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

In the matter of an Appeal under Article 128 of the Constitution read with Section 5 (C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

S.C. Appeal No:

199/2018

SC/HCCA/LA No:

272/2018

WP/HCCA/GPH No:

171/2011(F)

District Court of Gampaha

Case No: 38975/L

1. Rajapaksha Pathirennehelage
   Alleen Singho (Deceased)
   No. 100, Kalaotuwawa,
   Kalagedihena.

1a. Rajapaksha Pathirennehelage
   Renuka
   No. 99/2, Kalaotuwawa,
   Kalagedihena.

1b. Kamburugodage Aslin Nona
   No. 100, Kalaotuwawa,
   Kalagedihena.

1c. Rajapaksha Pathirennehelage
   Chandrasekara
   No. 99/1, Kalaotuwawa,
   Kalagedihena.

1d. Rajapaksha Pathirennehelage
   Ranjani

1e. Rajapaksha Pathirennehelage
   Rani

1f. Rajapaksha Pathirennehelage
   Chandrika

1g. Rajapaksha Pathirennehelage
Athula

All of No. 100, Kalaotuwawa,
Kalagedihena.

2. Rajapaksha Pathirennehelage
Renuka
No. 99/2, Kalaotuwawa,
Kalagedihena.

PLAINTIFFS

Vs.

1. Mapa Pathirennehelage Sediris Singho of Kalaotuwawa, Kalagedihena.
2. Ranatunga Arachchige Piyaseeli of Kalaotuwawa, Kalagedihena.
3. Nayaka Thanthrige Kamalawathie of Rathmale, Kalaotuwawa. (Deceased)
4. Jayasekara Subasingha Arachchige Dharmasena of Rathmale, Kalakotuwa, Kalagedihena. (Deceased)

4a. Kamala Nissanka

4b. Vineetha Jayasekara

4c. Dilani Rasika

All of Rathmale Kalakotuwa,

Kalagedihena.

DEFENDANTS

AND BETWEEN

1a. Rajapaksha Pathirennehelage Renuka

No. 99/2, Kalaotuwawa,

Kalagedihena.

2. Rajapaksha Pathirennehelage Renuka

No. 99/2, Kalaotuwawa,

Kalagedihena.

1ST AND 2ND PLAINTIFF-APPELLANT

Vs.

1. Mapa Pathirennehelage Sediris Singho of Kalaotuwawa, Kalagedihena.
2. Ranatunga Arachchige Piyaseeli of Kalaotuwawa, Kalagedihena.
3. Nayaka Thanthrige Kamalawathie of Rathmale, Kalaotuwawa. (Deceased)

4. Jayasekara Subasingha
Arachchige Dharmasena of
Rathmale, Kalaotuwawa,
Kalagedihena. (Deceased)

4a. Kamala Nissanka

4b. Vineetha Jayasekara

4c. Dilani Rasika

All of Rathmale Kalaotuwawa,
Kalagedihena.

DEFENDANT-RESPONDENTS

1b. Kamburugodage Aslin Nona
No. 100, Kalaotuwawa,
Kalagedihena.

1c. Rajapaksha Pathirennehelage
Chandrasekara
No. 99/1, Kalaotuwawa,
Kalagedihena.

1d. Rajapaksha Pathirennehelage
Ranjani

1e. Rajapaksha Pathirennehelage
Rani

1f. Rajapaksha Pathirennehelage
Chandrika

1g. Rajapaksha Pathirennehelage
Athula

All of No. 100, Kalaotuwawa,
Kalagedihena.

SUBSTITUTED PLAINTIFF-RESPONDENTS

AND NOW BETWEEN

1. Mapa Pathirennehelage Sediris Singho of Kalaotuwawa, Kalagedihena.
2. Ranatunga Arachchige Piyaseeli of Kalaotuwawa, Kalagedihena.

1ST AND 2ND DEFENDANT-RESPONDENT-APPELLANTS

Vs.

1a. Rajapaksha Pathirennehelage Renuka
No. 99/2, Kalaotuwawa, Kalagedihena.

2. Rajapaksha Pathirennehelage Renuka
No. 99/2, Kalaotuwawa, Kalagedihena.

1ST AND 2ND PLAINTIFF-APPELLANT-RESPONDENTS

1b. Kamburugodage Aslin Nona
No. 100, Kalaotuwawa, Kalagedihena.

