

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

SC/Appeal No. **SC/APP/122/2019**
SC/LA/Application No.
SC/HCCA/LA/239/2013
Civil Appellate High Court of
Batticaloa Case No.
EP/HCCA/BC/111/2012
DC Batticaloa Case No. **L/5071/06**

1. Carmaline Manoranjithamalar Xavier,
2. Alfred Pakkiyam Xavier,

All of No. 31, Boundary Road,
Batticaloa.

PLAINTIFFS

vs

A. Angela Sivakadhacham
No. 6, Boundary Road,
Batticaloa.

DEFENDANT

And

1. Carmaline Manoranjithamalar Xavier,
2. Alfred Pakkiyam Xavier,

All of No. 31, Boundary Road,
Batticaloa.

PLAINTIFFS- APPELLANTS

vs

A. Angela Sivakadhacham
No. 6, Boundary Road,
Batticaloa.

DEFENDANT – RESPONDENT

And Now Between

A. Angela Sivakadhacham
No. 6, Boundary Road,
Batticaloa.

**DEFENDANT – RESPONDENT -
APPELLANT**

vs

1. Carmaline Manoranjithamalar Xavier,
No. 31, Boundary Road,
Batticaloa.

**1st PLAINTIFF-APPELLANT-
RESPONDENT- (NOW DECEASED)**

2. Alfred Pakkiyam Xavier,
No. 31, Boundary Road,
Batticaloa.

**2nd PLAINTIFF-APPELLANT-
RESPONDENT- (DECEASED)**

- 2A. Carmaline Manoranjithamalar Xavier,
No. 31, Boundary Road,
Batticaloa.

**SUBSTITUTED-PLAINTIFF-APPELLANT-
RESPONDENT (NOW DECEASED)**

Noeline Dharmala Jeyendran,
No. 11, Urban Court, Etobicoke,
Ontario, M9W 5V7 and also of No. 31,
Boundary Road, Batticaloa,

**1ST AND 2ND SUBSTITUTED-PLAINITFFS-
APPELLANTS- RESPONDENTS-**

BEFORE : Yasantha Kodagoda, P.C., J.
Dr. Sobhitha Rajakaruna, J.
M. Sampath K. B. Wijeratne J.

COUNSEL : Rohan Sahabandu, P.C. with V. Puvitharan, P.C.,
Ratnam Ushanthanie and A. Narangoda
instructed by Subhani Kalugamage for the
Defendant-Respondent-Appellant.

Dr. Romesh de Silva, P.C., with N.R. Sivendran
and R. Abilashini instructed by A. Premalingam
for the 1st Plaintiff-Appellant- Respondent.

ARGUED ON : 21.11.2025

DECIDED ON : 15.07.2026

M. Sampath K. B. Wijeratne J.

Factual Background

The Plaintiffs-Appellants-Respondents (hereinafter referred to as “the Plaintiffs”) instituted action in the District Court of Batticaloa against the Defendant-Respondent-Appellant (hereinafter referred to as “the Defendant”), praying, *inter alia*, for a declaration of title and the ejectment of the Defendant from the premises in suit.

The Plaintiffs asserted title to the land in dispute on the basis of a series of deeds. The Defendant, in contrast, contended that she had been in independent, uninterrupted, and undisturbed possession of the property since 1987 and had consequently acquired prescriptive title thereto.

At the trial, four admissions and fourteen issues were recorded. After trial, the learned District Judge, by judgment dated 20th October 2011, dismissed the Plaintiffs’ action and held in favour of the Defendant. Being aggrieved by the said judgment, the Plaintiffs appealed to the Civil Appellate High Court, and the

learned High Court Judges, by judgment dated 14th May 2013, set aside the judgment and decree of the District Court and remitted the case for a trial *de novo*.

