

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

In the matter of an Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

S.C. Appeal No:
14/2020

Migunthenna Kariyakaranage
Sirisena Wadugedarawatte,
Panagoda, Neluwa.

SC Case No:
SC/HCCA/LA/62/2019

PLAINTIFF

Vs.

Civil Appellate Case No.
SP/HCCA/GA/106/2013(F)

1. Soma Jayasinghe (Deceased)
1A. Arambegoda Lokugamage
Ajith Pushpa Kumara,
No. 175/29, Weeramawatha,
Depanama, Pannipitiya.

DC Case No:
DC/Galle/14925/L

DEFENDANT

AND BETWEEN

Migunthenna Kariyakaranage
Sirisena Wadugedarawatte,
Panagoda, Neluwa.

PLAINTIFF-APPELLANT

Vs.

1. Soma Jayasinghe (Deceased)
1A. Arambegoda Lokugamage
Ajith Pushpa Kumara,

No. 175/29, Weeramawatha,
Depanama,
Pannipitiya.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Arambegoda Lokugamage
Ajith Pushpa Kumara,
No. 175/29, Weeramawatha,
Depanama,
Pannipitiya.

**DEFENDANT-RESPONDENT-
APPELLANT**

Vs.

Migunthenna Kariyakaranage
Sirisena Wadugedarawatte,
Panagoda,
Neluwa. (Deceased)

1a. Somawathie Jayasekara

1b. Migunthenna Kariyakaranage
Nimalsiri

1c. Wijenayaka Gamage Janakee
Amitha

1d. Migunthenna Kariyakaranage
Heshani Rumeshika

1e. Migunthenna Kariyakaranage
Lahiru Dilshan

All of Wadugedarawatte,
Panagoda, Neluwa.

**SUBSTITUTED PLAINTIFF-
APPELLANT-RESPONDENTS**

Before : Janak De Silva, J.
: Sobhitha Rajakaruna, J.
: Sampath B. Abayakoon, J.

Counsel : Chinthaka Mendis with Dinisuru Gamlath and Ms. Panchali Illankoon instructed by Bushra Hashim for the Defendant-Respondent-Appellant.
: Dr. Sunil Coorey instructed by Ms. Roshanara Jayampathy for the Substituted Plaintiff-Appellant-Respondents.

Argued on : 27-08-2025

Written Submissions : 06-03-2020 (By Defendant-Respondent-Appellant)
: 11-01-2023 (By Substituted Plaintiff-Appellant-Respondents)

Decided on : 20-02-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the defendant-respondent-appellant (hereinafter referred to as the defendant) on being aggrieved of the judgment dated 16-01-2019 pronounced by the Provincial High Court of the Southern Province holden in Galle while exercising its civil appellate Jurisdiction.

From the impugned judgment, the High Court set aside the judgment pronounced by the learned Additional District Judge of Galle on 18-12-2013 where the action initiated before the Court by the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) was dismissed, while allowing the reliefs prayed for by the plaintiff in the plaint filed before the District Court.

When this matter was considered for the granting of leave to appeal before this Court on 23-01-2020, leave was granted on the questions of law set out in paragraph 19(1) of the petition of appeal dated 25-02-2019.

In addition to the above, the learned Counsel for the defendant was allowed to raise an additional question of law, while the learned Counsel for the plaintiff was also allowed to raise two other questions of law.

The said questions of law read as follows.

1. Did the learned High Court Judge err in law when it was held that the land claimed by the respondent has been clearly identified by failing to give due consideration to the evidence of the surveyor that the boundaries of the entire land constituting Lots A, B, C, D are not definite and that it is not possible to state definitively whether the land surveyed was the land set out in the commission and that there is no way of explaining the increase in extent of the land?
2. Did the learned High Court Judge err in law in failing to appreciate that no evidence of encroachment on the part of the defendant-respondent-petitioner has been established at the trial?
3. Has the Hon. District Court Judge erred in law in dismissing the action of the plaintiff purely on the ground of non-identification of the corpus?
4. Did the Hon. District Court Judge err in law ascertaining the prescriptive title of the parties when the District Court decided that there is no proper identification of the corpus?

At the hearing of the appeal, this Court heard the submissions of the learned Counsel as to their respective stands and also had the benefit of considering the written submissions tendered to the Court in that regard.

The facts that led to the judgment of the learned Additional District Judge and the views expressed by the learned Judges of the High Court when allowing the appeal can be summarized in the following manner.

The plaintiff has initially filed his plaint on 16-01-2004 seeking a declaration of title to the land morefully described in the 2nd paragraph of the plaint which was a land with an extent of 1 acre 1 rood and 2 perches, and for the ejectment of the defendant from a portion of land towards the Southern boundary, among other incidental reliefs. It has been claimed that the defendant encroached upon the said portion of land and commenced possessing it somewhere around 06-12-1996.

After the subject matter of the land was surveyed for the purposes of the action, the plaintiff has filed an amended plaint on 07-05-2007 describing the land in question in accordance with the survey plan No-2716 dated 26-02-2005 prepared by licensed surveyor Anton Samararathne. The plaintiff has described Lot D mentioned in the said plan as the portion of land the defendant is in occupation. The surveyor has described the land, which is the subject matter of the action, as Lot A, B, C, D of the plan with an extent of 2 acres and 4 perches.

In the meantime, the original defendant has passed away, and her son has been substituted as the substituted defendant.

He, in his answer dated 02-01-2009, has denied that a cause of action has accrued to the plaintiff against the defendant and has stated that the land surveyed for the purposes of this action is not the land claimed by the plaintiff as Wadugedarawatte, but part of the land called Pangiri Hena with an extent of 50 acres which is owned and possessed by the defendant based on her title to an undivided 1/24 share of the said Pangiri Hena.

The substituted defendant has set out the title to the said land he claims as Pangiri Hena and has also claimed prescriptive title to the same. He has also averred that as a result of the plaintiff trying to encroach part of the land possessed by his mother, the original defendant initiated action in terms of section 66 of the Primary Court Procedure Act in 1997 where his mother was given possession of the land. He has prayed for the dismissal of the action.

At the trial before the District Court, there had been no admissions recorded and accordingly, the plaintiff has raised issue No. 01 to 07. The issues relating to the identity of the corpus has been recorded on the basis that the defendant encroached upon the earlier mentioned Lot D of the surveyor plan. The plaintiff has raised a single issue as to his title on the basis that he owns the land by prescription.

For matters of clarity, I would reproduce the said 3rd issue of the plaintiff which reads as follows,

03. පැමිණිලිකරු එකී ඉඩම බුක්ති විද පැමිණිලිකරු එකී ඉඩමට වලංගු කාලාවරොධී හිමිකම් ලබා තිබේද?

The defendant has raised issue No. 08 to 16 on the basis of the averments in his answer claiming reliefs as prayed for, which includes the dismissal of the plaintiff's action.

After the closure of the plaintiff's case, although the defendant has raised issues claiming title, he has not called any evidence to substantiate his issues.

In his judgment, the learned Additional District Judge has considered whether the plaintiff has identified the land, which is the subject matter of the action, and whether he has established the disputed portion of the land as stated in the pleadings as part of the subject matter. It has been the determination of the learned District Judge that the plaintiff has failed to explain the disparity between the extent of the land mentioned in the original plaint and that of the land surveyed by the surveyor for the purpose of this action, which was a land of 3 roods in excess.

After analysing the evidence of the plaintiff, it has been determined that there was no evidence before the Court to satisfy that the disputed land has been identified as the land depicted in the survey plan marked P-01 due to the discrepancies in evidence.

The learned District Judge was not required to consider the title pleaded by the plaintiff in such a scenario as the action of the plaintiff should in anyway

fail on account of his failure to establish the identity of the corpus for which he is seeking a declaration of title. However, the learned District Judge has also proceeded to consider whether the plaintiff has established the claimed prescriptive title to the land and his claim that the defendant encroached upon Lot D of the plan marked P-01 as claimed by him. On the basis that the plaintiff has failed to establish the identity of the land as well as the title as claimed by him, the plaintiff's action has been dismissed. Although the defendant has raised issues as to his title, since no evidence has been called in that regard, the defendant's action has also been dismissed.

In determining the appeal preferred by the plaintiff challenging the judgment of the learned Additional District Judge, the learned Judges of the High Court, of their judgment dated 16-01-2019, have determined that the plaintiff has sufficiently identified the subject matter by referring to metes and bounds and it is not always necessary to rely on a survey plan in accordance with section 41 of the Civil Procedure Code to identify the land.

It has been determined that although the land described in the plaint and the land described in the amended plaint after the survey have a difference in extent, since the boundaries are the same, there was no difficulty for the learned Additional District Judge to identify the land. In this regard, the High Court has extensively considered the survey plan and the report.

Having determined as to the corpus, the High Court has considered whether the plaintiff has proved the prescriptive title claimed by him and has held that according to his evidence and other documentary evidence, the plaintiff and his father have possessed the land for over 60 years and he has proved the prescriptive title to the land.

On the basis that the defendant has failed to give evidence in support of his claim to the land and has failed to establish that he has a better title than the plaintiff, the learned Judges of the High Court have set aside the judgment of the learned Additional District Judge awarding reliefs prayed for by the plaintiff in his amended plaint.

Having considered the above factual matrix, the question before me now is whether the plaintiff has proved the identity of the land and his claimed prescriptive title as determined by the learned High Court Judges or whether it is the judgment of the learned Additional District Judge that should stand. The amended plaint of the plaintiff clearly suggests that the action initiated by him was a vindicatory suit in order to get a declaration that he is the owner of the land morefully described in the 2nd paragraph of the amended plaint and to eject the defendant from Lot D of the plan prepared for the purposes of the action on the basis that the defendant is in unauthorized occupation of the said Lot which belongs to him.

It is settled law that in a case for declaration of title and ejectment, it is not only the title of the land as claimed by a plaintiff that should be proved on a balance of probability, but also the identity of the land pleaded as the subject matter of the action. It is my considered view that it is of paramount importance for a plaintiff in a *rei vindicatio* action to properly identify the land he is claiming title before proceeding to establish his title to the land, since it would be a futile exercise to consider title in a situation where the identity of the land has not been established.

It is clear from the judgment of the learned District Judge that the evidence has been considered in order to determine whether those basic requirements have been established before the Court on a balance of probability.

In the case of **Jamaldeen Abdul Latheef Vs. Abdul Majeed Mohomad Mansoor and Another (2010) 2 SLR 333**, the requirement of properly identifying the corpus of an action in a vindicatory suit was considered.

Held:

1. *It is trite law that the identity of the property with respect to which a vindicatory action is instituted is fundamental to the success of the action as to the proof of ownership (dominion) of the owner (dominus).*

Where the property sought to be vindicated consists of a land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method.

- 2. In a rei vindicatio action, it is not necessary to consider whether the defendant has any title or right to possession, where the plaintiff has failed to establish his title to the land sought to be vindicated, the action ought to be dismissed without more.*

I find that in this context, what the plaintiff has stated in the original plaint as to the extent of the land becomes very much relevant as considered by the learned District Judge in his judgment, although the High Court has gone on the basis that despite the disparity, the boundaries as claimed are the same, hence, the plaintiff has proved the identity of the land.

In the same context, it must be stated that although section 41 of the Civil Procedure Code provides for the description in a plaint in relation to a land so far as possible by reference to physical meets and bounds or by reference to a sufficient sketch, map or plan to be appended to the plaint, whether considering the meets and bounds only would suffice to identify a land is a matter that depends on the facts and circumstances of each case.

In the original plaint, the plaintiff, having identified the land as Wadugedarawatte, and after describing the four boundaries, has specifically stated the specific extent of the land claimed by him as a land of 1 acre, 1 rood, 2 perches, which is an obvious reference to a survey plan. For a reason only known to the plaintiff he has chosen not to identify the plan or give any reason for it. Therefore, it is clear that although the plaintiff has not identified the land in relation to a plan, he has been very specific as to the extent which has been mentioned up to the last perch. He has also averred that the defendant encroached a portion of land towards the Southern boundary.

In the amended plaint, the plaintiff has identified the alleged encroached portion as Lot D of plan No. 2716 dated 26-02-2005. However, the land which has been surveyed as shown by the plaintiff was a land of 2 acres and 4 perches, which amounts to an excess of 3 roods in extent.

The portion of the land identified by the plaintiff as the encroached portion in itself is a portion of about 10 perches less than 3 roods, which means that the remainder of the land identified by him before the surveyor almost equals to the land he has claimed prescriptive title in his original plaint.

The Commissioner who executed the survey has given evidence in this action and has stated that he was unable to separately pinpoint the portion of the land alleged to have been forcibly occupied by the defendant as both the defendant and the plaintiff claimed rights to the entire land.

Although the defendant has not given evidence at the trial to substantiate the issues raised on behalf of him, it appears that his position at the trial has been in line with the answer filed, to assert that the land claimed by the plaintiff is a part of a larger land of about 50 acres, where the defendant has claimed undivided rights to the said land based on some deeds.

On behalf of the plaintiff, it was the son of the plaintiff who has given evidence. He has identified the subject matter of the action as Wadugedarawatte and has stated that the said land depicts as Lot A, B, C, and D in the previously mentioned plan which has been marked as P-01 at the trial. The said witness too had failed to explain the reasons for the excess extent of 3 roods than the land specifically mentioned in the original plaint. At one point, the said witness has stated that the action was filed in relation to 1 acre, 1 rood, 2 perch land. He has also spoken about a plan prepared by the Survey General in relation to this portion of the land. However, such a plan has never been produced, nor has it been tendered to the surveyor enabling him to identify the land mentioned in the commission issued to him.

