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

SC/Appeal No.**SC/APP/13/2024**
SC/LA/Application No.
SC/HCCA/LA/259/2016
Civil Appellate High Court of Kurunegala Case No.
NWP/HCCA/KUR/55/2006(F)
DC Nugegoda Case No. **2133/L**

Rajaguru Mudiyanselage Muthubanda Rajaguru,
No. 164,
Barandana Road,
Mawathagama.

PLAINTIFF

vs

1. Hawwa Dewayalage alias Hewa Dewayalage Ukku alias Martin,

2. Lapaya Dewayalage Punchina alias Podina,

3. Lapaya Dewayalage Wijepala,

All of Thimbirigahakanaththa,
Maralanda,
Mawathagama.

DEFENDANTS

And

Rajaguru Mudiyanselage Muthubanda Rajaguru,
No. 164,
Barandana Road,
Mawathagama.

PLAINTIFF - APPELLANT

vs

1. Hawwa Dewayalage alias Hewa Dewayalage Ukku alias Martin,

2. Lapaya Dewayalage Punchina alias Podina,

3. Lapaya Dewayalage Wijepala,

All of Thimbirigahakanaththa,
Maralanda,
Mawathagama.

DEFENDANT - RESPONDENTS

And

In the matter of an Application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by Act No. 54 of 2006.

Rajaguru Mudiyanselage Muthubanda Rajaguru,
No. 164,
Barandana Road,
Mawathagama.

PLAINTIFF – APPEALLNT – PETITIONER

vs

1. Hawwa Dewayalage alias Hewa Dewayalage Ukku alias Martin,
DECEASED

Thimbirigahakanaththa,
Maralanda,
Mawathagama.

1(A). Hewadewage Katharine,
Sudarshana Mawatha,
Nelligahamullathenna,
Mawathagama.

2. Lapaya Dewayalage Punchina
alias Podina,
Thimbirigahakanaththa,
Maralanda,
Mawathagama.

3. Lapaya Dewayalage Wijepala,
DECEASED
Thimbirigahakanaththa,
Maralanda,
Mawathagama.

3(A) Lapaya Dewayalage
Wasantha Malani,
92/3, Ahasyana Pitiya,
Mawathagama.

3(B) Prasanna Sanjeewa
Wijayapala,
92/3, Ahasyana Pitiya,
Mawathagama.

DEFENDANTS – RESPONDENTS – RESPONDENTS

And Now Between

Rajaguru Mudiyanselage Muthubanda
Rajaguru,
No. 164,

Barandana Road,
Mawathagama.

PLAINTIFF – APPEALLNT – PETITIONER – PETITIONER – [APPELLANT]

vs

2. Lapaya Dewayalage Punchina alias Podina
of Thimbirigahakanaththa,
Maralanda,
Mawathagama.

2nd DEFENDANT – RESPONDENT – RESPONDENT – RESPONDENT – [RESPONDENT]

1. Hewadewage Katharine,
Sudarshana Mawatha,
Nelligahamullathenna,
Mawathagama.

2. Lapaya Dewayalage
Wasantha Malani,
92/3, Ahasyana Pitiya,
Mawathagama.

3. Prasanna Sanjeewa
Wijayapala,
92/3, Ahasyana Pitiya,
Mawathagama.

RESPONDENTS

BEFORE	:	Mahinda Samayawardhena, J. K. Priyantha Fernando, J. M. Sampath K. B. Wijeratne, J.
COUNSEL	:	Niranjan de Silva with Shane Foster instructed by Manjula Balasooriya for the Plaintiff - Appellant- Petitioner – Appellant. Hirosha Munasinghe for the Defendant - Respondents - Respondents.
ARGUED ON	:	22.09.2025
DECIDED ON	:	31.03.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Plaintiff-Appellant-Petitioner-[Appellant] (hereinafter sometimes referred to as the "Plaintiff") instituted this action in the District Court of Kurunegala, seeking a declaration of title to the land called and known as *'Thimbirigahakanaththa'*, described in the schedule to the amended plaint.

The facts of the case, as presented to the Court by the Plaintiff, are as follows:

As per the final decree of partition action No. 4079 dated April 1, 1953, several parties, namely, Mallika Ganegoda, Anula Ganegoda, Seelawathie Ganegoda, Tikirikumari Ganegoda, Leela Rekawa, and Nawaratne Banda Hunukumbura, were allotted certain lots in Plan No. 1152. The Plaintiff contends that, pursuant to an agreement among these parties, Nawaratne Banda Hunukumbura took possession of the land described in the schedule to the amended plaint.

