

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

In the matter of an appeal in terms of section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC Appeal No. : 181/ 2015
SC HC CA LA No. : 319/ 2013
**HCCA Kaluthara Case No. : WP/ HCCA/
KAL/ 29/ 2006 (F)**
DC Mathugama Case No. : 2462/P

Kekulandala Liyanage Don Jayasena,
No. 164/ 27,
Arawa Road,
Aluthgama Road,
Mathugama.

PLAINTIFF

Vs.

1. Kekulandala Liyanage Don Siripala,
"Asha",
Aluthgama Road,
Mathugama.
2. Kekulandala Liyanage Don
Siriawathi alias Silawathi,
(Deceased)
Palliyagoda South,
Mathugama.
3. Kannangara Arachchige Sirisena,
(Deceased)
No. 35/5,
Palliyagoda South,
Mathugama.

3A. Horawala Withanage Misilin,
No. 35/5,
Palliyagoda South,
Mathugama.

4. Horawala Withanage Misilin,
No. 35/5,
Palliyagoda South,
Mathugama.

5. Thanippuli Hewage Juwanis,
(Deceased)

5A. Siddhaluge Saina Fernando,
No. 77,
Balika Road,
Matugama.

6. Balasuriya Appuhamilage Nicolas
Perera,
No. 57/1,
Balika Road,
Mathugama.

7. Nalani Chandralatha Kannangara,
"Shriya",
Arawa Road,
Mathugama.

DEFENDANTS

AND THEN BETWEEN

Kekulandala Liyanage Don Jayasena,

No. 164/27,
Arawa Road,
Mathugama.

PLAINTIFF-APPELLANT

Vs.

1. Kekulandala Liyanage Don Siripala,
"Asha",
Aluthgama Road,
Mathugama.

2. Kekulandala Liyanage Don
Siriawathi alias Silawathi,
(Deceased)
Palliyagoda South,
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7. Nalani Chandralatha Kannangara,
"Shriya",
Arawa Road,
Mathugama.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Kekulandala Liyanage Siriyawathi
alias Silawathi,

(Deceased)

Palliyagoda South,
Mathugama

**2nd DEFENDANT-RESPONDENT-
APPELLANT**

- A. Gunarathne Withanage
Hemachandra Dias
- B. Gunarathne Withanage Chandima
Rani

- C. Gunarathne Withanage Samantha
Dias
- D. Gunarathne Withanage Chaminda
Dias Samantha
- E. Gunarathne Withanage Indika
Lankara Dias
All of them
No.35/7, Palliyagoda South,
Matugama

**SUBSTITUTED DEFENDANT-
RESPONDENT- APPELLANTS**

Vs.

Kekulandala Liyanage Don Jayasena
No. 164/ 27,
Arawa Road,
Aluthgama Road,
Mathugama.

**PLAINTIFF-APPELLANT-
RESPONDENT**

Kekulandala Liyanage Don Siripala,
"Asha",
Aluthgama Road,
Mathugama.

**1ST DEFENDANT-RESPONDENT-
RESPONDENT**

Kannangara Arachchige Sirisena,
(Deceased)
No. 35/5,

Palliyagoda South,
Mathugama.

**3RD DEFENDANT-RESPONDENT-
RESPONDENT**

Horawala Withanage Misilin,
No. 35/5,
Palliyagoda South,
Mathugama.

**3A DEFENDANT-RESPONDENT-
RESPONDENT**

Horawala Withanage Misilin,
No. 35/8,
Palliyagoda South,
Mathugama.

**4TH DEFENDANT-RESPONDENT-
RESPONDENT**

Siddhaluge Saina Fernando,
No. 77,
Balika Road,
Mathugama.

**5A DEFENDANT-RESPONDENT-
RESPONDENT**

Balasuriya Appuhamilage Nicolas
Perera,
No. 57/1,
Balika Road,
Mathugama.

**6TH DEFENDANT-RESPONDENT-
RESPONDENT**

Nalani Chandralatha Kannangara,
"Shriya",
Arawa Road,
Mathugama.

**7TH DEFENDANT-RESPONDENT-
RESPONDENT**

SC Appeal No. : 182/ 2015
SC HC CA LA No. : 334/ 2013
**HCCA Kaluthara Case No. : WP/ HCCA/
KAL/ 29/ 2006 (F)**
DC Mathugama Case No. : 2462/P

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No. 35/5,

Palliyagoda South,

Mathugama.

4. Horawala Withanage Misilin

No. 35/5,

Palliyagoda South,

Mathugama.

5. Thanippuli Hewage Juwanis

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5A. Siddhaluge Saina Fernando,

No. 77,

Balika Road,

Matugama.

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Perera,

No. 57/1,

Balika Road,

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Arawa Road,

Mathugama.

DEFENDANTS

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No. 35/5,
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DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Horawala Withanage Misilin,
No. 35/5,
Palliyagoda South,
Mathugama.

**3A DEFENDANT-RESPONDENT-
APPELLANT**

Horawala Withanage Misilin
No. 35/5, Palliyagoda South,
Matugama.

**4th DEFENDANT-RESPONDENT-
APPELLANT**

Vs.

Kekulandala Liyanage Don Jayasena
No. 164/ 27,
Arawa Road,
Aluthgama Road,
Mathugama.

**PLAINTIFF-APPELLANT-
RESPONDENT**

1. Kekulandala Liyanage Don Siripala
"Asha",
Aluthgama Road,
Mathugama.

2. Kekulandala Liyanage Don
Siriawathi alias Silawathi,
(Deceased)
Paliyagoda South,
Mathugama.

**DEFENDANT-RESPONDENT-
RESPONDENTS**

Before : **P. Padman Surasena J**
Mahinda Samayawardhena J
K. Priyantha Fernando J

Counsel : **SC Appeal No. 181/2015**

Chathura Galhena with Viduri Sulakkana for the 3A and
4th Defendant-Respondent-Appellants in SC Appeal No.
182/2015.

Yasas de Silva for the 2nd Defendant-Respondent-Appellant in
S.C. Appeal No. 181/2015.

Saman Liyanage with Janaka Gamage, Krishantha Elpitiya and
Nuwan Hewawitharana for the Plaintiff-Appellant-Respondent.

Dr. Sunil Cooray for the 1st Defendant-Respondent-
Respondent.

SC Appeal No. 182/2015

Chathura Galhena with Viduri Sulakkana for the 3A and
4th Defendant-Respondent-Appellants in SC Appeal No.
182/2015.

Yasas de Silva for the 2nd Defendant-Respondent-Appellant in
S.C. Appeal No. 181/2015.

Saman Liyanage with Janaka Gamage, Krishantha Elpitiya and
Nuwan Hewawitharana for the Plaintiff-Appellant-Respondent.

Dr. Sunil Cooray for the 1st Defendant-Respondent-Respondent.

Argued on : 17-10-2023
Decided on : 04-04-2024

P. Padman Surasena J

The Plaintiff-Appellant-Respondent (hereinafter sometimes referred to as the Plaintiff) has filed the plaint in the instant case, in the District Court of Mathugama against the 1st Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 1st Defendant), praying *inter alia*, that the corpus relevant to the case, morefully set out in the schedule to the plaint, be partitioned between him and the 1st Defendant. According to the plaint, the Plaintiff had claimed entitlement to 2/3 of the corpus and the 1st Defendant was said to be entitled to 1/3 of the corpus.

Upon a commission being issued in that regard, the Licensed Surveyor having prepared the Preliminary Plan, i.e., plan No. 1307 dated 27-09-1993, had reported to Court (his report has been produced marked **X**) that there are three other persons who had claimed the corpus which was pointed out by the Plaintiff. According to the Surveyor's report, the 2nd Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 2nd Defendant), the 3rd Defendant-Respondent-Appellant (hereinafter sometimes referred to as the 3rd Defendant), and the 4th Defendant-Respondent-Appellant (hereinafter sometimes referred to as the 4th Defendant), had come forward to claim portions of the corpus. Subsequently, the said persons along with several others were also named as defendants in the case. As the 3rd Defendant had passed away subsequently, his wife who stood as the 4th Defendant was substituted in the place of the 3rd Defendant.

At the outset, it must be observed that the sole question left for the learned District Judge to decide in this case, was the issue whether the 2nd, 3rd and 4th Defendants had been entitled to claim Lot 5A of Plan No. 1307 dated 27-09-1993, on the basis that they have established a prescriptive title to that land. After the trial, the learned District Judge by his judgment dated 30-01-2006, had concluded that the 2nd Defendant is entitled to Lot 5A of the said land and the 4th Defendant is entitled to Lot 3 of the said land as they had acquired prescriptive title to

those plots of land. It was on that basis that the learned District Judge had decided to exclude Lot No. 3 and Lot No. 5A of Plan No. 1307 from the corpus to be partitioned in this action. Accordingly, the learned District Judge had ordered that Lot No. 8 of the said land be reserved as a roadway and Lot No. 5B be partitioned between the Plaintiff and the 1st Defendant in such a way that the Plaintiff is entitled to 1/3 of the corpus and the 1st Defendant is entitled to 2/3 of the corpus.

Being aggrieved by the judgment of the learned District Judge, the Plaintiff appealed to the Provincial High Court of Civil Appeals of the Western Province, holden at Kalutara. The Provincial High Court of Civil Appeals by its judgment dated 10-07-2013, had altered the learned District Judge's judgment, by setting aside the decision of the learned District Judge to exclude Lot 3 and Lot 5A from the corpus to be partitioned.

Being aggrieved by the judgment dated 10-07-2013 of the Provincial High Court of Civil Appeals, the 3A Defendant and the 4th Defendant have lodged SC Appeal 182/2015. When the Leave to Appeal Application relevant to that appeal was supported, this court by its order dated 02-11-2015, having heard the submissions of the learned counsel for all parties, has granted Leave to Appeal in respect of the following questions of law.

1. *Did the Civil Appellate High Court misdirect[ed] itself on the concept of prescriptive title?*
2. *Did the Civil Appellate High Court err in deciding that the Petitioner had not established prescriptive title to Lot No. 3 in the Preliminary Plan?*
3. *Did the Civil Appellate High Court err in deciding that Lot No. 3 has to be partitioned among the Plaintiff and the 1st Defendant?*

The 2nd Defendant also being aggrieved by the judgment dated 10-07-2013 of the Provincial High Court of Civil Appeals, has lodged SC Appeal 181/2015. When the Leave to Appeal Application relevant to that appeal was supported, this court by its order dated 02-11-2015, having heard the submissions of the learned counsel for all parties, has granted Leave to Appeal in respect of the following questions of law.

1. *Whether the learned High Court Judges of the Civil Appellate High Court of Kalutara have erred in law by setting aside the part of the judgment of the learned District Judge by which the Lot 5A in preliminary plan No. 1307 was*

excluded from the corpus considering the cogent evidence placed before him with regard to the 2nd Defendant- Respondent- Petitioner's prescriptive title for Lot 5A?

2. *Whether the learned High Court Judges have erroneously disregarded the volume of evidence adduced at the trial to establish the prescriptive title of the 2nd Defendants - Respondent - Petitioner for Lot No. 5A in the Preliminary Plan No. 1307?*
3. *Whether the learned High Court Judges have erred in law [by setting aside a part of the judgment more specifically in relation to Lot 5A in the preliminary plan without assigning any valid reason?*

At the commencement of the argument of both these appeals, the learned counsel appearing for all parties in SC Appeal No. 181/ 2015 as well as SC Appeal No. 182/ 2015, agreed that the Court can amalgamate the hearing of both these Appeals. They also agreed that it would suffice for this Court to pronounce one composite judgment in respect of both these Appeals because both these Appeals have emanated from one and the same judgment of the District Court as well as one and the same judgment of the Provincial High Court of Civil Appeals. This Court has accordingly taken steps to pronounce this judgment which would be applicable to both SC Appeal No. 181/ 2015 as well as SC Appeal No. 182/ 2015.

The 3rd and 4th Defendants had jointly filed their Statement of Claim, praying that Lot No. 3 of Plan No. 1307 be excluded from the corpus to be partitioned, and Lot No. 2 of the said plan be reserved as a roadway. The 4th Defendant is the wife of the 3rd Defendant. According to their Statement of Claim, they have claimed prescriptive title to Lot 3 of Plan No. 1307.

