

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

In the matter of an application for
Appeal against the Judgment of
the provincial High Court of the
North Western Province in Case
No. NWP/ HCCA/ KUR 71/ 2010
(F)

Kadiragaman Kumararathnam
Siththamadama, Bangadeniya.

Plaintiff

SC Appeal No. 12/2017
SC (HCCA) LA/20/2015
NWP/HCCA/KUR 71/2010 (F)
DC Chilaw case No.24815/RE

v.

Muthalibu alias Muttu,
Puthukuduirippu, Battalu-Oya

Defendant

1A. V. Asanatchiya

1B. M. Fathima Salfika
1C. A. M. Thajudeen
1D. A. M. Al Raheem
1E. A. M. Riy Asdeen
1F. A. M. Larujideen
1G. A. M. Fathima Ferosha
1H. A. M. Safrika
All of Puthukuduirripu, Battalu-
Oya. Appearing by their
Guardian ad litem the 1A
Substituted Defendant

Substituted Defendants

AND BETWEEN

1A. V. Asanatchiya
1B. M. Fathima Salfika
1C. A. M. Thajudeen
1D. A. M. Al Raheem
1E. A. M. Riy Asdeen
1F. A. M. Larujideen
1G. A. M. Fathima Ferosha
1H. A. M. Safrika
All of Puthukuduirripu, Battalu-
Oya. Appearing by their
Guardian ad litem the 1A
Substituted Defendant

Substituted-Defendants-
Appellants.

V.

Kadiragaman Kumararathnam
Siththamadama, Bangadeniya.

Plaintiff-Respondent

AND NOW BETWEEN

1A. V. Asanatchiya
1D. A. M. Al Raheem
1G. A. M. Fathima Ferosha
1H. A. M. Safrika
All of Puthukuduirripu,
Battalu-Oya.

1A, 1D, 1G, 1H

Substituted-Defendants-

Appellants -Appellants

V.

Kadiragaman Kumararathnam
Siththamadama, Bangadeniya.

Plaintiff -Respondent - Respondent

1B. M. Fathima Salfika
1C. A. M. Thajudeen
1E. A. M. Riy Asdeen
1F. A. M. Larujideen
All of Puthukuduirripu,
Battalu-Oya.

1B, 1C, 1E, 1F Substituted

Defendants-Appellants

Respondents

Before : **Kumudini Wickremasinghe, J**

K. Priyantha Fernando, J

Sobhitha Rajakaruna J

Counsel : Dr. Sunil Coorey instructed by Mrs. Sudarshani Coorey for the 1A, 1D, 1G & 1H Substituted Defendant-Appellant-Appellants.

Rohan Sahabandu, PC, with Ms. Chathurika Elvitigala, Ms. Sachini Senanayake and Ms. Pubudu Weerasuriya instructed by Ms. Hasitha Amarasinghe for the Plaintiff-Respondent- Respondent.

Argued on : 01.07.2025

Decided on : 27.08.2025

K. PRIYANTHA FERNANDO, J

1. The Plaintiff-Respondent-Respondent (hereinafter sometimes referred to as the Plaintiff) instituted this action against the

Defendant-Appellants-Appellants (hereinafter sometimes referred to as the Defendants) praying for a declaration that the Plaintiff is the owner of the land known as "Kiriyankalliya", morefully described in the 4th schedule to the plaint, for the ejectment of the Defendant and all those holding under him and to place the Plaintiff in possession of the land. The Plaintiff also sought an enjoining order and an interim Injunction restraining the Defendant from entering the land described in the 4th schedule to the plaint.

2. According to the plaint filed by the plaintiff on 06.10.1997, the land referred to as "Kiriyankaliya" and described in the 4th Schedule is, in fact, a composite parcel comprising the lands set out respectively in the 1st, 2nd, and 3rd Schedules to the plaint. The plaintiff has provided an account of the manner in which title to each of the said lands were acquired. As per the Plaintiff, one Abubaker was the owner of the land in the 1st schedule by Deed No 9372 dated 27.05.1922 - and he by his Deed No. 39902 dated 09.08.1954 transferred same to one Kadiragaman - and he by his Deed No. 266 dated 25.01.1988 transferred same to his son - the Plaintiff. The Plaintiff went onto plead that, one Segu David was the owner of the land in the 2nd schedule and he by his Deed No 39609 dated 01.06.1994 transferred same to aforesaid Kadiragaman who by his aforesaid Deed No.266 dated 25.01.1988 - transferred same to the plaintiff. The Plaintiff went onto plead that, the land in the 3rd schedule was owned by one Saibo who became the owner on Deed No 9373 dated 29.05.1922 and after his death - the land devolved on three persons, who transferred same to aforesaid Kadiragaman on Deed No 213 in 1954, and he by the aforesaid Deed No.266 transferred same to the Plaintiff.

3. On that basis, the plaintiff contends that, having established title to the lands described in the 1st, 2nd, and 3rd Schedules, he is thereby entitled to claim ownership of the land described in the 4th Schedule, which represents an amalgamation of the aforementioned properties.
4. Accordingly, the plaintiff filed a case in the District Court of Chilaw bearing No. 24815/RE against the defendant's alleged unlawful entry and occupation of land belonging to the Plaintiff and sought ejectment of the Defendant and all those holding under him. The Original Defendant filed the answer and denied that there was any unlawful entry or occupation of land belonging to the Plaintiff. It was the main contention of the Defendant that he and two other persons were jointly owning a land by the name of "Kiriyankalliye Paniyawal" and they had purchased the land by virtue of Deed No. 711 dated 01.05.1982, attested by P. Thangarathnam, N.P. and had been in possession of the same from that point onwards. The Defendant stated that, the land described in the Plaintiff is not the same land that is claimed by the Plaintiff and that the land owned and possessed by the Defendants are different in extent and the boundaries depicted in the Plaintiff are also different. The Defendant made a cross claim seeking damages from the Plaintiff for the loss caused by the enjoining order obtained by the plaintiff.
5. Upon the commission issued by Court, S. Sritharan (Licensed Surveyor) prepared Plan No. 739 dated 10.04.2000 and returned to Court along with the report. (page 125 and 126 of document "X"). Subsequently Plan No. 970 dated 02/03/2001 was prepared by S. Sritharan and returned to Court. Plan No. 3098 submitted by the Defendant and marked as "V2" and Plan No. 397 submitted

by the Plaintiff and used for the said commission is at pages 136 and 137 of document "X". The Plan submitted by the Defendant refers to a land of **17 acres and 2 Roods and 35 perches** and the Plan Submitted by the Plaintiff refers to a land of **14 Acres 3 Roods and 01 Perches**.

6. After trial, the learned District Judge of Chilaw, by his judgment dated 31.03.2010, held in favor of the plaintiff. Aggrieved, the substituted defendant appellants appealed to the Civil Appellate High Court. The learned Judges of the Civil Appellate High Court by judgment dated 02.12.2014, reaffirmed the judgement given by the learned District Judge.
7. Being aggrieved by the said Judgment, the Defendants sought an appeal to this Court and leave was granted to the following question of law in the petition dated 10.01.2015 -

(F) "Has their Lordships of the High Court erred in holding that the Plaintiff has better title to the land described in the schedules to the plaint and considering the said finding in delivering Judgement, when in actual fact the Defendant's position is that land claimed by him is 'Kiriyankalliya Paniyawala' and established his title to the same."

8. In essence, the Plaintiff takes the position that he has better title to the land in suit. However, the Defendants disagree. The defendants contend that, the land they are claiming is not the same land the Plaintiff has referred to in the plaint. Instead, they claim that their land is called "Kiriyankalliya Panniyawala" and assert that they have already provided proof that they own it. In light of that, the main question to be decided here is whether the

Learned Judges of the Civil Appellate High Court erred by ruling in favor of the Plaintiff even though the Defendants say the land is different and rightfully theirs.

9. The learned President's Counsel for the Plaintiff submitted that the land referred to by the Defendant is a field or a "yaya". Referring to the evidence that was led in the District Court, the learned President's Counsel submitted that, the substituted Defendant has specifically said that her land is "Kiriyanckalliya Panniya Vayel". "Panniya Vayel" in Tamil is a "yaya". The learned President's Counsel states that, this Panniya Vayel / Yaya is in extent of 17 Acres. He further submitted that, the District Court correctly observed that the land referred to in the Defendant's deed No. 3635, is "Kiriyanckalliya Panniya Vayel" - and not "Kiriyanckalliya" (corpus).
10. The learned President's Counsel for the Plaintiff thereby submitted that, it was apparent, that these two are two different lands- and the Defendant's land is to the East of the corpus. He contended that the Learned District Judge has correctly formed the opinion on the facts and on reasonable grounds without being perverse.
11. Addressing the issue of prescription that has been put forth by the defendants, the learned President's Counsel for the plaintiff, contended that as the defendants claim to own and have prescribed to this land with two others, there cannot be prescription among these co-owners unless a party is able to prove that there had been an act of ouster prior to the running of prescription. According to the learned Presidents Counsel no act of ouster has been pleaded or put in issue.

12. The contention of the learned Counsel for the defendants, revolved around three main issues i. The identity of the corpus, ii. The Plaintiff not being the sole owner of the land to which he claims and iii. The Plaintiff's deed on which he claims title to the land, not referring to the plan presented by the Plaintiff. (No. 397)
13. The learned Counsel for the Defendants submitted that, if the three portions of lands described under the 1st to 3rd Schedules of the plaint are adjoining and the Plan No. 397 is drawn by combining all these three lands together (as per the 5th paragraph of the plaint), the Counsel questions as to what happened with the stream in the 2nd Schedule and the canal in the 1 Schedule. If the Plan No. 397 actually depicts the three lands described under the three Schedules, and the Lot 1 and Lot 2 of the Plan respectively depict the lands described under the 1st and the 2nd Schedules as stated by the learned High Court Judges, the Plan has to have this stream or the canal in between the 1st and the 2nd lots as it is a significant part of the land. The Counsel further contends that, generally the Surveyors do mark that kind of significant marks of the lands in their plans as that helps to recognise the land and distinguish such from another similar land. Thereby, based on these submissions the Learned Counsel for the Defendants questions the validity and credibility that has been put forth by the plaintiffs plan.
14. The learned Counsel for the Defendants further submitted that, by comparing the boundaries of these three lands, the High Court Judges in page No. 6 and 7 of their Judgment have come to the conclusion that "it is very probable, as three boundaries agree, that lots 1 and 2 (in Plan No. 397) form the contiguous lands

described in schedule 1 and schedule 2". However, the learned Counsel contends that this conclusion is solely based on assumptions and that the learned Judges of the High Court have come to this conclusion with no actual evidence to support such a claim.

15. In the instant case, the plaintiff claims title to the land called Kiriyankalliya in extent of 14A : 3R : 1P, which is a land consisting both high and paddy lands whilst the defendants claim title to a paddy land called Kiriyankalliya Panniya Vayel in extent 17A : 2R : 35P. This is a clear case of *Re vindicatio*. In a *Re vindicatio* case, the Defendant has no burden to prove his ownership to the land. Once Plaintiff has proved his title to the land in question, if the Defendant says that the land in question is a different land, it is sufficient to prove that it is a different land. If the defendants claim title or seek a declaration of title, then it is for the defendants to prove their title. In the instant case, as the Defendants call this land "Kiriyankalliya Panniya Vayel" then it is the defendant's duty to prove the same.
16. In ***Pathirana v. Jayasundara (1955) 58 NLR 169*** at page 172 Gratiaen J. held,

"In a rei vindicatio action the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation."

17. According to the 1st Schedule to the plaint, the extent of the land is 3 acres and 20 perches. The land described in the 2nd Schedule measures 3 acres and two-thirds of 20 perches, while the land in

the 3rd Schedule comprises 3 acres and three-eighths of 20 perches. Mr. Weerawardena (Licensed Surveyor) has treated them collectively as one land, which is described in the 4th Schedule. This consolidated land is depicted in Plan No. 397 marked as X3 and has a total extent of 14 acres, 3 roods, and 1 perch.

18. In the defendant's answer (page 111 of the brief), the Deeds tendered by the plaintiff to prove his title were not challenged. In fact all deeds including title Deed No. 266 in 1988 (P3) with Plan No. 397 went in without a challenge. Upon considering the evidence given by the plaintiff (page 165) regarding the pedigree of the land in suit, it can be said that both the Civil Appellate High Court and District Court have correctly evaluated and accepted that the Plaintiff had title to the land in question and thereby the burden on the Plaintiff was discharged.

19. Furthermore, reference to the evidence on page 183 of the brief reveals that the Plaintiff has clearly stated that the land referred to in the 4th Schedule is "Kiriyankalliya" and not "Kiriyankalliya Paniywala," and that it corresponds with the land depicted in Plan No. 397. In his evidence in page 183, the plaintiff states that the land has a portion which is a paddy land and gave evidence regarding this which he refers to as Kiriyankalliya Paniyawel.

පු : තමාගේ ඉඩමට පනියවල් කියා කියනවද ?

උ : අක්කර 40ක්, 50ක් පමණ යායම තමයි පනියවල් කියා කියන්නේ ඒක ඒ පැත්තේ අය දකුණු පැත්තේ ඇති වේල් යායට කියන තමයි.

පු : එලෙසම තමාගේ තොනා පැහැදිලිව මායිම් සහිත ඉඩමක් කියා තමා සඳහන් කර තිබෙනවද

උ : ඔවා

20. It is also observed that the Plaintiff had mortgaged this land and obtained a loan (page 162) thus confirming the fact of possession, and the existence of the plaintiff's land. When analyzing the same Evidence it is clear that the Defendant's father lived to the East of the corpus. The father was not called by the Defendant to contradict this position. It appears that, the Defendant who was in possession of the land to the East, in 1997 sought to encroach on the land claimed by plaintiff and cultivated in the same.

21. Although the Defendants contended that after superimposing their Plan No. 3098 over Plan No. 739 issued by the Commission, the extent of the land appeared to be the same, the Survey Report clearly establishes that the land identified by the Defendants does not in fact correspond with either Plan No. 739 or Plan No. 3098. The land shown by the Defendants is, in fact, "Kiriyankalliya." The inconsistency in the western boundary further confirms that the land in question is distinct from the land claimed by the Plaintiff. The following is an extract from the Survey report dated 14.04.2000 at page 125 of the brief.

"In plan No. 739 "The boundaries pointed out by the Plaintiff and the Defendant Western boundary is is not tallying with the plan mentioned in the schedule to the Commission issued by the District Court of Chilaw. The land was surveyed as existing on ground now."

22. If one looks at the evidence closely it appears that the land referred to by the Defendant is a field or a "yaya". It is also observed that, in the evidence of the substituted Defendant (page 275 of the brief) she specifically said that her land is "Kiriyankalliya Panniya Vayel." "Panniya Vayel" in Tamil is a "yaya". Although the defendants assert

their land to be in extent of 17 Acres, in the documentary evidence submitted by the Defendants, the land to which the Defendants had paid average taxes, was in respect of a 5 Acre 3 Roods. It is also important to note that, the Defendant's deed No.3635, along with their Plan No. 3098 refers to the land as "Kiriyankalliya Panniya Vayel" - and not "Kiriyankalliya" (corpus). Thereby It is clear that, the defendants have not been able to show a connection of his title to the land in Plan No.3098 that they have produced and even if it is assumed that the defendants have title to that land, the superimposition shows that it is the land of the Plaintiff which is claimed on a clear title to which the defendants had failed to show any right.

23. Thus it is apparent, that these two are two different lands- and the Defendant's land is to the East of the corpus. Thus the learned District Judge has correctly formed the opinion on the facts and it is not perverse.
24. Moreover, when analyzing the issue on prescription, Sri Lankan Law has identified instances where a co-owner has later prescribed for the co-owned land. However, in these instances there has been specific emphasis on the overt act done by the party claiming prescription. The case of ***Siyathuhamy and others V Podimenike and others [2004] 2 SLR 323*** discusses how there cannot be prescription among co-owners unless a party is able to prove that there had been an act of ouster prior to the running of prescription. In the instant case, upon consideration of the evidence and material submitted before the Court, no ouster by any overt act committed by one defendant against the plaintiff or the other defendants is apparent. Accordingly, their claim of prescription cannot be sustained.

25. In view of the foregoing considerations, this Court finds no justification to interfere with the judgments of the learned Judges of the High Court and the District Court. Accordingly, the question of law is answered in the negative, and the Judgment of the Civil Appellate High Court dated 02.12.2014 is hereby affirmed.

Appeal is dismissed

JUDGE OF THE SUPREME COURT

JUSTICE KUMUDINI WICKREMASINGHE

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SOBHITHA RAJAKARUNA

I agree

JUDGE OF THE SUPREME COURT