Subsequently, Nawaratne Banda Hunukumbura transferred the said land to the Plaintiff by Deed No. 9 dated May 9, 1983, attested by G.A. Fonseka, Notary

Public. Thereafter, the Plaintiff entered into possession of the same. The land described in the schedule to the amended plaint is depicted as Lots No. 1, 2, and 4 in Plan No. 401, made by S.P. Gunasinghe, Licensed Surveyor, made pursuant to a commission issued by the Court.

The 1st Defendant-Respondent-Respondent-[Respondent](hereinafter sometimes referred to as the "1st Defendant") was in occupation of a house marked 'B' on the land shown in the aforementioned Plan No. 401. According to the Plaintiff, the 1st Defendant had entered into possession of the land with the leave and license of the Plaintiff's predecessor in title, Nawaratne Banda Hunukumbura.

According to the Plaintiff, the 2nd and 3rd Defendants-Respondents-Respondents-[Respondents] (hereinafter sometimes referred to as "the 2nd Defendant" and "the 3rd Defendant," respectively) are relatives of the 1st Defendant. The Plaintiff alleges that the 2nd and 3rd Defendants forcibly entered the land described in the schedule to the amended plaint around July 1983 and have been residing in a wattle-and-daub house situated on the land, depicted as Lot 'A' in the aforesaid Plan No. 401. Furthermore, the 2nd and 3rd Defendants disputed the Plaintiff's entitlement to the land described in the schedule to the amended plaint.

At the trial, no admissions were recorded. Issues No. 1 to 12 were raised on behalf of the Plaintiff, while issues No. 13 to 19 were raised on behalf of the Defendants. On May 16, 2006, the learned Additional District Judge delivered judgment in favor of the Defendants, dismissing the Plaintiff's action.

Being aggrieved by the said judgment, the Plaintiff preferred an appeal to the Court of Appeal; subsequently, the appeal was transferred to the Civil Appellate High Court of Kurunegala. By their judgment dated April 29, 2016, the learned High Court Judges allowed the appeal, thereby rejecting the Defendants' prescriptive claim previously upheld by the learned Additional District Judge, and at the same time affirming the rejection of the Plaintiff's prescriptive claim.

Aggrieved by the judgment of the Civil Appellate High Court, the Plaintiff moved this Court seeking leave to appeal. This Court granted leave to appeal on the following questions of law.

17(c) Did the learned Lordships of the Honourable Civil Appellate High Court of Kurunegala and the Learned Additional District Judge of Kurunegala err in law in not envisaging that the Plaintiff-Appellant-Petitioner at the very least had proved that he is a co-owner of the land as described in the schedule to the Amended Plaint?

(e) Did the learned Lordships of the Honourable Civil Appellate High Court of Kurunegala and the Learned Additional District Judge of Kurunegala err in law in not considering the right of a co-owner to eject a trespasser from the whole land?

(k) Did the learned Lordships of the Honourable Civil Appellate High Court of Kurunegala err in law in confirming the Judgment of the Learned Additional District Judge in relation to the prescriptive title of the Defendant -Respondent-Respondents to the land-in-suit?

(l)Did the learned Lordships of the Honourable Civil Appellate High Court of Kurunegala err in law in failing to consider that there was [no] evidence to support the finding of the Learned Additional District Judge in relation to the prescriptive title of the Defendant -Respondent-Respondents to the land-in-suit?

Analysis

In view of the fact that the Plaintiff's action is in the nature of a *rei vindicatio*, the first issue to be considered is whether the Plaintiff has established his title to the property. As has been repeatedly held by this Court, in a *rei vindicatio* action, the Plaintiff must satisfactorily establish two elements: (i) title to the

land, and (ii) the defendant is in possession of the land. In ***Theivandran vs Ramanathan Chettiar*** (S.C.)[1], Sharvananda C.J. stated that:

"In a vindicatory action the claimant needs merely prove two facts; namely, that he is the owner of the thing and that the thing to which he is entitled to possession by virtue of his ownership is in the possession of the defendant. Basing his claim on his ownership, which entitles him to possession, he may sue for the ejectment of any person in possession of it without his consent. Hence when the legal title to the premises is admitted or proved to be in the plaintiff, the burden of proof is on the defendant to show that he is in lawful possession."

