

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

Enderutennagedara Shahul
Hameed Nuhun Nihar Nowfil
Lodge,
Bulugahathenne, Akurana.
Substituted Plaintiff-Appellant-
Petitioner-Respondent

Vs.

1. Son of Nagolle Gedera
Appuhamy,
M. M. Podibanda, Kahawatta,
Mullegama, Ambatenna.
2. Thalawinne Gedera Kiri
Menike,
Kahawatta, Mullegama,
Ambatenna.
Defendants-Respondents-
Respondents.

Now By and Between

- 1A. Enderutennagedara Shahul
Hameed Siththy Faiza,
- 1B. Enderutennagedara Shahul
Hameed Nizaak,

- 1C. Enderutennagedara Shahul
Hameed Fathima Azriya,
- 1D. Enderutennagedara Shahul
Hameed Mohamed Nawfil,
- 1E. Enderutennagedara Shahul
Hameed Siththy Nafeela,
- 1F. Enderutennagedraa Shahul
Hameed Siththy Naleera,
- 1G. Enderutennagedraa Shahul
Hameed Mohamed Nimlar,
- 1H. Enderutennagedraa Shahul
Hameed Siththy Nawsila,
- 1I. Enderutennagedraa Shahul
Hameed Siththy Nakeeba,
184/18, Matale Road,
Katugastota.
Plaintiff-Appellant-Petitioner-
Appellant

SC/APPEAL/165/2016

Vs.

CP/HCCA/KAN/31/2008 (F)

DC/KANDY/L/16374

- 1. Son of Nagolle Gedera Appuhamy,
M.M. Podibanda,
Kahawatta, Mullegama,
Ambatenna (Deceased).
- 1A. M. M. Ratnayaka,
- 1B. M. M. Bandara Menike,
- 1C. M. M. Mangalika Kumari,
No. 14/2, Kahawattta, Ambatenna.

Substituted 1st Defendant-
Respondents-Respondents-
Respondents

2. Thalawinne Gedara Kiri
 Menike,
 Kahawatta, Mullegama,
 Ambatenna.

2nd Defendant-Respondent-
Respondent-Respondent

3. Ederutennagedara Shahul
 Hameed Nuhun Nihar,
 Nowfil Lodge,
 Bulugahathenne, Akurana.

Substituted Plaintiff-Appellant-
Petitioner-Respondent

Before: Hon. Justice P. Padman Surasena
 Hon. Justice A.L. Shiran Gooneratne
 Hon. Justice Mahinda Samayawardhena

Counsel: Rushdhie Habeed with Ayuka Perera and Ms. Kalindi
 Dissanayake for the 1A to 1I Substituted Plaintiff-
 Appellant-Petitioner-Appellants.

Dr. S.F.A. Coorey with Sudarshani Coorey for the
 Defendant-Respondent-Respondent-Respondents.

Argued on: 04.12.2024

Written Submissions:

By the Appellants on 12.08.2020 and 05.02.2020

By the Respondents on 27.01.2021

Decided on: 27.02.2025

Samayawardhena, J.

The plaintiff filed action in the District Court seeking a declaration of title to the land in suit and ejectment of the defendants therefrom. The defendants claimed prescriptive title to the land. After trial, the District Court dismissed the plaintiff's action on the basis that the defendants have prescribed to the land. On appeal, the High Court affirmed the judgment of the District Court. Hence this appeal to this Court.

From what has been admitted in the pre-argument and post-argument written submissions of the plaintiff, it is clear that the defendants' prescriptive claim must succeed. The plaintiff in his written submission *inter alia* states as follows:

The moment the respondents entered into illegal possession of the land belongs to the plaintiff, the plaintiff in the first instance referred the matter to the Mediation Board. As there was no settlement, the plaintiff filed the action in the District Court of Kandy case No. L 10847 in September 1975. This action was withdrawn by the plaintiff in 1981 reserving the right to bring a fresh action. Thereafter, the second action bearing No. L 14308 was filed in 1984 alleging that the respondents were to construct buildings and there was an enjoining order against the respondents not to construct any buildings and this action also was withdrawn by the plaintiff with the liberty to file a fresh action. Accordingly, this case bearing No. L 16374 was filed in 1990.

As admitted above, the defendants have been in possession of the land in opposition to the plaintiff's claim of ownership from September 1975 to 1990. The institution of legal proceedings merely suspends the running of prescriptive possession, as held in *Nizar v. Parakrama* (SC/APPEAL/235/2016, SC Minutes of 28.10.2024). These suspensions

ceased in 1990. By the time the present action was instituted, the defendants had already acquired prescriptive title to the land.

Amidst this position, the plaintiff asserts that the defendants initially commenced possession as licensees. However, no evidence has been adduced to substantiate this claim.

The plaintiff then puts forward a convoluted argument, claiming that the land was vested in the Land Reform Commission, later reacquired by him, and that the defendants could not have prescribed to the land during the period it remained vested in the Land Reform Commission. The defendants do not claim to have prescribed against the Land Reform Commission. If the land indeed belonged to the Land Reform Commission, how did the plaintiff file multiple actions seeking declarations of title and the ejectment of the defendants? The plaintiff instituted these actions on the basis that he owned the land. The plaintiff cannot blow hot and cold.

There is ample evidence that the defendants have been in possession of the land for a considerable period of time without recognising any rights of the plaintiff over it.

I answer the question of law “Whether the defendants had discharged the burden of establishing the prescriptive claim required in law in the circumstances of the case?” in the affirmative. There is no necessity to address the remaining questions of law. The judgments of the District Court and the High Court are affirmed, and the appeal is dismissed without costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

A. L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court