

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

1. Mandis de Silva Jayasingha,
Walpola, Matara
(Deceased)
- 1A. Hemalatha de Silva Jayasingha,
Walpola, Matara
Plaintiff

SC APPEAL NO: SC/APPEAL/28/2014

SC LA NO: SC/HCCA/LA/540/2011

HCCA MATARA NO: SP/HCCA/MA/526/2006(F)

DC MATARA NO: P/14642

Vs.

1. Somadasa Galle Liyanaga,
Welegoda
2. Chandrika Kumudini Samaraweera,
2nd Cross Road, Walpola, Matara
3. Olga Ranjani Wijeweera alias
Samaraweera, Welewatte
Defendants

AND BETWEEN

1. Mandis de Silva Jayasingha
Walpola, Matara
(Deceased)

1A. Hemalatha de Silva Jayasingha,
Walpola, Matara
Plaintiff-Appellant

Vs.

1. Somadasa Galle Liyanaga,
Welegoda.
2. Chandrika Kumudini Samaraweera,
2nd Cross Road, Walpola, Matara
3. Olga Ranjani Wijeweera alias
Samaraweera,
Welewatta
Defendant-Respondents

AND NOW BETWEEN

1. Mandis de Silva Jayasingha,
Walpola, Matara
(Deceased)
- 1A. Hemalatha de Silva Jayasingha
Walpola, Matara
Plaintiff-Appellant-Appellant

Vs.

1. Somadasa Galle Liyanaga,
Welegoda
2. Chandrika Kumudini Samaraweera,
2nd Cross Road, Walpola, Matara

3. Olga Ranjani Wijeweera alias
Samaraweera, Welewatta
(Deceased)
 - 3A. Dayananda Wejeweera,
Welewatta, Matara
 - 3B. Devi Tharanga Wejeweera,
Welewatta, Matara
- Defendant-Respondent-Respondents

Before: Vijith K. Malalgoda, P.C., J.
Janak De Silva, J.
Mahinda Samayawardhena, J.

Counsel: P. Peramunugama for the substituted Plaintiff-Appellant-
Appellant.
Rohan Sahabandu, P.C., with Chathurika Elvitigala for the
substituted 3rd Defendant-Respondent-Respondents.

Argued on: 02.08.2022

Written submissions:

by the substituted Plaintiff-Appellant-Appellant on
04.04.2014

by the substituted 3rd Defendant-Respondent-Respondents
10.6.2014

Decided on: 12.01.2023

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court of Matara to partition the land known as “*Excluded portion of Punchipathagewatta bearing assessment number 11*” described in the second paragraph of the plaint

between the plaintiff and the 1st defendant. The 2nd and 3rd defendants, two siblings, have been made parties to the action as they dispute the plaintiff's rights to the land. After trial, the District Court dismissed the plaintiff's action on the basis that the 3rd defendant has prescribed to the land. On appeal, the High Court of Civil Appeal affirmed the judgment of the District Court and dismissed the appeal. The plaintiff has filed this appeal against the judgment of the High Court. This Court granted leave to appeal against the judgment of the High Court on the following questions of law as formulated by learned counsel for the plaintiff:

- a) *Did the Honourable Judges of the Provincial High Court of Civil Appeals of the Southern Province (Holden in Matara) err in not considering an all important item of evidence, the complaint marked IV2 and the existence of the Western boundary shown in Plan No. 1318A marked X, which nullifies the finding of the Learned trial Judge as to the possession of the subject matter of this action as part of the adjoining land pertaining to lot A of land called Punchipathagewatta?*
- b) *Did the Honourable Judges of the Provincial High Court of Civil Appeals of the Southern Province (Holden in Matara) err in holding that the learned District Judge is correct in holding that the 3rd Defendant has prescribed to the subject matter of this action by being in possession of the subject matter of this action as part of the adjoining land pertaining to lot A of land called Punchipathagewatta?*
- c) *Did the Honourable Judges of the Provincial High Court of Civil Appeals of the Southern Province (Holden in Matara) err in not considering that once the paper title to the subject matter of this action is proved to be with the Plaintiff and the 1st Defendant the burden of proving the prescriptive right to the subject matter of this action as a distinct and separate land within the meaning of*

section 3 of the Prescription Ordinance is with the 3rd Defendant which the 3rd Defendant has failed to do even on the finding of the Learned trial Judge as to the possession of the subject matter of this action?

There is no corpus dispute in this case but the District Court has confined the corpus to lot 1 in the preliminary plan marked X. Learned counsel for the plaintiff does not contest this finding. There had been a dispute on the pedigree but the District Court has resolved it in favour of the plaintiff. However the District Court has dismissed the plaintiff's action on the basis that the 3rd defendant possessed the corpus (i.e. lot 1 in plan X) together with lots 3 and 4 in the same plan as part of "*lot A of Punchipathagewatta bearing assessment number 11*" which lies adjoining the land to be partitioned. It is common ground that "*lot A of Punchipathagewatta bearing assessment number 11*" is possessed by the contesting defendants or their people, not by the plaintiff or the 1st defendant.

The plaintiff describes the disputed land as a burial ground but admits in evidence that no one has been buried there in her lifetime. She was 46 years old at the time of giving evidence. She has not witnessed any burials there although she says her deceased father had told her that some of her forefathers were buried there. There are no tombs. There is nothing to look after or possess. It is a bare land. The plaintiff in her evidence says when her father, the original plaintiff, was alive, he used to clean the land. The District Court has not believed this evidence. If what the plaintiff says in relation to possession is correct, they could have at least put up a fence separating that portion from "*lot A of Punchipathagewatta bearing assessment number 11*". This has not been done.

According to the complaint made by the original plaintiff to the Gramasewa Officer marked 1V2, which the plaintiff strongly relies on

(*vide* the first question of law reproduced above), the 2nd defendant is in possession of the land on the northern boundary of the disputed land and the 2nd defendant put up a fence joining the disputed portion of the land to her land on or around 24.05.1989. That is the complaint. The plaintiff does not ask the Gramasewa Officer to hold an inquiry into his complaint. He did not make a police complaint either. After this alleged incident, he filed this partition action on 18.08.1989. If the original plaintiff had been in possession of the disputed portion of the land for a long time and if the 2nd defendant forcibly evicted him by erecting a fence around that portion and joining that portion to her land, a reasonable person in my view would have acted differently. Be that as it may, if what the plaintiff says in 1V2 is correct, until such time, the disputed portion did not have a fence separating it from “*lot A of Punchipathagewatta bearing assessment number 11*”. This supports the assertion of the 2nd and 3rd defendants, which was accepted by the District Court, that they possessed the disputed portion of the land as part of “*lot A of Punchipathagewatta bearing assessment number 11*” as one allotment. According to the preliminary plan, there is no fence on the northern boundary of the land although the other three boundaries have fences. There is a “foundation” on the northern boundary. This seems to be a construction by the 2nd and 3rd defendants.

Neither the plaintiff nor her father has ever paid assessment rates to the Municipal Council in relation to the corpus but the 3rd defendant and her father have. Learned counsel for the plaintiff contends that although the 3rd defendant may have paid rates on assessment number 11, the land for the partition of which the action was filed is not assessment number 11. This is contrary to the evidence of the plaintiff. She has accepted in evidence that assessment number 11 is the land in dispute. It is in that context that the District Court has made the finding that the 3rd defendant and her father have paid taxes on assessment number 11

including the disputed portion. Learned counsel also contends that rates are not levied on burial grounds. Although the plaintiff identifies this as a burial ground, it is no longer used for that purpose.

Learned counsel for the plaintiff, either in the written submissions or oral submissions, does not give any acceptable cogent reason for this Court to reverse the judgment of the District Court. The judgment of the District Court is a well-considered one. On the facts and circumstances of this case, the finding of the District Court which was affirmed by the High Court that, on a balance of probability, the 3rd defendant has acquired prescriptive title to lots 1, 3 and 4 in plan X, is justifiable. I answer the questions of law upon which leave has been granted against the plaintiff and dismiss the appeal but without costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court