In ***Wanigaratne vs Juwanis Appuhamy*** (S.C.) [2], it was held that:

"It has been laid down now by this Court that in an action rei vindicatio the plaintiff should set out his title on the basis on which he claims a declaration of title to the land and must, in Court, prove that title against the defendant in the action. The defendant in a rei vindicatio action need not prove anything, still less, his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established. The plaintiff must prove and establish his title."

Furthermore, Justice Mahinda Samayawardhena, in the recent case of ***Bank of Ceylon vs A.C. Rajasingham*** (S.C.),[3] comprehensively explained that the cornerstone of a *rei vindicatio* action is the establishment of the Plaintiff's ownership of the subject property.

*"**In order to succeed in a rei vindicatio action, first and foremost, the plaintiff shall prove his ownership to the property. If he fails to prove it, his action shall fail**. This principle is based on the Latin maxim "onus probandi incumbit ei qui agit", which means, the burden of proof lies with the person*

1 [1986] 2 Sri LR 219 at 222.
2 *Wanigaratne vs Juwanis* 65 NLR 167, Paragraph 2 at Page 168.
3 SC/APPEAL/40/2014, SC Minutes of 04.07.2023.

who brings the action. Section 101 of the Evidence Ordinance is also to a similar effect. ..... The standard of proof in a rei vindicatio action is on a balance of probabilities."

[emphasis added]

In the same authority, Samayawardhena, J. held that: ***"The requirement of proof of chain of title which is the norm in a partition action is not applicable in a rei vindicatio action. If there is no challenge to the title deed of the plaintiff on specific grounds, the plaintiff can prove his ownership to the property by producing his title deed."***

As already emphasized in this judgment, for the Plaintiff to succeed in a *rei vindicatio* action, he needs to prove he has a better title than that of the defendant, to the disputed *corpus*. To determine whether Plaintiff has acquired a good title to the land in question, in the present case becomes necessary to examine the chain of title of the Plaintiff's predecessors because the Defendants have contested and impeached the Plaintiff's title on several grounds, including the alleged absence of due execution of Deed No. 9 as required by law[4], and the assertion that no valid title was conveyed to the Plaintiff pursuant to the said deed.

According to the Plaintiff's version of the case, he claims to have derived title to the subject property from Nawaratne Banda Hunukumbura, who was allegedly of unsound mind at the time of the conveyance. Accordingly, Deed No. 9 dated May 9, 1983 ('පැ7') was executed by the manager of the estate, Rajaguru Mudiyanselage Punchi Banda Hunukumbura. The recital of the deed clearly states that, ***"for the purchase of two divided and defined portions of land called Lots 27 and 29 out of 'Thimbirigahakanatta' in the village of …. [emphasis added]"***, thereby indicating that title was conveyed by Nawaratne Banda Hunukumbura to the purchaser, Rajaguru Mudiyanselage Mutubanda

4 *Vide* page 7 of written submission of the substituted Defendant Respondent.

Rajaguru, who is also the Plaintiff in the instant case, for a consideration of Rs. 15,000/-.

However, the acquisition of the title by the executor of 'පැ7' to the subject matter mentioned therein has also been challenged in this case. Therefore, before evaluating the validity of the deed marked 'පැ7', it is necessary to examine the title of the predecessors of Nawaratne Banda Hunukumbura, as the Respondents have challenged both the validity of the deed and the title purportedly conveyed thereunder.

As already noted, in the present case, pursuant to the decree entered in Partition Case No. 4079 ('පැ3'), Mallika Ganegoda, Anula Ganegoda, Seelawathie Ganegoda, Tikirikumari Ganegoda, and Leela Rekawa, together with Nawaratne Banda Hunukumbura, being family members, were said to have become entitled, *inter alia*, to certain lots depicted in Plan No. 1152, including Lot No. 29. Thereafter, Nawaratne Banda Hunukumbura is said to have obtained title to Lot No. 29, the land more fully described in the schedule to the plaint, pursuant to a purported agreement reached among the aforesaid parties. I shall first examine the relevant portions of the final decree marked ('පැ3'), insofar as they relate to the title of these predecessors.

Upon a careful reading of the decree, it becomes evident that the 2nd to 7th defendants in the partition action were granted joint title to the disputed portion of land. Under Section 26 (2)(e) of the Partition Law, [5] it is open to the Court to enter an interlocutory decree, including a decree by which ownership continues to remain in common among specified parties. For further clarity, I reproduce the relevant section below.