1c. Rajapaksha Pathirennehelage Chandrasekara
No. 99/1, Kalaotuwawa, Kalagedihena.

1d. Rajapaksha Pathirennehelage Ranjani

1e. Rajapaksha Pathirennehelage Rani

1f. Rajapaksha Pathirennehelage Chandrika

1g. Rajapaksha Pathirennehelage Athula

All of No. 100, Kalaotuwawa, Kalagedihena.

SUBSTITUTED PLAINTIFF-RESPONDENT-RESPONDENTS

3. Nayaka Thanthrige Kamalawathie of Rathmale, Kalaotuwawa. (Deceased)

4a. Kamala Nissanka

4b. Vineetha Jayasekara

4c. Dilani Rasika

All of Rathmale, Kalakotuwa, Kalagedihena.

3RD AND 4a, 4b, 4c DEFENDANT-RESPONDENT-RESPONDENTS

Before : P. Padman Surasena, J.

: Janak De Silva, J.

: Sampath B. Abayakoon, J.

Counsel	**:**	S.A.D.S. Suraweera for the 1st and 2nd Defendant-Respondent-Appellants.
	:	Sudarshani Cooray instructed by Diana Stephanie Rodrigo for the 1(a), 2nd Plaintiff-Appellant-Respondents and 1(d), 1(e), 1(g) Substituted Plaintiff-Respondent-Respondents.
	:	E. Thambiah with Nishani de Zoysa and Sithija Jayamanne instructed by Thambiah Law Associates for the 4(a), 4(b), 4(c) Defendant-Respondent-Respondents.
Argued on	**:**	06-02-2025
Written Submissions	**:**	08-07-2020 (By the 1a and 2nd Plaintiff-Appellant-Respondent and 1d, 1e, 1g Substituted-Plaintiff-Respondent-Respondents)
	:	16-06-2020 (By the 1st and 2nd Defendant-Respondent-Appellants)
Decided on	**:**	20-03-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the 1st and 2nd defendant-respondent-appellants on the basis of being aggrieved by the judgment pronounced on 11-07-2018 by the Provincial High Court of the Western Province Holden in Gampaha, while exercising the civil appellate jurisdiction granted in terms of Article 154P of The Constitution.

From the impugned judgment, the judgment pronounced by the learned Additional District Judge of Gampaha in District Court of Gampaha Case No-38975/L was set aside, and a judgment entered in favour of the 1st and 2nd

plaintiffs in the said action, giving reliefs as sought for in the prayer of the plaint.

When this matter was supported for leave to appeal, this Court granted leave on the questions of law as stated in paragraph 12 (ii), (iii) and (iv) of the petition, which reads thus,

1. Did the learned Judges of the Provincial High Court err in law by overlooking the vital aspect that the plaintiffs have failed to establish the identity of the corpus, which is a vital element to succeed in a *Rei Vindicatio* action.
2. Whether the learned Judges of the Provincial High Court have failed to appreciate the vital fact that the plaintiffs have not successfully established their title to the land in suit as pleaded in the plaint, as the evidence adduced by the plaintiffs at the trial is not in conformity with the pleadings.
3. Whether the learned Judges of the Provincial High Court have arrived at an erroneous conclusion that the plaintiffs have duly proved the identity of the corpus solely based on the plan and the survey reports marked as 'P-11'and 'P-12', as those documents are not sufficient evidence to prove the identity of the land in suit.

This Court heard the submissions of the learned Counsel for the 1st and 2nd defendant-respondent-appellants (hereinafter sometimes referred to as the appellants) as well as the submissions made by the learned Counsel for the 1a and 2nd plaintiff-appellant-respondents (hereinafter sometimes referred to as the respondents) in relation to their respective stands. This Court also had the benefit of reading written submissions tendered by both parties in relation to the appeal before the Court.

This is a matter where the original 1st and 2nd plaintiffs, being the father and the daughter, filed an action before the District Court of Gampaha seeking a declaration of title to the land morefully described in the schedule of the plaint, and also for an order to evict the original 1st to 4th defendants mentioned in the plaint on the basis that they have encroached on to a part

of the land belonging to them, and unlawfully occupying the said portion of land.

