

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

In the matter of an Appeal made in terms of section 5C of the High Court of the Provinces (Special Provisions) (Amendment) No. 54 of 2006 and the Rules of the Supreme Court made in terms of Article 136 of the Constitution.

S.C. Appeal No:
137/2024

SC/HCCA/LA:
17/2024

WP/HCCA/HO/419/2021/F

DC Kaduwela Case No:
150/L

Palihenage Don Shamalee Palihena,
No. 60,
Hewagama,
Kaduwela.

PLAINTIFF

Vs.

Vajira Kuruppu
No. 62,
Hewagama,
Kaduwela.

DEFENDANT

AND BETWEEN

Palihenage Don Shamalee Palihena,
No.60,
Hewagama,
Kaduwela.

PLAINTIFF-APPELLANT

Vs.

Vajira Kuruppu,
No.62,
Hewagama,
Kaduwela.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Vajira Kuruppu,
No.62,
Hewagama,
Kaduwela.

**DEFENDANT-RESPONDENT-
APPELLANT**

Vs.

Palihenage Don Shamalee Palihena,
No.60,
Hewagama,
Kaduwela.

**PLAINTIFF-APPELLANT-
RESPONDENT**

Before

: Janak De Silva, J.

: Dr. Sobhitha Rajakaruna, J.

: Sampath B. Abayakoon, J.

Counsel : Manohara de Silva, P.C. with Nadeeshani
Lankatilleka instructed by Anusha Perusinghe
for the Defendant-Respondent-Appellant.

: H. Withanachchi with Shantha Karunadhara
instructed by Gaithri de Silva for the Plaintiff-
Appellant-Respondent.

Argued on : 26-02-2026

Written Submissions : 04-05-2026 (By the Plaintiff-Appellant-Respondent)
: 04-05-2026 (By the Defendant-Respondent-
Appellant)

Decided on : 21-07-2026

Sampath B. Abayakoon, J.

The defendant-respondent-appellant (hereinafter referred to as the defendant) preferred this appeal on being aggrieved of the judgment pronounced on 01-12-2023 by the High Court of the Western Province holden in Homagama, while exercising its civil appellate jurisdiction.

From the impugned judgement, the learned Judges of the High Court set aside the judgment dated 25-06-2021 pronounced by the learned District Judge of Kaduwela in District Court of Kaduwela Case No. 150/L, and entered judgment in favour of the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) for the reasons as set out.

When this matter was considered before this Court on 12-11-2024 for the purpose of granting leave to appeal, this Court granted leave on the following question of law.

1. Did the learned Judges of the High Court misdirect themselves in holding that prescription by no means provide protection to a person who prevents the claimant or plaintiff from possessing the property by the use of force or hostility?

At the hearing of this appeal, this Court heard the extensive submissions of the learned President's Counsel who represented the defendant and also the submissions of the learned Counsel who represented the plaintiff. This Court also had the benefit of considering the pre-argument, as well as post-argument written submissions tendered by the parties.

The facts of this matter that led to the judgment of the learned District Judge and the appellate judgment of the High Court can be summarized in the following manner.

The plaintiff has instituted this action before the District Court of Kaduwela by her plaint dated 31-12-2008 in the form of a vindicatory suit. The plaint has been subsequently amended on 30-07-2010 after the subject matter was surveyed in order to identify the land in question. The plaintiff has prayed for a declaration stating that she is the rightful owner of the land morefully described in the schedule of the plaint, for the ejectment of the defendant and for any other reliefs deemed fit by the Court.

The defendant in her answer has admitted the final partition decree and the allocation of lots as per the final partition plan mentioned by the plaintiff. However, she has denied the claim of the plaintiff while claiming that she and her predecessors have prescriptive rights to the land in dispute.

It had been the position of the plaintiff that her father Palihenage Don Edmond Amarasena Palihena became entitled to the land morefully described in the plaint in accordance with the final partition decree in case No. 384/P of the District Court of Homagama. The said Amarasena Palihena has transferred his rights by deed No. 2018 dated 17-10-2004 attested by Rohan

Gamlath Notary Public to the plaintiff (document marked P-1). From the said deed, the father of the plaintiff has transferred the rights gained to the land depicted as lot No. 6 of the final partition plan No. 1147 dated 26-11-1977 of the earlier mentioned partition action.