The 2nd Defendant filing her Statement of Claim, has prayed that Lot No. 5 of Plan No. 1307 be excluded from the corpus to be partitioned on the basis that the 2nd Defendant has acquired prescriptive title to that Lot. She had also claimed that Lot No. 2, be reserved as a roadway.

It is common ground that the Plaintiff had come to the land in the year 1988. Indeed, the Plaintiff relies on Deed No. 1628 (produced marked **P7** in the District Court) by which he had sold 2/3 undivided share of the whole land to his brother Kakulanda Liyanage Don Siripala who is the 1st Defendant in the instant Partition Action. It is on that basis that the Plaintiff had filed the instant Partition Action only against the 1st Defendant (brother of the Plaintiff).

At the outset, it must be observed that the evidence of the Plaintiff has clearly indicated that the 3rd and 4th Defendants were also involved in some cultivation on the land. However, for the reasons best known to him, the Plaintiff had not chosen to name those two persons as defendants in his plaint. As mentioned above, the 3rd and 4th Defendants came into the case only after the Preliminary Survey was conducted.

After the Plaintiff closed his case, both the 2nd Defendant and the 4th Defendant had given evidence. The 2nd Defendant in her evidence had asserted that she was possessing this land since 1968. She had categorically stated that she had been in possession of a portion of the land, other than Lot 5A. According to her evidence, the 1st Defendant (Kakulanda Liyanage Don Siripala) had come to this area somewhere in 1987. The Plaintiff also in his evidence, had admitted that he came to this land at a later stage. He has categorically stated under cross-examination, that he came to reside in this area in the year 1988 and he was not residing there before 1987.

It is the position of the Plaintiff that the 2nd, 3rd and 4th Defendants are persons who had looked after this land when it was owned by Gnana Jayasinghe. This land was originally owned by Albert Jayasinghe and after his demise, Gnana Jayasinghe who is the wife of said Albert Jayasinghe came to be the owner of the land. It is the position taken up by the Plaintiff that the 2nd, 3rd and 4th Defendants came into the land as licensees of said Gnana Jayasinghe.

I observe that even according to the pedigree filed by the Plaintiff and according to the plaint, the name of the owner of the land (by virtue of Deed No. 266 dated 09-12-1966) has been mentioned as said Albert Jayasinghe. Kakulanda Liyanage Don Jayasena (the Plaintiff) had acquired his title by virtue of Deed No. 1017 dated 10-05-1987 by purchasing it from the wife (Gnana Jayasinghe) and the children of said deceased Albert Jayasinghe.

Contrary to the Plaintiff's version of the case, the 2nd, 3rd and 4th Defendants in their evidence had stated categorically that when they started possessing this land there was no known owner to the land. They deny the position that they came in as licensees of Gnana Jayasinghe (the previous owner). The evidence of the 3rd and 4th Defendants is that they started cultivating this land which was a part of the jungle when they were young and newly married. Thus, as far as the 3rd and 4th defendants are concerned, they have started possessing this land as if they had owned the land.

The evidence of the plaintiff is that they had brought to the notice of Gnana Jayasinghe, the fact that the defendants are forcibly cultivating the relevant land. The Plaintiff has also

stated in his evidence that, said Gnana Jayasinghe was angry hearing that information. This could be gathered from the following piece of evidence of the Plaintiff.

ප්‍ර : එතකොට තමන් ගිහිල්ලා ඥානා ජයසිංහට කිව්වේ නැද්ද, ඔය ගොල්ලන්ගේ බලාගත්තු අය දැන් අයිතිකම් පානවා කියා ?

උ : ගිහිල්ලා කිව්වා.¹

ප්‍ර : එතකොට එයා දීපු පිලියම මොකක්ද?

උ : එහෙම කරන්නේ කොහොමද කියලා ඒ නෝනා කිව්වා.

ප්‍ර : එතකොට තමන් කිව්වේ නැද්ද, එයාට ඇවිල්ලා කියන්න කියලා

විත්තිකාරයෝ නෙවෙයි බුක්ති වින්දේ, එයාගේ භාරකාරයා වශයෙන් වැඩකලා කියලා කියන්න?