In their plaint, the respondents have set out their title stating that the land mentioned in the schedule of the plaint is a land called Godawalewatta, now known as Helaudakalla, three roods in extent. It has been stated that it was originally owned by Kumburugodage Kechcha Nona, the mother of the 1st plaintiff, who became entitled to the said property by possessing it for a period of over 10 years without any interruption, and thereby, acquiring prescriptive title to it. It has been claimed that upon her death, the 1st plaintiff, namely Alleen Singho, inherited the property being the only child of her.

The 1st plaintiff has thereafter gifted an undivided 2/3rd of the property to his daughter, who is the 2nd plaintiff in the action, by way of a deed as stated in paragraph 4 of the plaint.

It has been claimed that the original defendants in the District Court action have forcibly encroached a part of the land belonging to the plaintiffs on 03-07-1994, claiming that the said portion of land is a part of a land called Meegahawatta which is owned by them.

It is on that basis, the respondents, being the plaintiffs of the action, have instituted this action before the District Court in the form of a *Rei Vindicatio* suit, seeking relief as stated in the prayer of the plaint.

The position of the appellants, being the defendants before the District Court, had been that the land claimed by the plaintiffs is a portion of a larger land called Meegahawatta, about 8 acres in extent. Setting out title to the said land called Meegahawatta, and claiming that they are in possession of the disputed portion of land on the basis of their pleaded title, the appellants have sought a dismissal of the action by the respondents, and for other reliefs as stated in their answer.

It is apparent from the District Court record that the respondents have obtained two commissions to depict the disputed land, which are the plans and reports marked as P-11 and P-12 respectively, at the trial. It appears that since the surveyor who surveyed the land and prepared the plan marked P-

11 was deceased at the time the case went on to trial, the plan and report marked P-12 has been subsequently prepared by the Commissioner, who gave evidence at the trial. The plan, which has been marked as V-01 during the trial, has been prepared by the appellants to show the land they claim as a part of a land called Meegahawatta, and also to show that the land claimed by the respondents as Godawalewatta a.k.a Helaudakalla is in fact a part of the land called Meegahawatta.

The matter has proceeded to trial *ex parte* against the 4th defendant mentioned in the plaint as he has not responded to the summons issued on him. There had been no admissions at the trial. The respondents have recorded 6 issues to be decided based on their plaint, and the appellants have raised issue No. 07 to 10, pleading for the dismissal of the action.

It is noteworthy to mention that at the trial, the now deceased 1st plaintiff has given evidence and had admitted that the original owner as claimed by him, namely Kechcha Nona, who is his mother, had two other children as well, which makes him only a co-owner of the land claimed by him as the sole owner.

It is very much apparent from the judgment pronounced by the learned Addition District Judge of Gampaha on 27-07-2011 that the learned Additional District Judge has correctly considered whether the respondents have identified the land described in their plaint as the land they claimed ownership, or whether it was part of a much larger land. After having considered the evidence placed before the Court, the learned Additional District Judge has determined that the respondents have failed to establish the identity of the land to the satisfaction of the Court, and also have failed to establish the title to the portion of land mentioned in the schedule of the plaint.

It is on that basis that the learned District Judge has proceeded to dismiss the plaint answering the issues in favour of the defendants of the District Court action.

After hearing the appeal preferred by 1a and 2nd plaintiff-appellants before the Provincial High Court of the Western Province Holden in Gampaha exercising its civil appellate jurisdiction, the learned Judges of the Provincial High Court, pronouncing the appellate judgment on 11-07-2018, has proceeded to set aside the judgment of the learned Additional District Judge of Gampaha on the basis that the said plaintiff-appellants have actually proved the identity of the land described in their plaint as a land called Godawalewatta a.k.a Helaudakalla. It has been determined that it is a land situated outside of the land claimed by the defendant-respondents as a part of a land called Meegahawatta.

Accordingly, it has been determined that the plaintiff-appellants are the owners of the said land, and that they are entitled to the reliefs sought by them in their plaint, and thereby, a judgment was granted in favour of 1a and 2nd plaintiff-appellants before the High Court.

At the hearing of this appeal, the learned Counsel for the appellants strenuously argued that the learned Judges of the Provincial High Court of the Western Province Holden in Gampaha were wrong in determining that the respondents have proved the identity of the corpus as well as the title, when setting aside the judgment of the learned Additional District Judge of Gampaha. He cited several authorities as well as the relevant law in that regard in support of his contention.

The submissions of the learned Counsel for the respondents were on the basis that the respondents, being the plaintiffs of the action, have proved their case on the balance of probability by establishing the identity of the corpus as well as the title to it, which entitles them to obtain reliefs as sought for in their plaint. It was her position that there exists no basis for this Court to interfere with the judgment of the Provincial High Court of Western Province Holden in Gampaha, pronounced exercising its civil appellate jurisdiction. Hence, she moved for the dismissal of the appeal.

It is of paramount importance for a party who comes before a Court claiming ownership or a right involved in a land, to establish the identity of such a land

to the satisfaction of the Court so that the Court can pronounce a judgment that can be enforceable relating to the claim before the Court. One of the primary modes of doing so is for the party or parties to obtain the services of a Court Commissioner to survey the disputed land and to identify the land as well as the disputed portion if any.

In the case of **Jamaldeen Abdul Latheef Vs. Abdul Majeed Mohamed Mansoor and Another (2010) 2 SLR 333**, it was held:

1. *It is trite law that the identity of the property with respect to which a vindicatory action is instituted is a fundamental to the success of the action as the proof of the ownership (dominion) of the owner (dominus). Where the property sought to be vindicated consists of a land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method.*
2. *In a Rei Vindicatio action, it is not necessary to consider whether the defendant has any title or right to possession, where the plaintiff has failed to establish his title to the land sought to be vindicated, the action ought to be dismissed without more.*

Per Saleem Marsoof, J.,

> *"An important feature of the actio rei vindicatio is that it has to necessarily fail if the plaintiff cannot clearly establish his title. Wille's Principle of South African Laws (9th Edition-2007) at pages 539-540 succinctly sets out the essentials of the Rei Vindicatio action in the following manner: -*
>
> > *To succeed with the Rei Vindicatio, the owner must prove on a balance of probabilities, first, his or her ownership in the property. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed. Thirdly, the defendant must be in possession or detention of the thing at the moment the action is instituted. The rationale is to*

ensure that the defendant is in a position to comply with an order for restoration."

When it comes to the case under appeal, it is clear that the respondents, being the plaintiffs in the case, has produced the plans marked P-11 (plan No. 5976 dated 11-09-1996 by K.G. Hubert Perera Licenced Surveyor) and P-12 (plan No. 1421 dated 10-08-2003 by R. Lakshman de Silva Licenced Surveyor) in order to identify the land for which they claimed ownership, and also to show the portion where allegedly the appellants, being the defendants in the case, has encroached upon. The plan marked P-12, upon which the respondents have relied upon, shows that their claim had been for lot No. 01, 02 and 03 of the said plan, which amounts to an extent of 1 rood and 26 perches. It had been their position that lot No. 02 and 03 of the said plan were the portions encroached upon by the appellants.

The appellants on the other hand, as the defendants of the District Court action, has prepared and relied upon on the plan marked V-01 (plan No. 1416 dated 05-02-1997 by R.M.J Ranasinghe Licenced Surveyor) to set up their claim to the disputed portion of land. Their position had been that they own and possess the portions of lands shown as E, F, G, I, H. The disputed portion of land has been shown as lots E and G, which is similar to lot No. 02 and 03 in the plan marked P-12.

It is very much apparent from the judgment of the learned Additional District Judge of Gampaha that the learned Additional District Judge had been well aware of the matters that need to be established before the Court, having considered the competing claims to the portion of the land under dispute.

I find that the learned Additional District Judge has crystalized the above in the following manner at page 04 of the judgment (page 232 of the appeal brief).

