

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

In the matter of an application under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

SC/APPEAL/127/2018 A

SC/LA/Application No.

SC/HCCA/LA/120/2016

Civil Appellate High Court of
Gampaha Case No.

WP/HCCA/GAM/196/2010/F

DC Gampaha Case No. **28235/P**

1. Sanghapala Arachchige Don Ghanapala
Dissanayake,
2. Sanghapala Arachchige Don Gunapala
Dissanayake both of Makola South,
Makola.

PLAINTIFFS

vs

1. Sanghapala Arachchige Don Karunapala
Dissanayake of Makola South,
Makola.
2. Vithanage Sarath Samaranayake Sheelanatha.
3. Vithanage Saman Both of No.601,
Bulugahagoda Road, Ihala Biyanwila,
Kadawatha. **(Deceased)**
- 3a. Rajapaksha Senadeera Arachchige
Gunitha Sanjeevani of No.601/2D,
Bulugahagoda Road, Ihala Biyanwila,
Kadawatha.

4. Sanghapala Arachchige Don Karunapala
Dissanayake of Makola South, Makola.
(Guardian-at-litem of 2nd & 3rd Defendants)
5.
6.
7. Sanghapala Arachchige Don Jayantha
Dissanayake of No. 588/C, Ihala Biyanwila,
Kadawatha.

DEFENDANTS

And

Sanghapala Arachchige Don Jayantha
Dissanayake of No. 588/C, Ihala Biyanwila,
Kadawatha.

7th DEFENDANT – APPELLANT

vs

1. Sanghapala Arachchige Don Gnanapala
Dissanayake
2. Sanghapala Arachchige Don Gunapala
Dissanayake both of Makola South, Makola.

PLAINTIFF - RESPONDENTS

1. Sanhapala Arachchige Don Karunapala
Dissanayake of Makola South,
Makola. **(Deceased)**
- 1a. Sanghapala Arachchige Don Gnanapala
Dissanayake of Makola South, Makola.
2. Vithanage Sarath Samaranayke
Sheelanatha of No. 601, Bulugahagoda, Road,
Ihala Biyanwila, Kadawatha.

3a. Rajapaksha Senadeera Arachchige Gunitha
Sanajeewani of No.
601/2D,
Bulugahagoda Road, Ihala Bianwila,
Kadawatha.

4.

DEFENDANT - RESPONDENTS

And Now Between

2. Vithanage Sarath Samaranayake Sheelanatha of
No.601, Bulugahagoda Road, Ihala Biyanwila,
Kadawatha.

3A. Rajapaksha Senadeera Arachchige Gunitha
Sanjeewani of No. 601/2D, Bulugahagoda
Road, Ihala Biyanwila, Kadawatha.

**2nd and 3A DEFENDANT – RESPONDENT–
APPELLANTS**

7. Sanghapala Arachchige Don Jayantha Dissanayake of
No. 588/C, Ihala Biyanwila, Kadawatha.

7th DEFENDANT –RESPONDENT -APPELLANT

vs

1. Sanghapala Arachchige Don Gnanapala
Dissanayake **(Deceased)**

1A. Sanghapala Arachchige Don Gunapala
Dissanayake

1B. Sanghapala Arachchige Siriyawathi Dissanayake,

Both, of 449/1, Makola South, Makola.

**1A and 1B PLAINTIFF-RESPONDENTS-
RESPONDENTS**

2. Sanghapala Arachchige Don Gunapala
Dissanayaka of Makola South,
Makola.

**2nd PLAINTIFF – RESPONDENT –
RESPONDENT**

BEFORE

: Janak De Silva, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne J.

COUNSEL

: Rohan Sahabandu, PC with Ms. Chathurika
Elvitigala and Ms. S. Senanayake instructed
by Ms. Vindya Diulawewa.
for the for 2nd and 3A Defendant-Respondent-
Petitioner-[Appellants].

Rushdie Habeeb with Aravindu Manathuga
Arachchi instructed by Chathurani de Silva
for 1st Plaintiff-Respondent-Respondent-
[Respondent].

ARGUED ON

: 02.10.2025

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

In the matter of an application under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

SC/APPEAL/127/2018 B

SC/LA/Application No.