Dissatisfied with the said judgment of the Civil Appellate High Court, the Defendant sought leave to appeal to this Court, and leave was granted on questions (b) and (f) set out in paragraph 20 of the petition, together with the two questions of law raised by the learned Counsel for the Plaintiffs on 3rd July 2019. The four questions of law read as follows:

- 1. 20. (b) Have the learned judges of the High Court erred in law in coming to the conclusion that the learned District Judge should have, in his judgment, considered the documents which have not been produced?*
- 2. 20. (f) In terms of the provisions of Section 114 of the Civil Procedure Code should the Learned Trial Judge place on record the documents that have not been proved?*
- 3. Whether in view of the tenancy agreement marked 'P2', the plaintiff is entitled to be declared the owner of the premises?*
- 4. In view of the tenancy agreement marked 'P2', was the learned District Judge incorrect in reaching his conclusion that the Defendant had prescribed to the premises?*

Analysis

Custody of the documents marked P1 and P6

The first matter that calls for the consideration of this Court is whether the learned trial Judge ought to have placed on record the documents marked 'P1' and 'P6', namely, Deed of Gift No. 2863 dated 10th September 1968 attested by S.A. Villavarayan, Notary Public, and Deed of Gift No. 6466 dated 28th

December 2005 attested by D.C. Chinnaiya, respectively submitted along with the plaint. The donee under the Deed 'P1' subsequently gifted the property to the 1st Plaintiff by Deed 'P6'. Consequently, the deed marked 'P6' constitutes the principal piece of evidence upon which the Court may determine the Plaintiffs' ownership of the property in dispute and, therefore, deserves due consideration by the Court.

The learned District Judge specifically emphasized that the Plaintiff's case failed due to the non-submission of the impugned document marked 'P6'. However, it is the contention of the Plaintiffs that, once a document is marked in evidence, the Court assumes responsibility for taking such document into its custody, a procedure which, it is alleged, was not followed in the present case.

I shall now proceed to analyse the provisions of the Civil Procedure Code relating to the custody of documents marked at a trial in the District Court. It is needless to say that the purpose of marking documents is to enable the parties to substantiate their respective claims and defences, and therefore, the Court is under a duty to carefully scrutinize every document tendered in evidence by the parties. The procedure pertaining to the tendering of documents consists not merely of written legal provisions, but also of established customs and practices that have been consistently followed by courts over the years.

First, I shall examine the relevant provisions of the Civil Procedure Code, specifically Sections 94 to 120 of Chapter XVI (hereinafter referred to as "the CPC"), which provide for the discovery, inspection, production, impounding, and return of documents.

According to Section 111 of the CPC, the parties or their registered attorneys shall be prepared with all documentary evidence upon which they intend to rely, including any documents not previously filed in court and any documents which the Court has, at any time prior to the hearing, directed to be produced.

As per Section 113(1) of the CPC, the Court shall receive documents produced by the parties at the hearing. Nevertheless, in terms of Section 114(1) of the CPC,

a document shall not be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force.

According to Explanation 1 to Section 154 of the CPC, where, *‘the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it’*. If a party disputes authenticity or mode of proof, such a document may be marked as ‘subject to proof’.¹ However, a document marked ‘subject to proof,’ though not subsequently proved, may nonetheless stand as valid evidence if the opposing party fails to reiterate the objection at the close of the case when the marked documents are read in evidence.² In the case at hand, a careful examination of the proceedings reveals that the documents were marked subject to proof without stating any specific ground. Subsequently, at the closure of the Plaintiffs’ case, the same objection was reiterated without specifying the matters on which proof is required. However, this objection appears to have been erroneously appreciated by the learned High Court Judges.

The practice of marking documents subject to proof is well established in our court system, and there are provisions that recognize this principle. For example, Sections 136(1) and (2) of the Evidence Ordinance provide that:

“136. (1) when either party proposes to give evidence of any fact, the judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

¹ See S.C. Appeal No. 183/2011 SC Minutes of 18.07.2024.

² See SC/Appeal/01/2025, SC Minutes of 10.02.2025.

(...)”

Be that as it may, as repeatedly emphasized by this Court, a party objecting to a document is required to clearly specify the particular aspect of the document that necessitates proof. I have elaborated on this principle in the judgment in ***Ceylon Petroleum Corporation vs H.M. Sugathadasa***³ (S.C. Minutes dated 17.12.2025), from which I will reproduce the following paragraphs,

“When a document is requested to be entered in evidence and the opposing Counsel moves to have it marked "subject to proof," the District Judge, rather than passively accepting the Counsel's assertion, should require the objecting Counsel to specify the precise aspect of the document being challenged. Thereafter, the Judge must make an independent determination on the objection raised.

This simple query would either result in the objection being withdrawn or, at the absolute least, clarify the real issue at hand. For instance, if a party claims that a deed is void ab initio due to forgery, execution under duress, or the executant's lack of capacity at the time of execution, such claims must be specifically pleaded and framed as issues, rather than being raised casually by requiring that the document be marked "subject to proof.