"ඒ අනුව මෙම නඩුවේ දී තීරණය කිරීමට ඇත්තේ පැමිණිල්ලේ උපලේඛනගත දේපල උත්තරයේ උපලේඛනයේ සඳහන් මීගහවත්ත නමැති විශාල ඉඩමේම කොටසක් ද, නොඑසේ නම් පැමිණිල්ලේ උපලේඛනයේ සඳහන් දේපලක් ස්වාධීනව පිහිටා තිබේ ද සහ ඒ සඳහා ඇති පැමිණිලිකරුවන්ගේ අයතිවාසිකම්වලට විත්තිකරුවන් හබ කරන්නේ ද යන කරුණයි."

With the above in mind, the learned Additional District Judge has proceeded to consider whether the disputed portion of land has been identified, and whether the respondents have established their title to the said land as claimed by them in the pliant.

The evidence led before the District Court bears testimony that the action before the District Court has occasioned as a result of a litigation which the parties had before the Magistrate Court of Aththanagalla in terms of section 66 of the Primary Court Procedure Act over the possession of the same disputed portion of land. In the said proceedings, the respondents have claimed that the appellants erected a new fence separating their land, and thereby, obtained forceful possession of it. However, the learned Magistrate of Aththanagalla, who went on an inspection of the land, has observed that in fact there is evidence of an old barbed wire fence which separated the lands and it has been removed subsequently. This has resulted in the learned Magistrate of Aththanagalla, in the capacity of the Primary Court Judge as well, ordering that the disputed fence be re-erected, giving possession of the disputed portion of land, namely lot No. 02 and 03 of the plan marked P-12, which is also the lots E and G of the plan marked V-01, to the appellants.

The learned Additional District Judge has also duly considered the facts relating to the dispute in order to determine whether the land claimed by the respondents as the owners comprised of lots No. 01, 02 and 03 in the plan marked P-12, and also whether it comprised of a distinct and separate land called Godawalewatta a.k.a Helaudakalla, or else, it comprised of a part of a much larger land called Meegahawatta.

The evidence of appellants had been to the effect that they are in possession of a strip of land which runs from the Pradeshiya Sabha road towards the South and up to the Northern boundary shown in all the plans with clearly demarcated boundaries between the lot No. 01 and lot No. 02 and 03 in the plan marked P-12.

As correctly determined by the learned Additional District Judge, if the assertions of the respondents that lot No. 02 and 03 are part of lot No. 01 of

the plan marked P-12, there should be a definitely identifiable boundary towards the Southern boundary of the said three lots. The plan marked P-12 as well as the plan marked V-01 clearly shows that the Southern boundary of all three lots were uncertain when the surveys were conducted. This goes on to give more weight to the contention of the appellants that lot No. 02 and 03 of the plan marked P-12, or in other words, lots E and G of V-01, were held and possessed by them as a part of lots I and H in the plan marked V-01, and it is a part of a larger land called Meegahawatta.

Another fact that favours the position of the appellants is the extent of the land claimed by the respondents to claim ownership and the actual extent of the same land as shown in the survey plans relied on by them. It has been claimed that the land prescribed by the plaintiff's predecessor in title was a land of 03 roods in extent. However, the surveyor plan marked P-12 reveals that the actual extent of the land is in fact 01 rood and 26 perches, which is a land significantly less than the land for which the respondents claimed ownership.

As observed correctly by the learned Additional District Judge, the now deceased 1st plaintiff, while giving evidence before the trial Court, has stated that the land called Meegahawatta claimed by the appellants is situated towards the South of the land he claims as Godawalewatta a.k.a Helaudakalla. He has also claimed that he is also a co-owner of the said land and had admitted that his children are in possession of the said land based on his co-ownership in the similar manner where the appellants occupy a strip of land between the Pradeshiya Sabha road to the South and to the Northern boundary as shown in plan P-12. The deceased 1st plaintiff in his evidence before the trial Court has admitted that the land called Meegahawatta for which he also claims co-ownership was a land of about 8 acres as claimed by the appellants and has stated that it extends beyond the Pradeshiya Sabha road depicted in plan marked V-01. He has also stated as correctly observed by the learned Additional District Judge that the said land called Meegahawatta extends beyond the Northern boundary of the disputed portion of land to which the respondents claim ownership as a separate land.

I find that it is under these circumstances the learned Additional District Judge, having analysed the evidence in relation to the identity of the land and also the claimed ownership to it, has come to a finding that there cannot be a separate portion of land called Godawalewatta a.k.a Helaudakalla in between the larger land called Meegahawatta.

