

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

Wijayarathna Gamage Palitha Srilal,  
379B, Kamburagalla, Rakgahawila.  
Defendant-Respondent-Appellant

**SC/APPEAL/38/2011**

**WP/HCCA/GAM/127/2005(F)**

**DC ATTANAGALLE 28/L**

Vs.

Wilwara Archchilage Sunethra Srimathi,  
Kamburagalla, Rakgahawila.  
Plaintiff-Appellant-Respondent

Before: Hon. Justice S. Thurairaja, P.C.

Hon. Justice A.H.M.D. Nawaz

Hon. Justice Mahinda Samayawardhena

Counsel: Rohan Sahabandu, P.C. with Chathurika Elvitigala for the  
Appellant.

Sumith Senanayake, P.C. with Nisali Balachandra for the  
Respondent.

Argued on: 24.10.2024

Written Submissions on:

By the Appellant on 31.03.2011 and 05.02.2025

No written submissions have been filed on behalf of the  
Respondent either before or after the argument.

Decided on: 27.03.2025

**Samayawardhena, J.**

The plaintiff instituted this action against the defendant in the District Court of Attanagalle seeking a declaration that she is a co-owner of the land described in the schedule to the plaint, the ejectment of the defendant therefrom, and damages. The dispute primarily concerns the defendant's use of a right of way over the plaintiff's land, which the plaintiff contends he is not entitled to.

In his answer, the defendant sought a declaration that he is entitled to a servitude of an eight-foot right of way over the plaintiff's land by prescription. He also claimed a fifteen-foot right of way by way of necessity.

After trial, the District Court entered judgment in favour of the defendant holding that he is entitled to a ten-foot right of way over the plaintiff's land by prescription.

On appeal, the High Court set aside the judgment of the District Court and entered judgment for the plaintiff as prayed for in the plaint. The defendant now appeals against the judgment of the High Court.

The defendant resides on the land situated to the south of the plaintiff's land. The defendant's land was subject to partition in Partition Case No. 18815/P in the District Court of Gampaha. The final partition decree dated 04.08.1986 was marked as P8, and the corresponding final partition plan was marked as P8අ.

On 15.10.1999, the defendant purchased Lot 1 of the said final partition plan by deed marked P7. The plaintiff instituted this action on 18.04.2002. As evidenced by Commission Plan No. 1552, which was prepared for the purpose of this case and marked as P9, Lot 1 forms the southern boundary of the plaintiff's land.

The plaintiff asserts that she and her family have been residing on the land situated to the north of Lot 1 for an extended period. Following the untimely demise of her husband on 05.11.1998, she temporarily moved to her parents' house with her two young children. During this period, the defendant, for his convenience, began using a roadway over her land, despite the existence of a clearly demarcated ten-foot right of way—Lot 11 of the final partition plan—providing access from Lot 1 to the main road.

The defendant's position is that he has been living in the house on Lot 2 of the final partition plan since 1989 and has been using this road over the plaintiff's land throughout. To put it simply, Lot 1 forms the southern boundary of the plaintiff's land, and Lot 2 forms the southern boundary of Lot 1. The defendant asserts that from his house on Lot 2, he has been using a right of way through Lot 1 and the plaintiff's land.

The deed by which the defendant claims title to Lot 2 was marked V2. This deed was executed on 25.03.1989 after the aforementioned partition decree by the allottees of Lot 2. However, in the deed, the said allottees do not refer to the partition decree at all. Instead, they have transferred their undivided rights, tracing their title to a deed executed in 1940. This is intriguing. Nevertheless, there is no need to examine this matter in the present appeal, as there is no dispute over Lot 2. What must be emphasized is that, after entering the partition decree, all prior deeds cease to have validity.

Furthermore, with the partition decree, any pre-existing roads across the defendant's land were extinguished, and a new access road—Lot 11—was created. The final partition plan does not indicate any road access northward from Lot 1. Instead, the public road is depicted on the eastern side of the larger land. The court commissioner, in Plan No. 1552, has identified this public road as the Pradeshiya Sabha road (see note 5 of that plan). Accordingly, the defendant's contention that he and their

predecessors in title have been using a roadway over the plaintiff's land for more than 60 years is untenable.

I have no reason to interfere with the judgment of the High Court. The defendant-appellant raised the following question of law before this Court: "*In the circumstances pleaded, is the judgment of the High Court according to law and according to the evidence adduced in the case?*". I answer the said question of law in the affirmative. There is no necessity to answer the other questions of law. I affirm the judgment of the High Court and dismiss the appeal with costs.

Judge of the Supreme Court

S. Thuraiaraja, P.C., J.

I agree.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court