SC/HCCA/LA/121/2016

Civil Appellate High Court of
Gampaha Case No.

WP/HCCA/GAM/196/2010/F

DC Gampaha Case No. **28235/P**

1. Sanghapala Arachchige Don Ghanapala
Dissanayake,
2. Sanghapala Arachchige Don Gunapala
Dissanayake both of Makola South,
Makola.

PLAINTIFFS

vs

1. Sanhapala Arachchige Don Karunapala
Dissanayake of Makola South,
Makola.
2. Vithanage Sarath Samaranayake Sheelanatha.
3. Vithanage Saman Both of No.601,
Bulugahagoda Road, Ihala Biyanwila,
Kadawatha. **(Deceased)**
- 3a. Rajapaksha Senadeera Arachchige
Gunitha Sanjeevani of No.601/2D,
Bulugahagoda Road, Ihala Biyanwila,
Kadawatha.

4. Sanghapala Arachchige Don Karunapala
Dissanayake of Makola South, Makola.
(Guardian-at-litem of 2nd & 3rd Defendants)
5.
6.
7. Sanghapala Arachchige Don Jayantha
Dissanayake of No. 588/C. Ihala Biyanwila,
Kadawatha.

DEFENDANTS

And

7. Sanghapala Arachchige Don Jayantha
Dissanayake of No. 588/C, Ihala Biyanwila,
Kadawatha.

7th DEFENDANT – APPELLANT

vs

1. Sanghapala Arachchige Don Gnanapala
Dissanayake
2. Sanghapala Arachchige Don Gunapala
Dissanayake both of Makola South, Makola.

PLAINTIFF - RESPONDENTS

1. Sanghapala Arachchige Don Karunapala
Dissanayake
(Deceased)
- 1a. Sanghapala Arachchige Don Gnanapala
Dissanayake of Makola South, Makola.
2. Vithanage Sarath Samaranayake
Sheelanatha of No. 601, Bulugahagoda, Road,
Ihala Biyanwila, Kadawatha.

3a. Rajapaksha Senadeera Arachchige Gunitha
Sanajeewani of No.
601/2D,
Bulugahagoda Road, Ihala Bianwila,
Kadawatha.

4.

5.

6.

DEFENDANT - RESPONDENTS

And Now Between

3. Sanghapala Arachchige Don Gnanapala
Dissanayake of Makola South, Makola.
(Deceased)

PLAINTIFF (Deceased)

1A. Sanghapala Arachchige Don Gunapala
Dissanayaka of Makola South,
Makola.

1B. Sanghapala Arachchige Siriyawathie Dissanayaka
of No. 447/1, Makola South,
Makola.

**1B and 1B PLAINTIFF RESPONDENTS-
APPELLANTS**

4. Sanghapala Arachchige Don Gunapala
Dissanayaka of Makola South,
Makola.

**2nd PLAINTIFF – RESPONDENT -
APPELLANT**

vs

2. Vithanage Sarath Samaranayake
Sheelanatha of No. 601, Bulugahagoda, Road,
Ihala Biyanwila, Kadawatha.

**2nd DEFENDANT-RESPONDENT-
RESPONDENT**

2. Sanghapala Arachchige Don Gunapala
Dissanayake of 449/1, Makola South, Makola.

2nd PLAINTIFF – RESPONDENT -APPELLANT

- 3a. Rajapaksha Senadeera Arachchige Gunitha
Sanjeevani of No. 601/2D, Bulugahagoda
Road, Ihala Biyanwila, Kadawatha.

DEFENDANT-RESPONDENT-RESPONDENT

5.
6.

7. Sanghapala Arachchige Don Jayantha Dissanayaka
of No. 588/C, Ihala Biyanwila, Kadawatha.

7th DEFENDANT-APPELLANT-RESPONDENT

BEFORE

: Janak De Silva, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne J.

COUNSEL

: Rushdie Habeeb with Aravindu Manathuga
Arachchi instructed by Chathurani de Silva
for 1A Defendant-Respondent-Petitioner-
[Appellant].

Rohan Sahabandu, PC with Ms. Chathurika

Elvitigala and Ms. S. Senanayake instructed by Ms. Vindya Diulawewa for the for 2nd and 3a Defendant-Respondent-Respondents-[Respondents].

ARGUED ON : 02.10.2025

DECIDED ON : 24.09.2026

M. Sampath K. B. Wijeratne J.

Factual Background

The deceased 1st Plaintiff-Respondent-Appellant (hereinafter referred to as the 1st Plaintiff) and the 2nd Plaintiff-Respondent-Appellant (hereinafter referred to as the 2nd Plaintiff) instituted the present action in the District Court of Gampaha to have the divided allotment of land marked Lot ‘H’ from and out of land called ‘*Millagahawatta*’, partitioned. According to the plaint, the deceased 1st Plaintiff, the 2nd Plaintiff, deceased 1st Defendant-Respondent-Respondent (hereinafter called and referred to as the “1st Defendant”), the 2nd Defendant-Respondent-Respondent (hereinafter called and referred to as the “2nd Defendant”) and the deceased 3rd Defendant-Respondent-Respondent (hereinafter called and referred to as the “3rd Defendant”) are entitled to undivided shares stated in the pedigree.

Pending action, the 1st Plaintiff passed away, and consequently, the 1A and 1B substituted Plaintiffs-Respondents-Appellants (hereinafter referred to as the “1A” and “1B” Plaintiffs respectively) were substituted in place of the deceased 1st Plaintiff¹. 1A Plaintiff is also the 2nd Plaintiff. Similarly, the 1st and 3rd Defendants too passed away, and 1A Substituted Defendant-Respondent-Respondent

¹ *Vide* proceedings dated 27-10-2016.

(hereinafter referred to as the “1A Defendant”) and the 3A Substituted Defendant-Respondent (hereinafter referred to as the “3A Defendant”) were substituted.

The commission for preliminary survey was issued to Mr. P. Jayakody, Licensed Surveyor, who had executed the same and tendered plan No: 1558 along with its corresponding report. The trial proceeded without any contest and a judgment was entered as pleaded in the plaint. Accordingly, an interlocutory decree was entered, and a final partition scheme was prepared.

Thereafter, the 7th Defendant-Appellant-Respondent (hereinafter referred to as the “7th Defendant”) made an application to the District Court stating that he was in possession of the land on the strength of prescriptive title and moved to have the judgment and interlocutory decree set aside. The Application was correctly rejected by the learned District Judge as there was no provision in the Partition Law No: 21 of 1977 to entertain such an application after judgment is entered.

The 7th Defendant thereupon made an application for revision to the Court of Appeal to have the judgment and the interlocutory decree set aside, which was allowed and the District Court was directed to allow the 7th Defendant to tender a statement of claims and commence a trial *de novo*.

The 7th Defendant tendered a statement of claims and thereafter tendered two amended statements of claims claiming prescriptive title.

The learned District Judge, after trial, rejected the claim of the 7th Defendant and granted judgment holding that the 1st and 2nd Plaintiffs and 1st to 3rd Defendants are entitled to undivided shares as per the plaint.

Thereupon, the 7th Defendant appealed to the High Court of Civil Appeal holden in Gampaha where the learned Judges held that the 7th Defendant, being a stranger, had possessed the *corpus* and acquired prescriptive title. Accordingly, the appeal was allowed, and the action of the Plaintiffs was dismissed.

The 1A Plaintiff and the 2nd Plaintiff, being aggrieved by the said judgment of the High Court of Civil Appeals, tendered the instant application for leave to appeal.

Simultaneously, the 3A Defendant too tendered the application for leave bearing No:121/2016. Both the applications were consolidated and taken up for hearing before this Court, and this Court granted leave to appeal on the questions of law set out in sub-paragraph (a) to (f) in paragraph 35 of both the petitions. I will reproduce them verbatim as pleaded:

“

- (a) Since there was no cogent evidence before Court to establish the prescriptive possession of the 7th defendant, could the High Court grant the reliefs as prayed for by the 7th Defendant in appeal?*
- (b) Did the High Court err in law declaring that the 7th Defendant has acquired prescriptive title over the land when there was no satisfactory evidence to that effect?*
- (c) Could the High Court declare that the 7th Defendant has prescribed to the corpus when there was no prayer for such relief?*
- (d) Are there evidence before Court to establish prescriptive title of the 7th Defendant as against paper title paper title of 1st and 2nd Plaintiffs and 1st to 3rd Defendants in the present case?*
- (e) In the circumstances pleaded, is the judgment of the High Court, correct and according to law?*
- (f) Has the Learned District Judge considered all material before him when making an order for partition the land as prayed for by the Plaintiffs? In such circumstances is the judgment of the District Court correct and according to law?”*

The questions of law raised in both appeals are identical, and accordingly it was agreed by the parties to once again consolidate the two appeals and pronounce one judgment. The instant appeal was numbered 127B, and the appeal of the 3rd Defendant was numbered 127A.

Identity of the *Corpus* Sought to be Partitioned.

The parties at the commencement of the fresh trial have expressly admitted the *corpus* as depicted in the preliminary plan No: 1558 made by P. Jayakody, Licensed Surveyor, dated November 17, 1986 marked 'X' at the trial.

Apart from the admission made, the boundaries of the land surveyed and depicted in plan No. 1558 identically tally with those described in the schedule to the plaint. The extent of the *corpus* referred to in the plaint is 3 roods and 15 perches, and it appears that the extent of the land surveyed is 3 roods and 10 perches. Taking into consideration the extent of the entire land, it appears to me that the minute difference of 5 perches could be ignored.

Accordingly, it appears to me that the *corpus* sought to be partitioned had been identified by the Commissioner and by the learned District Judge.

Title to the *Corpus*

The Plaintiffs have set out title to the *corpus* commencing from the final partition decree in case No. 21273/P which was marked 'P1' at the trial. Upon perusal of 'P1', it appears that one Suriyapperuma Vidanalage Manikhamy who was the defendant in the said case, was declared entitled to lot 'H', which is the subject matter of the present action. The said Manikhamy has transferred the land to Don Podisngho Dissanayake upon deed No: 628 dated December 2, 1907, attested by J. C. Wanigaratne, Notary Public. Thereafter, Podisingho Dissanayake had executed two deeds, No. 15809 and 15810 dated March 8, 1933, attested by J. E. Cabral, Notary Public, conveying undivided $\frac{1}{2}$ share each to Sangapala Arachchige Don Saimon Dissanayake and Don Sarpiyanu Dissanayake marked 'P3' and 'P4' respectively. Don Saimon Dissanayake, who thus became entitled to an undivided $\frac{1}{2}$ share, transferred $\frac{1}{6}$ th each to the 1st and 2nd Plaintiffs and the 1st Defendant upon deeds No: 7527, 7528 and 7529 dated March 19, 1981, attested by H. D. P. Tilakaratne, Notary Public, marked 'P5', 'P6' and 'P7'. Don Sarpiyanu Dissanayake, who became entitled to $\frac{1}{2}$ share as aforesaid, transferred the said share to the 2nd and 3rd Defendants upon deed No: 290 dated February 1, 1974, marked '2V1'.

Accordingly, it was established that the 1st and the 2nd Plaintiffs are entitled to an undivided 1/6th share each, the 1st Defendant is entitled to an undivided 1/6th share and the 2nd and 3rd Defendants are entitled to 1/4th share each.

Thus, the chain of title set out by the Plaintiffs and the 1st to 3rd Defendants was established, and the learned District Judge has rightly upheld the paper title claimed in respect of the *corpus*.

At the stage of re-examination of the 7th Defendant, a copy of the application for the search of death certificate of one Sangapala Arachchige Don Saimon Dissanayake was marked as '7V11'. The certificate states that no death certificate referable to the application could be traced. However, it appears to me that the 7th Defendant had marked a document as '7V6' while the 1st Plaintiff was under cross-examination, indicating the same to be the death certificate of Sangapala Arachchige Don Saimon Dissanayake. On the strength of this death certificate, it was argued at the late stage of the trial that Saimon Dissanayake could not have executed deeds 'P5', 'P6' and 'P7' in the year 1981.

To the contrary, the Plaintiffs have marked and tendered a copy of a document containing information to register the death of a person named S.D.S Dissanayake as 'P15' while the 7th Defendant was under cross-examination. However, 'P15' does not give the full name of the deceased but states only his initials. Details such as the names of parents are also not provided.