උ : එතකොට නෝනා කියලා තිබුණා, ඒගොල්ලෝ බලාගත්තා කියලා.

ප්‍ර : උසාවියට ඇවිල්ල කියන්න කියලා කිව්වද, එයා වෙනුවෙන් බලා ගත්තු අය කියලා ඒ දෙන්නා.

උ : ඒකට අවශ්‍යතාවයක් තිබුනේ නැහැ.

ප්‍ර : තමාට වැටහුනේ නැද්ද, මේ අයගේ භුක්තිය ඉල්ලන නිසා ඥානා ජයසිංහ සාක්ෂියට අවශ්‍ය යි කියලා?

උ : ඒගොල්ලන්ගේ භුක්තියක් ගැන කතාව ආවේ පස්සේ.

බ්‍රෝකර් ගාස්තු ගැන නොසැලකීම නිසා තමයි ඉඩමට පනින්න ලැස්ති වුනේ.²

Thus, the evidence of the Plaintiff itself has established before court that the nature of the possession of the relevant land maintained and enjoyed by the defendants, was a possession which was adverse to the interest of both the Plaintiff and Gnana Jayasinghe. In view of the above, it is now not open for the plaintiff to argue in this appeal that the Defendants had failed to prove the ingredient of adverse possession which is a requirement under section 3 of Prescription Ordinance.

The Plaintiff has also called the then Grama Niladhari of the area (Gama Ethige Don Francis Lambert) to give evidence on his behalf. I observe that even according to the evidence of the said Grama Niladhari (Lambert), the Defendants had cultivated this land for a long time. The following excerpts taken from the evidence given by the said Grama Niladhari (Lambert)

¹ Page 103 of the Appeal Brief.

² Page 104 of the Appeal Brief.

would also show that the 2nd , 3rd and the 4th Defendants from the very commencement of their possession, had not recognized at any stage, the ownership of Gnana Jayasinghe.

ජයසිංහ නෝනා කියලා කෙනෙකුට අයිතිව තිබුණ බව දන්නවා. ඒ අය මිලයට ගත්ත කාලය දන්නේ නැහැ. මට ඔප්පුව පෙන්නුවා. දෙදෙනෙකු එක්ක අරගෙන තිබුණා. ජයසිංහ නෝනා අයිතිකරුව සිටියදීත් කැලයට තිබුණේ. නමුත් මුකුණුවැන්න ටික තිබුනා.³

ප්‍ර : 5^ඒ වල තමයි මෙම සිරියාවතී හා සිරිසේන වගා කර තිබුණේ. එනම් ඇලෙන් උතුරු පැත්තට.

ඇලෙන් උතුරු පැත්ත 5^ඒ?

උ : ඔව්.

ප්‍ර : එම හරියේ මුකුණුවැන්න වගාකර තිබුනා?

උ : ඔව්.

ප්‍ර : ඒකේ මුකුණුවැන්න වගා කළා විත්තිකරුවන්?

උ : ඔව්.

ප්‍ර : 1960 ගණන්වල සිටලා ඒ අය මුකුණුවැන්න වගා කළා?

උ : ඔව් මම මගේ සේවා කාලය ඇතුලත දැක්කට එතනින් යනකොට මුකුණු වැන්න වගාකර තියෙනවා. ඊට කලින් ඒවා තිබුනේ නැහැ.⁴

ප්‍ර : තමන් නිකන්වත් හිතුවේ නැද්ද, ඒ නඩුවට, ඥානා ජයසිංහගෙන් මේ විත්තිකාරයෝ ඉඩම බලා ගත්තු බවට දිවුරුම් ප්‍රකාශයක් ගේන්න තමන් තැන් කළේ නැද්ද?

