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

In the matter of an Appeal against judgment dated 25th October 2018 pronounced in Case No. WP/HCCA/MT/36/2017 under and in terms of section 5(c)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006.

SC Appeal No:

111/2019

SC/HCCA/LA No:

413/2018

Civil Appellate High Court No:

WP/HCCA/MT/36/2017/F

D.C. Nugegoda Case No:

L 294/10

Meepagalage Nihal Perera,
No.411/5, High Level Road,
Makumbura,
Pannipitiya.

PLAINTIFF

Vs.

Rajapurage Wilson,
No.100/4, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.

Formerly –

No. 102, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.

DEFENDANT

AND BETWEEN

Meepagalage Nihal Perera,
No.411/5, High Level Road,
Makumbura,
Pannipitiya.

PLAINTIFF-APPELLANT

Vs.

Rajapurage Wilson,
No.100/4, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.
Formerly –
No. 102, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Rajapurage Wilson, (*deceased*)
No.100/4, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.
Formerly –
No. 102, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.

DEFENDANT-RESPONDENT-APPELLANT

Sella Kapuge Siriyawathi Silva
alias Sella Kapuge Shriyani Silva,
No. 100/4, Old Kesbewa Road,
Kattiya Junction,
Nugegoda.

SUBSTITUTED DEFENDANT-RESPONDENT-APPELLANT

Vs.

Meepagalage Nihal Perera,
No.411/5, High Level Road,
Makumbura,
Pannipitiya.

PLAINTIFF-APPELLANT-RESPONDENT

1. Rajapurage Niroshani
2. Rajapurage Rosani
3. Rajapurage Winson
4. Rajapurage Harshani

RESPONDENTS

Before **:** Kumudini Wickremasinghe, J.

: A.L. Shiran Gooneratne, J.

: Sampath B. Abayakoon, J.

Counsel	**:**	Amrit Rajapaksha instructed by Paul Ratnayake Associates for the Defendant-Respondent-Appellant.
	:	Manohara de Silva, P.C. for the Plaintiff-Appellant-Respondent.
Argued on	**:**	14-10-2025
Written Submissions	**:**	13-01-2020 (By the Plaintiff-Appellant-Respondent)
	:	30-08-2019 (By the Defendant-Respondent-Appellant)
Decided on	**:**	03-02-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the defendant-respondent-appellant (hereinafter referred to as the defendant) on being aggrieved of the judgment dated 25-10-2018, pronounced by the Provincial High Court of the Western Province holden in Mount Lavinia while exercising its civil appellate jurisdiction.

From the impugned judgment, the High Court set aside the judgment dated 10-01-2017, pronounced by the learned District Judge of Nugegoda, in which the action filed by the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) was dismissed. Having set aside the said judgment, the High Court entered judgment in favour of the plaintiff of the action, granting reliefs prayed for in the plaint.

When this matter was considered for the granting of leave to appeal from the impugned High Court judgment on 21-06-2019, this Court granted leave on the following question of law.

1. Whether Their Lordships of the Civil Appellate High Court have misdirected themselves in fact or in law in failing to appreciate that the petitioner has proved prescriptive title to an identified portion of land morefully described in the schedule to the plaint.

At the hearing of this appeal, this Court heard the submissions of the learned Counsel for the defendant as well as the submissions of the learned President's Counsel who appeared for the plaintiff. This Court also had the benefit of considering the written submissions tendered by the parties for the purpose of determining this appeal.

The facts as pleaded by the parties before the trial Court that led to the dismissal of the plaintiff's action can be summarized in the following manner.

The plaintiff has instituted this action before the District Court of Nugegoda for a declaration of title for the land morefully described in the schedule of the plaint and for the ejectment of the defendant who is in possession of the building bearing assessment No. 100/4, which is situated within the land described in the plaint. It has been the position of the plaintiff that the defendant came into the possession of the building with the leave and license of his predecessors in title, and when he terminated the said leave and license after he purchased the land, it was agreed by the defendant to leave the building and handover the possession to him but refused to hand over possession subsequently.

The stand taken up by the defendant before the trial Court has been that he came into possession of the building No.100/4 in the year 1972. He has claimed prescriptive rights to the portion of the land where he is in occupation. In the schedule of the answer, he has described the land as a portion of land 3.79 perches in extent.

