

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

Wickremasinghe Arachchilage Piyasena
No. 16/2, Pothgul Vihara Mawatha,
Ratnapura.

Plaintiff-Respondent-Appellant
(Deceased)

1A. Wickremasinghe Arachchilage Keerthi
No. 16/2, Pothgul Vihara Mawatha,
Ratnapura.

1A Plaintiff-Respondent-Appellant

SC/APPEAL/149/2022

SP/HCCA/RAT/115/2016 (FA)

DC RATNAPURA 19456/L

Vs.

2. I.K.A. Sarath

Muwagama Lower Road,
Muwagama, Ratnapura.

3. W. Wijepala (Deceased)

3A. Ileperuma Kodituwakku Arachchige
Mangalika (Deceased)

3B. Wellalage Ayesha Madhuwanthi

3C. Wellalage Rasika Rukshan Madhusanka

3D. Wellalage Nadeeka

All of Muwagama Lower Road,
Muwagama, Ratnapura.

2nd, 3B, 3C and 3D Defendants-
Appellants-Respondents

1. W. Ananda Weerasinghe
Elapatha, Ratnapura.

1st Defendant-Respondent-Respondent

Before: Hon. Justice Janak De Silva
Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna

Counsel: Anuruddha Dharmaratne for the Plaintiff-Respondent-Appellant.
Thishya Weragoda for the 2nd, 3A-3D Defendant-Appellant-Respondents.

Argued on: 11.06.2026

Decided on: 27.07.2026

Samayawardhena, J.

There is no dispute that, in terms of the settlement order entered in Case No. 03/40/3 before the Conciliation Board of Marapana, the plaintiff became entitled to Lots 6, 7 and 7A depicted in Plan No. 1544 dated 19.03.1974.

The plaintiff instituted the present action in the District Court of Ratnapura on 11.02.2004 against the 1st, 2nd and 3rd defendants seeking a declaration of title to Lots 6 and 7A, ejectment of the defendants therefrom, and damages. The 1st defendant filed answer stating that he made no claim to the said two lots. The 2nd and 3rd defendants filed answer claiming prescriptive title to Lot 6.

After trial, the learned District Judge, by judgment dated 11.08.2016, entered judgment in favour of the plaintiff, except for damages. The prescriptive claim of the 2nd and 3rd defendants was dismissed.

On appeal, the High Court of Civil Appeal of Ratnapura, by judgment dated 30.11.2017, allowed the appeal and held that the 2nd and 3rd defendants had acquired prescriptive title to Lot 6. The present appeal has been preferred by the plaintiff against the said judgment of the High Court.

This Court granted leave to appeal on the question whether the High Court erred in law in holding that the 2nd and 3rd defendants had acquired prescriptive title to Lot 6.

According to the answer filed by the 2nd and 3rd defendants in the District Court, their predecessor in title was John Singho, and upon his death, the 2nd and 3rd defendants, among others, became entitled to Lot 6. John Singho was the father of the 2nd defendant and the father-in-law of the 3rd defendant. Paragraph 8 of the answer reads as follows: “ඉහත ඡේදයේ කී පෝන් සිංඤ්ඤා බුදුල් කිරීමට තරම් දේපලක් නොතබා පළමුවන විත්තිකාර අයි.කේ සරත්, එමගේ මංගලිකා, එමගේ නිමල් ප්‍රේමතිලක, එමගේ අයෝමා කොඩිතුට්ටු සහ එමගේ පුෂ්පලතා තබා මියගියෙන් ඔවුනට නොබෙදූ 1/15 පංගුව බැගින් හිමි වන ලදි.”

At the trial, only the 2nd defendant gave evidence on behalf of the defendants. The 3rd defendant did not testify. The position taken by the 2nd defendant was that Lots 4, 5 and 6 in Plan No. 1544 were possessed and enjoyed as a single block of land and that Lot 6, being bare land, was used as the compound (මිදුල). The 2nd defendant also stated in evidence that his father had been in possession of Lot 6 and that he claimed title through his father, John Singho. “සියාගේ කාලේ ඉඳලා භුක්ති විදගෙන එනවා. තාත්තාගේ තාත්තා අබ්ලිංසිංඤ්ඤා. ඊට පස්සේ තාත්තාට ආවා. ඊට පස්සේ තාත්තාගේ අයිතිය මම ඉල්ලන්නේ.” (page 186 of the brief).