"Section 26 (1) (...)

(2) The interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another:-

5 Section 26 (e) of the Partition Act No 21 of 1977.

(a) (...)

(b) (...)

(c) (...)

(d) (...)

(e) ***Order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties****;*

(f) (...)

(g) (...) ”

[emphasis added]

Hence, I am unable to agree with the view expressed by the learned High Court Judges that: *“.... Although the way the Final decree P.3 entered is unsatisfactory in view of the fact that the very purpose of such a decree is to end but not to create co-ownership…”*

Accordingly, I find no error in the manner in which the final partition decree marked ‘පැ3’ is entered, as it confers title to several parties.

I will now proceed to examine the evidence adduced by the parties regarding the purported agreement reached by the 2nd to 7th recipients. Both the District Court and the High Court Judges held that Issue No. 3, relating to the agreement, has not been proved.

A careful consideration of the cross-examination reveals that the Plaintiff testified as to the devolution of title among the aforementioned recipients under the partition decree, and admittedly, the named individuals, Mallika Ganegoda, Anula Ganegoda, Seelawathie Ganegoda, and Tikirikumari Ganegoda, Leela Rekawa, and Nawaratne Banda Hunukumbura were siblings as well as recipients under the said decree. However, his responses to the questions

clearly show that he was unable to accurately recall the whereabouts or details of all seven siblings. For instance, he appeared to be unfamiliar with Anula Ganegoda and Seelawathie Ganegoda, leaving their details uncertain. According to him, Mallika Ganegoda and Leela Rekawa were married and had children; however, as admitted by the Plaintiff himself, Nawaratne Banda Hunukumbura did not acquire any title to the land from them.

Furthermore, Mallika Ganegoda and Tikirikumari Gnegoda are said to have died issueless, raising the question of whether their spouses had also predeceased the filing of the partition action, since in the absence of children, the surviving spouse would inherit the property. Consequently, it is unclear whether the deceased Nawaratne Banda Hunukumbura lawfully acquired these portions of land from those siblings.

Therefore, the Plaintiff's assertion that Lot No. 29 was acquired pursuant to an arrangement within the family has not been adequately substantiated. Moreover, where such an agreement pertains to land or other immovable property, it must be an instrument in writing in accordance with the Prevention of Fraud Ordinance.[6] For these reasons, I am unable to accept the family agreement alleged by the Plaintiff.

Additionally, both the Plaintiff and the Defendants raised Issues No. 4 and No. 18, respectively, concerning prescriptive title over the land in dispute. While the learned Additional District Judge answered the Plaintiff's issue as *not proven* and the Defendant's issue in the affirmative, the learned High Court Judges concluded both questions in the negative, holding that neither party had been able to substantiate their prescriptive title.

According to the evidence of the 1st Defendant, none of the recipients who obtained title under the final decree in the partition action possessed the land. At the very least, they did not appear to have shown any concern regarding the fruits or cultivation of the land. Given that Nawaratne Banda Hunukumbura

6 Section 2 of the Prevention of Frauds Ordinance.

was incapable of participating due to his mental condition, the manager was apparently the only person overseeing and visiting the land. Nevertheless, it remains unclear to what extent he took care of it, as the evidence does not specify the frequency or nature of his visits. The 1st Defendant stated that, while they frequently visited the *'Maralanda Walawwa,'* apparently the house of the Plaintiff's predecessors, they had not visited the land itself.[7]

In my opinion, therefore, the Plaintiff has failed to sufficiently establish prescriptive possession of the land by himself and by his predecessor, the deceased Nawaratne Banda Hunukumbura, from whom the Plaintiff derives his title.

On the other hand, the 1st Defendant contends that the subject land was an ancestral property inherited from his mother-in-law and denies any knowledge of the partition action or acquaintance with Nawaratne Banda Hunukumbura[8] or Punchi Banda Hunukumbura. This position is, however, untenable, given that the 1st Defendant came into occupation of the land following his marriage in 1944. Contradictorily, the witness Muthubanda Wijekoon testified that the 1st Defendant entered the land in 1973.[9]

If the 1st Defendant's version was to be accepted, it would necessarily follow that he would have been aware of late Hunukumbura and of the partition action concluded in 1953, as his occupation, according to his own account, is said to have commenced long before such proceedings.