උ : ඒ වෙලාවේ ඒ වගේ එකක් අවශ්‍ය වුණේ නැහැ.⁵

මෙම ඉඩමේ වර්තමාන අයිතිකරුවන් සිරිපාල හා ජයසේන. ඊට පෙර ජයසිංහ නෝනා කියන ලූකස් ගරාජ් එක අයිතිකරුගේ නැයෙක් පළමු අයිතිකරු. මගේ වාර්තාවෙන් පස්සේ වර්තමාන අයිතිකරුවන්ට ගොවිජන සේවා එකෙන් එවල තිබෙනවා අධිකෂණ නියමයක්, එවා කියල තිබෙනවා අධිකෂණ නියමයක් නොකිරීමට හේතු දක්වන්න කියලා. මගේ නිර්දේශයෙන් පස්සේ එය එවල තිබෙනවා කේ. එල්. ඩී. සිරිපාල මහතාට. අයිතිකරුවන්ගෙන් කාට හෝ එවනවා. ඊට පස්සේ දැනගත්ත විදිහට ආරවුලක් ඇතිවුණා සිරියාවතී මහත්මිය හා සිරිපාල මහතා අතර. ගොවි ජන සේවා කාර්යාලයට වාර්තාවක් ඉදිරිපත් කළා මෙම ඉඩම අයිතිකරුවන් නිසි ආකාරයට වගා කර නැත කියලා. වාර්තාව කරන්නට පෙර මම ඉඩමට ගොස් පරීක්ෂණයක් කළා. එම ඉඩමේ ටිකක් මුකුණු වැන්න තිබුනා. අනිත් හරිය මහා කැලය තිබුණා. සාමාන්‍යයෙන් මෙම කාලයේ මුකුණුවැන්න පාත්ති

³ Page 114 of the Appeal Brief.
⁴ Page 115 of the Appeal Brief.
⁵ Page 103 of the Appeal Brief.

4ක් විතර තිබුණා. සාමාන්‍ය වශයෙන් 10, 8 කැලි 4ක් විතර තිබුණා . අනිත් හරිය කැලයට තිබුණා. එය මුකුණු වැන්න වගාකර තිබුණේ කවද සොයා බැලුවා. සිරියාවතී මහත්මිය සහ එයාගේ අයියා සිරිසේන වගා කර තිබුණා. එසේ මුකුණුවැන්න වගාකර තිබියදීත් වගා කර නැත කියලා මම වාර්තාවක් යැව්වේ සෑහීමකට පත්වුණේ නැහැ මෙම ඉඩම වගාකල ඉඩමක් බවට. නැගෙනහිර පැත්තේ පොඩි කඳු වගේ තිබෙනවා. අනිත් හරිය දෙතිය වගේ තිබෙනවා. මගේ කල්පනාව හැටියට මැද ඇලකුත් යනවා.⁶

Thus, it can be seen that the cumulative effect of the evidence of the Plaintiff supported by the evidence given by Grama Niladhari Gama Ethige Don Francis Lambert is a clear establishment before Court that the nature of the possession of the relevant land maintained and enjoyed by the 2nd, 3rd and the 4th Defendants, was a possession which was adverse to the interest of both the Plaintiff and Gnana Jayasinghe.

The fact that the 2nd, 3rd and the 4th Defendants are licensees of Gnana Jayasinghe, is a position taken up by the Plaintiff. However, as has been mentioned earlier, there is no evidence to substantiate this position. Thus, I have to go on the basis that they are not licensees of Gnana Jayasinghe.

Thus, having regard to the totality of evidence adduced in this case, one would observe that the possession of the relevant land by the 2nd, 3rd and 4th Defendants had continued adverse to any interest Gnana Jayasinghe may have had at the beginning.

It is the Plaintiff who had come at a later stage and disturbed the possession of the 3rd and 4th Defendants. That act ended up with an order pronounced by the learned Magistrate of Mathugama, in a case filed under Section 66 of the Primary Courts procedure Act. The report filed in the Magistrate's Court by police in the said case, together with the order dated 18-02-1992 pronounced by the learned Magistrate of Mathugama has been produced in the District Court marked **2 V 10**. The 1st, 2nd and 3rd Defendants had stood as parties in the Magistrate's Court, in that case. The learned Magistrate by order dated 18-02-1992, had ordered that the 3rd Defendant is entitled to continue to possess the land in terms of the provisions of the Primary Courts Procedure Act.

⁶ Page 112 of the Appeal Brief.

