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

In the matter of an Appeal under and in terms of Articles 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006.

The Spiritual Assembly of the Bahai faith in Lanka (Ceylon),
No.65, National Bahai Center,
Havelock Road, Colombo 06.

SC Appeal. 25/2018

S.C/H.C./C.A (LA) 169/2017

SP/HCCA/MT/79/2013 (F)

D.C. Mt Lavinia 2017/05/L

Plaintiff

Vs.

1. Shirani Pushpalatha De Silva,
2. Nanayakkara Casen Pallige Alfred De Silva,

both of No. 29/10, Pangiriwatte Road, Mirihana, Nugegoda.

Defendants

And

The Spiritual Assembly of the Bahai faith in Lanka (Ceylon),
No.65, National Bahai Center,
Havelock Road, Colombo 06.

Plaintiff- Appellant

Vs.

1. Shirani Pushpalatha De Silva
2. Nanayakkara Casen Pallige Alfred De Silva,

both of No. 29/10, Pangiriwatte Road, Mirihana, Nugegoda.

Defendant-Respondents

And Now Between

The Spiritual Assembly of the Bahai
faith in Lanka (Ceylon),
No.65, National Bahai Center,
Havelock Road, Colombo 06.

Plaintiff-Appellant-Petitioner/Appellant

Vs.

1. Shirani Pushpalatha De Silva
2. Nanayakkara Casen Pallige Alfred De Silva,
both of No. 29/10, Pangiriwatte Road,
Mirihana, Nugegoda.

Defendant- Respondent-Respondents

Before: **Jayantha Jayasuriya, PC, CJ.**

Murdu N.B. Fernando, PC, J and

S. Thurairaja, PC, J.

Counsel: Manohara de Silva, PC with Hirosha Munasinghe for the Plaintiff- Appellant-Appellant instructed by N. Hippola

Geoffrey Alagaratnam, PC with Supuni Gunasekara for the Defendant–Respondent- Respondents

Argued on: 06-09-2023

Decided on: 16-10-2024

Murdu N.B. Fernando, PC. J.,

This is an Appeal against the judgement of the Civil Appellate High Court of the Western Province holden in Mount Lavinia ("the High Court").

This Appeal stems from an action instituted by the Plaintiff-Appellant-Appellant ("the plaintiff") in the District Court of Mount Lavinia, *inter-alia* seeking a declaration of title to the land more fully referred to in the schedule to the plaint, ejectment of the defendants therein and damages until the plaintiff is restored in possession.

The Defendant- Respondent-Respondents ("the defendants") rejected the contention of the plaintiff and pleaded that they had prescriptive title to the land in suit.

The District Court accepted the prescriptive title of the defendants and did not grant relief to the plaintiff. The plaintiff went before the High Court and the High Court dismissed the appeal. Being aggrieved by the said judgement, the plaintiff has now come before this Court, having obtained leave on the following two questions of law;

(i) Did both the District Court and the High Court err in law by holding that the 1st defendant has acquired prescriptive title to the land in suit when the defendants have failed to lead sufficient evidence to prove prescriptive title to the land in suit?

(ii) Did the learned High Court Judges err in holding that the plaintiff had failed to establish title to the land in suit?

The factual background

01. The plaintiff is a religious institution, registered in the year 1972 in accordance with the law.

    The plaintiff contends it acquired title to the land in suit in the year 1972 by virtue of a deed bearing No 3284 (**P1**). The case of the plaintiff was that even prior to the execution of the deed, the land in suit was owned by the plaintiff. However, it was in the name of one Kandaiah, a trustee of the plaintiff institution. It was transferred to the plaintiff by the aforesaid **P1** deed in 1972, upon a resolution passed by the plaintiff institution.

    Therefore, the plaintiff contends, that from or about 1956, the plaintiff has had undisturbed and uninterrupted possession of the land in suit and had thus, prescribed to the land.

02. The defendants case was that the defendants, (husband and wife) have been carrying on a horticulture business on the land in suit for the last 25 to 30 years.

03. The defendants contend that initially, the land was a marshy land and was developed to the present status, by filling with earth by the defendants. The defendants' business was sale of plants, flower pots and agri products and a variety of commercial crops. The defendants had a plants for hire scheme too. The land in suit was possessed by the defendants, uninterrupted and undisturbed for more than 30 years.