At the trial, the parties have admitted the jurisdiction and the fact that the defendant is in occupation of the building No.100/4 and also the fact that the land on which the building stand was previously owned by one Dona Johanna Thalagala.

The parties have also admitted that the defendant received the notice to quit dated 09-03-2010 and he replied to the said letter.

The trial has proceeded on the basis of 8 issues recorded by the plaintiff to be determined by the Court where the defendant has raised issues No. 09 to 14.

At the conclusion of the trial, the learned District Judge of Nugegoda, pronouncing his judgment dated 10-01-2017, has determined that although the plaintiff has sought a declaration of title for a land of 24.5 perches in extent, the defendant is not claiming prescriptive title to the entire land but a land of 3.79 perches in extent situated within the land claimed by the plaintiff, and since there is no dispute as to the entire land claimed by the plaintiff, there exists no necessity to pronounce a judgment in relation to the entire land as claimed by the plaintiff.

It has also been determined that a person will not have a right to get a declaration of title to a land where there is no dispute. On the above-mentioned basis, the learned District Judge has determined that since the defendant is not disputing in relation to the rights of the entire land, the plaintiff has failed to describe and identify the subject matter of the action before the Court.

However, the learned District Judge has determined that the plaintiff has established the paper title.

Having determined as such, the learned District Judge has proceeded to consider whether the defendant has established his claim of prescription to the subject matter.

It has been determined that the defendant was living on the premises in dispute from the year 1970 and he has come to the said property without having obtained permission from anyone. It was the view of the learned

District Judge that the plaintiff's assertion that the defendant came into possession of the land as a licensee of his predecessors in title has not been established with sufficient evidence. The learned District Judge has reasoned out that the defendant was successful in establishing the fact that he held and possessed the land and buildings standing thereof for over 10 years by holding it independently to any rights claimed by the plaintiff or his predecessors in title. On the said basis, the plaintiff's action has been dismissed since the defendant has prayed only for a dismissal of the action.

However, in appeal, the learned Judges of the High Court have taken a different view in relation to the judgment pronounced by the learned District Judge. It has been determined that the plaintiff's action being a *rei vindicatio* action, the plaintiff has in fact proved his title to the land in dispute and the learned District Judge was wrong to have answered the issues raised in that regard in the negative after having determined that the paper title has been proved.

Having considered the relevant applicable law, it has been determined that once the paper title has been proved, the burden shifts to the defendant to prove his claimed title, and it has been observed that since the defendant is claiming title to a small portion of the land in dispute, there was no basis for the learned District Judge to determine that the plaintiff has failed to prove title. Even if the defendant has proved prescription to the portion of land he is claiming, it has been the view of the High Court that the answer to the issue relating to the prescription should have been that he has proved prescription only in relation to the claimed portion of land and the learned District Judge was wrong in that regard.

The High Court has also determined that the defendant has failed to identify the portion of land that he is claiming prescription and also his evidence in that regard does not provide sufficient evidence to justify a prescriptive claim. It has also been determined that the defendant has been seeking relief based on prescription without praying for such a relief in his answer and the prayer, and therefore, there was no basis for the learned District Judge to determine the question of prescription.

On the above considered basis, the judgment of the learned District Judge has been set aside and a judgment has been entered in favour of the plaintiff.

With the above factual matrix in mind and also having in mind the question of law upon which leave to appeal was granted by this Court, I will now consider the respective submissions made by the learned Counsel in view of finding whether this Court should intervene into the judgment pronounced by the High Court of Civil Appeal.

In the case of **Laisa and Another Vs. Simon and Another (2002) 1 SLR 148**;

> "The plaintiff-appellants instituted action seeking declaration of title and ejectment of the defendants from the premises in question. The defendants claimed prescriptive rights. The plaintiffs' action was dismissed. On appeal it was held;
>
> 1. The contest is between the right of dominion of the plaintiffs and the declaration of adverse possession amounting to prescription by the defendants.
> 2. The moment title is proved the right to possess it, is presumed.
> 3. …
> 4. …
> 5. For the Court to have come to its decision as to whether the plaintiffs had dominion, the proving of paper title is sufficient.
> 6. …
> 7. Once paper title becomes undisputed the burden shifts to the defendant to show that they had independent rights in the form of prescription as claimed by them."

