

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

In the matter of an appeal against the judgment dated  
16.03.2012 of the Provincial Civil Appellate High Court  
of the Western Province (Holden at Gampaha)

**In the District Court**

Abeykoon Mayadunnage Isuru Udayantha Abeykoon  
**Plaintiff.**

SC Appeal No. 6/2013  
SC/HCCA/ LA 156/2012  
DC Gampaha No. 38641/P

Vs

1. Abeykoon Mayadunnage Somapala Abeykoon
2. Abeykoon Mayadunnage Gnanalatha Abeykoon
3. Hiriyadeniya Karunarathna Ananda Athapattu  
Mudali

**Defendants.**

**In the provincial High Court**

WP/HCCA/GPH- 39/2008(F)

Abeykoon Mayadunnage Isuru Udayantha Abeykoon

**Plaintiff-Appellant**

Vs

1. Abeykoon Mayadunnage Somapala Abeykoon
2. Abeykoon Mayadunnage Gnanalatha Abeykoon
3. Hiriyadeniya Karunarathna Ananda Athapattu  
Mudali

**Defendant-Respondents**

And Between

Abeykoon Mayadunnage Somapala Abeykoon

**1<sup>st</sup> Defendant-Appellant**

WP/HCCA/GPH-39A/2008(F)

Vs

1. Abeykoon Mayadunnage Isuru Udayantha Abeykoon  
**Plaintiff-Respondent**
2. Abeykoon Mayadunnage Gnanalatha Abeykoon
3. Hiriyadeniya Karunarathna Ananda Athapattu  
Mudali.

**Defendant-Respondents**

**In the Supreme Court**

Hiriyadeniya Karunarathna Ananda Athapattu Mudali.

**3<sup>rd</sup> Defendant-Respondent-Petitioner**

Vs

Abeykoon Mayadunnage Isuru Udayantha Abeykoon

**Plaintiff-Appellant-Repondent**

Abeykoon Mayadunnage Somapala Abeykoon

**1<sup>st</sup> Defendant-Appellant-Respondent**

Abeykoon Mayadunnage Gnanalatha Abeykoon

**Defendant-Respondent-Respondent**

**AND NOW IN THE SUPREME COURT**

Hiriyadeniya Karunarathna Ananda Athapattu Mudali.

**3<sup>rd</sup> Defendant-Respondent-Petitioner-Appellant**

Vs

Abeykoon Mayadunnage Isuru Udayantha Abeykoon

**Plaintiff-Appellant-Repondent-Respondent**

Abeykoon Mayadunnage Somapala Abeykoon

**1<sup>st</sup> Defendant-Appellant-Respondent-Respondent**

Abeykoon Mayadunnage Gnanalatha Abeykoon

**Defendant-Respondent-Respondent-Respondent**

BEFORE : CHANDRA EKANAYAKE J  
SISIRA J DE ABREW J  
SARATH DE ABREW J

COUNSEL : Sudarshani Coorey for the 3<sup>rd</sup> Defendant-Respondent-Petitioner-  
Appellant

Vinodh Wickramasoorioya for  
 the Plaintiff-Appellant-Repondent-Respondent  
 Ms.Thanuja Hathurusinghe for  
 the 1<sup>st</sup> Defendant-Appellant-Respondent-Respondent

ARGURD ON : 10.7.2014  
 DECIDED ON : 3.10.2014

**SISIRA J DE ABREW J.**

Plaintiff filed this action to have the land described in the schedule to the plaint partitioned among the parties (plaintiff and 1<sup>st</sup> to 3<sup>rd</sup> defendants). After trial learned the learned District Judge dismissed the case. Being aggrieved by the said judgment of the learned District Judge, the Plaintiff-Appellant-Respondent-Respondent (hereinafter referred to as the Plaintiff) and 1<sup>st</sup> Defendant-Appellant-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup> defendant) filed appeals in the Provincial High Court (High Court). The High Court, by its judgment dated 16.3.2012, set aside the judgment of the learned District Judge. Being aggrieved by the said judgment of the High Court, 3<sup>rd</sup> Defendant-Respondent-Petitioner-Appellant (hereinafter referred to as the 3<sup>rd</sup> defendant) appealed to this court. This court, by its order dated 21.1.2013, granted leave to appeal on the questions of law set out in paragraph 9(c) and 9(d) of the petition dated 25.4.2012 which are reproduced below.

