

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

*In the matter of an application for Leave to
Appeal in terms of section 5C of the High
Court of the Provinces (Special Provisions)
Act No. 19 of 1990 as amended by Act 2006.*

SC Appeal 138/2023

SC/HCCA/LA/ 21/2020

WP/HCCA/GAM/29/2015(F)

DC Gampaha No.619/L

Wadduwage Don Yasasiri Sumith
No.40/6, Sriya Mawatha,
Panadura.

PLAINTIFF

Vs.

1. Kahandawa Arachchige
Sumanawathie
No.279, Biyagama Road, Mabima,
Heiyanthuduwa.
2. Kahandawa Arachchige Don
Chandrawathie
No.279, Biyagama Road, Mabima,
Heiyanthuduwa.

DEFENDANTS

AND

Wadduwage Don Yasasiri Sumith,
No.40/6, Sriya Mawatha,
Panadura.

PLAINTIFF-APPELLANT

Vs.

Kahandawa Arachchige
Sumanawathie,
No.279, Biyagama Road, Mabima,
Heiyanthuduwa.

1ST DEFENDANT-RESPONDENT

AND NOW BETWEEN

Kahandawa Arachchige
Sumanawathie,
No.279, Biyagama Road, Mabima,
Heiyanthuduwa.

1ST DEFENDANT-RESPONDENT
-APPELLANT

Vs.

Wadduwage Don Yasasiri Sumith,
No.40/6, Sriya Mawatha,
Panadura.

PLAINTIFF-APPELLANT
-RESPONDENT

K. A. Sumanawathie v W. D. Yasasiri Sumith
Case No. SC/APPEAL/138/ 2023

Before: Yasantha Kodagoda, J.

Janak De Silva, J

Dr Sobhitha Rajakaruna, J

Counsel: Shanil Rajapakse with Amanda Chandrarathne and Hansana Gamage for the
1st Defendant-Respondent-Appellant

Indunil N. Bandara with Rosary Nonis for the Plaintiff-Appellant-Respondent

Written Submissions: 1st Defendant-Repondent-Appellant : 02 November 2023 & 29 April 2026
Plaintiff-Appellant-Respondent: 05 August 2025 & 28 April 2026

Argued on: 16 March 2026

Decided on: 30 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

This appeal arises from an action instituted by the Plaintiff- Appellant- Respondent ('Plaintiff') seeking a declaration of title to, and ejectment of the 1st Defendant-Respondent- Appellant ('1st Defendant') from, the land described in the Second Schedule to the Plaint, together with damages. The Plaintiff claims title through Deed No. 438 attested on 12 January 1974, by which, according to him, the heirs of the original owner, Kahandawa Arachchige Don Paul, transferred their respective interests in the land to him. The Plaintiff further maintains that the 1st Defendant and her sister came into occupation through their mother, Iddamalgodage Jane Nona, on a leave and licence granted by the Plaintiff and his predecessor in title, and that such occupation became unlawful upon her death.

The 1st Defendant, while denying the Plaintiff's title and the identity of the land claimed in the Plaint, pleaded for a separate chain of title and prescriptive possession. The learned District Judge dismissed the Plaintiff's action principally on the ground that the corpus had not been properly identified, while also finding that the 1st Defendant had failed to

establish her own case. On appeal, the Provincial High Court of Western Province holden in *Gampaha* ('High Court') set aside the judgment of the District Court and entered judgment in favour of the Plaintiff.

Leave to appeal was granted by this Court on questions principally concerning whether the Plaintiff had established his title to, and properly identified, the corpus described in the Plaint. The central matters requiring consideration are therefore the establishment of the Plaintiff's title and the identification of the corpus.

1st Defendant's Position

The principal contention of the 1st Defendant is that the Plaintiff has failed to identify the corpus with sufficient certainty and has consequently failed to establish his entitlement to the reliefs sought. It is submitted that there was a fundamental dispute as to the identity of the land, since the land described in the Schedule to the Plaint differs from that described in the 1st Defendant's Answer. Despite this dispute, the Plaintiff did not obtain a commission under section 428 of the Civil Procedure Code to identify the corpus. The 1st Defendant further contends that an assessment number or the oral evidence of a neighbouring witness is insufficient to satisfy the requirements of section 41 of the Civil Procedure Code. Reliance was placed, inter alia, on *David v Gunawathie* [2000] 2 Sri LR 352.

The 1st Defendant further submits that the Plaintiff's own pleadings, evidence and the decree in the earlier action bearing No. 39185/L disclose inconsistencies as to whether the property conveyed by Deed No. 438 comprised four separate allotments or an amalgamated land. It is contended that these inconsistencies create a serious doubt as to the identity of the corpus and that the learned District Judge was therefore correct in finding that the corpus had not been identified.

