

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

1. S. Selvaratnam
2. M. Ramasubbu
3. K.C. Namasiwayam (deceased)
4. Marimuthu Wadivel Chettiar
5. Sathasivam Darmalingam  
Sivakumar Chettiar
6. Muthuramalingam Sangaran  
Chetty  
All present Trustees of Sri  
Muthumariamamma Kovil,  
No. 53 and 55,  
Kotahena Street,  
Colombo 13.  
Plaintiffs-Respondents-Appellants

**SC/APPEAL/87/2023**

**WP/HCCA/COL/231/2015(F)**

**DC COLOMBO/DLM/102/2009**

Vs.

1. Arawwala Jothige Nimal Perera  
No. 22/16,  
Pickering Road,  
Colombo 13.  
1<sup>st</sup> Defendant-Appellant-  
Respondent
2. Veerasinghan Chandrakumaran,  
No. 22/16,

Pickering Road,

Colombo 13.

3<sup>rd</sup> Defendant-Appellant-

Respondent

3. Kotte Mudiyanseelage Malini

Sujatha,

No. 22/15, Pickering Road,

Colombo 13.

4<sup>th</sup> Defendant-Appellant-

Respondent

4. Saroja Fernando,

No. 22/17, Pickering Road,

Colombo 13.

5<sup>th</sup> Defendant-Appellant-

Respondent

Before: Hon. Justice Janak De Silva

Hon. Justice Mahinda Samayawardhena

Hon. Justice Menaka Wijesundera

Counsel: Rohan Sahabandu P.C. with Sachini Senanayake for the  
Plaintiffs-Respondents-Appellants.

Ranjan Gunaratne for the Defendants-Appellants-  
Respondents.

Argued on: 29.05.2025

Written Submissions:

By the Appellants on 06.09.2023 and 09.06.2025

By the Respondents on 30.10.2023

Decided on: 25.06.2025

**Samayawardhena, J.**

The plaintiffs instituted this action in the District Court of Colombo, seeking a declaration of title to the land described in the schedule to the plaint, along with a permanent injunction restraining the defendants from dumping garbage onto the said land and damaging the wall on its eastern boundary. The defendants, who reside on the eastern boundary, filed answer seeking dismissal of the action.

In their answer, the defendants admitted paragraphs 3 and 4 of the plaint, and this admission was formally recorded at the commencement of the trial. By paragraph 3 of the plaint, the plaintiffs averred that the land described as Lot 1 in Plan No. 2522, and morefully described in the schedule to the plaint, is the land in dispute. By paragraph 4, the plaintiffs asserted that they became entitled to the said land by virtue of Deed No. 1275 dated 29.05.1963.

The defendants raised issues on the premise that they are entitled to use “the common road”, *inter alia*, by long use.

The plaintiffs led the evidence of several witnesses at the trial, whereas the defendants did not call any witnesses.

Notably, in raising issues, the defendants failed to specify what they meant by “the common road” or to identify such road on the plaintiffs’ land. Needless to state that this omission is crucial, particularly in view of the admissions recorded at the commencement of the trial.

After the trial, the learned District Judge rightly entered judgment in favour of the plaintiffs, based on the formal admissions recorded and the failure of the defendants to prove their alleged entitlement.

On appeal, the High Court set aside the judgment of the District Court and directed the learned District Judge to enter judgment for the defendants,

predominantly on the basis that “the learned trial Judge erroneously made an observation that the parties have admitted the title of the plaintiffs to the land described in the schedule to the plaint, whereas what was admitted was only that the land in dispute is so described in the schedule to the plaint”, and further that “the learned trial Judge has misdirected himself in deciding this case without considering the relevant facts relating to the identity of the corpus, and has erroneously decided the case in favour of the plaintiffs.”

Let me reproduce paragraphs 3 and 4 of the plaint to demonstrate that it is not the learned Trial Judge, but rather the learned High Court Judge, who has misdirected herself both on the facts and the applicable law.

