

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

In the matter of an appeal under an in terms  
of Article 127 of the Constitution read with  
Section 5(c) of the High Court of the  
Provinces (Special Provisions) (Amendment)  
Act No. 54 of 2006.

**SC/Appeal No. 152/2025**

**SC/HC/LA No. 189/2022**

**SP/HCCA/KEG/66/2020(F)**

**DC Mawanella Case No.**

**1194/L**

K.G. Abeyrathna

Galpoththegoda Watta,

Mederigama, Mawanella.

**PLAINTIFF**

vs

K.G. Wickramasingha

Galpoththegoda Watta,

Mawanella.

**DEFENDANT**

**AND BETWEEN**

K.G. Wickramasingha

Galpoththegoda Watta,

Mawanella.

**DEFENDANT-APPELLANT**

vs

K.G. Abeyrathna  
Galpoththegoda Watta,  
Mederigama, Mawanella.

**PLAINTIFF-RESPONDENT**

**AND NOW BETWEEN**

K.G. Abeyrathna  
Galpoththegoda Watta,  
Mederigama, Mawanella.

**PLAINTIFF-RESPONDENT-  
PETITIONER**

vs

K.G. Wickramasingha  
Galpoththegoda Watta,  
  
Mawanella.

**DEFENDANT-APPELLANT-  
RESPONDENT**

**BEFORE**

: P. Padman Surasena, C.J.  
K. Priyantha Fernando, J  
M. Sampath K. B. Wijeratne, J.

**COUNSEL**

: Akila Aluthwatte for the Plaintiff-Respondent-  
Petitioner.

Dr. Sunil Abeyratne instructed by Buddhika  
Alagiyawanna for the Defendant-Appellant-  
Respondent.

**ARGUED ON** : 02.09.2025

**DECIDED ON** : 12.03.2026

**M. Sampath K. B. Wijeratne J.**

### **Introduction**

The Plaintiff-Respondent-Appellant (hereinafter referred to as the “Plaintiff”) instituted an action in the District Court of Mawanella claiming title to Lot No. 8 in the final partition plan No. 75 dated January 18, 1955, made by D. Liyanage, Licensed Surveyor, in case No. 8699 of the District Court of Kegalle. Upon issuance of a commission, W.M.L.R. Weerasinghe, Licensed Surveyor, made Plan No. 3106, marked ‘භූ 7’, wherein he superimposed Lot No. 8 on the final partition plan No. 75, depicting the aforesaid Lot No. 8 as Lots Nos. 1 and 2 in his plan No. 3106. Accordingly, the Plaintiff amended his plaint, claiming title to the said Lots Nos. 1 and 2 in Plan No. 3106 (භූ 7).

The original owner of Lot No. 8, as admitted at the trial, was Kehelpannala Gedara Punchi Appuhamy, who was declared the owner of the subject matter by the final partition decree in Case No. 8699/P. The said Punchi Appuhamy, by deed of gift No. 27286 dated September 30, 1968 attested by G.C.H. Molligoda, Notary Public, marked as ‘භූ 2 (අ)’ gifted the subject matter to his son Kehelpannala Gedara Amarasinghe in consideration of the natural love and affection. The donee, Amarasinghe predeceased Punchi Appuhamy, and after the death of Amarasinghe, Punchi Appuhamy revoked the deed of gift No. 27286 (‘භූ 2 (අ)’) by deed of revocation No. 2020 dated August 10, 1977 (භූ 3), attested by F. G. W. Godakumbura, Notary Public.

Thereafter, on the same day, Punchi Appuhamy gifted the subject land to his other son, Kehelpannala Gedara Abeyrathne, the Plaintiff, by deed of gift No. 2021, attested by the same Notary Public. The Defendant, in his evidence, admitted that the Plaintiff is the owner of Lot No. 8 in plan No. 75 (‘භූ 2’) and

is held and possessed by the Plaintiff<sup>1</sup>. Therefore, the Plaintiff's title to the subject land was not in dispute. It is also common ground that the Defendant is the owner of adjoining Lot No. 7 in Plan No. 75 ('පැ 2') and is held and possessed by the Defendant<sup>2</sup>.