The learned District Judge in his judgment has not paid any attention to the said documents. The question that arises is whether the inferences arising out of '7V11' and 'P15' could be taken into consideration. I am mindful of the question of law (f) that was raised before this Court, namely whether the learned District Judge has considered all material before him when making an order for partition the land as prayed for by the Plaintiffs and if so whether the judgment of the District Court correct and according to law.

If Saimon Dissanayake passed away in 1965, he could not have transferred 1/6th share each to the Plaintiffs and the 1st Defendant by deeds marked 'P5', 'P6' and 'P7'. Consequently, the deeds 'P5', 'P6' and 'P7' will be rendered forgeries.

Section 68 of the Partition Law No:21 of 1977 provides:

"It shall not be necessary in any proceedings under this Law to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to the party producing that deed, or unless the court requires such proof."

In ***Wimalawathie vs Hemawathie and others***² (C.A.) Abdus Salam J., while interpreting section 68 of the Partition Law, has held that unless a deed is impeached, its execution is not required to be proved.

In the present action, the 7th Defendant neither impeached the deeds 'P5', 'P6' and 'P7' in his statement of claims, nor has he raised a single issue on genuineness of the same while framing issues. Further. they were marked and admitted in evidence without any objection. Therefore, it may well be argued that the 7th Defendant cannot impeach a deed already marked when trial was in progress.

On the other hand, the 7th Defendant cannot make out a case that is not enunciated in his pleadings. Section 150, explanation 2 stands against the 7th Defendant agitating execution of the said deeds. It reads;

"The case enunciated must reasonably accord with the party's pleading, i.e., plaint or answer; as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings"

² 2009 (1) Sri.L.R. 95.

Accordingly, the Plaintiffs and the 1st Defendant cannot be expected to meet with a new position attempted to be taken up at the trial by the 7th Defendant.

Evidence reveals that the 7th Defendant's father and Saimon Dissanayake were close relations, and if Saimon Dissanayake died as far back as 1965, the 7th Defendant should, as a reasonable person, have known that fact and could have impeached the deeds executed in 1981.

The Notary in his attestation in deeds 'P5', 'P6' and 'P7' specifically states that the executant is known to him, implying that he was alive as at the date of execution.

A careful examination of proceedings where '7V6' was marked casts doubt as to whether it was properly admitted in evidence. I will reproduce the proceedings where the document was marked.

ප්‍ර - මේ ලේඛනය තමන්ගේ පියාගේ මරණ සහතිකය ද?

උ - නම කියෙනවා.

ප්‍ර - කලින් දවසේ තමන් කිව්වා භුක්ති විදගෙන හිටියාය කියලා තාත්තා මැරෙන තුරු ?

උ - ඔව්.

ප්‍ර - ඒ කියන්නේ කොයි අවුරුද්ද දක්වාද?

උ - 1982 දක්වාම හිටියා. 1982 මැයි 25 තමයි අන්නා වුනේ.

Hence, it appears to me that the witness had not admitted the document as his father's death certificate. The particulars given therein have not been put to the witness enabling him to identify the same. Though the certified copy of the document is entitled to the benefit of the presumption of genuineness contained in Sections 76 and 77 of the Evidence Ordinance, I am of the view that there should be direct evidence to the effect that '7V6' actually relates to the Plaintiff's father.

Taking into consideration the above facts and legal position, I am of the view that the 7th Defendant has failed to prove that the father of the Plaintiffs had died prior to the execution of the deeds 'P5', 'P6' and 'P7'.

Therefore, I am of the view that the Plaintiffs have established title to the *corpus* upon balance of probabilities, which is the required standard of proof in a partition action.

7th Defendant's Claim for Prescription

The 7th Defendant has pleaded in his statement of claim that Abraham Dissanayake possessed the *corpus* and thus acquired prescriptive title. It is further pleaded that upon the demise of Abraham Dissanayake in 1971, he continued possession and accordingly acquired prescriptive title. One main issue raised by the Plaintiffs and the 3rd Defendant is that the 7th Defendant cannot have a judgment on prescription due to his failure to pray for the same in the prayer to the statement of claims.