04. The defendants also pleaded that on or around the year 2003, the plaintiff disputed the defendants' possession. This dispute thereafter became the subject matter in a Section 66 application and the Magistrate granted relief to the plaintiff. However, in appeal, the High Court set aside the said order of the Magistrate and the defendants continued the possession of the land. The defendants relied upon the said order and other marked documents to establish its claim to the land in suit on prescription.

05. The trial judge in this instant case, whilst holding that the plaintiff had established its title to the land in suit, vide **P1** the deed, nevertheless accepted that the defendants had prescriptive title to the land in dispute.

06. Being aggrieved by the said order, the plaintiff went before the High Court.The learned Judges of the High Court held, that the case of the plaintiff being a declaration of title, the plaintiff failed to establish the chain of title to the land. The learned judges scrutinized the deed **P1** and especially its recitals and came to the finding that the plaintiff does not have exclusive title to the land in suit. Thus, based on case law, the High Court held that the plaintiff has failed to establish its title as required by law relating to a *rei vindicatio* action and therefore, varied the answers given by the trial judge to three issues, pertaining to plaintiff's title to the land in dispute to read as 'not proved'.

07. Further examing the order of the trial judge, the learned Judges of the High Court observed that the learned district judge has paid due consideration to the evidence led at the trial and had correctly found that the plaintiff failed to prove, at any given time, the physical possession of the land in dispute.

08. In relation to the prescriptive title of the defendants, the learned Judges of the High Court held, that the trial judge had carefully analyzed the oral and documentary evidence before court and had considered the matter on a judicious perspective and had come to the finding that the defendants acquired prescriptive title to the land in suit.

09. Therefore, the High Court held that there is no reason to interfere with such decision of the trial court and dismissed the appeal without costs, subject however, to the variation of the answers given to three issues as referred to earlier and thereby held that the plaintiff has failed to establish title to the land in suit.

10. In summary, the High Court held that the plaintiff failed to establish its title and that the trial judge correctly held that the defendants had acquired prescriptive title to the land in dispute, *viz*, 29/11, Pangiriwatta Road, Mirihana.

The Appeal before the Supreme Court

Having referred to the factual matrix of this Appeal, let me now move onto consider the questions of law raised before this Court. The first question relates to acquisition of prescriptive title by the defendants and the second, the title of the plaintiff itself.

Plaintiff's title

I wish to consider the 2nd question of law raised before this Court first *i.e.,* Plaintiff's title to the land in suit.

From the facts narrated earlier, there is no ambiguity that the only title deed produced before the trial court was **P1**, a deed executed in 1972 wherein the plaintiff claimed title to the land in suit. The defendants claimed uninterrupted and undisturbed possession, adverse to none, for more than 30 years.

The plaintiff instituted the instant matter in the District Court of Mount Lavinia in the year 2005.

Prior to the institution of this case, a Section 66 application pertaining to the land in suit was filed in the year 2003. According to the evidence led at the trial, there had been no disputes or disturbances between the parties until the year 2003. The land in suit lies next to the defendants residence. The plaintiff institution, is located away from the land in suit.

By the plaint filed in the District Court, the plaintiff claimed a declaration of title, ejectment and damages until the plaintiff is restored to possession. These reliefs, reflect all elements underpinning an application for a *rei vindicatio* action. However, in the written submissions filed before this Court, the plaintiff appears to distance himself from the said proposition and contend that the instant application is a pure and simple 'declaratory action'.

The nature and scope of a vindicatory action has been discussed and analysed in judgements and by text book writers here and in other jurisdictions, for many years and a plethora of judicial dicta has evolved pertaining to same.

There is no doubt that the *rei vindicatio* action is the major remedy conferred by the Roman-Dutch Law on an owner who had been deprived of his property. The *jus vindicandi,* or the right to gain possession of one's property, is a significant attribute of ownership in the Roman-Dutch Law.

Voet in his **Commentary at Vol 6.1.2** states as follows;

> *"From the right of ownership springs the vindication of a thing, that is to say, an action in rem by which we sue for a thing which is ours but in the possessions of another."*

Thus, an applicant for a *rei vindicatio* action ought to have a real right in the property. As *dominus* he has the right of possession and occupation of the property against all the world, a right in *rem,* save and so far as he has parted with his right to such possession and occupation.

Thus, the requisites of a *rei vindicatio* action is that the plaintiff is the owner of the property and the property is in the possession of the defendant.