According to her, both her father and herself enjoyed possession of the land although the defendant who is living in lot No. 3 of the same partition plan often used to quarrel with them over the land now owned by the plaintiff.

It has been the position of the plaintiff that on or about 28-09-2008, the defendant blocked the entrance to the land by erecting a gate and commenced possessing the land illegally and forcibly, depriving her of her ownership rights.

The defendant's position has been that although the final partition plan allocated lot No. 6 to the plaintiff's father and lot No. 3 to the 2nd to 8th defendants of the partition action, it was her grandmother, who was the 2nd defendant of the said action who held and possessed lot No. 3, 4, 5, and 6 of the partition plan as one contiguous land against the rights of all others who became entitled to the said lots. It had been her stand that the father of the plaintiff never obtained the possession of the lot he was declared entitled. It has been her position that she is now possessing the land under litigation based on the rights obtained through prescription.

It has been her contention that although the father of the plaintiff who never had any possession of lot No. 6 attempted to disturb the possession in 1984, she and her family members managed to restore their possession a few days thereafter.

The answer of the defendant and the evidence led at the trial also reveal that as a result of this dispute, a family member of the defendant has been killed, and the person who was accused of the killing (the brother of the plaintiff) has also been killed while the murder case was pending against him.

It was also in evidence that the father of the plaintiff previously instituted action against the mother and the grand-mother of the defendant for the same land, but it was later withdrawn.

The Judgment of the District Court

The learned District Judge, by his judgment dated 25-06-2021, has determined that although the plaintiff's father has become entitled to lot No. 6 of the final partition plan, he has never obtained possession of the same. It has been concluded that the defendant and her family members have held the possession of the land resisting the plaintiff and her father's attempts to obtain possession after the final partition decree was entered and throughout.

The learned District Judge has held that since the plaintiff's father had no title because of the prescription in favour of the defendant, he could not have transferred any rights to the plaintiff by the deed marked P-03. It has been determined that the defendant has established her title and the plaintiff is not entitled to reliefs as sought.

For matters of clarity, I would like to reproduce the following observations made by the learned District Judge in deciding to dismiss the plaintiff's action.

“නඩු විභාගයේදී ඉදිරිපත් වූ සාක්ෂි අනුව පැමිණිලිකාරියගේ පියා කිසිදු විටෙක දේපළ වගා කරමින් භුක්ති විඳ නොමැති බැවින් පැ.03 මගින් පැමිණිලිකාරිය වෙත එලෙස භුක්ති විඳිමින් අයිතිවාසිකම් ලද දේපලක් පැවරීමට හැකියාවක් නොමැති බැවින් දෙපල සම්බන්ධයෙන් අයිතිවාසිකම් නොපැවරේ. ඒ වන විටත් කාලාවරෝධී භුක්තිය මත අදාළ දේපල සඳහා අයිතිවාසිකම් විත්තිකාරිය සහ ඇයගේ පුර්වගාමීන් හිමිකරගෙන තිබේ ඇති බව ඉදිරිපත් වී ඇති සාක්ෂි මත තහවුරුවේ.” (at page 25 of the judgment – page 363 of the appeal brief)

“ඉහත සියළු කරුණු අනුව පැහැදිලි වන්නේ පැමිණිලිකාරියට හෝ ඇයගේ පුර්වගාමීන්ට පැමිණිල්ලෙන් දක්වා ඇති පෙළපත අනුව නඩුවට අදාළ දේපල සඳහා අයිතිවාසිකම් හිමි නොවන බවත් කාලාවරෝධී භුක්තිය මතද ඒ සඳහා අයිතිවාසිකම් හිමි නොවන බවයි. එබැවින් පැමිණිලිකාරිය පැමිණිල්ලෙන් දක්වා ඇති පරිදි නඩු නිමිත්තක් හට නොගන්නා අතර ඉල්ලා ඇති සහන ලබා ගැනීමට හිමිකමක් නොමැත.” (at page 27 of the judgment – page 365 of the appeal brief)

The Judgment of the High Court

The learned Judges of the High Court by their judgment dated 01-12-2023 have first considered whether the subject matter of this *rei vindicatio* action has been clearly identified.

After having satisfied that the subject matter is lot No. 6 in the final partition plan No. 1147 dated 26-11-1977 prepared for the purposes of the partition action No. 384/P in the District Court of Homagama, the Court has proceeded to consider whether the plaintiff has established her paper title to the land.

Upon being satisfied that the plaintiff's paper title has been proved and the subject matter is in possession of the defendant, the Court has proceeded to consider whether the defendant has established a better title by way of claimed prescription to the said land.

Having considered the evidence placed before the Court, the learned Judges of the High Court have determined that although the defendant and her claimed predecessors in title may have possessed the land, such possession have been by use of force or hostility. The Court has considered the provisions of the relevant section 3 of the Prescription Ordinance in order to consider whether the defendant has fulfilled the necessary criteria to claim prescription in her favour. It has been determined that the learned District Judge erred in determining that the defendant has proved prescription to the subject matter, and accordingly, the District Court judgment has been set aside.

After setting aside the trial Court judgment, the High Court has proceeded to answer the issues under which the trial proceeded before the District Court afresh. Answering the issues in favour of the plaintiff and determining that the defendant has failed to establish her claimed prescription, the High Court has determined the action filed before the District Court in favour of the plaintiff while granting the reliefs as prayed for in her plaint.

Consideration of the Question of Law and Conclusion

At the hearing of this appeal, the learned President's Counsel who represented the defendant was of the view that the evidence led before the trial Court has clearly demonstrated that despite the final partition decree, the questioned lot No. 6 has been possessed by the defendant's family along with lot No. 3, 4, and 5 as one amalgamated land for a continuous period of over 30 years. He contended that there is a clear boundary wall that separates the Western boundary of lot No. 6 from another land belonging to the plaintiff's father and there was never a separate entrance to the said lot No. 6.

It was argued that the present action was instituted in 2008 and the evidence has clearly established that the defendant and her family members held and possessed the land despite several attempts by the plaintiff's father to enter into possession.

It was his view that the learned Judges of the High Court erred when determining that hostile or violent possession cannot be termed as adverse in terms of section 3 of the Prescription Ordinance.

He relied on the case of **Simon Appu Vs. Christian Appu 1 NLR 288** at 291-292 where this Court held,

"If the actual physical possession has never been interrupted, it matters not that the possessor has been troubled by law suits or by claims in execution or by violence. If he has succeeded in holding possession, such attempts to oust him only make it more certain that he held adversely to those who disputed with him."

The case of **Surabial Vs. Singappu 30 NLR 413** was also cited where it was held that,

"An isolated act of destructive violence is not sufficient to interrupt prescriptive possession."

It was the submission of the learned Counsel for the plaintiff that, evidence adduced before the trial Court by the plaintiff has been to the effect that her and her father held possession of the land despite the violent acts of the

defendant and her family members until she was ousted in the year 2008. It was contended that the learned District Judge erred as to the required standard of proof in relation to a vindicatory suit. He was of the view that the defendant has failed to establish her prescriptive title claim with the required standard of proof in terms of section 3 of the Prescription Ordinance, and violent conduct should not be interpreted as adverse possession.

Conclusion

Having considered the judgment of the learned District Judge as well as the appellate judgment of the learned Judges of the High Court, it is my considered view that the learned District Judge was clearly misdirected as to the way the evidence in a vindicatory suit should be considered by a trial Judge.

It is well settled law that in a *re vindicatio* action, as in the matter under appeal, it is the duty of the plaintiff to establish his or her title to the satisfaction of the Court. Only if it is established so, the burden shifts to the defendant to show that he or she has a better claim or title to the land in question than that of the plaintiff.

In other words, in relation to the facts of this case, the defendant must establish that she has prescriptive rights to the land in question.

In the case of **Siyaneris Vs. Jayasinghe Udenis De Silva 52 NLR 289**, it was held,

“In an action for declaration of title to property where the legal title is in the plaintiff, but the property is in the possession of the defendant, the burden of proof is on the defendant.”

The case of **Leisa and Another Vs. Simon and Another (2002) 1 SLR 148** was a case where the plaintiff-appellants instituted action seeking declaration of title and ejectment of the defendants from the premises in question. The defendants claimed prescriptive rights. The plaintiff’s action was dismissed.

On appeal –

Held:

1. *The contest is between the right of dominium of the plaintiffs and the declaration of adverse possession amounting to prescription by the defendants.*
2. *The moment title is proved, the right to possess it is presumed.*
3. *For the Court to have come to this decision as to whether the plaintiff had dominium, the proving of paper title is sufficient.*
4. *Once paper title becomes undisputed the burden shifted to the defendants to show that they had independent rights in the form of prescription as claimed by them.*

The rights of an absolute owner as discussed by “Willie” in his book “*Principles of South African Law* (3rd edition)” at page 190, which reads as follows, was quoted.

“The absolute owner of a thing is entitled to claim the possession of it; or, if he has the possession he may retain it. If he is illegally deprived of his possession, he may by means of vindicatio or reclaim recover the possession from any person in whose possession the thing is found. In a vindicatory action, the claimant needs merely prove the facts, namely, that he is the owner of the thing and that the thing is in the possession of the defendant.”

In the case of **Luwis Singho and Others Vs. Ponnampereuma (1996) 2 SLR 320**, it was held,

“1. Actions for declaration of title and ejectment (as in this case) and vindicatory actions are brought for the same purpose of recovery of property. In a rei vindicatio action the course of action is based on the sole ground of violation of the right of ownership. In such an action proof is required that;

- i. *the plaintiff is the owner of the land in question i.e. has the dominium and,*
- ii. *that the land is in the possession of the defendant.*

Even if an owner never had possession, it would not be a bar to a vindicatory action.”

In the present action, there was no dispute that the father of the plaintiff derived title to lot No. 6 of the final partition plan from the final decree of the relevant partition action. Thereafter, he has transferred his rights to the plaintiff by the relevant deed marked as P-03. There had been no dispute as to the identity of the corpus as the earlier mentioned lot No. 6.

The corpus has been clearly identified by the surveyor who marked and produced his plan No. 710 dated 12-04-2010 and its report marked as P-04 and P-04(a) and prepared for the purposes of the action.

Therefore, it is abundantly clear that the plaintiff has proved her paper title to the land in question although the land at the time of instituting proceedings before the District Court was not under her possession, which was the very reason why she has instituted proceedings to assert her rights.

The earlier reproduced portion of the judgment by the learned District Judge clearly demonstrates that the analysis of the evidence before the trial Court had not been on such a basis. The learned District Judge has entirely relied on the alleged possession of the land by the defendant and her relatives to determine that since the plaintiff's father has never possessed the land, he had no rights to pass on to her daughter, the plaintiff.

How the evidence should be analyzed in the case of a vindicatory suit has been well emphasized by **Wigneswaran, J.** in the case of **Leisa and Another Vs. Simon and Another (supra)** at page 152-153 in the following manner.

“The contest in an action of this nature is between the right of dominium of the plaintiff and the declaration of adverse possession amounting to prescription by the defendant. The moment title to the corpus in dispute is proved the right to possess it is presumed. Thus, even if the Court found that the defendants had prescribed to the corpus the proper answer to the first issue would have been “Yes. But, the defendants have prescribed to the corpus”. An averment of prescription by a plaintiff in a plaint after pleading paper title is employed only to buttress his paper

title. Such pleading also acts as an advance assertion against any averment of prescription that may be claimed by the defendants. For the Court to have come to its decision as to whether the plaintiffs too in this case had dominium over the corpus, the proving of paper title was sufficient.”

Be that as it may, now the question of law before this Court is whether holding and resisting the person entitled to the land by hostile and violent means by preventing the actual owner's attempts to take possession of the land would amount to adverse possession as required in section 3 of the Prescription Ordinance.

The relevant section 3 reads as follows –

3. Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as herein before explained, by such plaintiff or intervenient, or by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs:

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.

In the action under appeal, since the title of the plaintiff has been clearly established as I have stated before, the burden clearly shifts towards the defendant to establish her claim, which was a claim based on prescription to the satisfaction of the Court. Towards this, in my view, the evidence has to be considered in its totality rather than on a piecemeal basis.

The relevant lot No. 6 has been allocated to the father of the plaintiff in the final partition decree entered in the year 1977.

According to the evidence of the defendant, the father of the plaintiff has forcibly entered the property in 1984 and her family members have evicted him few days thereafter. There had been a violent incident in 1986 over the same land where a member of the family was killed. There had been a counter-killing as a result of the said violent incident, which shows that the defendant's alleged possession had been continuously interrupted and disturbed by the true owners of the land, namely the plaintiff and her father. In my view, it should be under these factual circumstances the Court has to consider whether violently resisting the actual owner's right to enjoy his property should amount to prescription in terms of section 3 of the Prescription Ordinance.

Although the learned President's Counsel relied on two cases pronounced by our Superior Courts reported in **1 NLR** and **30 NLR** to argue that, holding on to a property through violent conduct against a true owner's rights would suffice to establish prescription, it is my considered view that, such line of thinking has not been followed by our Courts lately, which would amount to encouraging violent conduct as against the rights of a true owner.

I am also unable to agree that having an old boundary wall separating the said lot No. 6 from another land owned by the father of the plaintiff, as an indication that he never had the possession of the land.

It may also be possible to infer that since the contested lot No. 6 is a separate land which had been provided with a separate access road in the partition decree, there was no necessity to amalgamate that lot to another land owned by the plaintiff's father.

In the case of **Sirajudeen and Two Others Vs. Abbas (1994) 2 SLR 365**, it was observed that,

“One of the essential elements of the plea of prescriptive title as provided for in section 3 of the Prescription Ordinance is proof of possession by a title adverse to or independent of that of the claimant or plaintiff. The occupation of the premises must be of such character as is incompatible with the title of the owner.”

What constitutes adverse possession in terms of section 3 of the Prescription Ordinance applicable to similar facts and circumstances as the matter under appeal, has been discussed by **Samayawardhena, J.** in the case of **Jamuregoda Gamachchilage Siripala Vs. Labugamage Diyonis Perera and Others S.C. Appeal No. 42/2018 decided on 13-05-2026.**

After having considered several decided cases in this regard, it was observed at page 20,

“It must be emphasized that ouster or adverse possession is not synonymous with possession acquired or maintained through violent acts. A possessor who resorts to violence cannot claim prescriptive title, as such possession would not be undisturbed and uninterrupted for the requisite period. The necessity of resorting to violence itself indicates that the possession has been subject to disturbance and interruption.

What is meant by adverse possession? Simply stated, adverse possession is possession in a manner incompatible with the title of the true owner. The parenthetical clause of section 3 of the Prescription Ordinance provides a statutory definition of adverse possession: “that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would

*fairly and naturally be inferred.” The Privy Council in **Cadija Umma v. Don Manis Appu (1938) 40 NLR 392 at 396** observed that although “the clause is no mere illustration, it is not so completely successful an attempt to achieve the full and self-contained definition as might be wished.” However, in **Nonis v. Peththa (1969) 73 NLR 1 at 3**, the Privy Council stated that it constitutes a complete definition, rather than merely an illustration. Whether or not it is a complete definition, this definition underscores that for possession to be adverse, it must be exclusive, continuous and exercised as of right, without any recognition of the ownership of another.”*

As against the claim by the defendant that she and her family members never relinquished the possession of lot No. 6 after the entering of the final partition decree, the evidence of the plaintiff had been that her father actually obtained the possession and they enjoyed it on and off until she was finally dispossessed in the year 2008.

I find no basis to agree with the contention that the plaintiff’s father’s failure to obtain possession of lot No. 6 for which he became entitled under the partition decree through the fiscal of the Court, should be considered in favour of the defendant’s assertion that possession was never obtained by the plaintiff’s father. As often happens, once a final partition decree is entered, the parties who are entitled to their respective lots, go into possession since the said lots will have clear demarcations by way of a final partition plan. It is always not necessary for the parties to obtain possession through an official of the Court.

As I have considered before, though it appears that the defendant and her family members may have prevented the plaintiff and her father from continuously possessing the land they are entitled to own, what is clear to me is that the defendant’s claim of adverse possession does not amount to undisturbed and uninterrupted possession as required in section 3 of the Prescription Ordinance.

For the reasons as considered above, I am of the view that the learned Judges of the High Court have not erred in law when it was determined that the defendant has failed to prove her claimed prescriptive title as against the proved title of the plaintiff for the matters considered therein.

Accordingly, I answer the question of law under which leave to appeal was granted in the negative.

Hence, I affirm the appellate judgment dated 01-12-2023.

The appeal is dismissed for want of merit. The parties shall bear their own costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court