It is common ground that the 7th Defendant's parental home is situated in the land to the East, namely Lot 'A'. It was revealed in evidence that Lot 'A' too was partitioned and the 7th Defendant was allotted a portion of land out of the said lot. It was contended by the 7th Defendant that he possessed the *corpus* along with the land to the East.

The contention of the 1st Plaintiffs was that they possessed the *corpus* until institution of the action. He stated that he periodically visited the land and took its produce. Moreover, it was stated that the 7th Defendant, after institution of action, constructed a wattle and daub house. The 1st Plaintiff is said to have made a complaint to the Grama Niladhari with regard to this act, which was marked 'P8.' It was further stated by the 1st Plaintiff that the 7th Defendant, after the interlocutory decree was entered, followed by the abortive trial, the 7th Defendant had rented out the wattle and daub house to third parties against which he complained to the police. The complaint was marked 'P9'.

As against the Plaintiffs' contention, the 7th Defendant claimed that he possessed the *corpus* while residing thereon. He relied on extracts from the electoral registers marked and produced as '7V1' to '7V5'. Among them, '7V5' is for the year 1986, where the 7th Defendant's name is registered. However, '7V5' is an extract from the electoral register for the year 1986, namely after institution of this action.

The electoral registers produced by the 7th Defendant are in respect of a house number 588/1/A. As against this, the Plaintiffs have produced extracts from the electoral register for the years 1977, 1978, 1979 and 1980 marked 'P10' to 'P14' in respect of a house bearing No: 588. In all extracts marked 'P10' to 'P15', the 7th Defendant's name is stated as one of the occupants of the house, leading to the inference that the 7th Defendant at all times relevant was residing in his main house bearing No: 588. It was further corroborated by the fact that the 7th Defendant's National Identity Card states his residence as No: 588.

Then the issue is as to where the house 588/1/A was situated. The 7th Defendant has tendered two certified copies of letters issued by two Grama Niladhari officers for a partition case that was instituted in respect of lot A, the adjacent land where the 7th Defendant's parental house is situated, marked '7V7' and '7V9'. A similar letter issued by an agricultural officer is marked '7V8'. '7V8' and '7V9' were marked and produced in partition case No: 28235/P where the relevant officers have certified that the 7th Defendant was residing in house No: 588/1/A. The officers who issued the letters were testified, and significantly, none of the officers have identified the land where the house bearing No: 588/1/A was situated. Therefore, it could well be that the relevant officers have issued the letters in respect of the land for which case No: 28235 was instituted. If house 588/1/A was not situated within the *corpus* in case No: 28235 and it was situated in the *corpus* of this action, why should it be produced as evidence in case No: 28235? Further, the 7th Defendant, having called the two 'Grama Niladhari' officers to testify, never led evidence to explain where the house in the electoral register was situated. It is to be noted that the 7th Defendant had made no attempt to precisely establish his residence within the *corpus* with reference to the electoral register in a context where there is a doubt as to where house No: 588/1/A was situated.

The Plaintiffs maintained the position that the hut 'A' was not occupied by any person until the preliminary survey was carried out. To the contrary, the 7th Defendant asserted that he was residing in the said building.

The Commissioner of Court, in his plan bearing No: 1558 has depicted a wattle and daub hut (මඩුළුව) as 'A'. The report does not indicate any person residing therein. It should be noted that the Commissioner arrives for preliminary survey having made public announcements such as exhibiting written notices and tom tom beating. As rightly observed by Shirani Bandaranayake J. (later Chief Justice) in ***Reginold Fernando vs Publinahamy***³, no survey could secretly be done. Therefore, it appears to me that the hut marked 'A' in the preliminary plan would not have been in occupation of any person, which proceeds to show that the version of the Plaintiffs is more probable.

The 7th Defendant in his evidence has stated that he is possessing the *corpus* and has described the plantation therein. At page 185 has stated that there are 30 coconut trees 5 jack trees, 2 clove trees and 5 banana bushes. This description does not tally with the report of the surveyor, where he has reported only 36 young coconut trees of 1 to 3 years of age. The Surveyor has reported 5 jack trees, which tallies with the 7th defendant's evidence, but the clove plantation does not tally. The report of the commissioner states that there are 5 clove plants of 2 years of age. He has observed 2 cashew trees which were not stated in the 7th Defendant's evidence. Hence a doubt arises as to whether the 7th Defendant actually possessed the land, particularly when he could not describe the plantation on the land.