The pivotal issue for determination at the trial was whether the Defendant had perfected prescriptive title to the disputed portion of the Plaintiff's land by reason of continuous, uninterrupted, and adverse possession for the requisite statutory period.

It is admitted that both the Plaintiff and Defendant derive their title to their respective lots from the final partition decree in case No. 8699 in the District Court of Kegalle. Both the Plaintiff and Defendant took out commissions on two different surveyors to survey the two lots owned by them. The Plaintiff's land, Lot No. 8 and the Defendant's land Lot No. 7, in Plan No. 75 ('පැ 2') were resurveyed and were superimposed on both the Plaintiff's Plan No. 3106 ('පැ 7') and the Defendant's Plan No. 5882 ('ඒ 1') made by K.S. Panditharathna, Licensed Surveyor. Not only the Plaintiff's Plan 'පැ 7' but also the Defendant's Plan 'ඒ 1' confirms that the Defendant has encroached into Lot No. 8 belonging to the Plaintiff. However, a slight difference in the extent of the encroachment could be observed between the two plans made by the two commissioners. According to 'පැ 7', the encroachment is 1.5 perches (Lot No. 1), whereas in plan 'ඒ 1', it is 1.53 perches (Lot No. 5), being a difference of 0.03 perches. Be that as it may, the Defendant claimed that he had prescribed to the encroached extent.

The Plaintiff's action being one of *rei vindicatio*, the burden of proving title rests on the Plaintiff. Only upon the establishment of the Plaintiff's title does the burden shift to the Defendant to prove the character in which he possesses the

---

<sup>1</sup> *Vide* Defendant's evidence at pages 83, 84 and 86.

<sup>2</sup> *Vide* paragraph 6 of the Plaintiff, evidence of the Plaintiff at Page 57 of the appeal brief, and evidence of the Defendant at page 79/80/83/85 of the appeal brief.

disputed land. In the present case, the Defendant did not dispute the Plaintiff's title to Lot No. 8 before the District Court.

Accordingly, the learned District Judge of Mawanella entered the judgment in favour of the Plaintiff and granted reliefs (අ) and (ආ) sought in the amended plaint, namely, a declaration of title to the land described in the schedule to the plaint and ejectment of the Defendant from the encroached portion thereof. The learned District Judge further dismissed the counterclaim of the Defendant, which sought a declaration that he was the lawful owner of the disputed portion of land.

Being aggrieved by the Judgement of the learned District Judge, the Defendant appealed to the Civil Appellate High Court where an argument was raised for the first time that the revocation of deed of gift No. 27286 (පැ 2 (අ)) after the demise of the donee is invalid. The learned High Court Judges upheld the Defendant's position and held that the revocation is invalid. Accordingly, the learned High Court judges dismissed the action of the Plaintiff.

The Plaintiff then sought leave to appeal against the judgment of the High Court. Having heard the submissions of the parties, this Court decided to grant Leave to Appeal on the following three questions of law;

"

1. *Has the Defendant challenged the title of the Plaintiff in the trial by way of raising an issue?*
2. *If the answer to question No. [1] is in Negative, in view of the failure on the part of the Defendant to establish his claim to the disputed portion of Lot 1 of Plan No 3106 dated 05.10.2013. whether the Plaintiff is entitled to eject the Defendant from that portion of land?*

3. *In the circumstances of this case, is the Plaintiff entitled in any case, to eject the Defendant on the basis that the Plaintiff's title was not challenged by the Defendant in the trial?* ”<sup>3</sup>

### **Analysis**

In the case before us, Deed of revocation No. 2020 (‘භූ 3’) was neither put in issue nor objected to at the time of marking. As also asserted by the Supreme Court in the case of *Sri Lanka Ports Authority and another vs Jugolinija - Boal East*,<sup>4</sup> that if no objection is taken at the closure of a case, documents read in evidence, are evidence for all purposes of the law. Thus, in the case of *Violet Perera vs Rupa Hewawasam*<sup>5</sup> Court of Appeal refused to look into the admissibility of the documents in issue as they had not been objected to at the District Court.

At this stage the pertinent question arises as to whether this question could have been raised in appeal for the first time.

In the Supreme Court case of *Talagala vs Gangodawila Co-operative Stores Society*<sup>6</sup> it held that “*Where a question which is raised for the first time in appeal is a pure question of law and is not a mixed question of law and fact, it can be dealt with.*”

The rationale for the inference that a pure question of law which does not require the ascertainment of new facts can be raised for the first time in appeal is the principle that findings of primary facts by a trial Judge who hears and sees witnesses should not be lightly disturbed on appeal.

However, if a question of law mingled with facts raised for the first time in appeal, where that point might have been put forward in the Court below under one of the issues raised, and the Court which hears the appeal has before it all

---

<sup>3</sup> Journal Entry dated 02.09.2025.

<sup>4</sup> (1981) 1 Sri L R 18.

<sup>5</sup> [1985] 1 Sri LR 229.

<sup>6</sup> 48 NLR 472.

the materials required to decide the question, then the appeal Court can decide on such an issue.<sup>7</sup>

This has been very well articulated in the case of *Leechman Co. Ltd vs Rangalle Consolidated Limited*<sup>8</sup> where it was held that

*“Where the point depends upon a question of fact which is disputed and should be determined on evidence, then it cannot be taken up for the first time in appeal unless the facts necessary for the determination appear in the evidence and are not in dispute at all.”*

As I have already stated above, in the case before us, both the deed of gift and the deed of revocation had been marked without any objection. In light of the above analysis, the validity of the Deed of Revocation is a mixed question of law and fact. Where the Respondents failed to place the relevant factual circumstances in issue, or waived any objection by accepting ‘පැ 3’ in evidence before the original court, such matters cannot be raised for the first time on appeal. As a result, the title of the Plaintiff must be deemed to have been admitted. Sri Lanka's system of administration of justice being adversarial in nature, this Court does not have the freedom of a wild horse to embark on a voyage of discovery to decide on issues that are not presented before the judge for adjudication.

As stated earlier, in the instant case, the learned High Court Judges set aside the Judgement of the learned District Judge acting under the principles of Kandyan law. For the High Court judges to rule on the validity of the deed of revocation, first, it needed to be established that the Deed of Gift (‘පැ 2 (අ)’) is governed by Kandyan law. In the circumstances, the revocability of said deed becomes a mixed question of law and fact. Since the Deed of gift was never put in issue, there was no necessity for the Plaintiff to lead evidence regarding the applicable law, and there is not even an iota of evidence regarding the said facts. Therefore,

---

<sup>7</sup> *Setha vs Weerakoon* 49 NLR 225.

<sup>8</sup> [1981] 2 Sri LR 373.

learned High Court judges erred in law in setting aside the judgment of the learned District Judge on that basis.

Be that as it may, since the learned High Court Judges have set aside the judgment of the learned District Judge considering the validity of the deed of revocation, let me also address the issue whether there is a valid revocation in the case before us.

Under the Roman Dutch law, the common law of this country, a deed of gift cannot be revoked without a decree of court unless the right to revoke is reserved in the deed itself. Even in such instances Court would allow revocation only in certain exceptional circumstances such as ingratitude, donor having children after a gift of great value, and being prejudicial to the legitimate portion of the donor's children due to its magnitude.<sup>9</sup> Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017, has now entrenched the revocation of irrevocable deeds of gift on the ground of gross ingratitude only on an order made by a competent court.

However, Kandyan law, unlike the general law, allows the donor to revoke any Deed of Gift during his lifetime unless it falls within the purview of any of the exceptional grounds provided under Kandyan Law Declaration and Amendment Ordinance 39 of 1938 as amended by Act No 25 of 1944.

Section 4 of the Kandyan Law Declaration and Amendment Ordinance reads as follows;

*“Section 4 (1) Subject to the provisions and exceptions hereinafter contained, a donor may, during his lifetime and without the consent of the donee or of any other person, cancel or revoke in whole or in part any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation:*

---

<sup>9</sup> See Pererira, The Laws of Ceylon, 2nd Edition- page 610.

*Provided that the right, title, or interest of any person in any immovable property shall not, if such right, title, or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted.*

(2) [...]”

Accordingly, ordinarily deed of gift under Kandyan law is revocable irrespective of whether the donee consented or not. Even in instances where the subject matter of such Deed of Gift has been passed for a valuable consideration, still the donor’s right to revoked remain unaffected. Hence in the Court of Appeal case of ***Muthubanda and Another vs Gunaratne***,<sup>10</sup> held as follows;

*“Section 4 (1) of the Kandyan Law Declaration and Amendment Ordinance clearly reserves to the donor a right to revoke a gift and section 5 (1) (d) provides for the renunciation of the right to revoke. These two sections taken together clearly spell out the donor’s right to revoke and hence on a plain reading of the two sections it is my view that the donee by a subsequent retransfer to a 3<sup>rd</sup> party could not defeat the donor’s [sic] right to revoke.”*

In the Court of Appeal case of ***Sirisena vs Eyelyn de Silva***<sup>11</sup> where the donor revoked the deed of gift, 16 days after the death of the original donee, the Court rejecting the argument of the learned Counsel for the heirs of the original donee held that;

*“I am inclined to take the view that under the Kandyan Law the heirs be they minors or majors get no better interest than the original donee and they all get only a contingent interest. Therefore, once the deed of gift is revoked the said contingent interest terminates and the donor re-acquires title. As section 4(1) of*

---

<sup>10</sup> [1999] 3 Sri L R 1.

<sup>11</sup> [2003] 2 Sri L.R 255.

*the Kandyan Law Declaration Amendment Ordinance specifically states that the consent of the donee or any other person is not required covers the contingent rights of the heirs of the deceased and they forfeit their rights on revocation of the deed of gift by the donor.”*

However, as I have already noted above, the right to revocation of a donor is subject to the qualifications provided in Section 5 of the Kandyan Law Declaration and Amendment Ordinance.

#### Section 5

*(1) Notwithstanding the provisions of section 4 (1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance: -*

*(a) any gift by virtue of which the property which is the subject of that gift shall vest in the trustee or the controlling viharadhipati for the time being of a temple under the provisions of section 20 of the Buddhist Temporalities Ordinance or in any bhikkhu with succession to his sacerdotal pupil or pupils or otherwise than as pudgalika for the benefit of himself and his heirs, executors, administrators or assigns;*

*(b) any gift in consideration of and expressed to be in consideration of a future marriage, which marriage has subsequently taken place;*

*(c) any gift creating or effecting a charitable trust as defined by section 99 of the Trusts Ordinance;*

*(d) any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words " I renounce the right to*

*revoke " or words of substantially the same meaning or, if the language of the instrument be not English, the equivalent of those words in the language of the instrument:*

*Provided that a declaration so made in any such subsequent instrument shall be of no force or effect unless such instrument bears stamps to the value of five rupees and is executed in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.*

(2)[...]"

Accordingly, even if the deed states that the gift is absolute and irrevocable, if the right to revoke is not renounced with the words " *I renounce the right to revoke* " or similar words, such deed can be revoked.

Thus, in ***P. B. Ratnayake vs M. S. B. J. Bandara***,<sup>12</sup> the Supreme Court held that "The words "absolute and irrevocable" are only adjectival description of the gift but the essential requirement is a transitive verb of express renunciation. Words merely of further assurance are insufficient. The use of the words "absolute and irrevocable" and "to hold the premises for ever" do not satisfy the requirement of section 5(1)(d) of the Ordinance. Deed 8247 was revocable."

A similar view has been expressed in the Court of Appeal case of ***Somalatha and Others vs Wickremasinghe and Others***<sup>13</sup> where it was observed that;

*"Kandyan Law gives the right to a Donor without the consent of the Donee or any other person, such as the life interest holder, to cancel or revoke any gift by an instrument in writing in conformity with the law. Therefore, the question of a*

---

<sup>12</sup> [1990] 1 SRI.L.R. 156.

<sup>13</sup> [2002] 2 Sri LR 347.

*unilateral revocation [argument (ii) above] without notice to the donee does not arise for consideration. [...]*

*The basic question to be asked in gifts seeking exception to come under section 5 (1) (d) is not how strongly the gift had been expressed but whether there had been a deliberate and express renunciation by the donor of his right to revoke. In other words, the donor, conscious of his right to revoke under Kandyan Law, should have expressed in words similar to the words mentioned in section 5 (1) (d) that he was renouncing his right to revoke. In the instant case the words expressed (2D2 and 2D3 above) were descriptive of the nature of the gift. That is, the donor explained deed No. 531 that he was giving a gift **which was irrevocable and absolute under all circumstances. He did not say that he was renouncing his right to revoke such an "irrevocable and absolute" gift. The section expected such renunciation in words similar to what is mentioned in section 5 (1) (d), if a gift was to be considered as an exception to the general rule of revocability of gifts under Kandyan Law.**" [emphasis added]*

For the aforementioned reasons, I am of the view that the learned High Court judges erred in holding that the revocation of a deed of gift is not possible when the donee is not alive.

Since the title of the Plaintiff to the *corpus* in question is not disputed, next I will deal with the question as to whether the Defendant has established a prescriptive title that will operate adversely to the paper title of the Plaintiff.

For the Defendant to succeed in his claim for prescriptive title, the onus is on him to satisfy all ingredients set out in section 3 of the Prescription Ordinance No. 22 of 1871 as amended. Accordingly, the Defendant must prove undisturbed and uninterrupted possession by a title adverse to or independent of that of the Plaintiff in such action for ten years prior to the institution of the action.

In the case before us, the Defendant seems to suggest to the Court that the portion that said to have been encroached by him is in his possession as per a determination made by the District Court in a partition action. He claims that the common fence that was erected including Plaintiff's portion of land, is the fence

erected by Defendant's father as per the judgment of the partition action filed in Kegalle District Court.

“ප්‍ර - තමන් කියා සිටියා මේ බෙදීමට යෝජනා ඉඩමයි තමන්ගේ ඉඩමයි අතර පොදු මායිම පියා හැඳුව මායිම කියලා?

උ - ඔව්

ප්‍ර - ඒ වගේම තමන් කියනවා දිස්ත්‍රික් අධිකරණයෙන් වෙන් කල මායිම තමා තියෙන්නේ කියලා?

උ - ඔව්”

He has repeatedly confirmed his assertion in the cross examination.

උ- පියා හිටවපු වැට. වෙන වැටක් හිටවලා නැ. එක වැටයි තියෙන්නේ. දිස්ත්‍රික් උසාවියෙන් බෙදූ වැට තමයි තියෙන්නේ

(Appeal brief page 87)

ප්‍ර- තමුන්ට විරසිංහ මහතාගේ කැබලි අංක. 01 ගත්තත්, පණ්ඩිතරත්න මහතාගේ 5882 පිඹුරේ කැබලි අංක. 5 ගත්තත්, ඒ කොටස් තුල පොදු මයිමක් ලෙස තමුන් කියන්න උත්සාහ කරන කලු රේඛාව කොටස කොයි කාලයේ වැටහිර ගස් හිටෙව්වාද කියලා තමුන්ට කීමට හැකියාවක් නැහැ කියලා යෝජනා කරනවා?

උ- ස්වාමීනි වැටහිර ගස් මම හිටෙව්වේ නැහැ. අපේ පියා විසින් හිටවපු වැට තියෙන්නේ. මම එක වැටක්වත් හිටෙව්වේ නැහැ.

(Appeal brief page 90)

I am unable to accept the Defendant's contention that the District Court executed a writ of possession in a way that wrongfully encroached on another person's

portion. This seriously questions the Defendant's credibility and reliability as a witness.

The very version of the Defendant's story is shaken by the evidence of the licensed surveyor and Court Commissioner L.R. Weerasinghe, who clearly identifies the Defendant's encroachment into the Plaintiff's portion.

“කැබලි අංක.7 ට ඇදාගෙන තිබෙනවා කැබලි අංක. 8හි කොටසක්. ඒ බව හඳුනා ගන්න පුළුවන් වුනා. ඒ කොටස මගේ පිඹුරේ කැබලි අංක1 න් දක්වලා තිබෙනවා. කැබලි අංක 1 නැගෙනහිරට ඇති කළු පාට රේඛාවෙන් පෙන්වලා තිබෙනවා. පැලඳුනි වැටක් පෙන්නුම් කර තිබෙනවා. දෙගොල්ලෝ අතර බුක්ති විදින වැට පෙන්නුම්කර තිබෙන්නේ. ඒ අනුව කැබලි අංක.1 කියන්නේ විත්තිකරු පැමිණිලිකරුගේ ඉඩමෙන් අල්ලාගන්න කොටසක කියන්නේ ලියනගේ මහතාගේ අංක.75/8 කැබැල්ල. කැබලි අංක.8 කියන එක මේ නඩුවේ පැමිණිලිකරුට තිබෙන ඉඩම.”

(Appeal brief page 72)

The evidence of the licensed surveyor falls in line with the Plaintiff's version of the story. It is the contention of the Plaintiff that the Defendant had erected a new fence on or around August 03, 2011, encroaching upon the land of the Plaintiff. The land that was encroached upon is also depicted by Lot 1 in Plan No 3106 dated October 05, 2013.<sup>14</sup> This was affirmed by the brother of Plaintiff at the examination- in-chief.

‘මගේ ඉඩමයි වික්‍රමසිංහගේ ඉඩමයි අතර මම දන්නා කාලයේදී මායිම් ලෙස වැටහීර තිබුණා. එය පරණ මායිමක්. එහෙම බුක්ති විදගෙන එන කොට සිද්ධියක් වුනා.

විත්තිකරු බලහත්කාරයෙන් වැට කපලා තිබෙනවා. පරණ වැට ගලවා අලුතෙන් වැටක් ගැහුවා.’

(page 57 of appeal brief)

---

<sup>14</sup> Paragraph 7 of the Plaintiff.

Furthermore, the Defendant in this case, has not at any point identified the time period from which he has begun to possess the *corpus* in question adversely to the Plaintiff. When he was questioned as to the commencement of the prescriptive possession, he had failed to identify the starting point of his prescriptive period.

“ප්‍ර - බුක්කියක් ආරම්භ වූ ආකාරයක් ගැන තමුන් කියන්න දන්නේ නැහැ කියලා යෝජනා කරනවා?”

