

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

SC/Appeal/152/2024
SC/HC/CA/LA/197/2023
CP/HCCA/Kandy/39/17/FA
DC Kandy No. 18369/L

In the matter of an Appeal in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Kulasekara Mudiyansele Seneviratne.
(Deceased)
- 1A. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.
2. Rajanayake Mudiyansele Koin Menike Rajanayake,
3. Kulasekara Mudiyansele Channa Nilanga Seneviratne.
4. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.
5. Kulasekara Mudiyansele Priyangika Seneviratne.
6. Kulasekara Mudiyansele Gnanathilaka Banda.
7. Kulasekara Mudiyansele Aberatne Banda.
8. Kulasekara Mudiyansele Thilak Kumara.
(Deceased)
- 8A. Aththanayaka Mudiyansele Nanda Kumari.
9. Kulasekara Mudiyansele Thissa Bandara.
10. Kulasekara Mudiyansele Anura Kulasekara.
11. Kulasekara Mudiyansele Tikiri Kumarihamy.
12. Kulasekara Mudiyansele Sudarma Kulasekara.
13. Kulasekara Mudiyansele Kuda Banda.
(Deceased)
- 13A. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.

All of
"Thilak Niwasa",
Wathurakumbura, Muruthalawa.

PLAINTIFFS

Vs

1. Kulasekara Mudiyansele Banda,
(Deceased)
Mendapallehage,
Wathurakumbura, Muruthalawa.
- 1A. Kulasekara Mudiyansele Ananda Lal
Jayaratne. (Deceased)
- 1B. Bandaranayake Mudiyansele Shyamali
Chandani Bandaranayake.
- 1C. Kulasekara Mudiyansele Chathurangi
Jayamini Bandaranayake. (Minor)
- 1D. Kulasekara Mudiyansele Praveen Mahendra
Bandaranayake. (Minor)
- 1E. Bandaranayake Mudiyansele Tikiri Banda
Bandaranayake (Guardian of the 1C and 1D
Minors)
2. Samarakoon Mudiyansele Thilakaratne
Banda,
No.174, "Kamathe Gedara",
Wathurakumbura, Muruthalawa.
3. Samarakoon Mudiyansele Rambanda alias
Ram Banda (Deceased)
- 3A. Samarakoon Mudiyansele Abekoon Banda.
No.174, "Kamathe Gedara",
Wathurakumbura, Muruthalawa.
4. Kulasekara Mudiyansele Ananda Lal
Jayaratne. (Deceased)
- 4A. Bandaranayake Mudiyansele Shyamali
Chandani Bandaranayake
Mendapallehage,
Wathurakumbura, Muruthalawa.

DEFENDANTS

AND THEN BETWEEN

Bandaranayake Mudiyansele Shyamali
Chandani Bandaranayake.
Mendapallehage,
Wathurakumbura, Muruthalawa.

1B AND 4A DEFENDANT-APPELLANT

Vs

- 1A. Kulasekara Mudiyansele Aruna Wimarshana
Seneviratne.
2. Rajanayake Mudiyansele Koyin Menike.

3. Kulasekera Mudiyansele Channa Nilanga Seneviratne.
4. Kulasekera Mudiyansele Aruna Wimarshana Seneviratne.
5. Kulasekera Mudiyansele Priyangika Seneviratne.
6. Kulasekera Mudiyansele Gnanathilaka Banda. (Deceased)
- 6A. Sampath Bandara Gnanathilake,
7. Kulasekera Mudiyansele Aberatne Banda.
- 8A. Aththanayaka Mudiyansele Nanda Kumari. (Deceased)
9. Kulasekera Mudiyansele Thissa Bandara. (Deceased)
10. Kulasekera Mudiyansele Anura Kulasekara.
11. Kulasekera Mudiyansele Tikiri Kumarihamy. (Deceased)
12. Kulasekera Mudiyansele Sudharma Kulasekara.
- 13A. Kulasekera Mudiyansele Aruna Wimarshana Seneviratne.

All of
 “Thilak Niwasa”,
 Wathurakumbura, Muruthalawa.

PLAINTIFFS-RESPONDENTS

- 1C. Kulasekera Mudiyansele Chathurangi Jayamini Bandaranayake. (Minor)
- 1D. Kulasekera Mudiyansele Praveen Mahendra Bandaranayake. (Minor)
- 1E. Bandaranayake Mudiyansele Tikiri Banda Bandaranayake (Guardian of the 1C and 1D Minors) (Deceased)
2. Samarakoon Mudiyansele Thilakaratne Banda Samarakoon.
 No.174, “Kamathe Gedara”,
 Wathurakumbura, Muruthalawa.
- 3A. Samarakoon Mudiyansele Abekoon Banda.
 No.174, “Kamathe Gedara”,
 Wathurakumbura, Muruthalawa.

DEFENDANTS-RESPONDENTS

AND NOW BETWEEN

- 1A. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.
2. Rajanayake Mudiyansele Koyin Menike.
4. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.
5. Kulasekara Mudiyansele Priyangika Seneviratne.
6. Kulasekara Mudiyansele Gnanathilaka Banda. (Deceased)
- 6A. Sampath Bandara Gnanathilake,
7. Kulasekara Mudiyansele Aberatne Banda.
- 8A. Aththanayaka Mudiyansele Nanda Kumari. (Deceased)
9. Kulasekara Mudiyansele Thissa Bandara. (Deceased)
10. Kulasekara Mudiyansele Anura Kulasekara.
11. Kulasekara Mudiyansele Tikiri Kumarihamy. (Deceased)
12. Kulasekara Mudiyansele Sudharma Kulasekara.
- 13A. Kulasekara Mudiyansele Aruna Wimarshana Seneviratne.

All of
“Thilak Niwasa”,
Wathurakumbura, Muruthalawa.

PLAINTIFFS-RESPONDENTS-APPELLANTS

Vs

Bandaranayake Mudiyansele Shyamali
Chandani Bandaranayake
Mendapallehage,
Wathurakumbura, Muruthalawa.

1B AND 4A DEFENDANT-APPELLANT-RESPONDENT

- 1C. Kulasekara Mudiyansele Chathurangi Jayamini Bandaranayake. (Minor)
- 1D. Kulasekara Mudiyansele Praveen Mahendra Bandaranayake. (Minor)

2. Samarakoon Mudiyansele Thilakaratne Banda Samarakkoon.
No.174, “Kamathe Gedara”,
Wathurakumbura, Muruthalawa.

3A. Samarakoon Mudiyansele Abekoon Banda.
No.174, “Kamathe Gedara”,
Wathurakumbura, Muruthalawa.

DEFENDANTS-RESPONDENTS-RESPONDENTS

Kulasekera Mudiyansele Channa Nilanga Seneviratne.
“Thilak Niwasa”,
Wathurakumbura, Muruthalawa.

3RD PLAINTIFF-RESPONDENT-RESPONDENT

8AA Kulasekara Mudiyansele Priyadharshani Kulasekara,
No. 03, Pethiyagoda, Gelioya.

9A. Aththanayake Mudiyansele Ramya Kumari Aththanayake,
No. 208/5, Polgahaanga, Welgalle.

11A. Ekanayake Mudiyansele Udagedara Gemunu Bandara Godamunne,
No. 111, Gemunu Niwasa, Udaeriyagama, Peradeniya.

SUBSTITUTED-PLAINTIFFS-RESPONDENTS-RESPONDENTS

K. M. A. Wimarshana Seneviratne and Others v B. M. S. Chandani Bandaranayake and Others

Case No. SC/Appeal/152/2024

Before: A.L. Shiran Gooneratne J.
Dr Sobhitha Rajakaruna J.
Menaka Wijesundera J.

Counsel: Priyantha Alagiyawanna with Vihanga Fernando for the Plaintiffs–Respondents–Appellants.
S. A. D. S. Suraweera with Ashinika Perera for the 1B and 4A Defendant–Appellant–Respondent.
Sanduni Edirimanna for the 8AA, 9A & 11A Substituted Plaintiffs–Respondents–Respondents.

Written Submissions: Plaintiffs–Respondents–Appellants – 3 March 2025 & 6 May 2026

Argued on: 24 March 2026

Decided on: 02 October 2026

Judgement

Dr Sobhitha Rajakaruna J.

This is an appeal by the Plaintiffs- Respondents- Appellants (“Plaintiffs”) against the judgment of the Provincial High Court of the Central Province holden in Kandy (“High Court”), dated 17 March 2023, whereby the High Court allowed the appeal preferred by the 1B and 4A Defendant-Appellant-Respondent (“Defendant”) against the judgment of the District Court of Kandy (“District Court”) dated 20 April 2015 and dismissed the Plaintiff’s action.

The Plaintiff instituted the action in the District Court by Plaint dated 12 December 1995. The Plaintiff sought, inter alia, a declaration that the property described in the schedule to the Plaint was commonly owned by the Plaintiffs and a declaration that the original Defendants (“Defendants”) had no right or entitlement to use a road over the said property. The case of the Plaintiff, in substance, was that the rights in the property had devolved upon the Plaintiffs through a series of transactions and devolution of title, and that the roadway over the property was private. It was alleged that the Defendants, whose lands were situated towards the northern side of the Plaintiff’s property, had access to their lands by a *Gamsabha* road running along the canal bank, but that, on or about 29 November 1995, they had unlawfully constructed a new roadway over the Plaintiff’s property by demolishing the separating fence.

The Defendants, by their Answer dated 28 January 1997, denied the Plaintiff’s claim and, inter alia, sought a declaration that certain of the Defendants were entitled to use an eight-foot-wide roadway over the land in dispute. Their position was that they and their predecessors had used the roadway for over 30 years and had thereby acquired a prescriptive right of way.

The District Court held that the original 1st to 6th Plaintiffs were entitled to judgment as prayed for and dismissed the Defendants’ claim in reconvention. However, the claims of the 7th to 13th Plaintiffs were rejected on the basis that they had failed to establish the relevant rights said to have devolved upon them.

Being dissatisfied with that judgment, the Defendants appealed to the High Court which allowed the appeal and dismissed the Plaintiff’s action. The essential basis of the High Court’s decision was that the Plaintiffs had instituted the action jointly and that, in order

to obtain the relief claimed, they were required to establish ownership of the entirety of the land in suit. The Plaintiff thereafter invoked the appellate jurisdiction of this Court. Leave to Appeal was granted on the following Questions of Law:

1. Did the learned High Court Judges err in law holding that the Plaintiff-Respondent-Petitioners must establish that they are sole owners of the entire land as described in the schedule to the Plaintiff to obtain relief as prayed for in prayer "b" to the Plaintiff?
2. Can a co-owner prevent a 3rd party from using a right of way without establishing the full title to the entire land?

I have carefully considered the pleadings, the evidence led before the learned District Judge, the judgment of the learned District Judge, the judgment of the High Court, and the submissions made before this Court. The principal question that arises for determination is whether the learned High Court Judges were correct in holding that, since the Plaintiffs instituted the action jointly, the failure of some of the Plaintiffs to establish their title to the property was necessarily fatal to the entire action.

The starting point, in my view, must be the relief actually sought by the Plaintiffs. In prayer (a) of the Plaintiff, the Plaintiffs sought a declaration that the property described in the schedule belonged to them in common. The Plaintiffs did not seek a declaration that each of them was the exclusive owner of the entirety of the property. Prayer (b), which is of particular significance to the present appeal, sought a declaration that the Defendants had no right or entitlement to use the road over the said property.

The learned District Judge, having considered the pleadings and the issues, appreciated that the principal controversy between the parties concerned the alleged right of the Defendants to use the disputed roadway. The learned District Judge accordingly considered prayer (b) in the context of an *actio negatoria*. In **Saparamadu v Melder** [2004] 3 Sri L.R. 148, the Court of Appeal explained the nature of an *actio negatoria* as an action by which a person having the requisite proprietary rights in land seeks to establish that the property is free from a servitude claimed by another. The essential question, therefore, is whether the person seeking such relief has the requisite proprietary or soil rights in the property over which the alleged servitude is claimed.

It follows that the material question in the present Case is not whether every Plaintiff established exclusive ownership of the entirety of the land. Rather, it is whether the

Plaintiffs who seek to enforce the proprietary rights asserted in prayer (b) established a sufficient proprietary interest in the land and, if so, whether the Defendants established the right of way which they claimed.

The District Court carefully considered the title relied upon by the Plaintiffs. Having considered the deeds marked P1 to P4 and the evidence relating to the devolution of title, the learned District Judge found that Plaintiffs 1–6 had established their co-ownership of the property, whereas Plaintiffs 7–13 had failed to establish an unencumbered co-ownership therein. The learned District Judge accordingly granted relief only in favour of Plaintiffs 1–6 and declined to grant relief to Plaintiffs 7–13.

In my view, that finding is of considerable significance. The learned District Judge did not proceed on the basis that all thirteen Plaintiffs had established an identical interest in the property. On the contrary, the learned District Judge distinguished between those Plaintiffs who had established their proprietary rights and those who had failed to do so. Having found that Plaintiffs 1–6 had established their co-ownership, the learned District Judge was entitled to consider whether those Plaintiffs, as co-owners, were entitled to protect the proprietary rights thereby established against the Defendants.

The authorities relied upon by the learned Counsel for the Plaintiff, including *Hevawitarane et al v Dangan Rubber Co. Ltd.* [1913] 17 NLR 49 and *Harriette v Pathmasiri* [1996] 1 Sri L.R. 358, recognise the right of a co-owner to assert and protect his or her proprietary interest against a person who has no lawful right to interfere with the property. The same principle is reflected in the later decisions relied upon by the Plaintiff, including *M.M.M. Ashar v T.H. Kareem*, (SC Appeal No. 171/2019, SC Minutes of 22 May 2023).

Based on the circumstances of this case I do not find it necessary, for the determination of this appeal, to hold that every co-owner is, in every circumstance, entitled to maintain an *actio negatoria*. The narrower proposition which is sufficient for the present Case is that, where a Plaintiff has established an undivided proprietary interest and corresponding soil rights in the property, the mere fact that the Plaintiff is a co-owner and not the exclusive owner of the entirety does not, by itself, deprive that Plaintiff of the right to protect those proprietary interests against a third party asserting a servitude or other right over the property.

Submissions (in view of sections 11 and 12 of the Civil Procedure Code) were made in support of the proposition that the failure of one or more persons joined as Plaintiffs to establish their interest necessarily defeats the claim of every other Plaintiff who has independently established a right to relief. The fact that the Plaintiffs were joined in one action could not enlarge the rights of those who failed to establish title, but neither could it extinguish the rights of those who succeeded in establishing their proprietary interest. In the circumstances of this Case, I therefore differ from the approach adopted by the High Court that, because the action had been instituted jointly, “all Plaintiffs should succeed this case jointly or otherwise fail.” That proposition, in my view, overlooks both the actual wording of prayer (a), which was expressly founded upon common ownership, and the distinction between the rights established by Plaintiffs 1–6 and those which were not established by Plaintiffs 7–13.

Nor do I consider that the learned District Judge exceeded the jurisdiction conferred by the pleadings or the issues framed in the action. The issues expressly required the Court to determine the title of the parties, the devolution of the relevant rights, the nature and use of the roadway, whether the Defendants had constructed or used the disputed roadway unlawfully, whether the Defendants had an alternative lawful access, and whether the relief sought by the Plaintiffs could be granted. The determination made by the learned District Judge was therefore founded upon matters which were directly placed in issue by the parties.

The evidence concerning the disputed roadway also requires consideration. The District Court accepted the evidence of the surveyor concerning the roadway depicted as B–C in Plan No. 1549 and found that the road in question had been newly cut in or about 1995. The evidence concerning the fresh cutting marks and fresh soil was considered together with the survey evidence. The District Court further considered the evidence relating to the earlier partition proceedings and observed that, if the Defendants or their predecessors had been exercising a prescriptive right over the disputed roadway for the period alleged, such a claim could reasonably have been expected to have been asserted in those proceedings.

The District Court also considered the evidence led by the Defendants in support of their claim of prescription. Having considered the evidence of the relevant witnesses, including the evidence concerning the period and nature of the alleged use, the learned District Judge

found that the Defendants had failed to establish the adverse and uninterrupted possession necessary to acquire a prescriptive right. Significantly, the evidence did not establish that the alleged use had been adverse to the rights of the Plaintiffs for the requisite period. The learned District Judge also found that, even if there had been use of the roadway, such use could not be treated as sufficient to establish the prescriptive right claimed by the Defendants. The District Court further found that the Defendants had access by an alternative route and rejected the claim that the disputed roadway was the only lawful means of access available to them.

Those findings were findings reached upon an assessment of the evidence led before the trial Court. I find no sufficient basis, upon a consideration of the record, to disturb the learned District Judge's findings that the disputed roadway had been unlawfully constructed in 1995 and that the Defendants had failed to establish a prescriptive or other lawful right to use the roadway.

It is also important to bear in mind that the burden did not rest upon Plaintiffs 1–6 merely to establish their proprietary interest. Once they established the requisite soil rights for the purpose of the relief sought in prayer (b), the Defendants' assertion that they possessed a lawful right of way had to be established by the Defendants. The Defendants relied principally upon their alleged prescriptive use. That claim was expressly considered and rejected by the learned District Judge.

In these circumstances, I am unable to agree with the High Court that the failure of Plaintiffs 7–13 to establish their title necessarily rendered the entire action liable to dismissal. Such an approach would, in effect, permit the failure of one party to establish a proprietary interest to defeat a substantive right independently established by another party who had joined in the same action and sought relief arising from the same factual circumstances.

The distinction between the two prayers in the Complaint is also material. Prayer (a) concerned the declaration of the proprietary rights of the Plaintiffs. Prayer (b), on the other hand, sought to restrain the Defendants' asserted right over the property. The District Court was entitled to determine those claims upon the basis of the rights actually established by the evidence. Based on the circumstances of this Case, Plaintiffs 7–13's failure to establish their title did not prevent the Court from granting the relief sought in prayer (b) in favour of Plaintiffs 1–6, who had established the requisite proprietary interest.

I therefore conclude that the District Court was correct in finding that Plaintiffs 1–6 had established their co-ownership of the property and that the Defendants had failed to establish any lawful right to use the disputed roadway.

For the foregoing reasons, I proceed to answer the aforesaid Questions of Law upon which this Court granted Leave to Appeal in the affirmative. Accordingly, the judgment of the High Court is therefore set aside. The judgment of the learned District Judge dated 20 April 2015, insofar as it granted relief in favour of Plaintiffs 1–6 and dismissed the claim of Plaintiffs 7–13, is affirmed.

In the circumstances of this case, I make no order as to costs.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court