In taking into consideration the totality of evidence, it appears to me that the 7th Defendant has failed to establish that he or his predecessor possessed the *corpus* ten years prior to the institution of action.

The learned Trial Judge, having analyzed the evidence has arrived at the conclusion that the 7th Defendant failed to establish an overt act. However, as the 1st Plaintiff has made a complaint against the construction of the house by the 7th Defendant, he has proceeded to hold that the 7th Defendant had constructed a house pending action and awarded compensation.

³ 2005 (1) SLR 31 at p. 36.

The learned Judges of the High Court of Civil Appeals reversed the judgment of the original court entirely on the ground that the 7th Defendant, being a stranger, is not bound to establish an overt act. It has been observed that the 7th Defendant had appropriated the produce of the land and even rented out the house and possessed the same with *ut dominus*, satisfying the ingredients required to establish prescriptive title. Accordingly, the learned Judges have upheld the claim of prescription preferred by the 7th Defendant and dismissed the Plaintiffs' action.

The learned District Judge has not arrived at a definite conclusion that the 7th Defendant has not possessed the land. He has proceeded to hold that the 7th Defendant has failed to prove an overt act.

Before I venture into the requirement of an overt act, I will examine whether the 7th Defendant has sufficiently established prescriptive possession. As I stated before, there was no clear evidence as to whether the 7th Defendant did reside in the *corpus* prior to the institution of the action. The best witness to identify the location of House No: 588/1/A was the Grama Niladhari who recorded information for the Electoral Register, who, for best reasons known to the 7th Defendant, has failed to call to testify. The two 'Grama Niladhari' officers who were called to testify have stated that they issued the relevant documents '7V7' and '7V9' only. They neither identified the land in respect of which they issued the letters nor have explained as to how the 7th Defendant possessed the land stated in the letters.

The 7th Defendant was required to establish not mere possession but possession adverse against the claimant of title for a period over 10 years. Hence, it was held ***Juliana Hamine vs Don John***⁴ that mere statement that "*I possessed*" or "*we possessed*" is not sufficient to establish adverse possession and the nature of possession should be explained and exemplified. In ***Alwis vs Perera***⁵ the Supreme Court dealt with the nature of evidence required to establish prescriptive possession. Bertram C.J. observed that mere statement in evidence that "*I possessed*" or "*we*

⁴ 59 NLR 546 at p. 548.

⁵ 21 NLR 321 at p. 326.

possessed” or “*we took the produce*” does not establish prescriptive possession. Prescription is a specific claim made in adverse to the person or persons who hold title. In ***De Silva vs Commissioner General of Inland Revenue***,⁶ Samarawickrama J observed that “*The principle of law is well established that a person who bases his title in adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In order to constitute with adverse possession, the possession must be in denial of the title of the true owner. The acts of the person in possession should be irreconcilable with the rights of the true owner; the person in possession must claim to be so as of right as against the true owner.*” Hence the law is settled that mere possession does not amount to adverse possession rendering the claimant to acquire title. In ***Corea vs Iseris Appuhami***⁷ Lord MacNaghten, termed prescription as an illegality made legal. Accordingly, in ***Thilakarathne vs Bastian***⁸ “adverse possession” was interpreted as “possession held in a character incompatible with the claimant’s title. Hence, it is established law that mere possession does not amount to adverse possession. Samyawardana J, in ***Athukoralalage Don Chandrasekara vs Athukorarlalage Don Sarathchandra S.C. Appeal No. 30/2016, S.C. Minute dated 04.07.2024***, has observed that ‘*mere possession is not prescriptive possession. It should be adverse possession known to the real owner. Adverse possession should continue uninterruptedly for 10 years. For mere possession to become adverse possession there should be an overt act for the real owner and the court to understand the starting point of prescriptive possession. It cannot be done stealthily. The 10-year period begins to run from that point and not from the mere act of possession as not every instance of possession qualifies as prescriptive possession.*” This view was precisely laid down by De Abrew J. in ***Punchiralage Keerala vs Dingiri Banda S.C. No.188/2011 S.C. Minute dated 18.07.2018***, where His Lordship has observed that, “*....In fact when a person encroaches upon lands for which he has no title, he acquires states of a*

⁶ 80 NLR 292 at p. 295.