I find that the learned District Judge has well analyzed the evidence placed before the Court to determine that the plaintiff has failed to identify the subject matter of the action as pleaded in his plaint for which I have no reasons to disagree.

When it comes to the appellate judgment pronounced by the High Court, it is clear that the learned Judges of the High Court have gone on the basis that the boundaries given to the land in the plaint as well as the amended plaint are the same. It has been determined that although the original plaint depicts a specific portion of land, it is the amended plaint that describes the subject matter properly. I find that the learned Judges of the High Court have failed to analyze the significant difference in extent of the land mentioned in the original plaint and the amended plaint filed after the survey was conducted.

The stand of the plaintiff was that the defendant is in forceable occupation of Lot D only, which nearly amounts to the additional portion of land that has taken in as the subject matter in comparison to the original plaint. It needs to be emphasized that the plaintiff, who gave the extent of the land he is claiming up to the last perch in his original plaint, cannot have a basis to amend the plaint to add an additional extent of land as the subject matter to claim a declaration of title. It is my view that for the Court to accept the additional extent of land also as part of the corpus, there should be clear evidence before the Court as to why the plaintiff gave a different specific extent of land as the corpus in the plaint and as to why he changed his stand after the survey was done for the purposes of the action. I find that without such an explanation, there was no basis for the learned High Court Judges to conclude that the plaintiff has proved the identity of the land.

At the same time, it needs to be noted that the plaintiff has claimed title to the land on prescription. Therefore, it becomes necessary for him, even if he has established the identity as claimed, to prove that he has acquired prescriptive title to the land.

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

“Where the evidence of possession lack consistency the fact of occupation alone or the payment of municipal rates by itself is insufficient to establish prescriptive possession.

As regards to mode of proof of prescriptive possession, mere general statements of witnesses that the plaintiff possessed the land in dispute for a number of years exceeding the prescriptive period are not evidence of the uninterrupted and adverse possession necessary to support a title by prescription. It is necessary that the witness should speak of specific facts and the question of possession has to be decided thereupon by the Court.

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.”

It was also observed in the case of **Wanigaratne Vs. Johanis Appuhami 65 NLR 167** that;

“In an action rei vindicatio, the plaintiff must prove and establish his title. He cannot ask for a declaration of title in his favour merely on the strength that the defendant’s title is poor or not established.”

In his judgment, the learned District Judge had not only considered whether the plaintiff has proved the identity of the land, but has considered the prescriptive title claimed by him to find out whether there can be any justification for such a claim.

The witness called on behalf of the plaintiff has stated that his father Sirisena became the owner of the land through his paternal inheritance. As observed clearly by the learned District Judge, this is in total contrast to the plaintiff’s position that he became the owner of the land through prescription.

I find that the learned Judges of the High Court have merely gone on the basis that the plaintiff has possessed the land over a long period of time and has therefore, prescribed to the land. I find that this was not the way a claim of prescription should be considered in a case where the right to ownership has been based on prescription and especially when there is a counter-claim to the said claim. The High Court has failed to consider the evidence of the

witness called on behalf of the plaintiff where he has claimed the title based on inheritance as relevant.

Another factor which needs consideration is the deed marked 2V2 by the defendant when the son of the plaintiff was under cross-examination. This is a deed where the plaintiff has been given title to a land similar to the land claimed by the plaintiff where an undivided portion of land out of a land in extent of 50 acres has been transferred to him. For some reason, the plaintiff has not relied on this deed to claim title to the land under litigation. It is clear that if this deed was produced as evidence to claim title, the plaintiff will have to be considered as a person who owns an undivided right of a larger land and where the mode of proof of ownership by prescription against the other co-owners would be different. That may be the very reason why the plaintiff has not relied on a title deed but on prescription to claim the land.

When the above factual matters are considered in its totality, it clearly establishes that there cannot be any reason to conclude that the plaintiff can succeed on a claim of prescription to the land either.

I find that this was a matter that the learned Judges of the High Court have failed to consider after determining that the plaintiff has proved the identity of the land.

For the above reasons as considered, I find no basis to allow the judgment of the learned Judges of the High Court to stand.

Accordingly, I answer the 1st and the 2nd question of law in the affirmative, and the 3rd question of law in the negative.

Answering the 4th question of law, I hold that although there was no necessity for the learned District Judge to consider the title after determining that the identity of the subject matter of the action has not been established, no prejudice has been caused to the plaintiff by the learned District Judge's decision to examine the title as well.

Accordingly, the appellate judgment dated 16-01-2019 is set aside and the judgment dated 18-12-2013 by the learned Additional District Judge of Galle is affirmed.

There will be no costs of the appeal.

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court