

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

Samaya Mantree Gamladdalage
Sumanadasa,
Yaalawa, Uhumiya.
Plaintiff

SC/APPEAL/131/2018

NWP/HCCA/KUR/150/2009(F)

DC KURUNEGALA/5682/L

Vs.

1. Egalle Muhandiramlage
Simonhamy Alias Podiappu,
2. Samaya Mantree Gamladdalage
Leelawathi,
Both of Yaalawa, Uhumiya.
3. Ratnayake Mudiyansele
Somaratna,
4. Ratnayake Mudiyansele
Dayananda,
5. Ratnayake Mudiyansele
Chandrawathie Podimenike,
All of Uhumiya Post, Yalawa
North.
6. Ratnayake Mudiyansele
Nandawathi Kumarihamy
Pahalawatta, Bogoda, Maspotta.

7. Ratnayake Mudiyansele
Dasanayake, Uhumiya Post,
Yalawa North.

Defendants

1. Egalle Muhandiramle
Simonhamy Alias Podiappu,
2. Samaya Mantree Gamladdalage
Leelawathi,
Both of Yaalawa, Uhumiya.

Defendants-Appellants

Vs.

Samaya Mantree Gamladdalage
Sumanadasa,
Yaalawa, Uhumiya.

Plaintiff-Respondent

- 1A. Hangili Gedara Karunawathie,
2A. Samayamantree Gamladdalage
Sarath Sisira Kumara,
3A. Samayamantree Gamladdalage
Samaratunga,
4A. Samayamantree Gamladdalage
Ranjith Dharmasiri,
5A. Samayamantree Gamladdalage
Malani Somalatha,

6A. Samayamantree Gamladdalage
Sunil Premaratna,

7A. Samayamantree Gamladdalage
Danapala Wijesiri,
All of Uhumiya Post, Yalawa
North.

Substituted Plaintiffs-
Respondents

AND NOW BETWEEN

1. Egalle Muhandiramlage
Simonhamy Alias Podiappu,
2. Samaya Mantree Gamladdalage
Leelawathi
Both of Yaalawa, Uhumiya.
Defendants-Appellants-Appellants

Samaya Mantree Gamladdalage
Sumanadasa,
Yaalawa, Uhumiya.
Plaintiff-Respondent-Respondent

1A. Hangili Gedara Karunawathie,
2A. Samayamantree Gamladdalage
Sarath Sisira Kumara,
3A. Samayamantree Gamladdalage
Samaratunga,

4A. Samayamantree Gamladdalage
Ranjith Dharamasiri,

5A. Samayamantree Gamladdalage
Malani Somalatha,

6A. Samayamantree Gamladdalage
Sunil Premaratna,

7A. Samayamantree Gamladdalage
Danapala Wijesiri,

All of Uhumiya Post, Yalawa
North.

Substituted Defendants-
Respondents- Respondents

Before: Hon. Justice Janak De Silva
Hon. Justice Mahinda Samayawardhena
Hon. Justice Sampath B. Abayakoon

Counsel: Nizam Kariapper P.C. with M.I.M. Iyunullah, Ilham N.
Kariapper and Chathurika Perera for the 1st and 2nd
Defendants-Appellants-Appellants.
Jacob Joseph for the 7A Substituted Plaintiff-Respondent-
Respondent.

Argued on: 07.05.2025

Written Submissions:

By the Respondent on 05.11.2024
By the Petitioners on 09.06.2025

Decided on: 25.06.2025

Samayawardhena, J.

The plaintiff instituted this action in the District Court against the 1st and 2nd defendants seeking a right of way over Lot 2 depicted in Plan No. 584 prepared by Mr. Padeniya, Licensed Surveyor (marked X), from his land to the public road, based on prescription and/or necessity. The said roadway traverses the land owned by the 1st and 2nd defendants, who are husband and wife.

In their answer, the 1st and 2nd defendants denied the plaintiff's claim and asserted that the plaintiff had enjoyed access to his land via a roadway over the land of one Punchi Banda, situated to the north of their property. They further contended that it was only after Punchi Banda obstructed that access that the plaintiff began asserting a right of way over their land.