As correctly observed by the learned Judges of the High Court, the plaintiff has clearly proved his paper title to the land that is morefully described in his plaint. Even the learned District Judge has determined so, though he has answered the issue raised in that regard in the negative. Therefore, it is clear that the plaintiff has proved his paper title by giving evidence and producing the documents marked P1-P7 that he is the owner of the land morefully described in the plaint, which is 24.5 perches in extent.

As observed correctly by the learned Judges of the High Court, the defendant has sought only a dismissal of the action, and not a declaration of title for himself on paper title or on prescription. However, in the body of his answer dated 10-12-2010, he has set out various events which suggest that he is claiming prescription to a certain portion of the land described in the plaint. In the schedule of the answer, the defendant has referred to plan No. 5080 dated 02-03-1996, which is a land with an extent of 3.70 perches. In his evidence, he has claimed that he came to occupy the said portion of the land on his own without having taken permission from anyone. However, at the trial, the fact that the land was previously owned by one Sisili Thalagala has been an admitted fact in this action. Hence, the defendant has no basis to claim that he was unaware who owned the land. The said Thalagala is a predecessor in title of the land under litigation.

It has been the evidence of the defendant that he was in occupation of the said portion of the land since 1972, and held and possessed it independently of others. To establish that, he has submitted the documents to show that it is he who paid municipality rates and obtained water and electricity to the house situated therein and also the electoral register. There has been no dispute during the trial that the defendant was in fact in occupation of the house situated on the land described in the schedule of the plaint. However, since the defendant has claimed prescription for a specific portion of land, it was up to him to establish his claim.

In the case of **Sirajudeen and Two Others Vs. Abbas**, it was held;

> "*Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights.*
>
> *A facile story of walking into abandoned premises after the Japanese air raid constitute material far too slender to found a claim based on prescriptive title.*

As regards to the mode of proof of prescriptive position, mere general statements of witnesses that the plaintiff possess the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title of prescription. It is necessary that the witness should speak specific facts and the question of possession has to be decided thereupon by the Court."

I am of the view that the High Court was correct in considering whether the defendant has claimed any title based on prescription, whereas he has not. His only contention has been for the dismissal of the plaintiff's action claiming that he has prescribed to a certain unidentified portion of land. In fact, he has described the said portion in relation to a plan prepared in 1986, a photocopy of which has been marked as V15. Although the learned trial Judge has relied on the said document in his judgment, it is abundantly clear that the said photocopy of the plan was marked in Court, the learned Counsel of the plaintiff has objected to it and it has been allowed to be marked subjected to proof.

When the defendant closed his case, the learned Counsel for the plaintiff has duly objected that the said V15 has been accepted as evidence on the basis that it has not been proved. Even after the closing of the defendant's case, the Court has allowed the documents that were marked subjected to proof, namely V14, V15, and V16, to be proved by the defendant, whereas he has led evidence to establish V14, which was a deed of declaration, and V16, the land registration extract of the same. However, the defendant has failed to lead any evidence in order to establish V15 which was a mere photocopy of a plan.

In a *rei vindicatio* suit, it is necessary for a person who is claiming title to a land to establish his title as well as the identity of the corpus of the action. Similarly in my view, when a defendant is claiming prescriptive rights to a portion of land where a plaintiff has proved his paper title and identity, it was up to the said defendant to identify the portion where he claims prescription and establish prescription to the said portion as required by law, either to

claim title or even to seek a dismissal of a plaintiff's action in relation to that specific portion of land.

As determined rightly by the learned Judges of the High Court, I find that the defendant has failed to identify the portion of the land claimed by him to the satisfaction of the Court where denying of rights of an owner or a paper title holder of the said portion can be justified.

For the above considered reasons, I find no basis to interfere with the appellate judgment of the High Court of the Civil Appeal.

Accordingly, I answer the question of law under which this appeal was considered in the negative.

The appeal is dismissed for want of merit.

The parties shall bear their own costs.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court