Significantly, during cross-examination, the 1st Defendant admitted on one occasion that he knew Nawaratne Banda Hunukumbura, thereby contradicting his earlier statement.[10] Further, the electoral register shows that the 1st Defendant alone was in occupation of the land during 1981, 1982, and 1983. Supporting this, the witness Wimaladharma Mapitigama, testifying on behalf of the Plaintiff, stated that at the time the Plaintiff purchased the land, no person

7 *Vide* Page 219 of the 1st Defendant's evidence in the Appeal brief.
8 *Vide* page 228 of the Appeal Brief.
9 *Vide* Page 187 of the evidence of Muthubanda Wijekoon in the Appeal brief.
10 *Vide* page 218 of the Appeal Brief.

other than the 1st Defendant was in occupation. The same witness also stated that the 1st Defendant was cultivating the land as a tenant cultivator temporarily. It was noted that the manager of Nawaratne Banda Hunukumbura provided fertilizer and other materials for cultivation, and that the 1st Defendant returned a portion of the harvest to the manager, indicating a right or interest of Nawaratne Banda Hunukumbura in the land.

There was no indication of a permanent plantation on the land. Even if one existed, it would not constitute sufficient evidence of possession. As held in ***Hassan, Son of Mohideen vs Romanishamy*** (S.C.) [11], Basnayake C.J. observed that *"that mere statements of a witness, "I possessed the land" or "we possessed the land" and "I planted plantain bushes and also vegetables", are not sufficient to entitle him to a decree under section 3 of the Prescription Ordinance, nor is the fact of payment of rates by itself proof of possession for the purposes of this section."*

Accordingly, it may be concluded that the 1st Defendant possessed the land as a tenant cultivator on the leave and license of Nawaratne Banda Hunukumbura, as corroborated by the evidence of two other witnesses, Muthubanda Wijekoon and Wimaladharma Mapitigama. In light of this evidence, I find that the 1st Defendant has also failed to reasonably and convincingly establish prescriptive title.

In ***Romanis & Others vs Siveth Appu and Another*** (S.C.) [12], T.S. Fernando J. stated that *"that vague evidence without details, that people "possessed" a land is insufficient to satisfy a Court that there was possession within the meaning of section 3 of the Prescription Ordinance."* Accordingly, in the absence of sufficient evidence from both parties concerning prescriptive title, I concur with the finding of the learned High Court Judges regarding the proof of prescriptive title.

11 *Hassan vs Romanishamy* 66 C.L.W 112.
12 *Romanis & Others vs Siveth Appu & Another* 68 C.L.W. 40.

I will now proceed to assess the validity of the deed marked 'පැ7'. In their written submissions, the Respondents have challenged the validity of the said deed. The Defendants had marked 'පැ7' subject to proof during the trial[13]. At the closure of the Plaintiff's case, Counsel for the Defendants objected to 'පැ7' on the ground that it had not been proved by the Plaintiff.

Under Issue No. 14, the Defendants raised two concerns. The first is whether the execution of Deed No. 9 was an act of Nawaratne Banda Hunukumbura. I answer this question in the affirmative. This conclusion is founded on the fact that, by an order dated March 7, 1983, in Case No. 6183/LG[14], the District Court of Colombo directed the sale of two lots to the Plaintiff and appointed Rajaguru Mudiyanselage Punchi Banda Hunukumbura[15] as manager. The subject land in dispute is also included in the inventory marked 'පැ5' of the same case, along with other particulars.

This order is sufficient to establish that Nawaratne Banda Hunukumbura was a person of impaired mental capacity and therefore incapable of managing his legal obligations or property interests. Consequently, the deed 'පැ7' concerning Nawaratne Banda Hunukumbura's property, executed by his manager under the authority of the District Court order, can be accepted as the valid act and deed of the principal, Nawaratne Banda Hunukumbura.

The second concern is whether the document is forged. In this regard, Section 154A(2)(b) of the Civil Procedure Code provides that:

"If the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document."

13 *Vide* Page 136 of the Appeal Brief.
14 *Vide* order of the District Court case bearing No.6183/LG marked 'පැ6'.
15 *Vide* Pages 312 and 321 of the Appeal Brief.

By virtue of the above-cited provision, the Court is empowered to exercise its discretion in determining whether additional evidence should be led concerning the execution or genuineness of a deed or document when the opposing party challenges the evidence already placed before the Court.