Our courts have constantly held that when the defendant is in possession of the land in dispute, the burden is on the plaintiff to prove that he has *dominum.* [Ref. **Wanigaratne v. Appuhamy 65 NLR 167; Peeris v. Saunahamy 54 NLR 207; Abeykoon Hamine v. Appuhamy 52 NLR 49** and **De Silva v. Goonetileke 32 NLR 217**]

Our court have been unanimous in holding that *dominum* or ownership is proved though the chain of title running into many years or as far as you could remember, and the burden or the *onus probandi* is on the plaintiff to prove *dominum*.

Based upon the above proposition in the instant appeal, the plaintiff should prove ownership. As discussed earlier, the trial judge relying only upon the deed **P1** executed in 1972, came to the finding that the plaintiff has established *dominum*.

The learned Judges of the High Court reversed such finding after carefully analyzing the contents of **P1,** the only title deed marked in evidence and the oral evidence led before court. It is a matter of interest, that the plaintiff failed to lead evidence of the purported indenture and the resolution passed by the plaintiff institution in 1972 and the evidence of Kandaiah or any other trustee of the plaintiff institution. Thus, for reasons stated in the judgement, the learned judges of the High Court came to the finding that the plaintiff has failed to establish title and specifically, exclusive title to the land in suit, the contention put forward at the trial by the plaintiff.

The learned President's Counsel for the Appellant submitted before us, that the action filed in the District Court was not a *rei vindicatio* action but a declaratory action. Thus, it was contended that it was not necessary to establish title through a chain of title and **P1** would suffice.

Further, it was contended, even if the Appellant obtained only the rights of the trustee Kandaiah, (as contended by the Respondents since, the recitals in **P1**, refer to 'Kandaiah and another' having title) that the plaintiff becomes a co-owner of the land and capable of vindicating its rights. The learned Counsel relied upon **Hewawitharana v. Dangan Rubber Co. 17 NLR 49** to put forward this argument. The learned Counsel also relied upon **Pathirana v. Jayasundara 58 NLR 169** and the Court of Appeal judgement in **Luwis Singho and others v. Ponnamperuma (1996) 2 SLR 320** to justify, that in an action for a declaration of title and ejectment, the plaintiff need not sue by right of ownership but could do so, by right of possession and ouster as well.

I do not wish to have a discourse with regard to *rei vindicatio* actions *vis-â-vis* declaratory actions in this judgement. It would suffice to state, that there is an affinity between the two actions though distinct in scope. [Ref. **Le Mesurier v. Attorney General 5 NLR 65** and **Allis Appu v. Endiris Hamy (1894) 3 SCR 87**]

Although our courts have recognized the two actions as indistinguishable, the requisites to be proved in the two actions are clearly different, when the elements under which a party wishes to vindicate its rights, is considered.

In the instant Appeal, the version of the plaintiff was in the year 1956, 16 years prior to the registration of the plaintiff institution, one Kandaiah being a trustees of the plaintiff institution, *together with another* purchased the land in suit, upon an indenture. However, as stated earlier, no evidence was led about such facts nor was the indenture marked at the trial.

Another argument put forward by the Appellant before this Court was that the defendants were put on the land in 1973 for one year by the said Kandiah, and thus the defendants were on the land with the 'leave and license' of the plaintiff.

The record bears out that no evidence had been led by the plaintiff in respect of the said contention of 'leave and license' and any facts surrounding such proposition either. Though the Appellant now, through his written submissions tends to cast doubts about the documents relied upon by the defendants and accepted by the trial judge to prove prescriptive title, it appears that, the said documents were neither challenged nor were subjected to cross-examination when led during the trial.

Thus, I see no merit in the submissions of the Appellant, that the plaintiff is only moving for a declaration of title and therefore, need not establish its title, as necessitated in a *rei vindicatio* application, by presenting evidence and that the deed **P1** and its recitals alone, is sufficient to prove its title.

I also see no merit in the submission of 'leave and license' and the corollary submissions of 'co-ownership', made by the learned President's Counsel (conceding to the argument of the defendant that even under **P1,** the plaintiff does not get exclusive title), that the plaintiff institution as a co-owner of the land in suit, can vindicate its title and get a declaration to the title and an ejectment order and damages against the defendants, whom the plaintiff refers to as 'trespassers to the land in suit', in the given circumstances.

Let me now consider the judicial authority relied upon by the Appellant.

In **Hewawitharana v. Dangan Rubber Co** (Supra) it was held by Wood Renton A.C.J. as follows;

> "*that a bona fide possessor need not necessarily be the owner of the property possessed, nor need he have a legal right to possess*

it. It is sufficient if his possession is the result of a honest conviction in his mind of a right to possess."