As regards title, the 1st Defendant contends that the Plaintiff has failed to establish the title of Don Paul, whom the Plaintiff pleaded to have acquired title by long possession, and has consequently failed to establish a valid chain of title leading to Deed No. 438. It is further submitted that the presumption under section 90 of the Evidence Ordinance, applicable to an old document, does not extend to the truth of the contents of the document. The 1st Defendant also challenges the contents of Deed No. 438, including the description of the property and the alleged interpolation therein, and maintains that the Plaintiff has not

established title to the land claimed as an amalgamated property.

The 1st Defendant additionally submits that the documents P2 to P14 were marked subject to proof and were not subsequently proved in accordance with law. It is therefore contended that the High Court erred in relying upon those documents in determining title and possession. Reliance was placed on *Sri Lanka Ports Authority v Jugolinija-Boal East* [1981] 1 Sri LR 18. The 1st Defendant further maintains that the evidence relied upon by the Plaintiff concerning sand mining does not establish possession of the land itself.

Finally, the 1st Defendant contends that the High Court failed to properly evaluate the evidence relating to her own pleaded title and prescriptive possession, as well as the absence of evidence establishing the damages awarded to the Plaintiff. Accordingly, she seeks that the judgment of the High Court be set aside and that the judgment of the District Court dismissing the Plaintiff's action be affirmed.

Plaintiff's Position

The Plaintiff submits that the present action is a *rei vindicatio* action and that he has established his title by producing Deed No. 438 dated 12 January 1974, by which the heirs of Don Paul transferred their respective interests to him. Relying principally on *Bank of Ceylon v Anura Gamage* (SC/Appeal/39/2014, SC Minutes of 4 July 2023), the Plaintiff contends that, in a *rei vindicatio* action, where the title deed has not been subjected to a valid and specific challenge, production of the deed is sufficient to establish title and that the requirement of proving an entire chain of title applicable to a partition action does not arise. The Plaintiff further relies on section 90 of the Evidence Ordinance in relation to the age of Deed No. 438.

The Plaintiff also relies on the evidence concerning his possession of the property, including the documents relating to the granting of sand-mining rights and the evidence of his wife and witnesses for the Defendant. In particular, the Plaintiff contends that the evidence of the Defendant's husband concerning the proposed allocation of a portion of the land to the Defendants supports an inference of the Plaintiff's title.

As to the identification of the corpus, the Plaintiff submits that the four allotments described in items 1 to 4 of Deed No. 438 constitute one property and that the identity of the land can be established by the boundaries, adjoining properties and physical features, including the Biyagama Road to the north and the Kelani River to the south. It is

contended that the absence of the surveyor who prepared Plan No. 6358 does not render the land incapable of identification and that the appointment of a commission was not mandatory in the circumstances.

The Plaintiff further relies upon the oral evidence of his own witnesses and, in particular, the evidence of witnesses called on behalf of the Defendant, including P. A. Renuka Samankanthi and Srilal Gamage Erabodugoda, the former Grama Niladhari. According to the Plaintiff, their evidence establishes the boundaries and location of the disputed land and corresponds with the descriptions contained in the relevant plans. The Plaintiff therefore submits that, even if the plans are disregarded, the corpus was sufficiently identified through the totality of the oral and documentary evidence.

Accordingly, the Plaintiff maintains that the High Court correctly considered the totality of the evidence and concluded that both his title and the identity of the corpus had been established. Relying again on *Bank of Ceylon v Anura Gamage*, the Plaintiff submits that the judgment of the High Court is sound in law and supported by the evidence, and accordingly seeks dismissal of the appeal with costs.

Analysis

The central question for determination is whether the Plaintiff has discharged the burden resting upon him in this *rei vindicatio* action by establishing both his title to the property claimed and the identity of that property as the very corpus in the possession of the 1st Defendant. These two matters are closely connected in the circumstances of the present Case.

It is not in dispute that the Plaintiff relies principally upon Deed No. 438 marked P1, by which he claims to have acquired the interests of the heirs of Kahandawa Arachchige Don Paul. The Plaintiff also relies upon the evidence relating to the possession and use of the property, including the alleged granting of permission for sand mining, as well as the oral evidence concerning the boundaries of the land.

I have considered the submission of the Plaintiff that, in a *rei vindicatio* action, production of an unchallenged title deed may, in appropriate circumstances, be sufficient to establish title, as recognised in the said *Bank of Ceylon v Anura Gamage*. However, that principle does not dispense with the requirement that the Plaintiff establish that the property to

which his title relates is the particular property sought to be recovered. Where the identity of the corpus is specifically placed in issue, the Court must be satisfied, upon the totality of the evidence, that the property described in the Plaint is sufficiently identified and corresponds with the property possessed by the Defendant.

The present Case presents a significant difficulty in that regard. The 1st Defendant specifically denied that she was in possession of the land described in the Plaint and maintained that the land in her possession was the land described in her Answer. The descriptions given by the parties therefore cannot be treated as merely different descriptions of an admitted corpus. There was a substantive dispute as to the identity of the land itself.

The High Court approached this question principally by comparing the eastern and western boundaries given by the parties and by relying upon the evidence of witnesses who were said to be familiar with the property. It was observed that the Biyagama Road and the Kelani River constituted the northern and southern boundaries, respectively, and that the eastern boundary described by the Plaintiff as the land of Wilbert or William corresponded with the "Banda" referred to in the Answer of the 1st Defendant, since Wilbert was also known as Banda.

I have carefully considered that reasoning. While such evidence is relevant, I am unable to regard the identification of a common northern and southern boundary, together with an apparent correspondence in the name of the eastern adjoining owner, as by itself sufficient to resolve the fundamental dispute concerning the corpus. The High Court itself recognised that there were a number of lands adjoining the Kelani River and the road. In those circumstances, greater significance attaches to the precise identification of the eastern and western boundaries and to the documentary evidence upon which the Plaintiff's claim is founded.

The evidence of P. A. Renuka Saman Kanthi and Srilal Gamage Erabodugoda, the former Grama Niladhari, undoubtedly provides support for the Plaintiff's contention regarding the location of the land. Nevertheless, that evidence must be considered in the light of the other evidence and, in particular, the inconsistencies arising from the Plaintiff's own case concerning the property described in Deed No. 438 and the position taken in the earlier proceedings.

The decree in the aforesaid Case No. 39185/L marked P19 assumes particular importance in this context. The 1st Defendant relies upon that decree as demonstrating that the Plaintiff had previously dealt with the property by reference to separate lots, including Lot 1 and Lot 2, and that the Plaintiff had admitted a distinction between those separate items and the land now claimed. The Plaintiff, on the other hand, seeks to explain his present claim on the basis that the four allotments described in P1 together constitute the property now in dispute. The evidence concerning these matters therefore requires careful reconciliation before the Court can safely conclude that the corpus claimed in the present action has been established.

I have also considered the Plaintiff's reliance upon Plan No. 6358 and the descriptions of the four allotments contained in P1. The absence of the surveyor who prepared the plan, or the fact that the original plan may no longer be available, does not by itself render a property incapable of identification. Nor do I consider that the appointment of a commission under section 428 of the Civil Procedure Code is invariably mandatory in a *rei vindicatio* action. However, where the identity of the corpus has been expressly and materially disputed, and the documentary evidence does not provide an unambiguous means of identifying the property, the absence of a survey or commission assumes considerable importance.

Section 41 of the Civil Procedure Code requires the property forming the subject matter of an action to be described with sufficient certainty to enable it to be identified. This requirement is substantive in character because a decree for the recovery of immovable property must identify the property with sufficient precision to permit effective execution. The principle stated in *David v Gunawathie* [2000] 2 Sri LR 352 is therefore relevant to the determination of the present dispute.

I have not overlooked the finding of the High Court that the evidence of the parties and their witnesses, when considered together with the documents, demonstrated that the land was in fact the property claimed by the Plaintiff. Nevertheless, the Court must distinguish between evidence which merely establishes that the Plaintiff was regarded by persons in the locality as having an interest in or exercising some control over land in the vicinity and evidence which establishes, with sufficient certainty, the precise corpus claimed in the Plaintiff.

In this regard, I am also unable to place the same significance as the High Court placed

upon the evidence relating to sand mining. The fact that persons allegedly obtained permission from the Plaintiff to mine sand near the Kelani River may support an inference that the Plaintiff exercised some form of control or asserted ownership over the area. It does not, however, necessarily establish possession of the precise land described in the Second Schedule to the Plaint. In particular, access to the river or activities carried out at the riverbank cannot, without further evidence, establish possession of the entire corpus claimed.

There is also an evidentiary issue concerning documents P2 to P14. The submissions of the 1st Defendant indicate that certain of these documents were marked subject to proof. If such documents were not subsequently proved in accordance with law, the Court cannot treat their contents as established merely because they were marked in evidence. I have considered the principle relied upon by the 1st Defendant in the said case, *Sri Lanka Ports Authority v Jugolinija-Boal East*. Accordingly, the weight placed upon such documents must depend upon whether their contents were properly established at the trial.

