

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

In the matter of an Application for
Special Leave under Article 128 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

SC Appeal 112/19

SC/HCCA/LA/96/2018

High Court of Civil Appeal No.
WP/HCCA/KAL/240/2014(F)

DC Panadura Case No. 971/L

AND NOW BETWEEN

1. Padukkage Dona Chandrawathie
Jayasinghe.

1A. Sampath Chandana Jayasinghe
No. 24, Batuwandara, Madapatha.

Appearing by his Power of Attorney
Holder Nilangika Dilum Jayasinghe
Bodaragama.
No.26, Suleiman Place, Colombo 05.

2. Edward Upali Jayasinghe.
Both at No. 24, Batuwandara,
Madapatha.

Defendant-Respondent-Appellants

Vs.

Padukkage Dona Dayawathie
No. 116, 2nd Lane, Ratmalana.

Plaintiff-Appellant-Respondent

Before : Yasantha Kodagoda, PC, J.
A. L. Shiran Gooneratne, J.
Menaka Wijesundera, J.

Counsel : Mangala Niyarepola with Ms. Kushmi Gunaratna and
Kushil Lanerolle instructed by Tharaka Sachindra
Jayathilake for the Defendant-Respondent-Appellants.
Shiral Lakthilake with Chathuranga Hathurusinghe
instructed by Sunari Tennakoon for the Plaintiff-
Appellant-Respondent.

Written

Submissions : Latest written submission filed on behalf of 1A
Substituted-Defendant-Respondent-Appellant and 2nd
Defendant-Respondent-Appellant on the
31st of March 2026.
Latest written submission filed on behalf of the Plaintiff-
Appellant-Respondent on the 11th of March 2026.

Argued on : 18.02.2026

Decided on : 17.07.2026

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 26.02.2018 of the Civil Appellate High Court of Kalutara. When this matter was supported for leave on 27.06.2019, this Court granted leave on the following two questions of law,

- i) Did the learned High Court judges err in holding that the plaintiff had proved her title?
- ii) Did the learned High Court judges err in holding that the defendants had failed to prove prescriptive title?

The plaintiff-appellant-respondent (hereinafter referred to as “plaintiff”) filed an action in the District Court of Panadura against the defendant-respondent-appellants (hereinafter referred to as “defendants”), who were her sister and

brother-in-law. In the said plaint dated 19.12.1994, she had sought a declaration that she was the owner of the property mentioned in the schedule to the plaint, that the 1st and 2nd defendants be evicted from the said property, that possession be handed over to her, and that she be permitted to recover the damages caused up to the date of the plaint.

According to the said plaint, the plaintiff had further pleaded that the property described in the schedule to the plaint was Lot A, which had been allotted to Kuruppuarachchige Don Sumanawathi, by the final decree entered in the Partition Case No. 352 in the District Court of Panadura. Thereafter, the said Sumanawathi, by way of Deed No. 17/158 dated 9th of June 1963, had made a conditional transfer and sold it to Paddukage Don Jamis Appuhamy, subject to the condition that the original owner had the right to repurchase the property within two years. Thereafter, the said Sumanawathi, repurchased the property by Deed No. 183/77 dated 15.09.1964.

The said Sumanawathi was the mother of the plaintiff and the 1st defendant. According to paragraph 4 of the plaint, the said Sumanawathi, sold the said property to the plaintiff by Deed No. 454 dated 18.10.1966. The plaintiff had further stated that thereafter, she and the predecessors had been in possession of the said property for more than 10 years; therefore, she claims prescriptive rights in addition to her paper title described in the schedule to the plaint.

The plaintiff had also stated that, at the time she purchased the property from her mother, the 1st defendant had been married to the 2nd defendant, and she had permitted the 1st defendant and her husband to occupy House No. 24, situated on the property described in the schedule to the plaint. Thereafter, the defendants commenced occupying the said property under the leave and license of the plaintiff. The plaintiff claims that she had gone to live at Ratmalana.

Then the plaintiff had taken steps to erect a fence to identify the boundary between her land and the land of Don Wilson Gunawardena on 10.06.1994. At this point, the defendants had objected to this action of the plaintiff, claiming ownership of the property and challenging the ownership of the plaintiff. Therefore, on 01.08.1994, she wrote to the defendants cancelling the said leave and license. The defendants prevented the plaintiff from entering the property; therefore, she filed the instant action against the defendants claiming the above-mentioned relief.

When the trial began in the District Court, the plaintiff had raised seven issues, and the defendants had raised three issues, which were based on prescriptive title.

The plaintiff had given evidence in the District Court and had stated how she came to have title to the property described in the schedule to the plaint by marking P2, P3, and P4.

The plaintiff stated in her evidence that she worked in the Bata Company and helped her mother to regain the property and that, as a mark of gratitude, the mother had transferred the property to her which had been marked as P4.

During this time, the 1st defendant had got married, and the Plaintiff had allowed the 1st and 2nd defendants to live on the property under her leave and license.

The defendants had filed an answer and claimed that the 1st defendant lived on her ancestral property and completely denied that she lived on the property with the leave and license of the plaintiff.

They had claimed that Deed No. 454 was a forgery and that, after the marriage, they developed the house on the property at a cost of approximately Rs.12 lakhs. Therefore, they had sought a declaration from the Court, under prayer (B) of their answer, that they be granted prescriptive title and compensation for the improvements they had made to the property.

The learned District Judge had dismissed the plaintiff's plaint on the basis that she had not proved that the defendants had lived on the alleged property with her leave and license and that they had gained prescriptive title to the property as pleaded in their answer.

The plaintiff, being aggrieved by the said judgment had lodged an appeal to the Civil Appellate High Court, and the learned High Court Judges had held that the defendants' claim of prescription could not be accepted because the defendants had been living on the ancestral property and, even at the time the action in the District Court was filed, the mother of both parties had been alive and had been the predecessor in title of the plaintiff. Hence, in that case, the defendants had to show adverse possession as against the mother in respect of the ancestral property, which the learned High Court Judge held was not practical.

Nevertheless, the learned High Court Judges held that the title of the plaintiff was clear because, at the time the Deed No. 454 was marked, the defendants had not objected to its production.

Therefore, they had set aside the judgment of the District Judge and had granted the relief sought by the plaintiff. The instant appeal is against the said judgment.

In the instant matter, what has to be decided, as set out in the two questions of law, is whether the plaintiff had paper title and whether the defendants have prescribed to the property described in the schedule to the plaint.

As per the material stated above, the plaintiff's version is that she gained paper title by Deed No. 454, which the defendants have challenged. However, her evidence is that her predecessor in title, namely the mother of both parties, had transferred the property in the name of the plaintiff as a mark of gratitude because the plaintiff had helped her mother redeem the property. When the said deed was marked and produced in evidence, the defendants had not object to it. Therefore, her title to the property is established.

However, the position of the defendants was that the Deed No. 454 was marked and produced subject to proof, and the case was closed without proving the document.

Section 68 of the Evidence Ordinance Act of Sri Lanka states that,

“If a document is required by law to be attested (e.g., deeds affecting land, wills), it cannot be used as evidence until at least one attesting witness is called to prove its execution, provided such a witness is alive and capable of giving evidence”

Section 154(1) of the Civil Procedure Code states as follows,

“Every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness. If it is an original document already filed in the record of some action, or the deposition of a witness made therein, it must previously be procured from that record by means of, and under an order from, the court. If it is a portion of the pleadings, or a decree or order of court made in another action, it shall not generally be removed therefrom, but a certified copy thereof shall be used in evidence instead.”

As with regard to Section 68 of the Evidence Ordinance, in **SC Appeal No. 55/ 2020, Weerakulasooriya Boosa Baduge Shamaline Fernando v Kusalanthi Fernando and Weerasekara Hettiarachchige G. Perera**, decided on 9th November 2023, Yasantha Kodagoda P.C., J has quoted the case of **Bandiya v Ungu et.al (15 NLR 263)** :

“Chief Justice Lascelles explained that the requirements contained in section 68 of the Evidence Ordinance is a “wholesome rule” and held that, a notarially attested Deed shall not be used as evidence, until one attesting witness at least has been called for the purpose of proving its execution, subject to the circumstances that an attesting witness is alive, he is capable of giving evidence and is subject to the process of the court.”

Therefore, Justice Kodagoda, had stated that in the same judgment:

“The admission by a party to an attested document that it was executed by him will so far as such party is concerned, supersede the duty cast on the party which produced the document and is seeking that the contents of the document be treated as evidence, of either calling the attesting witness or of giving any other evidence of its due execution”

Thus, His Lordship states that Section 70 of the Evidence Ordinance, serves as a proviso to Section 68.

Thereafter, His Lordship proceeded to consider whether an admission recognized by law of the due execution of the deed existed and analyzed Section 154(1) together with the newly introduced Section 154A to the Civil Procedure Code by the Civil Procedure (Amendment) Act No. 17 of 2022, which came into operation on 23rd June 2022. He observed that proof of a document as stipulated in Section 68 of the Evidence Ordinance is no longer required under the new amendment introduced by Section 154A of the Civil Procedure Code.

Therefore, as per the law laid down above, the impugned document can be accepted as proven, and it can be concluded that the plaintiff had title to the impugned property described in the schedule to the plaint.

Hence, I answer the first question of law in the negative.

The next question to be decided is whether the defendants were living on the said property under the leave and license of the plaintiff or whether they acquired title by prescription to the land.

Prescription is a legal doctrine related to the acquisition of rights or the extinguishment of claims through the passage of time. In the context of property law, it often refers to the process by which a person can acquire title to land or other immovable property through continuous and uninterrupted possession over a prescribed time.

In the case of **N. Dinesha Marita Amarasekera v M.T. Theobald Perera et al. SC APPEAL 117/2020** Achala Wengappuli, J. held that,

“When one relies on adverse possession in setting up a claim of prescriptive title against another under provisions of section 3 of Prescription Ordinance, it appears that the Superior Courts have applied a slightly different criterion in assessing validity of such a claim, depending on the fact whether there is a familial relationship in existence between the contesting parties, vis a vis the criterion they had adopted in the assessment of such a claim that had been laid against a total stranger.”

This distinction recognizes that occupation among family members is ordinarily referable to mutual trust or permission, and therefore stronger evidence is required to establish that such possession became hostile to the true owner's title.

This ties in perfectly with the following case;

Chaminda Abeykoon v P. Nicholas Anthony Fernando and Others [SC Appeal No. 54A/2008] decided on 02.10.2018, Justice Prasanna Jayawardena, PC cited the case **Chelliah v Wijenathan et al [(1951) 54 NLR 337]** where **Gratien J.** established that,

“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 fably and squarely on him to establish a starting point for his or her acquisition of prescriptive rights. If that onus has prima facie been discharged, the burden shifts to the opposite party to establish that, by reason of some disability recognised by Section 13, prescription did not in fact run from the date on which the adverse possession first commenced. Once that has been established, the onus shifts once again to the other side to show that the disability had ceased on some subsequent date and that the adverse possession relied on had uninterruptedly continued thereafter for a period of ten years.”

According to the facts and the circumstances of the case, although the defendants deny that they were living on the property with the leave and license of the plaintiff, if they had gained prescriptive rights to the property in suit, their adverse possession must have begun when the mother had been living.

She died in 1999, six years after the institution of this action. If that is so, the best evidence the defendants could have produced would have been the evidence of the mother because it is they who claim prescription, and the burden is on

them to prove it is. However, they failed to do so. Therefore, the presumption under Section 116 of the Evidence Ordinance may be drawn against the defendants.

The defendants, in their evidence, claimed the improvements they had done to the property through a quantity surveyor, which, in my opinion, had not been done in good faith.

Hence, I see no material upon which to conclude that there was adverse possession by the defendants because, as per their own evidence, they had been living in the house of their mother and father. Furthermore, the question of when the alleged adverse possession began remains unanswered by the defendants.

Accordingly, I answer the second question of law in the negative.

In conclusion, I am of the opinion that there is no reason whatsoever to set aside the judgment of the High Court. Hence, it is affirmed and the instant appeal is dismissed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT