administrator should have taken interest to recover it.

As per the said section 42, it must be revealed in the Pleint that the action is filed in a representative capacity. As per the Pleint, Pleintiff was the administrator with limited letters of administration to sue the Defendants. Thus, she has averred facts to indicate that she filed this action in a representative capacity. Even though the exact words to indicate that she was filing in representative capacity were not included, one familiar with law can easily recognize that she has filed the action after obtaining the necessary authority from the testamentary case. Those facts indicate that she filed the action as the Administrator with limited letters of administration to sue the Defendants. It is true that the relevant Form No. 14 included in the First Schedule to the Civil Procedure Code has mentioned the representative character of an administrator in the caption itself. However, the said section 42 does not indicate that it must only be done according to the said form. Section only requires to indicate it in the Pleint. Therefore, the form is only an example showing how the representative character may be indicated in the Pleint. If the body of the Pleint has revealed sufficient material to show the representative character of the Pleintiff, it is sufficient for the purpose of the section. In my view, the Pleintiff sufficiently indicated in the Pleint that she filed the action as the one who held the letters of administration to sue the Defendant. Thus, her representative nature with regard to the estate of the deceased was revealed in the Pleint.

As said before, if it was an action filed based on her co-ownership or ownership, she need not have averred in relation to the issuance of limited letters of administration to sue the Defendants. At the trial, an issue had also been raised on the premise that limited letters of administration had been issued to the Pleintiff. The learned District Judge in his judgment has clearly recognized that the action had been filed as the administrator. That is why he gave the declaration of title on the basis that the Pleintiff is the Administrator of the estate- vide answer to issue No 13. There was no objection or challenge to the status or *locus standi* of the Pleintiff through issues raised in the action before the District Court. Now if this Court considers to decide the insufficiency of the exposure of the representative character, in a way, this court is going to decide on a matter not placed before the original Court.

On the other hand, one may argue that the original licensor was the deceased Jagathipala, and with his demise it is the duty and responsibility of the Pleintiff as the administrator to recover the properties of the estate in the hands of persons who have become the trespassers and she herself can file action of this nature without any representative nature as this involves a matter related to her duties and responsibilities which is of a fiduciary nature. Anyway, I do not intend to do a deep discussion in that aspect as I think sufficient facts have been revealed through averments in the Pleint to recognize that she sued the Defendant in her representative capacity as the Administrator after obtaining the limited letters of administration to sue the Defendants. However, as explained above, the learned High Court Judges failed to appreciate such facts.

For the forgoing reasons, I answer the question of law quoted at the beginning of this Judgment in the affirmative in favour of the Plaintiff-Appellants.

Therefore, I set aside the Judgment of the High Court dated 11.10.2017 and restore the Judgment of the Learned District Judge as the case had been filed as the Administrator of the estate of the deceased Jagathipala to recover a property belonging to the estate after the expiry of a license to occupy given by said Jagathipala to the Defendants.

Appeal allowed with costs.

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Judge of the Supreme Court

Hon. Priyantha Jayawardena, PC, J

I agree.

.....

Judge of the Supreme Court.

Hon. A. L. Shiran Gooneratne, J

I agree.

.....

Judge of the Supreme Court.