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

In the matter of an Appeal in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC/APPEAL/115/2018

SC/SPL/LA/202/2016

C.A. Appeal 02/2000[F]

D.C. Avissawella 394/L

Naina Marikkar Ummu Suleila
No. 437, Gurugalla Road,
Thalduwa, Avissawella.

PLAINTIFF

Vs.

Rathubadalge Ensohamy
No. 537, Gurugalla Road,
Thalduwa,
Avissawella.

DEFENDANT

AND BETWEEN

Naina Marikkar Ummu Suleila
No. 437, Gurugalla Road,
Thalduwa, Avissawella.

(Deceased)

PLAINTIFF- APELLANT

Mohamed Tawufeek Zeenathul Munauvara
No. 63, Kumarimulla,
Pugoda.

SUBSTITUTED - PLAINTIFF-APPELLANT

Vs.

Rathubadalge Ensohamy
No. 537, Gurugalla Road,
Thalduwa, Avissawella.

(Deceased)

DEFENDANT-RESPONDENT

1A.Dewanarayana Acharige Ariyawathie
1B.Dewanarayana Acharige Kamalawathie
1C.Dewanarayana Acharige Sriyalatha
1D.Dewanarayana Acharige Sunila
1E.Dewanarayana Acharige Wansawathie
1F.Dewanarayana Acharige Thilak Premalal

All of No. 69/20, Mulwrusawa,
Dehiowita.

SUBSTITUTED DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

Rathubadalge Ensohamy
No. 537, Gurugalla Road,
Thalduwa, Avissawella.

(Deceased)

DEFENDANT-RESPONDENT-APPELLANT

1A.Dewanarayana Acharige Ariyawathie
1B.Dewanarayana Acharige Kamalawathie
1C.Dewanarayana Acharige Sriyalatha
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SUBSTITUTED DEFENDANTS-RESPONDENTS-APPELLANTS

Vs.

Naina Marikkar Ummu Suleila
No. 437, Gurugalla Road,
Thalduwa, Avissawella.

(Deceased)

PLAINTIFF- APPELLANT- RESPONDENT

Mohamed Tawufeek Zeenathul Munauvara
No. 63, Kumarimulla,
Pugoda.

SUBSTITUTED PLAINTIFF-

APPELLANT- RESPONDENT

Before: Yasantha Kodagoda PC. J.

Kumudini Wickremasinghe J.

Dr. Sobhitha Rajakaruna J.

Counsel: Lakshman Perera, PC with Ms. Tharika Jinadasa for Substituted Defendants-Respondents-Appellants

J.P.Gamage with Ms. Meleesha Perera for Substituted Plaintiffs-Appellants-Respondents

Argued on: 04.08.2025

Written Submissions: Defendant-Respondent-Appellant – 08.08.2018

Plaintiff-Appellant-Respondent – 13.09.2018

Decided on: 03.02.2026

Dr. Sobhitha Rajakaruna J.

The original Plaintiff, now represented by the Substituted-Plaintiff-Appellant-Respondent (hereinafter referred to as 'Plaintiff') filed an action in the District Court of Avissawella seeking for a declaration that the Plaintiff is the owner of the land and premises described in the Plaint along with the eviction of the original Defendant (hereinafter referred to as 'Defendant') now represented by Substituted-Defendants-Respondents-Appellants, from the

said land and premises. The District Court dismissed the Plaintiff's action, concluding that the Defendant had acquired title through prescription. The Court of Appeal, upon an appeal filed by the said Plaintiff, set aside the judgement of the District Court.

Being aggrieved by the said judgement of the Court of Appeal, the Defendant filed the instant Application. This Court granted special leave to appeal on the Questions of Law detailed in paragraphs 22(i) to 22(vi) of the Amended Petition dated 07.02.2017.

In the answer filed in the District Court, the said Defendant divulged about a prior partition action bearing Case No. 8638. It is admitted that when the decision of the said partition action was made, the Defendant and her husband resided in the house marked as 'E' in Plan No. 1315A (found at page 121 of the brief), situated on the portion of land allocated to the Plaintiff under the respective partition decree. The contention of the Defendant is that she occupied the said property continuously since the partition action concluded in 1967. The Defendant further asserts that the original house marked as 'E' was entirely demolished by flooding, prompting her to construct a replacement house on the site, which forms the core subject matter in the instant Case.

The Plaintiff appears to be the 3rd Defendant in the said partition action, whereas the 7th Defendant of the said partition action, namely Girigoris, is the husband of the Defendant. It is acknowledged that the final decree dated 12.02.1965 (found at page 117 of the brief) of the said partition action mandated a payment of Rs. 350 to the 7th and 15th Defendants. The Plaintiff maintains that she did not deposit the amount directly with the court but instead delivered it to an individual named Abdul Latif (the deceased Plaintiff of the said partition action) to be deposited in court. The Defendant, however, contends that the Plaintiff never transferred the funds to her husband.

The evidence confirms that neither the Defendant nor her said husband obtained any allotment from the partition action, but the Defendant maintains that her occupancy of the premises was under license of the Plaintiff. The District Court, in light of the Defendant's prolonged residence for more than ten years, on the disputed premises where she later put up a house, despite the Plaintiff's repeated objections, decided that she had acquired prescriptive title thereto.

Upon reviewing the pertinent facts and relevant legal principles, the Court of Appeal observed that the court must address the ensuing questions:

1. Whether the house alleged to have been built by the Defendant can be separated from the land and if not, whether it goes with the soil.

2. Since Plaintiff's ownership of the land is accepted by the Defendant, can the Defendant prescribe only to the house?

3. Since the death of her husband, as the Defendant has accepted the position that the Plaintiff is the owner of the land and premises, is the Defendant estopped from claiming prescriptive title under Section 116 of the Evidence Ordinance?

4. Whether the Defendant is a bona fide or mala fide improver?

Evidence presented in the Trial Court confirmed that the Defendant acknowledged ownership of the subject land by the Plaintiff. However, she proceeded to construct a new house in lieu of the original structure, disregarding the Plaintiff's protests. The Defendant argues that her ongoing occupancy stems from the Plaintiff's non-payment of Rs. 350 in compensation, as mandated by the said final partition decree dated 12.02.1965 in Case No. 8638. The Plaintiff will be formally entitled to apply for a writ of possession once she complies with the said order to pay compensation.

Under Section 337 of the Civil Procedure Code, any application, whether it be the first or a subsequent application, for executing a decree (other than one for an injunction) is barred after 10 years from the date of the decree. The 1980 amendment to this section further stipulates that an unexecuted writ remains effective for just one year from issuance, in accordance with Section 337(2). Consequently, the Plaintiff cannot seek enforcement of the said final partition decree owing to the extensive delay and failure to remit the stipulated compensation. It is noteworthy that the District Court imposed no deadline for the Plaintiff to fulfil this payment obligation, nor did the Plaintiff request an extension or renewal of the decree. Moreover, neither the Defendant nor her husband ever formally pursued the payment from the Plaintiff, which strengthens the Plaintiff's assertion that the Defendant was in occupation with the leave and license of the Plaintiff.

The Court of Appeal highlighted a potential counterargument: the destruction of the original house by flooding would have simultaneously nullified the Defendant's claim to compensation, since that award was specifically tied to the house prior to floods. Accordingly, the Court of Appeal decided that the Defendant holds no entitlement to compensation for a residence lost to floods, which qualify as a natural cause or *vis major*. On the other hand, the stand taken by the Defendant in her answer in the District Court is that the Plaintiff is not entitled to claim rights upon the house put up by the Defendant, as the Plaintiff initiated the District Court proceedings in respect of the old house, which was destroyed due to floods.

In its judgment, the District Court determined that the Defendant had occupied the disputed premises since 1977 pursuant to her right of occupation, which the court termed *jus retentionis*. Among her submissions, the Defendant asserted that this *jus retentionis* entitled her to retain possession until the compensation was disbursed. This raises the issue of whether she qualifies for compensation regarding the new house. The Court of Appeal noted that, under Roman-Dutch law, compensation for improvements extends solely to a bona fide improver who undertook them with the belief or intent of acquiring ownership of the land. The Court of Appeal cited ***Sediris v. Dingirimanika* 51 NLR 6**, wherein it was held that possession exercised under *jus retentionis* does not constitute adverse possession and thus cannot support a prescriptive title.

Another aspect of the arguments advanced by the Defendant, particularly in her answer in the District Court, without prejudice to her other averments, is that she is entitled to a sum of Rs.100,000 in compensation should the Plaintiff elect to pay. Nevertheless, the Defendant has not submitted adequate material in proof of any improvements to the property or the costs associated with constructing the new house

Similarly, the Defendant's claim under the Rent Act is unsustainable, as she has failed to maintain a consistent stance on her entitlement to possess the house in question. The facts and circumstances of this Case demonstrate that the Defendant and her husband occupied the premises under the leave and license of the Plaintiff. I cannot gather sufficient evidence to form a contrary opinion other than the position that the Defendant is in occupation of the premises under the leave and license of the Plaintiff.

The consistent position taken up by the Plaintiff is that the Defendant is not claiming the prescriptive title to the entire land, but she is claiming prescriptive title only to the subject house. The Court of Appeal, in view of such argument, observed that:

> "Furthermore, when one builds a house on another's land the house goes with the soil. Since the Defendant has built the house on the land belonging to the Plaintiff, the house goes to the land with the Plaintiff. Accession was a primary mode of acquisition of property recognized by the Civil law[1]. Exceptions were admitted in regard to movable property for cogent reasons of policy[2], but as far as land was concerned, it was an absolute principle that structures and plantations acceded to the soil and enured to the benefit of the owner of the soil[3]."

In addition to the above, the Court of Appeal decided that the Defendant is a mala fide improver, thereby disqualifying her from any compensation for the improvements made. The reason considered by the court for the said conclusion is that the Defendant built the house disregarding the Plaintiff's explicit objections.

For the foregoing reasons and upon a thorough analysis of the whole evidence led in the District Court, it is manifest that the Defendant's occupation of the premises has at all material times been permissive, under the leave and license of the Plaintiff, and cannot be construed as adverse possession sufficient to found a prescriptive title under the circumstances of this case. The Defendant's admissions as to the Plaintiff's ownership and her failure to formally demand or pursue the stipulated compensation within the prescriptive period also need to be taken into consideration in this regard. I endorse the consideration of the Court of Appeal upon the absence of any bona fide intent of the Defendant in effecting improvements in defiance of the Plaintiff's explicit objections and also the applicability of the incontrovertible principle of accession whereby the house the Defendant constructed acceded to the soil and enured to the benefit of the Plaintiff. I cannot possibly overlook the phrasing of the relief sought in the prayer of her answer filed in the District Court whereby she has moved for a declaration affirming her alleged title exclusively to the subject house while excluding the

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[1] *Quidquid in nostro solo aedificaturet plantatur ex-iure naturalinostrum fit qioa superficies solo cedit*; cf. Inst. 2.1.31.32
[2] Works of art were an example. Inst. 2.1.34.
[3] Inst. 2.1.29.

appurtenant land. Thus, I hold that the Defendant is precluded from claiming any entitlement to prescriptive title whether to the land, the house, or otherwise. The Defendant's invocation of *jus retentionis*, claims under the Rent Act, or demands for additional compensation are equally untenable, lacking both evidentiary foundation and legal consistency. Accordingly, the judgment of the Court of Appeal is affirmed and the instant Appeal is dismissed. I order no cost.

Judge of the Supreme Court

Yasantha Kodagoda PC. J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe J.

I agree.

Judge of the Supreme Court