When confronted with such an application, the District Judge should be cautious to first ascertain the precise matter or matters that are said to require proof and then determine whether those matters have in fact been raised as issues. The Judge should then decide whether the document should be marked "subject to proof" under section 136 of the Evidence Ordinance, or if no additional proof is required.”

³ *Ceylon Petroleum Corporation vs H.M. Sugathadasa* SC/Appeal/197/2015 SC Minutes dated 17.12.2025.

In the present case, although Deed Nos. 2863 and 6466 were pleaded in the answer as being invalid, no specific grounds of invalidity, such as forgery, misrepresentation of the transaction, impersonation, or a false chain of title, were pleaded. Furthermore, the validity of Deed No. 2863 was not raised as an issue for determination. Therefore, in the absence of a proper objection, the two documents marked 'P1' and 'P6' must be deemed to have been admitted in evidence.

Consequently, these documents shall constitute evidence for all purposes of the case in terms of Section 114(1) of the CPC, which then requires the Judge to admit the documents and place them on the record, and to comply with the requirements set out in Section 114(2) of the CPC, which the learned District Judge failed to take into consideration.

It is true that, owing to practical difficulties, a practice has developed whereby, with the concurrence of the opposing parties, original documents are returned to the respective parties after retaining photocopies thereof, and are subsequently recalled prior to the delivery of judgment, at which stage the Judge takes custody of the originals. There are instances where the courts have acknowledged this practice in prior precedents. For instance, as early as 1982, the Court of Appeal in *Thilagaratnam vs E.A.P. Edirisinghe*⁴, followed subsequently in *Ranasinghe vs Zubair and Others*⁵, held that, in summary procedure on liquid claims under Section 705 of Chapter LIII of the Civil Procedure Code, a photocopy of the original instrument is sufficient to be tendered at the time of filing the action.

In recent times, our Courts have also adopted the practice of returning documents to the party who tendered them, in the absence of any objection from the opposing party, in order to ensure the safety of documents. This practice evolved due to the fact that retaining briefs containing numerous important documents relating to an action within Court premises may result in the destruction or misplacement of such documents. The recent destruction of a document forming part of a case record by an Attorney-at-Law is a classic example of such an

⁴ *Thilagaratnam vs E.A.P Edirisinghe* [1982] 1 Sri L.R. 56.

⁵ *Ranasinghe vs Zubair and Others* [2002] 2 Sri L.R. 399.

occurrence⁶. Nevertheless, such practices cannot override statutory requirements.

In the above circumstances, I am of the view that the learned District Judge erred in returning the marked documents to the respective Counsel without causing them to be filed of record. If the documents were to be returned, this should have been done with the concurrence of the opposing party, retaining photocopies thereof.

However, it should be noted that, with the transition towards the *e-court* system in Sri Lanka, such issues are unlikely to arise in the future, as the courts will be able to work with soft copies of original documents uploaded to the system. These documents will remain accessible throughout the duration of the litigation, thereby ensuring both their preservation and security, while the original documents may be retained by the parties unless and until the Court requires their production.

Validity of the Tenancy Agreement marked P2

In the present case, the Plaintiffs' principal contention is that the Defendant entered into occupation of the premises as a tenant. Accordingly, the validity of the tenancy agreement marked 'P2', submitted along the plaint, requires consideration. The learned District Judge held that the said document is not valid in law due to non-compliance with Section 2 of the Prevention of Frauds Ordinance, which requires execution in the presence of two witnesses and a Notary.

I am in agreement with the view of the learned District Judge, as 'P2' clearly bears only a single witness's signature and, in addition, lacks a proper attestation clause as required by law.

Furthermore, I would like to turn my attention to the witness, the Notary, who was called to prove 'P2'. As pleaded by the Plaintiffs, the agreement is said to have been executed between the 2nd Plaintiff and the Defendant, which required

⁶ *Hon M.M. S. Bandara vs Roshini Abeyrathne*, SC/Rule No.02/2024 S.C. Minutes Dated March 16, 2026.

at least one attesting witness to be called for the purpose of proving it as per Section 68 of the Evidence Ordinance. The Plaintiffs called D.C. Chinnaiya, Notary Public, who is said to have attested the document, and he testified that neither the executants nor the witnesses were known to him.