In the case of **Luwis Singo and Others Vs. Ponnamperuma (1996) 2 SLR 320**, it was held:

1. *Actions for declaration of title and ejectment (as in this case) and vindicatory actions are brought for the same purpose of recovery of property. In Rei Vindicatio action the course of action is based on the sole ground of the violation of the right of ownership and in such an action proof is required that,*
    1. *The plaintiff is the owner of the land in question i.e. he has the dominium and,*
    2. *That the land is in the possession of the defendant.*

    Even if an owner never had possession, it would not be a bar to a vindicatory action.

    Per Wingneswaran, J.,

    "The Court must dismiss the plaintiff's action for the following reasons: -

    i. *Plaintiff in a declaration of title and ejectment must prove his title and his right to possess.*
    ii. *The Defendant need not do so and if plaintiff fails in a balance of probabilities the defendant would succeed.*
    iii. *Under the Roman Dutch Principle Jus Tertii the plaintiff must not only through a better title but also a title better than any known to the defendant."*

It is clear from the evidence placed before the District Court that although the respondents have claimed sole ownership to the land they claimed as a separate land based on a claimed prescriptive title of the mother of the 1st plaintiff of the action, it had been an admitted fact that the said mother of the

1st plaintiff, namely Kechcha Nona, also had two other children which makes the 1st plaintiff in the action, if at all, a co-owner of the land.

It is well settled law that a co-owner of a land can institute an action to evict a trespasser. It is also settled law that even if the plaintiff's claim of title was on the basis of sole ownership, and if the Court finds that he is entitled to the land as a co-owner only, there is no impediment to give a declaration of title in favour of a plaintiff, limited to his proven co-ownership rights and to evict a trespasser from the land based on his such rights.

Having considered a plethora of judgments and legal principles in that regard **Mahinda Samayawardhena, J.** observed in the case of **M. Sudath Harison and others Vs. W. Piyaseeli Fernando and others SC Appeal No. 57/2016, decided on 11-09-2023** that;

> *"If the plaintiff in a Rei Vindicatio action seeks a declaration of title to the entire land, but at the end of the trial, if the court finds that the plaintiff is not entitled to the entire land but only to a portion of it the court need not dismiss toto. It is a recognized principle that when a plaintiff has asked for a greater relief than he is actually entitled to it should not prevent him from getting the lesser relief which he is entitled to. 'Non debet cui plus licet quod minus est non licere': the greater includes the less. This is a well-established principle in law and also in consonance with common sense."*

In the case of **Punchiappuhami Vs. Dingiribanda (SC/Appeal/4/2010, SC Minutes of 20-11-2015)** the plaintiff filed action seeking a declaration of title to the whole land and ejectment of the defendant therefrom. The District Court granted both reliefs. On appeal, the High Court reversed the judgment of the District Court. Having considered the appeal preferred to the Supreme Court challenging the High Court judgement **Wanasundera, J.** remarked:

> "*I am of the view that the judges of the Civil Appellate High Court should have granted a declaration of title only to 11/24th share of the co-owned land of Belinchagahamula hena to the plaintiffs instead of dismissing the action altogether. I hold that the appellants are only entitled to that relief*

and no more. Since it was not proved that the defendant was a trespasser, he cannot be ejected by the plaintiffs."

In the case of **Aththanayake Vs. Ramyawathie (2003) 1 SLR 401**, the original plaintiff sued the defendant for a declaration of title to the land in suit and ejectment. The plaintiff did not refer to herself being a co-owner of the land in dispute. The defendant too claimed title to the same land. The evidence showed that the title to the allotment of land in suit was to be divided among seven persons. The plaintiff failed to prove exclusive (prescriptive) title to the larger land she claimed; nor was any issue suggested at the trial or in appeal in respect of the larger land.

Held:

"Although the plaintiff might have been entitled to a declaration of title to a portion of the land as co-owner of the entire land, she failed to adduce evidence of ownership for a portion or the larger land claimed by her by prescription or ouster. In the circumstances of the case, the plaintiff was not entitled for the relief of a declaration of title."

The above line of authorities clearly shows that the learned Additional District Judge was correct in her determinations and answering the issues raised by the parties, which led to the dismissal of the respondents' action instituted before the District Court.

It is manifestly clear that the respondents have not only failed to established the identity of the land claimed by her as a separate land to the satisfaction of the Court, and also the title claimed by them on such a basis either as a co-owner or sole owners. The respondents have claimed title based on prescription to it by their predecessor of title to the portion of land they have claimed a separate land. However, the evidence made available before the District Court clearly provides, as I have considered before, that the appellants' contention that the said portion of land is also part of a larger land has more meaning, for which the appellants as well as the respondents are admittedly co-owners.

However, it appears that when the judgment was appealed against to the Provincial High Court of the Western Province Holden in Gampaha, the learned High Court Judges have taken up a different approach although they have agreed with the determination of the learned Additional District Judge as to the matters that should be determined, where it has been reproduced in its verbatim, the portion of the judgment, as I have reproduced earlier.

It appears that the learned Judges of the Provincial High Court, exercising its civil appellate jurisdiction, has proceeded to consider the identity of the disputed land and has relied mainly on an answer given by the 1st appellant, as the 1st defendant before the District Court action, while under cross-examination on behalf of the respondents.

It has been suggested to him that lot No. 01, 02 and 03 marked in the plan marked P-12 by the surveyor Lakshman Silva has depicted the said lots as Godawalewatta a.k.a Helaudakalla to which the witness has answered 'Yes', which in my view is a factually correct answer. In plan P-12, the surveyor who conducted the survey as shown by the respondents has depicted the said lots in that manner, which does not mean the appellants accepting that as an existence of a separate land as claimed by the respondents.

I find that the learned High Court Judges of the Provincial High Court in exercising their civil appellate jurisdiction has been misdirected as to the facts as well as law in that regard.

It has been determined that even in the plan marked V-01, when superimposing the plan marked P-10 showing lot No. 01, 02 and 03 in the said plan as part of Godawalewatta a.k.a Helaudakalla as proof that it is a separate land other than the land claimed by the appellants as Meegahawatta, which is also factually wrong.

It is trite law that in a case before a trial Court, be it a criminal action or a civil action, the Court is duty bound to look at the evidence placed before the Court in its totality and not in a piecemeal basis, and come to a finding in that regard. The only difference being that in a criminal action, the case must be proved against an accused person beyond reasonable doubt, and in a civil

action, like in the action under appeal, the burden of proof should be on the balance of probability.

I also find that the learned Judges of the Provincial High Court exercising its appellate jurisdiction was misdirected as to the facts and law, when it was determined that the defendants in the District Court action have failed to establish that the disputed portion of land was a part of Meegahawatta as claimed by them, and also the learned Additional District Judge has determined the action without properly identifying the disputed land in the judgment.

I find that it is the duty of the party, who comes before the Court claiming title to a property and seeking eviction of the opposing party from a part of the said property, to establish the identity of the land and his title to the property. It is not obligatory on the part of a defendant to disprove the plaintiff's case.

It needs to be emphasized that other than considering the establishment of the identity of the land, the learned High Court Judges, while exercising its civil appellate jurisdiction has not gone into the title of the respondents to consider whether they have proved the title to the land as claimed, by analysing the determinations of the learned Additional District Judge in that regard, and giving reasons as to why the said determinations are faulty.

For the reasons as stated above, I am of the view that there was no legally tenable basis for the learned High Court Judges of the Provincial High Court of the Western Province Holden in Gampaha, while exercising its civil appellate jurisdiction, to set aside the judgment pronounced by the learned Additional District Judge in this matter. I am of the view that it is the judgment of the learned Additional District Judge of Gampaha that should stand, as the said judgment had been pronounced by proper analysis of the facts as well as the relevant law. Hence, I answer all three questions of law raised in the affirmative.

Accordingly, I set aside the judgment dated 11-07-2018 pronounced by the Provincial High Court of the Western Province Holden in Gampaha exercising

its civil appellate jurisdiction, and affirm the judgment dated 27-07-2011 pronounced by the learned Additional District Judge of Gampaha, where the action instituted by the respondents was dismissed for the reasons as stated in the said judgment.

The appeal is allowed. There will be no costs of this appeal.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court