උ - මම දන්නා කාලයේ සිට බුක්කි වින්ද වැට”

(Appeal brief page 91)

If one is unable to point to a specific act or series of acts to show that his possession has become adverse, how can one claim a prescriptive title? Samayawardhene J. in *Athukoralalage Don Chandrasekera vs Athukoralalage Don Sarathchandra and others*<sup>15</sup> observed that, “*Mere possession is not prescriptive possession. It should be adverse possession known to the real owner. Adverse possession should continue uninterruptedly for 10 years. For mere possession to become adverse possession, there should be an overt act for the real owner and the Court to understand the starting point of prescriptive possession. [...] The 10-year period begins to run from that point, not from the mere act of possession, as not every instance of possession qualifies as prescriptive possession.*” [emphasis added]

The evidence that the Defendant primarily relied on to prove his continuous possession is the cultivation of certain trees. However, mere cultivation of certain plants does not itself suffice to prove ‘*adverse possession*’ as required under section 3 of the Prescription Ordinance. This is evident by the evidence given by Defendant himself at the cross examination.

“ප්‍ර- තමුන්ලා ඒ කොටසට කාලාවරෝධය යටතට අවුරුදු 10 ක් බුක්කි වින්දා

---

<sup>15</sup> SC APPEAL NO: SC/APPEAL/30/2016, SC Minutes of 04.07.2024.

කියන්න කිසිම සාධකයක් නැහැ කියලා යෝජනා කරනවා. ?

උ- පියා ඉන්න කාලයේ පටන්ම ඒ කොටස බුක්ති වින්දා.

ප්‍ර-පැමිණිලිකරුගේ කොටසක් අල්ලාගෙන් තමුන්ලා භුක්ති වින්දා කියන්න තමුන්ට කිසිදු ලේඛණගත සාක්ෂියක් හෝ වාචික සාක්ෂියක් නැහැ කියලා යෝජනා කරනවා ?

උ-මම දන්නේ නැහැ ඒක කියන්න මගේ දෙමව්පියෝ ඉන්න කාලයේ සිට

තමා බුක්ති විදින්නේ. ඒක කියන්න මම දන්නේ නැහැ.”

(Appeal brief page 90)

As held by several decisions of the Supreme Court,<sup>16</sup> a prescription is an illegality made legal. Here law does not intend to confer any premium on the wrongdoing of a person in wrongful possession but rather seeks to penalize a person who has slept on his own rights. Accordingly, the Court would rather follow a strict approach in allowing claims of prescription. Unless a party seeking to establish a prescriptive title proves all the elements required to establish such a title to the satisfaction of the Court, the Court would not hesitate in disallowing such a claim. When evaluating the totality of evidence, I am of the view that Defendant has failed to establish a prescriptive title to the corpus in question as required by law.

Accordingly, the Defendant is not entitled to succeed his claim of prescriptive title, and therefore the Plaintiff is entitled to eject the Defendant from that portion of land that is in dispute.

## Conclusion

I answer questions of law raised in the following manner;

---

<sup>16</sup> *Corea vs Iseris Appuhamy* (1911) 15 NLR 65 at 78, *Kiriamma vs Podibanda* [2005] BLR 9 at 11, *Fathima Naseera vs Mohamed Haris* (CA/818/96(F), CA Minutes of 11.07.2012, *Sumanawathie vs Sirisena* (CA/830/98(F), CA Minutes of 10.03.2014.

1. Has the Defendant challenged the title of the Plaintiff in the trial by way of raising an issue? **No**
2. If the answer to question No 1 is in Negative, in view of the failure on the part of the Defendant to establish his claim to the disputed portion of Lot 1 of Plan No 3106 dated 05.10.2013. whether the Plaintiff is entitled to eject the Defendant from that portion of land? **Yes**
3. In the circumstances of this case, is the Plaintiff entitled in any case, to eject the Defendant on the basis that the Plaintiff's title was not challenged by the Defendant in the trial? **Yes**

I affirm the Judgment of the learned District Judge. The judgment of the learned High Court Judges is set aside.

Appeal is allowed. The Appellant is entitled to costs of this court and the courts below.

**JUDGE OF THE SUPREME COURT**

**P. Padman Surasena, C.J.**

I agree.

**CHIEF JUSTICE**

**K. Priyantha Fernando, J.**

I agree.

**JUDGE OF THE SUPREME COURT**