1. Have their Lordships erred in failing to appreciate that the 3<sup>rd</sup> defendant has possessed the relevant portion of land, namely Lot 2 in Preliminary Plan No.25997("X") to the exclusions of all others by erecting fences and not allowing any other person to enter the land and thereby clearly shown an ouster from 1975 onwards and acquired a prescriptive title to the land.
2. Have their Lordships erred in holding that there was no evidence to show that the parties had possessed the land independently according to the plan

prepared after the settlement when infact the plaintiff's evidence and the other witnesses who gave evidence on behalf of the plaintiff admitted the fact that the lands of the 3<sup>rd</sup> defendant was separated by long standing fences from the other lands and that no other person was allowed to enter into the land of the 3<sup>rd</sup> defendant.

The learned District Judge, in his judgment, came to the conclusion that the land sought to be partitioned had been amicably partitioned in the Conciliation Board case in the year of 1975 and as such the ownership had come to an end. Learned Counsel for the 3<sup>rd</sup> defendant made the same submission and further stated that the parties, after settlement, had independently possessed their blocks of land.

The most important thing that must be decided in this case is whether the parties had amicably partitioned the land in the Conciliation Board case in the year of 1975. For this amicable partition to have taken place, all the parties should have participated in the Conciliation Board case. If all the parties had not participated in the Conciliation Board case, it cannot be said that the land had been amicably partitioned among the parties. I ask the following question. Have all the parties participated in the Conciliation Board case? The 2<sup>nd</sup> defendant giving evidence before the learned District Judge stated that neither she nor her father participated in the Conciliation Board case. Thus it cannot be said that parties had amicably partitioned the land in the Conciliation Board case. Thus I hold that the learned District Judge was wrong when he came to the conclusion that the parties had amicably partitioned the land. The learned High Court Judges considering this position came to the conclusion that the learned District Judge was wrong when he

came to the above conclusion. When I consider the above matters, I hold that the learned High Court Judges were correct on this point.

The learned District Judge further decided that as a result of the amicable partition of the land in the Conciliation Board case, the ownership of the co-owners had come to an end. Is this decision correct? I now advert to this question. In this connection it is pertinent to consider whether a co-owner can acquire prescriptive title to a co-owned land without the other co-owners being ousted from common usage of the land. It must be remembered here that all the parties did not participate in the Conciliation Board case. To find an answer to the above question it is pertinent to consider the judgment in the case of *Wickramarathne and Others Vs Alpenis Perera* [1986] 1 SLR page 190 wherein the Court of Appeal held thus: “A co-owner’s possession is in law the possession of other co-owners. Every co-owner is presumed to be in possession in his capacity as co-owner. A co-owner cannot put an end to his possession as co-owner by a secret intention in his mind. Nothing short of ouster or something equivalent to ouster could bring about that result.”

In *Corea Vs Appuhamy* 15 NLR 65 Privy Council held thus: “A co-owners’s possession is, in law, the possession of his co-owners. It is not possible for him to put an end to that possession by any secret intention in his mind. Nothing short of ouster or something equivalent to ouster could bring about that result.”

Having considered the above legal literature, I hold that a co-owner cannot acquire prescriptive title to a co-owned land without the other co-owners being ousted from common usage of the land

When I consider the above matters, I hold that the learned District Judge was wrong when he came to the above conclusion. The learned High Court Judges after considering the above matters decided that the learned District Judge was wrong on this point too. In my view the learned High Court Judges were correct when they reached the above conclusion. In view of the above conclusion reached by me the questions of law raised by the appellant are answered in the negative. After considering all the above matters I would like to express the following view. If a co-owner of a co-owned land can get the co-owned land amicably partitioned in a conciliation board case without participation of all co-owners, then the provisions of the Partition Act will be rendered redundant.

When I consider all the above matters, I hold the view that I should not interfere with the judgment of the Civil Appellate High Court. For the above reasons, I dismiss the appeal with costs.

*Appeal dismissed.*

Judge of the Supreme Court.

CHANDRA EKANAYAKE J

I agree.

Judge of the Supreme Court.

SARATH DE ABREW J

I agree.

Judge of the Supreme Court.

