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

In the matter of an Application for Leave to Appeal and in terms of the Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka to be read with the Section 5C of the High Court of Provinces (Special Provisions) (Amendment) Act No.54 of 2006.

ORIGINALLY

1.Kadinappulige Yasawathie Hemamala
(deceased)
Mohoriya,
Andigama.

2.Hewa Hawarige Pedrick Fernando,
Mohoriya,
Andigama.

Plaintiffs

SC/APPEAL/159/2019
SC/HCCA/LA/19/2017
WP/HCCA/GAM/151/2010 (F)
DC Gampaha Case No.
38476/P

Vs.

1. Kadinappulige Pilochiya (deceased)
Paddawala, Kirindiwela.

1A.Edirippulige Luciya Fernando alias
Julia Fernando (deceased)

1B.Kadinappulige Pilochiya (deceased)
Paddawala, Kirindiwela.

2. Karunagamage Sirilak Ruwan
Jayweera,
No. 45A, Mailawalana, Kirindiwela.

3. Karunagamage Ramani Pushpa
Kanthi Jayaweera,
No. 135/2, Boddimangalarama road,
Patthalagedara, Veyangoda.

4. Karunagamage Sirimathie
Padmakanthi Jayaweera (deceased).

4A. Karunagamage Ramani Pushpa
Kanthi Jayaweera,
No. 135/2, Bodhimangalarama road,
Patthalagedara, Veyangoda.

AND NOW BETWEEN

1. Hewa Hawarige Pedrick Fernando,
Mohoriya,
Andigama.

Substituted-Plaintiff-Respondent-Petitioner

Vs.

2. Karunagamage Sirilak Ruwan
Jayaweera,
No.45A,Mailawalana Road,
Kirindiwela.

4A. Karunagamage Ramani
Pushpakanthi,
No.135/2, Bodimangalarama Road,
Paththalagedara, Veyangoda.

2nd and 4A Defendant-Appellants

1B. Kadinappulige Premathilake,
No.30A, Mailawalana,,
Kirindiwela.

1B Defendant-Respondent

3. Karunagamage Srimathie
   Padmakanthi Jayaweera,
   No.45 A,Mailawalana Road,
   Kirindiwela.

3rd Defendant-Respondent

Before : Janak De Silva, J.
Dr. Sobhitha Rajakaruna, J.
Menaka Wijesundera, J.

Counsel : Sandun Senadhipathi instructed by Mangalika Munasinghe for the substituted Plaintiff-Respondent-Appellant-Petitioners.
Shantha Karunadara for the 1B Defendant-Respondent-Respondent.
Pradeep Perera with Sureka Wijendra for the 2A Defendant-Appellant-Respondent-Respondent & 3rd Defendant-Respondent-Respondent.

Written Submissions : Written submissions on behalf of the 3rd and 4A Defendant-Appellant-Respondents on 16th November 2020.
Written submissions on behalf of the Plaintiff-Respondent-Appellants on 16th October 2019.

Argued on : 23.09.2025

Decided on : 31.03.2026

MENAKA WIJESUNDERA J.

The instant appeal has been filed to set aside the judgment dated 29.11.2016 of the Civil Appellate High Court.

This matter stems from a decision in a partition action No. 11670 of the District Court of Gampaha which had partitioned the land called Lot 2 of the Kahatagaswatta.

According to the plaint filed by the Plaintiff-Appellant in the instant matter (P 38476) the above-mentioned land had been 4 acres and 13.3 perches in extent and had been divided into equal shares by partition action no. 11670, to **Kadinappuli Radage Adochiya and Karunagamage Jayaweera,** as depicted in preliminary plan No.65 dated 15.12.1996 (father and son).

The Plaintiffs to the original Court action had been the daughter and the son-in law of the above mentioned Kadinnappulige Radage Adochiya and the sister of the above mentioned Karunagamage Jayaweera.

The Plaintiffs had filed the action against the Defendant Pillochiya, the 1st child of above mentioned Adochiya.

The 1st Defendant had died and 1A defendant had been substituted and the statement of claim had been filed seeking a dismissal of the plaint.

Thereafter, the substituted 1A also had died and then the 1B Defendant had been substituted.

The 3rd and the 4th Defendants had filed statements of claim, claiming prescriptive title.

At the trial, the 2nd Plaintiff has given evidence with two other witnesses and had said that defendant had been in occupation of the co-owned land and as the defendant had failed to give them the produce from the land, the instant action has been filed on their paper title obtained from the father Adochiya.

The 1B Defendant had given evidence and had claimed paper title and that he had been in occupation of the entire land. The 2nd Defendant had given evidence on behalf of 2nd to the 4th defendant and had claimed prescriptive title to the land.

The plaintiffs had marked the Plans as X and X1, and P1 to P4 the deeds and the defendants had marked 1V1 and 1V2.

According to the documents marked at the trial, the following claims have been revealed.

The above mentioned Jayaweera, had by deed no. 2720 dated 1966.12.19, given back Kadinappuli Radage Adochiya, the father, 128 shares out of 195 of his portion.

Kadinappuli Radage Adochiya, by deed no. 3060 marked as P3, had gifted 2/3 of his share to the 1st plaintiff and the 2nd plaintiff, who were husband and wife and the daughter of Kadinappuli Radage Adochiya.

Kadinappuli Radage Adochiya had gifted 1/3 of his share to his eldest son Kadinappuli Radage Pilochchiya by deed 3059 dated 1968.01.19.

Thereafter, Karunagamage Jayaweera had gifted the balance portion of his share to Kadinappuli Radage Pilochchiya by deed 1766 dated 1966.11.10. (subsequent to the deed of sale to his father)

The 2nd, 3rd and the 4th defendants, who are the children of Karunagamage Jayaweera had claimed in the District Court that they had inherited rights from their mother, Milinawathi, the wife of Karunagamage Jayaweera, who had been gifted portion of Jayaweera's share by deed 1967 dated 1973.07.13.

But the District Judge has very correctly observed that by 1979.07.13 Karunagamage Jayaweera had given his share to his father, Adochiya and brother, Kadinappuli Radage Pilochchiya.

Therefore, Karunagamage Jayaweera could not have had any land left to be given to his wife by deed no. 1767.

Hence, based on the above-mentioned facts and the diagram of Lot 2, the Kahatagaswatta land had been partitioned into equal shares in the said partition action. Although Kadinappuli Adochiya and Karunagamage Jayaweera were each allotted equal shares by the partition decree, Kadinappuli Adochiya subsequently purchased 128 out of the 195 shares from Jayaweera. The remaining shares retained by Jayaweera were later sold to Kadinappuli Pillochiya, the eldest son of the original Defendant, Adochiya.

Although the 2nd to 4th Defendants have claimed paper title under the deed no. 1767 executed in favour of Milinawathie, the wife of the aforementioned Jayaweera, no valid title could have passed to her, as by that time Jayaweera

had already divested himself of all his interests in the land by transferring the entirety of his shares to Adochiya and Pillochiya.

Hence, the learned trial judge's conclusion that the above mentioned Jayaweera could not have given any land to his wife and the three children is very correct and therefore, the 2nd, 3rd and the 4th Defendants cannot claim any paper title to the land in question.

However, the original plaint had been filed against the defendant, who had been the eldest son of Adochiya, and as such, in his answer, what he has claimed is his rights devolving from Adochiya and Jayaweera and the evidence led on his behalf had been that he had been occupying the land and before him, his other brother Jayaweera.

The defendant had claimed that the Plaintiffs were never on the land.

But the position of the Plaintiffs-Appellants had been that the 1st Plaintiff, the daughter of Adochiya and the sister of Pillochiya, who had been dead at the time of the trial, had been gifted with two thirds of his father's share during her marriage to the 2nd Plaintiff-Appellant.

They had not been living on the land but they had been given profits from the land at the time Jayaweera lived but once he died, they had lost the income.

The trial judge had held with the plaintiffs and the 1st defendant and rejected the claim of the 2nd to the 4th defendants, and an appeal had been lodged in the Civil Appellate High Court and they had set aside the judgment of the District Court.

The plaintiff-appellants had lodged the instant appeal and the following questions of law had been granted with leave to proceed by this Court. They are as follows;

(i) Whether their Lordships of the Civil Appellate High Court of Gampaha have erred in law by holding that the 2 and 4A Defendant-Respondent-Respondents have established prescriptive title to the lot 03 of the Preliminary Plan marked as X when there is no an iota of evidence to that effect placed before the Court by the 2nd and 4A Defendant-Respondent-Respondents?

(ii) Whether their Lordships of the Civil Appellate High Court of Gampaha have erred in law by failing to appreciate the fact that the 2 and 4A Defendant-Respondent-Respondents

cannot claim prescriptive title to the corpus as they had claimed undivided shares from the corpus?

The learned trial judge has held in favour of the plaintiff-appellants and had divided the land between the plaintiff-appellants and the defendant, stating as stated above that the 2nd to the 4th defendants could not have inherited from Milinawathie as the late K. Jayaweera did not have any land to pass on to his children and wife after the execution of deeds P2 and 1V1.

Hence, the trial judge had held that the 2nd to the 4th defendants did not have paper title and neither prescriptive title because,

1) The starting point of prescription is not clear
2) The defendants have not shown any documents to say that they were in adverse possession of the land in question.

The defendants being aggrieved by the said finding had appealed to the Civil Appellate High Court and they also have held that the 2nd to the 4th Defendants have no paper title and as such, they had been trespassers of the land since the execution of 2V1a, and has excluded lot 3 and has held that they had prescriptive title over the said portion.

Having considered the above mentioned facts, it is my opinion that the 2nd to the 4th Defendants have no paper title to the instant land but as they have also pleaded prescriptive title, it has to be observed that the plan pertaining to the land had been marked as X and X1 and in both plans the corpus is not in question and it is very clear that Pillochiya and his descendant had been in occupation of the land.

The 2nd defendant to the 4th defendant had not made any claim with regard to Lot 3 and the surveyor report had said that there were no claimants, who were not parties at the time the land was being surveyed.

The plaintiff and the Defendant had shown the boundaries to X and X1 but at the time of X1 the 2nd defendant and the 4th had been present.

But at the trial the 2nd Plaintiff, his two witnesses and the Defendants had given evidence and all had said that the land question was a co-owned land.

Hence, it is settled law that if one is trying to plead prescription for a co-owned land, he or she must expressly plead 10 years of adverse possession with evidence and not mere statements that they were on the land.

The 2nd to the 4th defendant also had not produced any documentary evidence to say that they were in adverse possession of the land.

Furthermore, the plan marked as X and X1 also have indicated that the 1DA was in possession but of course the 3D had claimed that she had occupied the house in lot 3 to the surveyor but his evidence had not been led but only the reports had been marked and it had indicated that the defendant had occupied the land and had developed the land as well.

As urged by the defendants they may have been in possession of the Lot 3 but it has to be proved to the rest of the world that they were in adverse possession. They had entered the land believing that they had paper title but as per the above facts that is not correct and both the lower Courts had held so and if that is so then they must show from when exactly their adverse possession began and what was the adversity which took place.

At this point, I wish to consider the following judgment by **Janak de Silva J in CA-206-99 CA minutes 11.09.2018** in which he has analyzed the plea of prescription as follows:

In ***D.R Kiriamma v J.A. Podibanda and 8 others*** (2005 B.L.J 9 at 11) Udalagama J. adverted to some important points to be borne in mind in considering a claim of prescriptive title:

> *"Onus probandi or the burden of proving possession is on the party claiming prescriptive possession. Importantly, prescription is a question of fact. Physical possession is a factum probandum. I am inclined to the view that considerable circumspection is necessary to recognize the prescriptive title as undoubtedly it deprives the ownership of the party having paper title. It is in fact said that title by prescription is an illegality made legal due to the other party not taking action. It is to be reiterated that in Sri Lanka prescriptive title is required to be by title adverse to an independent to that of a claimant or plaintiff."*

He has further stated that, "Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property the burden of proof rests fairly and squarely on him to establish the starting point for his or her acquisition of prescriptive rights **[Gratiean J in Chelliah v Wijenathan 54 N.L.R. 337 at 342].**

The principles of burden of proof and mode of proof, where a party claims prescriptive title was succinctly stated by the Supreme Court in ***Sirajudeen and two others v. Abbas*** [(1994) 2 Sri L.R. 365] as follows:

"Where the party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights.

A facile story of walking into abandoned premises after the Japanese air raid constitutes material far too slender to found a claim based on prescriptive title.

As regards the 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 witnesses should speak to specific facts and the question of possession has to be decided thereupon by 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. The occupation of the premises must be of such character as is incompatible with the title of the owner." In the instant matter as stated above the 2nd to the 4th defendants although have claimed prescriptive title have failed to produce any documentary evidence as of their adverse possession and a specific starting point of the same have been able to on make mere claims of prescription which according to the above mentioned case law is not sufficient."

Thus, having considered the above mentioned facts and the law, I am compelled to answer the questions of law raised above in the affirmative and conclude that the learned Trial Judge was correct in concluding in favor of the Plaintiff-Appellants and the original Defendant.

Hence, this Court while affirming the findings of the learned Trial Judge, set aside the findings of the Civil Appellate High Court and hereby allowed the instant appeal.

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