

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

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.

SC/APPEAL/151/2023
SC/HCCA/LA/143/2022
SP/HCCA/MA/31/2016/F
D.C. MATARA No: 8520/L

Loku Bogahawattage David
Sisila, Piladuwa
Welletota, Palatuwa

PLAINTIFF

Vs.

1. Hewa Lunuwilage Jayatissa
Randeniyagewatta,
Walgama, Matara
2. Vinodahewage Nandaseeli
Randeniyagewatta
Walgama, Matara

DEFENDANTS

AND

1. Loku Bogahawattage David
Sisila, Piladuwa
Welletota, Palatuwa
- 1A. Bogahawaththage Chitra Rohini
Manigamulla, Gothatuwa
Nagoda

SUBSTITUTED PLAINTIFF-
APPELLANT

Vs.

1. Hewa Lunuwilage Jayatissa
Randeniyagewatta,
Walgama, Matara

2. Vinodahewage Nandaseeli
Randeniyagewatta
Walgama, Matara

- 2A. Vinodahewage Chandima Sampath
Kumara
Randeniyagewatta
Walgama, Matara

- 2B. Vinodahewage Nadeesha Sanjeevanie
Randeniyagewatta
Walgama, Matara

- 2C. Vinodahewage Diluka Thushantha
Kumara
Randeniyagewatta
Walgama, Matara

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

1. Loku Bogahawattage David
Sisila, Piladuwa
Welleto, Palatuwa

- 1A. Bogahawaththage Chitra Rohini
Manigamulla, Gothatuwa
Nagoda

SUBSTITUTED PLAINTIFF-
APPELLANT-PETITIONER

Vs.

1. Hewa Lunuwilage Jayatissa
Randeniyagewatta,
Walgama, Matara

2. Vinodahewage Nandaseeli
Randeniyagewatta
Walgama, Matara

2A. Vinodahewage Chandima Sampath
Kumara
Randeniyagewatta
Walgama, Matara

2B. Vinodahewage Nadeesha Sanjeewanie
Randeniyagewatta
Walgama, Matara

2C. Vinodahewage Diluka Thushantha
Kumara
Randeniyagewatta
Walgama, Matara

DEFENDANT-RESPONDENT-
RESPONDENTS

Before: **Justice A. L. Shiran Gooneratne**
 Justice Menaka Wijesundera
 Justice Sampath K.B Wijeratne

Counsel: Nisala Seniya Fernando with Maneesha Perera instructed by Kaushalya Hapuarachchi for the **Substituted Plaintiff-Appellant-Appellant.**

Dr. Sampath Wijesinghe with Shyanaka Jayasena instructed by J. M. Nipun C. Jayasekara for the **1st and 2A, 2B and 2C Defendant-Respondent-Respondents.**

Argued on: 23/02/2026

Decided on: 13/05/2026

A. L. Shiran Gooneratne J.

By Amended Plaint dated 23/07/1998, the Plaintiff-Appellant-Appellant (hereinafter referred to as the “Plaintiff-Appellant”) filed this action No. D.C. Matara 8520/L against the Defendant-Respondent-Respondents (hereinafter referred to as the “Defendant-Respondents”), and sought inter alia, a declaration that the Plaintiff-Appellant is the owner of the land in extent 0.A 0.R 11.5.P, described in the schedule of the Plaint, and for the ejectment of the Defendant-Respondents.

In Paragraphs 2 and 3 of the said Plaint, the Plaintiff-Appellant states that the land described in the schedule to the Plaint as Lot D appears in the final partition Plan in Partition action No. P. 926 in the District Court of Matara as Lot D. The Plaintiff-Appellant claims entitlement to the said land by virtue of Deed of Transfer No. 2697 dated 01/09/1960.

According to Paragraphs 6 and 7 of the Plaint, on or about 17/02/1986, the 1st and 2nd Defendant-Respondents, without the Plaintiff-Appellant's permission, approval, or knowledge, unlawfully encroached upon the land, constructed buildings, and commenced a temporary occupation.

According to Paragraph 8 of the Plaintiff, the Defendant-Respondents have continued in such occupation of the subject property notwithstanding the letter dated 02/12/1994, requesting that possession be handed over to the Plaintiff-Appellant.

By their joint Amended Answer dated 01/10/1998, the Defendant-Respondents denied that the Plaintiff-Appellant had possession of the said land and stated that they had acquired prescriptive title to the buildings depicted as Lots 1 and 3 within Lot D in Plan No. 4908 dated 20/10/1997 made by S. L. Galappaththi, Licensed Surveyor, by virtue of uninterrupted possession for a period exceeding ten years, and prayed for a dismissal of the Plaintiff.

At the conclusion of the Trial, the learned Additional District Judge, by judgment dated 08/07/2016, held *inter alia* that the Defendant-Respondents had established uninterrupted possession of Lots 1 and 3 within Lot D in Plan No. 4908 dated 20/10/1997 and had thereby acquired prescriptive title to the said land. Accordingly, the Plaintiff-Appellant's rights over Lot D were recognised subject to the rights of the Defendant-Respondents.

Being aggrieved by the said judgment, the Plaintiff-Appellant preferred an Appeal to the High Court of the Southern Province holden in Matara, exercising Civil Appellate Jurisdiction (hereinafter referred to as the "Appellate Court"). The Appellate Court, having considered the question of prescriptive title raised by the Defendant-Respondents, by judgment dated 05/05/2022, affirmed the judgment of the learned Additional District Judge dated 08/07/2016 and dismissed the Appeal without costs.

The Plaintiff-Appellant, by Petition dated 13/06/2022, is before this Court to set aside the said Judgment dated 05/05/2022, delivered by the Appellate Court.

By Order dated 16/10/2023, this Court granted Leave to Appeal on the following question of law;

"Did the Honourable High Court err, by failing to appreciate that the Defendants (now Defendant-Respondents-Respondents) failed to prove that

they have been in undisturbed, uninterrupted and adverse possession of the property for a period of at least ten years?”

The Plaintiff-Appellant asserts entitlement to the land and premises depicted as Lot D on Plan No. 4908, dated 20/10/1997, prepared by S. L. Galappaththi, Licensed Surveyor, marked as P7, surveyed pursuant to the final Partition Plan in Partition Action No. P. 926. The District Court determined the Plaintiff-Appellant’s rights based on Plan No. 4908. The Defendant-Respondents claimed prescriptive rights to the buildings Nos. 1 and 3 therein. From the evidence of the 2nd Defendant, it is clear that both Defendant-Respondents were residing in the same premises claimed to have been acquired by prescriptive title.

“[...] 1 වන විත්තිකරු සාක්ෂි දෙන කොට ඉදිරිපත් කළා “1ව1” කියලා ඡන්දනාම ලේඛනය. 1980 අගෝස්තු මාසේ ඉදිරිපත් කර තිබෙන්නේ. එහි සඳහන් වෙනවා අංක 370 කියන ගෘහය. විනෝද හේව්වගේ ගුණදාස කියන්නේ අපේ තාත්තා. විනෝද හේව්වගේ ජයතිස්ස මස්සිනා. කමලාවතී නංගි. 2 වන විත්තිකාර නන්දසිරි කියන්නේ මම. සමරසේකර අයියා. 1980 වර්ෂය වන විට සියළු දෙනා පදිංචි වෙලා හිටියේ එක නිවසේ. [...]”

(Vide page 177 of the Appeal brief)

Since the identity and the title to the land were not disputed, the trial proceeded to address the only issue raised by the Defendant-Respondents in the Trial Court, which was to determine whether the Defendant-Respondents were entitled to the buildings marked 1 and 3 in Plan No. 4908 on prescriptive title.

To establish uninterrupted adverse possession since 1980, the Defendant-Respondents mainly relied on the documents marked 1V1 to 1V4, copies of the electoral register, and the receipts of payment of rates and taxes. It is also claimed that the Defendant-Respondents have continued to be in possession of the land since 1974.

The Plaintiff-Appellant on the other hand has relied on documents marked P8 and P9 to establish that there had in fact been an interruption to the possession of the land by the Defendant-Respondents. The document marked P8 is a complaint dated 05/02/1986, through which the Plaintiff-Appellant sought the assistance of

the Grama Niladhari to intervene to prevent the unlawful and forceful construction of a house by the 1st Defendant-Respondent and his wife Vinodahewage Kamalawathi in the land which was identified in partition action No. P. 926 in the District Court of Matara marked Lot D. In response to the said complaint, the 1st Defendant-Respondent in a statement to the Grama Niladhari dated the 17/02/1986, marked P9, admitted unequivocally that the said land belonged to the Plaintiff-Appellant and further stated that he was constructing a house with the intention of purchasing the premises within one year, and if he is unable to do so, he would vacate the land and premises.

The Defendant-Respondent in his cross-examination has also admitted to giving the said statement to the Grama Niladhari;

ප්‍ර: ප්‍රදේශයේ ග්‍රාම නිලධාරී තැන ඔබගේ කට උත්තරය සටහන් කර ගන්නා නේද?

උ: එහෙමයි.

ප්‍ර: නමා ඉදිරිපත් කරපු කට උත්තරය ඉදිරිපත් කරා “පැ9” හෝ “පැ10” කියල?

උ: එහෙමයි.

(vide page 269 of the appeal brief)

It is the contention of the Plaintiff-Appellant that due to the failure of the Defendant-Respondents to adhere to the said undertaking, that the present action was instituted on 03/02/1995, well before any prescriptive right could accrue under Section 3 of the Prescription Ordinance, which requires proof of undisturbed and uninterrupted possession by a Defendant for 10 years.

Both Trial Court and the Civil Appeal High Court have considered the said documents marked P8 and P9 (also marked P10) in their respective judgements. However, both Courts have failed to provide any legal analysis with respect to the same. Having examined only the documents adduced by the Defendant-Respondents in evidence, particularly those relating to the payment of taxes and the electoral register, the Trial Court and the Appellate Court concluded that the Defendant-Respondents had established long-term possession sufficient to

sustain a claim of prescriptive rights to the land and the buildings standing thereon.

In the face of a clear admission of the Plaintiff-Appellant's title, and where the Defendant-Respondents' possession of the land was admittedly conditional, which constitute decisive when determining whether title could shift by a right recognised under prescription, it is disconcerting to observe that both Courts below appear to have turned a blind eye to this fundamental principle of law, which would not entitle a party to benefit in terms of Section 3 of the Prescription Ordinance.

Nevertheless, in recognising the Defendant-Respondents' claim of adverse possession, both Courts placed reliance on tax receipts and entries in the electoral registers and thereby arrived at the erroneous conclusion that the Defendant-Respondents had been in possession of the disputed land since 1980.

In ***Hassan Vs. Romanishamy*** 66 C.L.W. 112, Basnayake, C.J. held that mere statements of a witness, "*I possessed the land*" or "*We possessed the land*" and "*I planted plantain bushes and vegetables*", are not sufficient to entitle the Plaintiff to a decree under Section 3 of the Prescription Ordinance; and also the fact of payment of rates is by itself not proof of possession for the purposes of this Section.

As emphasised in the Written Submissions of the Plaintiff-Appellant, where a party invokes the provisions of Section 3 of the Prescription Ordinance to defeat the title of an adverse claimant to immovable property, the burden of proof rests squarely upon such party to establish the commencement of prescriptive possession.

This position is consistent with the settled principle that, where the paper title is vested in the opposing party, the burden of establishing title by prescription lies upon the party asserting it. Mere assertions of 'possession', without clear and cogent evidence as to the date of commencement of adverse possession, continuity, and extent of such possession, are of no evidentiary value in establishing prescriptive title. In the absence of such proof, the burden must be held not to have been discharged.

As stated earlier in this Judgment, it is clear that the Defendant-Respondents have failed to discharge the burden of proof to establish prescriptive rights described above, particularly, regarding the establishment of uninterrupted, undisturbed, adverse possession in respect of which a declaration is sought.

In the circumstances, the party asserting prescriptive title has failed to discharge the burden of proof cast upon them by law. The evidence adduced falls short of establishing the requisite elements of uninterrupted, undisturbed, and adverse possession necessary to sustain a claim of prescription. Accordingly, the claim to prescriptive title cannot be upheld.

Accordingly, I am of the view that the question on which Leave to Appeal to this Court has been granted is answered in the affirmative.

In these reasons, the Judgement dated 08/07/2016 of the Additional District Judge and the Judgement dated 05/05/2022 of the Appellate Court are hereby set aside, and the Plaintiff-Appellant is granted the reliefs as prayed for in the Amended Complaint dated 23/07/1998.

Appeal is allowed. No order for Costs.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree

Judge of the Supreme Court

Sampath K.B Wijeratne, J.

I agree

Judge of the Supreme Court