The filing of the said report in the Magistrate's Court by police, had been triggered when the 1st Defendant had disturbed the peaceful possession of this land hitherto enjoyed by the 2nd Defendant. It was the 2nd Defendant who had complained to police about the disturbance of her peaceful possession on 30-09-1991.

The 4th Defendant in her evidence had stated that she along with her husband K.L. Sirisena who stood as the original 3rd Defendant, was in possession of this land since 1968 along with the 2nd Defendant who is the sister of the 3rd Defendant. The 4th Defendant has also stated that there was no owner to this land when they started possessing it in 1968. The 4th Defendant has also stated the same.

In addition to the above, a neighbour who was living close to the land, Siddi Haluge Saina Fernando, had also given evidence on behalf of the Defendants. According to said Saina Fernando's evidence the 2nd and 3rd Defendants had been cultivating this land for a long period of time. This neighbour Saina Fernando had been living in this locality for over 50 years.

Learned District Judge having considered all the evidence led in the case, for the reasons set out in his judgment, had opted to accept the evidence of the 3rd and 4th Defendant and decided to exclude Lot 3 and Lot 5A of the Plan No. 1307 from the corpus to be partitioned in this case on the basis already set out in this judgment.

Having perused the judgment pronounced by the Provincial High Court of Civil Appeals, I observe that there is only one operative paragraph in that judgment which only deals with the merits of the case. It is as follows,

"The learned District Judge has failed to consider that 2nd, 3rd and 4th Defendants have acquired prescriptive title to lot 3 of the preliminary plan marked as X at the trial. It is very important to note that 2nd, 3rd and 4th Defendant- Respondents have not produced any acceptable document to prove their possession. The documents marked by the Defendants are the police complaint (2V1) and proceedings of 66 case and letter of administration. These documents are insufficient to prove prescription"

In my view, this paragraph cannot be taken as giving any acceptable reason for setting aside the conclusion arrived at by the learned District Judge who had analyzed the evidence in detail.

In addition to the above, the Provincial High Court of Civil Appeals in the middle paragraph of page No. 3 of its judgment, had relied on the case of *David Vs Gunawathie*,⁷ which is found to be not relevant to the facts of the instant case. This shows that the learned Judges of the Provincial High Court of Civil Appeals had confused themselves with regard to the applicable law and the facts of the instant case. That itself is sufficient to set aside the judgment of the Provincial High Court of Civil Appeals.

Although it is by taking up the position that the 3rd and 4th Defendants are licensees of Gnana Jayasinghe that the Plaintiff had sought to attack the case of the 2nd, 3rd and 4th Defendants, the evidence adduced by the Plaintiff in that regard is totally hear-say evidence. This is obviously so because the Plaintiff was admittedly not in this land before 1987. The Plaintiff had neither listed Gnana Jayasinghe as a witness nor sought to establish the availability of said Gnana Jayasinghe to give evidence in the case. On the other hand, as far as the Defendants' position is concerned, their possession of the relevant land had continued for a long time adverse to the interests of Gnana Jayasinghe from the very beginning.

The learned District Judge has analyzed all relevant items of evidence produced before the District Court before deciding to exclude Lot No. 3 and Lot No. 5A of Plan No. 1307 from the corpus to be partitioned in the case. The learned District Judge has given reasons for his conclusion. I agree with his reasoning. On the other hand, there is no basis either factual or legal, for the Provincial High Court of Civil Appeals to set aside the said well-considered decision of the District Court. Therefore, I am unable to agree with the judgment pronounced by the learned judge of the Provincial High Court of Civil Appeals.

For the foregoing reasons, I answer the questions of law in respect of which this court has granted Leave to Appeal, in the affirmative. I proceed to set aside the judgment dated 10-07-2013 pronounced by the High Court of Civil Appeals, and restore the judgment dated 30-01-2006 pronounced by the District Court of Mathugama. The Appeal is allowed. The Appellants are entitled to the costs in both courts.

As has already been mentioned above, this judgment must apply to both SC Appeal No. 181/ 2015 as well as SC Appeal No. 182/ 2015.

⁷ 2000 Sri L. R. (2) 352

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena J

I agree,

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando J

I agree,

JUDGE OF THE SUPREME COURT