"An ***owner of an undivided share of land may sue and have his title to the undivided share declared****."*(emphasis added)

In the instant matter, it is clearly observed that at the trial, the plaintiff has failed to lead any evidence in respect of an undivided share of the land in suit. The plaintiff is claiming exclusive title. Thus, as held in **Hewawitharana v. Dangan Rubber Co. case**, having failed to substantiate that the plaintiff was entitled to an undivided share of the land, the plaintiff cannot, now take solace, in the argument that he is a co-owner and can therefore vindicate his rights, upon the said basis.

Further, the Appellant relied upon **Pathirana v. Jayasundara** (Supra) regarding privity of contract and **Luwis Singho v. Ponnamperuma** (Supra) in respect of possessory remedy to justify its stance. The Appellant also drew our attention to the Court of Appeal judgement of **Ruberu and another v. Wijesooriya (1998) 1 SLR 58** where it was observed;

"Whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of him without whose permission, he would not have got it. The effect of operation of Section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must first, quit the land.";

to contend that a licensee cannot question the title of the owner.

The Appellant, in my view is approbating and reprobating. Without leading any evidence in respect of a leave and license arrangement or a licensee, the Appellant is surmising, legal fiction to justify before us, that the Appellant has established its cause. Thus, I see no merit in the said submissions. The cases and dicta relied upon by the Appellant has no relevance to the matter at hand and can be distinguished. In my view, at the trial the plaintiff has failed to establish its title, exclusively or otherwise and/or that the defendants have been put on the land in issue by the plaintiff.

In any event, in the impugned judgement the learned Judges of the High Court, relied upon the Supreme Court judgements of **Harriette v. Pathmasiri (1996) 1 SLR 358** and **Dharmadasa v. Jayasena (1997) 3 SLR 327** to come to its findings.

In the judgement of **Harriette v. Pathmasiri** (Supra) it was observed;

"Plaintiff produced title deeds to undivided shares in the land but her action being one for declaration of title to the entirety she cannot stop at adducing evidence of paper title to an

undivided share. It was her burden to adduce evidence of exclusive possession and acquisition of prescriptive title by ouster."

"Our law recognizes the right of a co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land because the owner of the undivided share has an interest in every part and portion of the entire land. ***But such was note the case formulated by the plaintiff.****"* (emphasis added)

Similarly, in the judgement of **Dharmadasa v. Jayasena** (Supra), it was observed;

*"****In a rei vindicatio action the burden is on the plaintiff to establish the title pleaded and relied on by him. The defendant need not prove anything.*** *The 'grant' relied upon by the plaintiff was invalid. Hence, the plaintiff has failed to establish his title."* (emphasis added)

In the instant case, as discussed earlier, the plaintiff has failed to establish exclusive title to the land, which was the case pleaded by him, before the trial court. The plaintiff rested its entire case on **P1**, the deed executed in 1972. The plaintiff failed to produce the purported indenture by which Kandaiah was said to have acquired title or even the resolution passed in 1972 by the plaintiff institution to acquire or obtain the property adverted to have been purchased by Kandaiah, for and on behalf of the plaintiff institution. The argument on, 'co-ownership' and 'leave and license' was not the case formulated by the plaintiff before the trial court. Whatever the circumstances be that the plaintiff is now relying upon, in my view the Appellant has failed to prove its title to the land in suit.

In such circumstances, I see no reason to interfere with the impugned judgement of the High Court.

Thus, I answer the 2nd question of law in the negative and in favour of the Respondents.

Prescriptive title

This is the 1st question of law raised before this Court. It pertains to acquisition of prescriptive title by the defendants. On this issue, both the trial court and the High Court held in favour of the defendants.

The submission of the learned Presidents' Counsel for the Appellant before this Court, was that the defendant has failed to prove possession by title adverse to or independent to that of the plaintiff; a starting point of adverse possession; and the metes and bounds of the land in suit. The Appellant also contended that the evidence led before the trial court by the defendant cannot be relied upon.

To substantiate its contention, the learned Presidents' Counsel relied upon the judgements of **Sirajudeen and two others v. Abbas 1994(2) SLR 365, Hameed Alim Abdul Rahman v. Weerasinghe and others [1989] 1 SLR 217** and **Chelliah v. Wijenathan 54 NLR 337** to establish that the Respondent failed to prove prescriptive title.

The learned Counsel specifically, drew our attention to **Sirajudeen's case** where it was observed as follows;

> *"One of the essential elements of plea of prescriptive title as provided for in Section 3 of the Prescription Ordinance is proof of possession by a title adverse to or independent of that of the claimant or plaintiff. The occupation of the premises must be of such character as is incompatible with the title of the ownership."*
>
> *"There is another relevant aspect of the plea of prescriptive title […] That principle is, best stated in the words of Gratien, J., in **Chelliah v. Wijenathan**, where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights." (page 370)*

The learned Counsel also drew our attention to the following paragraph in **Hameed Alim Abdul Rahamans case:**

> *"The plaintiffs' title not having been disputed by the 1st defendant, the burden clearly was on the 1st defendant to show by what right she continued to occupy the premises […] This principle was referred to by Sharvananda CJ in **Theivandran v. Ramanathan Chettiar**. An owner of a land has the right to possession of it and hence is entitled to sue for ejectment of a trespasser"*
>
> *"Hence, when **the legal title to the premises is admitted or proved to be the plaintiff, the burden of proof is on the defendant to show that he is in lawful possession**."* (emphasis added)

The law pertaining to 'prescriptive title' in our legal system is clear and unambiguous. Its written in stone, so to speak. There is no misconception regarding the same. The 1954 case of **Chelliah v. Wijenathan** and the dicta of Gratian, J., is synonymous with prescriptive title and referred to and quoted in numerous orders and judgements by our courts.

But the question that remains to be answered by us is, in order to rely on the said dicta and put the Respondents to prove their case based on prescription, has the Appellant first fulfilled the duty cast on him, by establishing its title. The answer to such question is a firm 'No'. For reasons adduced and discussed earlier in this judgement, the Appellant has failed to establish its title. In such circumstances, we see no reason to delve on such concepts as to whether the possession of the Respondent is adverse to or independent to that of the Appellant and or, what is the starting point of the adverse possession of the Respondent and or as to what the metes and bounds of the land in dispute are, at this juncture. The fact of the matter is the Appellant has failed to establish its title.

On the other hand, the learned President's Counsel for the Respondents contended, that the Appellant without fulfilling its primary duty relating to a *rei vindicatio* action to establish its title, is now casting doubts upon the documents marked and proved at the trial, without challenging or cross-examining the defendants, on the said issues at the trial.

Furthermore, the Respondents submit that the Appellant is peddling a case of 'leave and license' and a 'co-ownership', without leading an iota of evidence in respect of same. The learned Counsel also contends that the Appellant has not only failed to establish title but has failed to adduce any evidence pertaining to its possession of the land in suit, at any given time, prior to or after the execution of **P1** in 1972.

This action was filed in the year 2005, *i.e.,* 32 years after the execution of **P1**. The Appellant has failed to establish that he possessed the land at any given time or that he even stepped into the land. The only dispute was the 2003 incident which resulted in a Section 66 application, being filed by the police and which too was held in favour of the Respondent, in appeal.

Corollary, the Respondent has produced documents and led evidence to substantiate that they possessed the land in suit, developed the land (a marshy land, now filled with earth) and carried on a horticulture business on the land for a period of more than 30 years and that such land is adjunct to the place where the Respondents reside.

Thus, the learned President's Counsel for the Respondents submitted to this Court, that in view of the uncontradicted evidence of the possession of the Respondents' of the land in suit, that the possession or title of the Appellant or any other, is inconsistent with the possession of the Respondents. Furthermore, it was contended that such uncontradicted evidence of possession gives rise to the counter presumption of ouster, at the least.

In order to substantiate the said argument the Respondent relied upon the case of **Tillekeratne v. Bastian, 21 NLR 12**, where it was held that;

> *"it is open to the court, from lapse of time in conjunction with the circumstances of the case, to presume that a possession originally that of a co-owner has since become adverse."*

> *"It is a question of fact,* ***wherever long-continued exclusive possession by one co-owner is proved to have existed, whether it is not just and reasonable in all the circumstances of the case that the parties should be treated as though it had been proved and that separate and exclusive possession had become adverse*** *at some date more than ten years before action brought."*(emphasis added)

The learned Counsel argued, though the above principle was enunciated in the context of a co-owner's possession to bring in the courter presumption of ouster, that the said principle holds more strength in the present context, where the Respondents (husband and wife as a unit) admittedly do not co-own the land in suit with another.

The President's Counsel further submitted, that the factual matrix of the instant appeal clearly indicates the Respondents' possession of the land in suit for more than 30 years, which is far greater than the ten years, the law of prescription requires. Thus, it was the case of the Respondents that the Respondents' title is adverse, inconsistent with the ownership of anyone, and everyone, including the Appellant and thus, the counter presumption of ouster against the Appellant exists.