The successors in title to Punchi Banda were thereafter added as the 3rd to 7th defendants. In their answer, they too denied that the plaintiff ever used a roadway over their land.

At the trial, several witnesses were called, and a number of documents were marked in evidence. Among the documents marked were five survey plans. In addition to Plan No. 584 prepared by Mr. Padeniya (marked X), which is referred to in the plaint, the following plans were produced: Plan No. 804 by Mr. Wijeratne, L.S. (marked 1V1); Plan No. 205090 by Mr. Edirisinghe, L.S. (marked 1V9/3V2); and Plan Nos. 1824 and 1825 by Mr. Yapa, L.S. (marked 1V7 and 3V1, respectively). The respective surveyors were in fact called to give evidence at the trial. It was a full trial.

After trial, the learned District Judge, in a well-considered judgment, held that the plaintiff is entitled to use Lot 2 in Plan No. 584 prepared by Mr. Padeniya (marked X), as a right of way. However, the learned Judge imposed certain restrictions on the manner in which that right is to be exercised, depending on the purpose for which the roadway is used.

Being dissatisfied with the judgment of the District Court, the 1st and 2nd defendants preferred an appeal to the High Court of Civil Appeal. The High Court, in an equally well-considered judgment, affirmed the judgment of the District Court. However, the High Court removed the restrictions imposed by the District Judge on the use of the roadway, observing that there was no justification for such limitations once it was held that the plaintiff was entitled to use Lot 2 in Plan No. 584 as a right of way.

A previous Bench of this Court granted leave to appeal against the judgment of the High Court on the question of whether the High Court erred in law “in granting a right of way by prescription in the absence of any evidence by the plaintiff to prove prescription.” This question presupposes that there was no evidence to prove prescription, which is not correct. Both the District Court and the High Court analysed the evidence extensively and concluded that the evidence led before the District Court was sufficient, on a balance of probabilities, to support the finding that the plaintiff had acquired the right of way by prescription.

At the argument, the learned President’s Counsel for the 1st and 2nd defendants relied on a few selected items of evidence to contend that there was insufficient material to support a finding on prescription. One such submission was that the High Court failed to consider the contents of the report of Surveyor Padeniya, wherein it is stated, *inter alia*, that there was no roadway on Lot 2 of his Plan No. 584. This contention is untenable. What the surveyor in fact states is: “දැනට පිඹුරේ කැබැලි අංක 2 වශයෙන් පෙන්වා ඇති බිම් තීරුවේ පාරක් නොමැත. බාධක වලින් තොර තැනිතලා බිමක් වූ මෙය පාරක් වශයෙන් යොදා ගැනීමට හැක. මෙහි පාරක් තිබූ බව පැමිණිලිකරු පවසන නමුත් විත්තිකරුවන් විසින් එය පිළි නොගනී.” This observation is consistent with the position of the plaintiff, who instituted the present action upon being prevented by the 1st and 2nd defendants from using the said roadway. It is in that context that the surveyor states that there is no *existing* roadway on Lot 2.

What is shown in Plan No. 804 of Mr. Wijeratne is the road shown by the 1st and 2nd defendants as the road used by the plaintiff previously, and not an existing roadway. In his post-argument written submissions, the learned President's Counsel for the 1st and 2nd defendants has highlighted some selected portions of Mr. Wijeratne's testimony in an attempt to show that the plaintiff used a roadway over Punchi Banda's land and not over the land of the 1st and 2nd defendants. This submission is not persuasive. The evidence of Mr. Wijeratne cannot be considered in piecemeal, but must be assessed holistically and in conjunction with the evidence of the other surveyors who testified at the trial. When the evidence of all the surveyors is considered together, it does not support the contention advanced on behalf of the 1st and 2nd defendants that the roadway used by the plaintiff lay over the land of Punchi Banda.

Having regard to the facts and circumstances of this case, I do not consider that this Court should interfere with the judgment of the High Court, which affirmed the well-considered judgment of the District Court, on the basis that there was insufficient evidence to establish a servitude of right of way by prescription over Lot 2 in Plan No. 584.

I accordingly answer the question of law on which leave to appeal was granted in the negative, and dismiss the appeal, but without costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon, J.

I agree.

Judge of the Supreme Court