The question of title presents a further difficulty. The Plaintiff pleaded that Don Paul was the original owner by reason of long possession. Yet, according to the evidence referred to in the submissions, the Plaintiff admitted in cross-examination that he did not know how Don Paul acquired title. While it may not be necessary in every *rei vindicatio* action to establish an unbroken chain of title in the same manner as in a partition action, the Plaintiff must nevertheless establish a title sufficient to support the relief claimed. In the present Case, the evidence concerning the original acquisition of title assumes significance because the identity of the property said to have been conveyed by P1 is itself in dispute.

The reliance placed upon section 90 of the Evidence Ordinance does not, in my view, resolve this difficulty. Even assuming that P1, being more than thirty years old, attracts the statutory presumption concerning its execution and authenticity, that presumption cannot be extended to establish the truth of every recital contained in the deed or to determine a disputed question as to the identity of the property conveyed.

I have also considered the allegation made by the 1st Defendant that the latter portion of P1 contains an interpolation. In view of the conclusion I have reached on the principal issues, it is unnecessary to determine conclusively whether an interpolation in fact occurred. The Plaintiff's case fails on the more fundamental ground that, upon the totality of the evidence, the identity of the corpus and the Plaintiff's title to that particular corpus

have not been established with the requisite degree of certainty.

The High Court further placed emphasis on the fact that the 1st Defendant did not object when the Plaintiff allegedly granted permission to various persons to conduct sand mining. The High Court posed the question as to why the Defendants would remain silent if the land belonged to them. Anyhow, the silence or failure to object cannot, by itself, constitute proof of the Plaintiff's title. Such conduct may be relevant evidence in appropriate circumstances, but it cannot relieve the Plaintiff of the primary burden of proving his title and identifying the corpus.

Similarly, the fact that the 1st Defendant has pleaded a separate title does not shift the burden resting upon the Plaintiff. The 1st Defendant relied upon a separate chain of title and prescriptive possession. Whether or not every element of that claim has been established is not determinative of the Plaintiff's entitlement. A plaintiff in *rei vindicatio* cannot obtain judgment merely because the Defendant's title is also found to be defective.

Conclusion

Having considered the totality of the evidence, I am therefore unable to agree with the learned judge of the High Court that the Plaintiff satisfactorily established the identity of the corpus. The evidence concerning the boundaries and the adjoining owners provides some support for the Plaintiff's case, but when considered together with the dispute as to the corpus, the contents and interpretation of P1, the earlier proceedings reflected in P19, the absence of a satisfactory survey identifying the disputed land, and the evidentiary difficulties concerning certain documents, it leaves a material uncertainty which has not been satisfactorily resolved.

In my view, the learned District Judge was therefore entitled to conclude that the Plaintiff had failed to establish the corpus. Once that finding is reached, the Plaintiff's claim in *rei vindicatio* cannot succeed, irrespective of whether the 1st Defendant has herself established every aspect of the title pleaded in her Answer.

Accordingly, I conclude that the High Court erred in reversing the judgment of the learned District Judge. The evidence, viewed as a whole, does not establish the Plaintiff's entitlement to recover the specific property claimed in the Plaint with the degree of certainty required in law.

For the reasons set out above, I hold that the Plaintiff has failed to discharge the burden

resting upon him in this *rei vindicatio* action. In particular, he has failed to establish, with the requisite degree of certainty, that the property described in the Plaint is the same property in respect of which he claims title under Deed No. 438 and which is presently possessed by the 1st Defendant. The fact that the 1st Defendant may not have established every aspect of the title pleaded by her cannot entitle the Plaintiff to succeed, since the Plaintiff must establish his own title and his entitlement to recover the specific property claimed.

In the circumstances of the Case, I proceed to answer the following Questions of Law (set out in paragraphs 23b and 23c of the Petition dated 14 January 2020) upon which this Court granted Leave to appeal in the negative:

(b) Has the Plaintiff identified the corpus to obtain a declaration that he is the owner of the amalgamated land described in the schedule to the plaint?

(c) Is there any evidence to establish that the Plaintiff is the owner of the amalgamated land described in the schedule to the plaint?

Accordingly, I would allow the Appeal of the 1st Defendant-Respondent-Appellant, set aside the judgment of the High Court dated 10 December 2019, and restore the judgment of the learned District Judge dated 27 August 2015 dismissing the Plaintiff's action. I make no order for costs.

Judge of the Supreme Court

Yasantha Kodagoda, J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court