John Singho gave evidence at the Conciliation Board inquiry. In that evidence, he categorically stated that he was a licensee under another person, that he had no independent possession, and that he had no title to the land. Simply put, the predecessor in title of the 2nd and 3rd defendants did not assert adverse possession of, or prescriptive title to, Lot 6. “මේ ඉඩමේ ලොකු අප්පුහාමිගේ අවසරය උඩ සිටියා. ඊට පසු ගල්ලැල්ලේ මොහොට්ටිහාමි 2 විත්තිකරුගේ පියා ගනනේ සිටියා. ඉහත කී මුදලාලි නමින්. මට ඉඩමේ අයිතියක් නැත. වරිපනම් ගෙවන්නේ මුදලාලිගේ නමින්. මම කිසිවෙකුට කුලියට දීමනාවක් කර නැත. මුදලාලිට අයිති වන කැබෙල්ලේ මා සිටින ගෙයද ඇතුලත් කලොත් මා කැමතිය. නඩුවෙන් ඉවත් වීමට මා කැමතිය.” (pages 491–492 of the brief).

There is also no dispute that an appeal was preferred to the Court of Appeal against the decree entered by the District Court in Case No. 766/CB in terms of the settlement order of the Conciliation Board and that the Court of Appeal delivered judgment on 04.04.1995. (pages 224-227 of the brief).

It is common ground that the plaintiff did not obtain possession of Lot 6 through the Fiscal. On that basis, it is the contention of the 2nd and 3rd defendants that the plaintiff cannot now claim title to Lot 6. “රත්නපුර දිසා අධිකරණයේ අංක 766 නඩුවට ඇතුළත් කරලා තියෙන තීන්දු ප්‍රකාශය මගින් අපේ භුක්තියෙන් තොරවීම සඳහා පැමිනිලිකරු කිසිදු ක්‍රියාමාර්ගයක් ගත්තේ නැහැ. අයිතිවාසිකම් පිළිගෙන පැමිනිලිකරු ක්‍රියා කරලා තියෙනවා. ඒ නිසා පැමිනිලිකරුට මේ දේපලට දැන් අයිතිවාසිකම් කියන්න අයිතියක් නැහැ.” (pages 176–177 of the brief).

This contention is untenable in law. According to section 337 of the Civil Procedure Code, the ten-year period for the execution of a decree commences from “the date of the decree sought to be executed or of the decree, if any, on appeal affirming the same”. Since the judgment of the Court of Appeal was delivered on 04.04.1995, the ten-year period began to run from that date.

When the plaintiff instituted the present action on 11.02.2004, he was well within the ten-year period. Unnecessarily, he instituted a fresh action against the son and son-in-law of John Singho, although a decree binds not only the parties to the action but also their privies.

Be that as it may, the simple question is whether the 2nd and 3rd defendants can succeed in their claim of prescriptive title. This is not a complicated question. On the facts and circumstances of this case, it is only after the death of John Singho that the Defendants could, if at all, claim that they commenced prescriptive possession. The date of death of John Singho is not clear from the evidence. However, that is immaterial because, at the relevant time, the appeal against the decree of the District Court was pending, and the appeal was concluded only on 04.04.1995.

It is settled law that the institution of an action suspends prescription. If, at the conclusion of the action, the plaintiff succeeds, the defendant's possession is deemed to have been interrupted from the date of the institution of the action. If the plaintiff fails, the defendant's possession remains uninterrupted.

In the present case, the plaintiff ultimately succeeded in the appeal and, therefore, the 2nd and 3rd defendants could claim prescriptive title only from 04.04.1995, when the judgment of the Court of Appeal was delivered. The plaintiff instituted the present action on 11.02.2004. Accordingly, prior to the institution of the action, the 2nd and 3rd defendants had not completed ten years' adverse possession so as to acquire prescriptive title under section 3 of the Prescription Ordinance.

Unfortunately, the High Court did not consider any of these legal principles. Instead, it relied heavily on a single answer given by the plaintiff in cross-examination, namely, “65 ගන්නට පසුව බුක්කි වින්දේ ඒ අය”, and concluded therefrom that the 2nd and 3rd defendants and their predecessor in title had been in possession of Lot 6 from 1965 until the institution of the action in 2004, thereby upholding the prescriptive claim of the 2nd and 3rd defendants. This approach is clearly erroneous.

The plaintiff, who was 80 years old, commenced giving evidence on 15.09.2008. His evidence concluded approximately four years later, on 12.03.2012, during which period he testified on six different dates. This is most unsatisfactory.

I answer the question of law on which leave to appeal was granted in the affirmative. The judgment of the High Court is set aside and the judgment of the District Court is restored. The plaintiff is entitled to recover costs in all three courts from the 2nd and 3rd defendants jointly and severally.

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