3. බලයලත් මිනින්දෝරු පී. සින්නනම්බි විසින් මැන සාදන ලද වර්ෂ 1989 ක් වූ සැප්තැම්බර් මස 29 වන දින දරණ සහ අංක: 2522 දරණ පිඹුරේ පෙන්නුම් කර ඇති ප්‍රමාණයෙන් රු.11.50 ඵකයි පර්චස් එකොලහයි දශම පහයි බිංදුව (අක්.0 රු.1 පර්.11.50) ක් වූ ලොට් 1 දරණ ඉඩම් කට්ටිය වන කොළඹ 13, කොටහේනේ, පිකරින්ස් පාරේ, වරිපනම් අංක: 208 දරණ ඉඩම් කට්ටිය සහ ස්ථානය මෙම නඩුවේ විෂය වස්තුව නිර්මාණය කරන අතර එම ස්ථානය මෙම පැමිණිල්ලේ උපලේඛණයේ ඉතා සම්පූර්ණ ලෙස විස්තර කර ඇති අතර මින් මතුවට “මෙම නඩුවට අදාළ ස්ථානය” වශයෙන් හඳුන්වනු ලැබේ.

එකී අංක: 2522 දරණ පිඹුරේ සත්‍ය ඡායා පිටපතක් “එක්ස් 1” වශයෙන් ලකුණු කර මීට අමුණා ඇති අතර එය මෙම පැමිණිල්ලේ කොටසක් වශයෙන් අයැද සිටියි.

4. ප්‍රසිද්ධ නොතාරිස් සිවසිතම්පරම් සෝමනාදන් විසින් ලියා සහතික කරන ලද වර්ෂ 1963 ක් වූ මැයි මස 29 වන දින දරණ සහ අංක: 1275 දරණ ඔප්පුව යටතේ සහ එය කරණ කොටගෙන මෙම නඩුවට අදාළ ස්ථානය වර්තමානයේ ඉහත නම් සඳහන් 1 සිට 3 දක්වා වූ පැමිණිලිකරුවන්ට පැවරී හිමිව අයත්ව ඇත.

එකී අංක: 1275 දරණ ඔප්පුවේ සත්‍ය ඡායා පිටපතක් “එක්ස් 2” වශයෙන් ලකුණු කර මීට අමුණා ඇති අතර එය මෙම පැමිණිල්ලේ කොටසක් වශයෙන් අයැද සිටියි.

Paragraph 4 of the answer reads as follows:

4. පැමිණිල්ලේ 3 සහ 4 වන ඡේද මෙම විත්තිකරුවන් පිළි ගනී.

These are the admissions recorded at the trial:

1. අධිකරණ බලය පිළි ගනී.
2. පැමිණිල්ලේ 3 වන ඡේදයේ සම්ප්‍රකාශ පිළි ගනී.
3. පැමිණිල්ලේ 4 වන ඡේදයේ සම්ප්‍රකාශ පිළි ගනී.
4. පැමිණිල්ලේ 6අ ඡේදයේ සඳහන් සම්ප්‍රකාශ පිළි ගනී.

This Court granted leave to appeal against the judgment of the High Court on two questions of law:

- (a) Did the High Court err in law in holding that the plaintiffs have failed to prove title and identity of the corpus when the defendants in their answer as well as admissions specifically admitted title and identity of the land in dispute?
- (b) In any event, was there sufficient evidence to prove the contrary position taken up by the defendants where none of the defendants gave evidence of the use of the roadway?

There is no necessity to prove admitted facts. Cases are decided on admissions and issues.

The defendants neither identified the alleged “common road” in their issues nor established any entitlement to such a right by long usage or otherwise.

I answer the first question of law in the affirmative, and the second in the negative.

I set aside the judgment of the High Court and restore the judgment of the District Court. The plaintiffs are entitled to costs of the appeal.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court