⁷ 15 NLR 65 at p. 78.

⁸ 21 NLR 12 at p. 18.

trespasser in respect of the encroached area of land. Trespasser starts possessing lands for which he has no title and continues to possess the land secretly. As I pointed out earlier, to claim prescriptive title in terms of section 3 of the Prescription Ordinance, claimant's possession should be an adverse possession, a person who possesses a land with secret intention cannot claim that his possession is adverse possession. Possession of a land by a person with secret intention cannot be considered as an adverse possession in terms of section 3 of the Prescription Ordinance" The same view was subsequently adopted by me in ***H. L. Gunarathne vs H. A. Peiris***, S.C. Appeal No. 58/2019, S.C. Minute dated 06.03.2026.

Therefore, mere possession by the 7th defendant, even if he had possessed, does not entitle him to the benefit of section 3 of the Prescription Ordinance. As I have observed, there is no clear and precise evidence that the 7th Defendant had possessed the land prior to the institution of this action. It was urged before us by the learned President's Counsel for the 7th Defendant that the 7th Defendant rented out the house marked 'A' to certain tenants. To the contrary, Plaintiff has produced the complaint marked 'P9' on August 21, 1990 to show that the house was rented out long after the institution of the action. Therefore, on careful examination of the evidence, I do not find clear and unequivocal evidence supporting physical possession of the *corpus* by the 7th Defendant for a period of 10 years prior to the institution of the action. Further, I find absolutely no evidence indicating that the 7th Defendant possessed the land while the Plaintiffs and 1st to 3rd Defendants were aware of such possession, rendering it to be adverse possession.

I hold that the learned Judges of the High Court of Civil Appeals have failed to interpret the term '*adverse possession*' and accordingly have proceeded to hold that mere possession amounts to adverse possession, which is a misdirection of law. Therefore, I set aside the judgment of the learned Judges of the High Court of Civil Appeals. I further affirm the judgment of the District Court directing the partition of the *corpus*.

Should Prescription be Prayed as a Specific Relief in the Prayer to the Statement of Claims.

The learned President's Counsel for the Plaintiffs has argued that a claim for prescription should be specifically prayed for in the prayer and mere plea in the body of the statement of claim is not sufficient. Section 19(1)(a) of the Partition Law No: 21 of 1977 reads thus;

“ any defendant in the action may file or cause to be filed in court a statement of claim setting out the nature and extent of his right, share or interest to, of or in the land to which the action relates and shall, if he disputes any averment in the plain relating to the devolution of title, file or cause to be filed in court, together with his statement of claim, a pedigree showing the devolution of title; ”

Hence it appears to me that the statement of claims should state the precise claim of the party in the body of the pleadings, and it doesn't appear to me that having pleaded the claim in the body of the statement of claim, a separate and distinct prayer on the claim is required to be prayed once again.

Accordingly, the said argument has to fail.

Conclusion

The questions of law are answered as follows;

- a) Yes. There was no cogent evidence to establish prescriptive possession.
- b) Yes.
- c) Yes. Claim for prescription need not be specifically prayed if the claim is pleaded in the body of the pleadings.
- d) No.
- e) No.
- f) Yes.

The learned District Judge has awarded compensation for the wattle and daub house marked 'A' in the preliminary plan for the 7th Defendant. However, it appears that

the construction has taken place after the institution of the action and further that the 1st plaintiff has protested by making a complaint to the Grama Niladhari. Accordingly, I am not persuaded that the 7th Defendant should be awarded any compensation for the said construction. However, no question of law was raised before us on this part of the judgment, and therefore, I will not venture in the legality of the said part of the judgment.

Accordingly, the judgment of the High Court of Civil Appeals is set aside, and the judgment of the District Court directing a partition as prayed for in the plaint is affirmed.

In the circumstances of the case, I make no order for costs of this 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