We observe that although the plaintiff pleaded possession of the land in suit, the Appellant's witnesses failed to establish such fact. Moreover, the said witnesses had no personal knowledge of the defendants entry to the land and the manner and mode of long possession of the defendants at all.

Thus, we see merit in the argument of the learned President's Counsel for the Respondent, in respect of the counter presumption of ouster.

A recent judgement of this Court, **Serasinghe Vidanalage Somalatha v. Aluthgamage Albert SC/Appeal 35/2018 - S.C. Minutes 14.11.2023** too, sheds light to this issue.

In the said case Aluwihare, J., discussed **Corea v. Appuhamy 15 NLR 65, Thilekeratne v. Bastian (Supra),** and quoted **Angela Fernando v. Devadeepthi Fernando (2006) 2 SLR 188** to observe;

> *"Ouster does not necessily involve actual application of force. The presumption of* ***ouster is drawn in certain circumstances when exclusive possession has been so long continued that it is not reasonable to call upon the party who relies on it to adduce evidence that at a specific point of time in the distant past there was in fact a denial of the rights of the other co-owners.****"*
>
> *"The presumption of ouster is an exception to the general rule which can be invoked when there are special circumstance*

> *in addition to the fact of undisturbed and uninterrupted possession for the requisite period of 10 years."* (emphasis added)

Whilst, I re-iterate the above sentiments, I am of the view, in the instant Appeal the Respondents' long and continuous possession; no claim being made by the Appellant to the improvements and the plantations; payment of assessment taxes by the Respondents; and based on several other material evidence adduced at the trial, a reasonable inference could be drawn that the Respondents' possession had become adverse to the Appellant, for more than 30 years. In the said circumstances the presumption of ouster would come into play and we see merit in the submissions made by the learned Counsel for the Respondent, that this Appeal cannot be maintained before a court of law.

Thus, we see no merit in the contention of the Appellant, that the Respondents have failed to establish that their title is adverse and independent to the Appellant or that the Respondents have failed to establish a starting point in their adverse possession.

Finally, the learned President's Counsel for the Appellant drew our attention to the inability of the Respondents to specify the extent, and the metes and bounds of the land or to clearly identify the land on paper, to justify its grounds for Appeal.

Countering the said submission, the Respondents argued that the land was a marshy land filled by the Respondents; it's fenced and annexed to the land where the Respondents live and own; the Appellant has failed to produce any maps or plans pertaining to the land in suit indicating among others the access to the land; the only access identified and known to the land has been through the land where the Respondents live; the Respondents for many years possessed both lands as one unit; and the access to the land is only through the Respondents land. Further, the Respondents submitted that a party prescribing to a land will not have a deed and therefore, cannot with certainty give details of metes and bounds and the extent; when the land prescribed to is a marshy land or part of an unbuilt larger marshy land, exceeding the extent claimed (i.e., by the Appellant in the plaint), giving metes and bounds and extent is a mere impossibility; and therefore such factors cannot be relied upon as good ground to justify this Appeal. Therefore, the Respondents submitted, that the contention pertaining to metes and bounds is irrelevant in deciding this Appeal.

We have considered the aforesaid and the totality of the submissions of the learned Counsel and especially the challenge mounted by the Appellant before this Court, to the documents already marked and produced at the trial, which were neither challenged nor cross-examined by the plaintiff at the trial and we see no reason to interfere with the judgement of the trial court and the impugned judgement of High Court pertaining to the acquisition of prescriptive title by the Respondents to the land in suit, which is the 1st question of law raised by the Appellant.

Moreover, we observe that the Appellant does not challenge nor dispute that the Respondents have been in possession of the land for over thirty years, carrying on a horticulture

business. In the aforesaid circumstances, we hold that the Respondents are entitled to the presumption of ouster and have established prescriptive title to the land in suit.

In the said circumstances, we see no reason to interfere with the impugned judgement of the High Court, pertaining to the question of prescriptive title of the Respondents.

Hence, the 1st question of law raised before this Court, is also answered in the negative and in favour of the Respondents.

For reasons adumbrated herein, the judgement of the High Court is upheld.

The Appeal is thus, dismissed with costs fixed at Rs. Fifty Thousand (Rs. 50,000.00) payable by the Appellant to the Respondents forthwith.

Judge of the Supreme Court

Jayantha Jayasuriya PC, CJ

I agree

Chief Justice

S. Thurairaja PC, J.,

I agree

Judge of the Supreme Court