In terms of Section 31(9) of the Notaries Ordinance, an attesting Notary cannot execute an instrument unless one of the executants to the deed or the two attesting witnesses is known to the Notary. However, as stated above, since the witnesses were not personally known to the Notary, he ought to have been acquainted with at least one of the parties, namely either the 1st Plaintiff or the Defendant. Nevertheless, in light of the Defendant's denial that he had ever subscribed his signature to the said agreement, it was incumbent upon the 1st Plaintiff, being the remaining executant, to testify before Court. However, no such evidence was led.

In view of the deficiencies in the evidence, I hold that the document marked 'P2' remains unproven. Hence, I am of the view that the learned District Judge was correct in finding that the 'P2' document is invalid.

However, in law, the existence of a tenancy need not necessarily be established through a written agreement, provided that the parties are able to adduce satisfactory evidence demonstrating the existence of an agreement creating a tenancy between them.

In the instant case, the Plaintiffs sought to rely on the fact that the Defendant paid a monthly rent of Rs. 1,000/- for occupation of the premises. However, the evidence adduced in support of this position falls short of the required standard of proof. Accordingly, the contentions advanced by the Plaintiffs based on the alleged tenancy are not acceptable.

Prescriptive title claimed by the Defendant

Although the learned High Court Judges appear to have overlooked the Defendant's claim for prescriptive title in their judgment, in order to answer Question of Law No. 4, I am compelled to consider the same.

The Defendant has pleaded prescriptive title to the property in dispute in paragraph 17 of the answer. However, in framing the issues, issue No. 10 was directed to the question whether the Defendant is entitled to the property in terms of paragraph 16 of the answer, wherein the Defendant states that she had been in possession since November 10, 1987 and had spent several sums of money on repairs to the house.

The learned District Judge, in delivering judgment, answered issue No. 10 in favour of the Defendant, thereby recognizing the Defendant's entitlement to the property. As previously stated, the Defendant is said to have been in peaceful possession since November 1987 and to have repaired the damage caused to the house in 1996.

However, it is trite law that mere possession is insufficient to establish prescriptive title. The repairs carried out to the house, by themselves, do not establish adverse and independent possession in the absence of sufficient proof.

The learned District Judge held that the predecessor-in-title of the 1st and 2nd Plaintiffs was residing overseas and, accordingly, by virtue of Section 13 of the Prescription Ordinance, the Defendant is precluded from raising a plea of prescription against him. It was further noted that the property was transferred in the names of the 1st and 2nd Plaintiffs only on December 28, 2005, whereas the present action was instituted on May 16, 2006. In these circumstances, the intervening period is clearly insufficient to sustain a plea of prescription against the 1st and 2nd Plaintiffs alone. Consequently, the claim of prescription cannot be upheld.

Conclusion

I am unable to comprehend the basis upon which the learned High Court Judges ordered that the case be remitted for trial *de novo*. Such an order would afford the parties an opportunity to reopen their respective cases, which is unwarranted. It would also set an undesirable precedent and result in the unnecessary consumption of valuable judicial time.

The application to call for the marked documents is, however, allowed, as there was a lapse on the part of the Court in failing to call for the documents prior to delivery of judgment.

Accordingly, the judgments of the High Court and the District Court are set aside, and the learned incumbent District Judge is directed to call for the documents marked 'P1' and 'P6' and thereafter to deliver a fresh judgment after considering all oral and documentary evidence. If one or both of the said documents are not produced, the learned District Judge shall proceed to deliver judgment on the basis of the available evidence.

In light of the reasons set out above, the questions of law raised are answered as follows:

1. *(b) Have the learned judges of the High Court erred in law in coming to the conclusion that the learned District Judge should have, in his judgment, considered the documents which have not been produced?*

No.

2. *(f) In terms of the provisions of Section 114 of the Civil Procedure Code should the Learned Trial Judge place on record the documents that have not been proved?*

No. However, documents not properly objected to should be admitted and placed on record.

3. *Whether in view of the tenancy agreement marked 'P2', the plaintiff is entitled to be declared the owner of the premises?*

No. The plaintiff is not entitled to be declared the owner of the premises on the strength of the tenancy agreement alone.

4. *In view of the tenancy agreement marked 'P2', was the learned District Judge incorrect in reaching his conclusion that the Defendant had prescribed to the premises?*

Yes. But not on the basis of the tenancy agreement itself.

I make no order as to costs. The appeal is partly allowed

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT