

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

In the matter of an Application for Leave to Appeal from an order dated the 15th of July 2020, of the High Court of Civil Appeals of the Western Province holden at Colombo, in terms of the provisions of Article 128(1) of the Constitution read with the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC No. SC/Appeal/15/2023

Provincial High Court No.

WP/HCCA/MT/40/2018/F

DC Mt. Lavinia Case No.

2711/12/L

Kurukulaarachchige Dona Merceline

Nanayakkara

No. 52, Vihara Mawatha,

Pepiliyana,

Borelesgamuwa

Plaintiff

Omanthage Janitha Nelum Nishika Perera

No. 52, Vihara Mawatha,

Pepiliyana,

Borelesgamuwa.

Substituted Plaintiff

Vs.

Nandasena Ranatunge
No. 30/3, Vihara Mawatha,
Papiliyana,
Boralesgamuwa.

Defendant

AND BETWEEN

Nandasena Ranatunge
No. 30/3, Vihara Mawatha,
Papiliyana,
Boralesgamuwa.

Defendant-Appellant

Vs.

Omanthage Janitha Nelum Nishika Perera
No. 52, Vihara Mawatha,
Papiliyana,
Borelesgamuwa.

Substituted Plaintiff –Respondent

AND NOW BETWEEN

Omanthage Janitha Nelum Nishika Perera
No. 52, Vihara Mawatha,
Pepiliyana,
Borelesgamuwa.

**Substituted Plaintiff-Respondent-
Petitioner**

Vs.

Nandasena Ranatunge
No. 30/3, Vihara Mawatha,
Papiliyana,
Boralesgamuwa.

Defendant-Appellant-Respondent

BEFORE : **YASANTHA KODAGODA, PC J**
DR. SOBHITHA RAJAKARUNA, J &
MENAKA WIJESUNDERA, J.

COUNSEL : Murshid Maharooft with Shoaib Ahamed
instructed by S.M.M. Makam for the Appellant.

Samantha Wilwaraarachchi with Sumudu Rathnayake
instructed by Derek Fernando Associates for the
Respondent.

ARGUED & DECIDED ON : 17.06.2026

JUDGMENT

YASANTHA KODAGODA, PC, J

This matter was taken up for hearing, having paid due regard to the three questions of law in respect of which Leave to Appeal had been granted on 31.10.2023 in favour of the then Petitioner (present Appellant).

We heard learned counsel for the Appellant and learned counsel for the Respondent. Both of them made very useful submissions, and did so acting in terms of professional ethics. They functioned as true officers of Court.

Founded upon the evidence presented before the learned District Judge as well as the situation on the ground, we gathered from the submissions made by learned counsel the following salient facts and circumstances.

1. The property in issue is presently owned by the Plaintiff (present Appellant). She has title to the property.
2. The said property is being currently possessed either in real time or constructively by the Defendant (the present Respondent).

3. The Defendant had entered the property in issue founded upon leave and license obtained from the owner of the property as at the time such entry was made.
4. Both as at now as well as in the past, the Defendant did not possess ownership rights or had contractually agreed rights to possess the property in issue.
5. Since the institution of legal action in the District Court, the Respondent has not paid any lease rental or other consideration to the Appellant.

In view of the foregoing facts, it is the considered view of this Court that as at now, the Defendant has no right recognized by law to possess the property in issue. In those circumstances, quite independent of the questions of law raised by the Appellant, this Court does not see any basis that can be recognized in terms of the law, which would enable the Respondent to remain in the property any further. In fact, the Respondent should have handed over possession of the property to the Appellant a long time ago.

It appears that the Respondent had mobilizing his funds developed the property to some extent. However, we do not find a judicial finding in respect of such development or cogent evidence regarding the exact sum expended by the Respondent in that regard.

In view of the forgoing, it is the view of this Court that notwithstanding the findings reached by the High Court of Civil Appeals, the Judgment of the learned District Judge coincides with the unimpeachable items of evidence referred to above which are unequivocally in favour of the Appellant.

In those circumstances, it is the view of this Court that the Judgment of the District Court should prevail over the Judgment delivered following the 1st Appellant hearing by the High Court of Civil Appeals. Therefore, we set aside the impugned Judgment of the High Court of Civil Appeals dated 15.07.2020 and we restore the Judgment of the District Court dated 06.05.2018.

Given the totality of the attendant circumstances, we grant a period of four months from today, for the Respondent to vacate the premises in issue. Should they refuse or fail to do so, the Appellant will be entitled to takeout a writ and have it executed without any advance notice being given to the Respondent. We observe that, it would make very good sense, if the Appellant would pay a sum of Rs. 1 million to the Respondents in consideration of the improvements made by him to the property in issue.

In view of the forgoing, this Appeal is allowed. Parties will bear their own costs.

Proceedings terminated.

JUDGE OF THE SUPREME COURT

DR. SOBHITHA RAJAKARUNA, J

I agree.

JUDGE OF THE SUPREME COURT

MENAKA WIJESUNDERA, J.

I agree.

JUDGE OF THE SUPREME COURT