In the present case, I hold that, as noted above, since the Plaintiffs have duly discharged their burden of proof by establishing that the deed was indeed an act of Nawaratne Banda Hunukumbura, it is unnecessary to adduce further evidence regarding the execution or genuineness of the said deed. The issue raised by the Defendants does not fall within the scope of Section 68 of the Evidence Ordinance, which would have been relevant only if the execution of the deed had been specifically challenged. The dispute raised by the Defendants concerns the title of the Plaintiff and his predecessors, a matter already examined above.

In ***Sangarakkita Thero vs Buddarakkita Thero*** (S.C.) [16], it was held that: *"A deed which on its face appears to be in order is presumed to have been duly executed. The mere framing of an issue as to the due execution of the deed followed in due course by a perfunctory question or two on the general matter of execution, without specifying in detail the omissions or illegalities which are relied upon, is insufficient to rebut that presumption."*

Since the alleged family agreement and prescriptive title of the Plaintiff's predecessor is not established by cogent evidence, the only legitimate source of title is the co-ownership devolved on Nawaratne Banda Hunukumbura pursuant to the final decree of the partition action, which remained with him at the time of the execution of the deed marked 'ඇ7'. Consequently, the Plaintiff is entitled to the undivided rights over Lot No. 29 by virtue of Deed No. 9.

The Latin maxim *"Nemo dat quod non habet"*, that a person cannot transfer a better title than that which he lawfully possesses, is directly applicable in this case, as the seller, having only co-owned rights, could not transfer a title of a

16 *Sangarakkita Thero vs Buddarakkita Thero* NLR Volume 53 Page 457.

different character to the purchaser. Furthermore, I do not accept the Defendant's contention that the deed in question is forged. This is because Nawaratne Banda Hunukumbura, being of unsound mind, executed the deed lawfully through his manager, who had been duly appointed by the Court in accordance with established legal procedures.[17]

I will now turn to determine whether the Plaintiff, as a co-owner, has the right to eject the Defendants from Lot No. 29. I reproduce below relevant authority on this issue.

In ***Hevawitarane et al. vs Dangan Rubber Co., Ltd***. (S.C.) [18], it was held that: *"the owner of an undivided share of land might sue a trespasser to have his title to the undivided share declared, and for ejectment of the trespasser from the whole land."*

Similarly, in ***Hariette vs Pathmasiri*** [19] (S.C.), it was held that: *"Our law recognizes the right of a co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land because the owner of the undivided share has an interest in every part and portion of the entire land."*

The same precedent was followed in the recent case ***Attanayake vs Ramyawathie***[20] (S.C.), where it was held that: *"A co-owner of a land who sues a trespasser for a declaration of title and ejectment is entitled to maintain the action even if he instituted the action as the sole owner of the land and premises. The fact that an appellant has asked for greater relief than he is entitled to, should not prevent him from getting the lesser relief which he is entitled to. However, in such a situation, there is a burden on such person who makes the claim, to adduce evidence of ownership to the allotment of land."*

17 *Vide* order of the District Court case bearing No.6183/LG marked 'පැ6'.
18 *Hevawitarane Et Al. vs Dangan Rubber Co., Ltd.*17 NLR 49.
19 *Hariette vs Pathmasiri* SLR 1996 Volume 01 Page358.
20 *Attanayake vs Ramyawathi* 2003 1 SLR 401.

Accordingly, in the present case, the Plaintiff, as a co-owner of the land, is lawfully entitled to seek the ejectment of the Defendants from the disputed land.

Conclusion

Considering the foregoing facts and evidence, I answer the questions of law on which leave to appeal was granted as follows:

17(c) - The learned District Judge erred in law by overlooking the fact that the Plaintiff-Appellant-Petitioner*-[Appellant]** ***had, at the very least, established that he is a co-owner of the land described in the schedule to the Amended Plaint. However, the learned High Court Judges correctly took due cognizance of this fact.

17(e)- The learned District Judge committed an error in law in failing to recognize that a co-owner is entitled to eject a trespasser from the entirety of the land, a matter which the learned High Court Judges took due cognizance of .

(k)- The learned High Court judges did not affirm the decision of the Learned Additional District Judge in relation to the prescriptive title of the Defendants -Respondents-Respondents-[Respondents] to the land-in-suit.

(l)- The learned Judges of the Civil Appellate High Court of Kurunegala did not affirm the findings of the Learned Additional District Judge in relation to the prescriptive title of the Defendants -Respondents-Respondents-[Respondents] to the land-in-suit.

I hereby affirm the judgment of the High Court, subject to the above variations, and set aside the judgment of the District Court.

Appeal is partly allowed. Parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT