

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

In the matter of an application for
substitution in terms of Section 760
A of the Civil Procedure Code.

SC/Appeal No. **SC/APP/165/2015**
SC/LA/Application No.
SC/HCCA/LA/77/2013
Civil Appellate High Court of
Kurunegala Case No.
WP/HCCA/KUR/131/2009/F
DC Kuliypitiya Case No. **13990/03/L**

Asana Lebbege Segu Mohamadu,
Kekunagolla Post,
Dampitiya.

PLAINTIFF

vs

1. Mohamed Sharibuge Adampulle,
Kekunagolla Post,
Dampitiya.
2. Ahamadu Lebbe Hajari Umma,
Kekunagolla Post,
Dampitiya.

DEFENDANTS

Between

Ahamadu Lebbe Hajari Umma,
Kekunagolla Post,
Dampitiya.

2nd DEFENDANT - APPELLANT

vs

Asana Lebbege Segu Mohammadu,
(Deceased)

PLAINTIFF – RESPONDENT

Segu Mohammadu Neina Mohideen,
Kekunagolla Post,
Dampitiya.

**SUBSTITUTED PLAINTIFF -
RESPONDENT**

And

Mohamed Sharibuge Adampulle,
Kekunagolla Post,
Dampitiya.

1st DEFENDANT – RESPONDENT

And Now Between

Ahamadu Lebbe Hajari Umma,
Kekunagolla Post,
Dampitiya.

**2nd DEFENDANT – APPELLANT –
APPELLANT**

vs

Asana Lebbege Segu Mohammadu,
(Deceased)

PLAINTIFF – RESPONDENT

Segu Mohammadu Neina Mohideen,

Kekunagolla Post,
Dampitiya.

**SUBSTITUTED PLAINTIFF –
RESPONDENT – RESPONDENT**

And

Mohamed Sharibuge Adampulle,
Kekunagolla Post,
Dampitiya.

**1st DEFENDANT – RESPONDENT
– RESPONDENT**

Now Between

2. Ahamadu Lebbe Hajari Umma,
(Now Deceased)

**2nd DEFENDANT – APPELLANT –
[PETITIONER]**

2A. Mohamed Sharibuge Adampulle,
Kekunagolla Post,
Dampitiya.

**2A DEFENDANT - APPELLANT–
PETITIONER – [APPELLANT]**

vs

Asana Lebbege Segu Mohammadu
(Deceased)

PLAINTIFF – RESPONDENT)

Segu Mohammadu Neina Mohideen,
Kekunagolla Post,

Dampitiya.

**SUBSTITUTED PLAINTIFF –
RESPONDENT – RESPONDENT –
RESPONDENT**

2. Mohamed Sharibuge Adampulle,
Kekunagolla Post,
Dampitiya.

**1st DEFENDANT – RESPONDENT
–RESPONDENT- [RESPONDENT]**

BEFORE : A. L. Shiran Gooneratne, J.
K. Priyantha Fernando, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL : Samantha Vithana with Mahanama
Dissanayake instructed by Samudika de
Silva for the Substituted 2A Defendant-
Appellant - Appellant.

Faisz Musthapha, P.C., with Thushani Machado
Instructed by Sanjeewa Kaluarachchi for the
Substituted Plaintiff - Respondent -
Respondent - Respondent.

ARGUED ON : 16.10.2025

DECIDED ON : 30.03.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Plaintiff-Respondent (hereinafter referred to as “the Plaintiff”) instituted the present action in the District Court of Kuliyaipitiya, seeking, *inter alia*, a

declaration of title to the land more fully described in Schedule “B” to the plaint, the ejectment of the 1st Defendant-Respondent (hereinafter referred to as “the 1st Defendant”) therefrom, and damages.

The 2nd Defendant-Appellant (hereinafter referred to as “the 2nd Defendant”), the mother of the 1st Defendant, was subsequently added as a party to the action. However, the Plaintiff did not file an amended plaint in terms of section 21 of the Civil Procedure Code, and consequently, no relief has been sought against the 2nd Defendant in the plaint.

The 1st Defendant, in his answer, sought a dismissal of the action, whereas the 2nd Defendant, while seeking the same relief, also made a claim in reconvention that she has acquired prescriptive title to the subject matter of the action, more fully described in Schedule “B” to the plaint.

When this matter was taken up for trial on September 26, 2006, the Plaintiff moved to amend paragraph 15 of the original plaint, which application was allowed subject to a draft being tendered. Upon the draft amended plaint being filed, the 1st and 2nd Defendants objected thereto, and the Court, after inquiry, made order rejecting the proposed amended plaint. Accordingly, the case proceeded on the original plaint dated October 21, 2003.

At the trial, two admissions were recorded, and four issues on behalf of the Plaintiff, three issues on behalf of the 1st Defendant, and eight issues on behalf of the 2nd Defendant were framed.

After trial, the learned Additional District Judge delivered his judgment dated November 26, 2009, in favour of the Plaintiff, granting the reliefs prayed for in the plaint, except for paragraph (e) thereof.

Being aggrieved by the aforesaid judgment of the learned Additional District Judge, the 2nd Defendant preferred an appeal to the High Court of Civil Appeal,

Kurunegala. The learned Judges of the High Court of Civil Appeal dismissed the appeal, thereby affirming the judgment of the learned Additional District Judge. Hence, this appeal by the 2nd Defendant to this Court.

Accordingly, this Court granted leave to appeal on the questions of law set out in paragraph 30, except sub-paragraphs (vi) and (ix), of the Petition dated February 6, 2013, which read as follows:

“

- i. *Have Their Lordships of the High Court of Civil Appeal erred in law as they have failed to take into account that effect of converting an action of one character into an action of another and inconsistent character of the suit is barred by Section 46(2) of the Civil Procedure Code?*
- ii. *Have Their Lordships of the High Court of Civil Appeal erred in law as they have failed to take into account that the Plaintiff has neither pleaded possession ut dominus in his plaint nor framed an issue with effect to possession ut dominus but the Learned Additional District Judge misdirected himself that the above styled action was a possessory action although the Plaintiff's action is infact a rei vindicatio action?*
- iii. *Have Their Lordships of the High Court of Civil Appeal erred in law as they have misdirected themselves that when a Plaintiff filed an action seeking a declaration of title and failed to prove his title, the said action could be converted into a possessory action?*
- iv. *Have Their Lordships of the High Court of Civil Appeal erred in law as they cited number of authorities in their judgment which are irrelevant to the issue in this case, as none of the cases cited in the judgment do not permit to convert a rei vindicatio action into a possessory action. ?*

- v. *Have Their Lordships of the High Court of Civil Appeal erred in law as they held that the Learned Additional District Judge has correctly answered issue no. 2,3 & 4 affirmative?*
- vi. [omitted]
- vii. *Have Their Lordships of the High Court of Civil Appeal erred in law in misapplying the Section 4 of the Act No: 22 of 1871?*
- viii. *Have Their Lordships of the High Court of Civil Appeal erred in law in holding that a rei vindicatio action could be converted into a possessory action according to the facts of the case*
- ix. [omitted]”

Analysis

There is no dispute regarding the identification of the *corpus*, which is the subject matter of this action, more fully described in Schedule “B” to the plaint and depicted as Lot 2 in Plan No. 272 dated October 16, 1985. As the Plaintiff does not seek to challenge the finding of the learned Additional District Judge that he had failed to prove title on a balance of probabilities to the satisfaction of the Court, in order to obtain a declaration of title, the crux of this case is, more or less, confined to the question whether the Plaintiff is entitled to the possessory relief granted by the learned Additional District Judge and affirmed by the learned Judges of the High Court, as raised in several questions of law upon which leave to appeal was granted in this matter.

Questions of law No (i), (iii),(iv) and (viii)

The 2nd Defendant contends that the Plaintiff is not entitled to possessory relief, as the Plaintiff is pursuing a claim of a *rei vindicatio* nature rather than a claim

of a possessory character. In support of this proposition, the 2nd Defendant cites a series of cases, including *Ekanayake vs Ekanayake*¹, *Sellaiah Marimuttu vs Sivapakkayam*², and *Wijeratna vs Lenora*³. The 2nd Defendant further relies on the observations of Sampayo J. in *Philippu vs Pedris*⁴, where it was held that:

“I am strongly of the opinion that that the original order converting this action from one of declaration of title into a possessory action was wrong.”

The learned Counsel for the Plaintiff draws our attention to the case of *Ekanayake vs Gunawardhane*⁵, where it was held that:

“Although the Plaintiff has not succeeded in establishing a title upon which he can claim a declaration in a rei vindicatio action, he has undoubtedly had possession for a year and a day prior to the ouster by the defendants and has instituted his action within a year and a day thereafter.In the case already referred to it was held that even though no application is made to convert a rei vindicatio action into a possessory one, the Court may ex mero motu grant a possessory decree when all the necessary evidence is before it. The principle there applied was extended in the case of Juwanis as Caro Appu S.C. W.R. 33 which held that the possessory remedy could be granted by this Court on appeal”

The High Court of Civil Appeal relied on *Fernando vs Fonseka*⁶ and *Juwanis vs Caro Appu*⁷ to hold that it is possible to convert a *rei vindicatio* action into a possessory action, depending on the facts of each case.

¹ 63 NLR 188.

² [1986] 1 CALR 264.

³ 60 NLR 457.

⁴ [1916] K. Balasingham Law Reports Vol. V page 39.

⁵ 51 CLW 70.

⁶ [1909] Balasingham Law Reports Vol. IV page 167.

⁷ [1920] Ceylon Weekly Reports Vol. VIII page 33.

After a perusal of the existing case law, it is more accurate to state that possessory relief can be granted in a *rei vindicatio* action if the proven facts entitle the Plaintiff to such relief. Furthermore, since the cases cited by the learned Judges of the High Court address issues similar to those before us, I see no reason to conclude that the learned High Court Judges relied on irrelevant authorities.

The learned Counsel for the Plaintiff contends that the principle of “greater includes lesser” applies to the present case, relying on the recently decided case of *M.M.M. Ashar vs T.H. Kareem*⁸. If the Court has before it all the material facts necessary to grant the lesser relief, I see no reason to deprive a deserving party of a remedy to which he is entitled.

A similar view was expressed in *Juwanis vs Caro Appu* (supra), as follows:

*“The cases of Silva v. Appuhamy [15 NLR 297] and Fernando v. Fonseka [4 Bal 167] are examples of cases which, **although the claim was originally based on actions for vindication of title, were subsequently converted into possessory actions upon the facts being proved entitling the plaintiff to such a remedy.**”*

[...] It was objected for the respondent that it is now too late to change the form of the action and give the plaintiff this relief which he might and did not claim in the lower court, but I see no reason why this Court should not, when the facts show that the plaintiff is entitled to this remedy, allow it upon the appeal [...] [emphasis added]

The Courts are now less concerned with the label attached to a cause of action than with the substance of the relief sought and the facts proved. In other words, if the Plaintiff has established facts entitling him to such relief, the Court will not deny it merely because the pleadings categorize the cause of action differently.

⁸ SC/Appeal/ 171/2019, SCM 22.05.2023.

It is my considered view that, in circumstances where strict adherence to the letter of the law would result in injustice, the Court should exercise its judicial discretion to temper the rigidity of the law, allowing the spirit of justice to prevail by granting a deserving litigant the relief to which he is entitled.

For the reasons discussed above, I answer Questions of Law Nos. (i), (iii), (iv), and (viii) in the negative.

Question of Law No (ii)

Although the Plaintiff has failed to prove title on a balance of probabilities, as required in a *rei vindicatio* action, the facts of the case indicate that the Plaintiff was in possession of the disputed property. He had cultivated it and derived produce therefrom. The Plaintiff's possession can be inferred from the evidence he presented.

ප්‍ර: එහි පොල් ගස් කීයක් තිබුණාද?

උ: 11 ක් පමණ තිබෙනවා.

ප්‍ර: ඒ 11 තමා බුක්කි වින්දාද?

උ: බුක්කි වින්දා.

ප්‍ර: ඒ පොල් ගස් 11 හී කොපමණ පොල් කරවෙනවාද?

උ: 200 ගන්නක් පමණ කරවෙනවා

[....]

ප්‍ර: ඒ පොල් කඩන විට ඔහුට කීයක් ගෙවනවාද?

උ: ඒ කාලයේ රුපියල් 40/= ක් පමණ දෙනවා.

(Appeal brief page 96)

It is also evident from the evidence presented before the Court that the Plaintiff was forcibly ejected by the 1st Defendant on or around October 8, 2003.

In his cross-examination, the Plaintiff stated as follows:

ප්‍ර.සාක්ෂිකරු තමා සාක්ෂියේදී ප්‍රකාශ කලා තමාගේ පැමිණිල්ලේ 'බී' අක්ෂරය දරන උප ලේඛනයේ ඤාතීන් ඉඩමට 1 වෙනි විත්තිකාර ආදම් පුල්ලේ කම්බිමිවැට ගලවා බලහත්කාරයෙන් ඇතුළු වුනා කියලා

උ: ඔව්.

ප්‍ර.කවදද මේ සිද්ධිය වුනේ?

උ.2003 කියලා මතකයි. දිනය හරියට මතක නැහැ.

ප්‍ර.මේ සිද්ධිය සම්බන්ධයෙන් පොලීසියට පැමිණිලි කලාද?

උ: ඔව්.

[...]

ප්‍ර. කවදද පොලීසියට පැමිණිලි කලේ?

උ: මගේ පුතා

(Appeal brief page 96)

The police complaint dated June 26, 2003, marked “P7,” corroborates the Plaintiff’s contention that the 1st Defendant unlawfully interfered with the Plaintiff’s possession of the disputed portion of land.

Be that as it may, the learned District Judge’s observation that that ‘වාර්තා ගත කර ඇති විසඳිය යුතු ප්‍රශ්න සලකා බැලීමේදී පැමිණිලිකරු මෙම නඩුව පවරා ඇත්තේ ප්‍රධාන වශයෙන් භුක්ති සහනයක් ලබා ගැනීම සඳහා බව පෙනී යයි is, *prima facie*, erroneous, since the action was instituted to obtain a declaration of title and to recover possession, as is clearly evident from the prayer of the original plaint, which reads as follows:

(අ) පැමිණිලිකරු 'බී' අක්ෂරය දරන උපලේඛනයේ විස්තර කර ඇති ඉඩමේ නීත්‍යානුකූල අයිතිකරු හැටියට නින්දුවක්ද

(ආ) විත්තිකරුද, ඔහුගේ පවුලේ සාමාජිකයන් සහ ඔහු යටතේ ඇති සියලු ...
එකී ඉඩමෙන් නෙරපා හැර එකී ඉඩමේ නිරවුල් බුක්තිය ලබා ගැනීමට තීන්දුවක්ද
[...]

However, the learned Judges of the High Court, instead of following the same rationale, reached a similar conclusion on the basis that a *rei vindicatio* action can be converted into a possessory action if the essential elements of a possessory action are established.

Let me further clarify the law on this point. Both a *rei vindicatio* action and an action for a declaration of title are instituted primarily for the recovery of possession. In an action for a declaration of title, possessory relief can be granted even if it has not been specifically pleaded. In the case of *Silva vs Appuhamy*⁹, Wood Renton J., delivering a concurring opinion, observed as follows: “*Mr. Hector Jayewardene argued that there had been no claim for or issue as to a possessory remedy, and that the District Judge ought not to have given that relief to the respondent in an action where only a declaration of title had been claimed. I do not think, however, that the appellant has any reason to complain of the decree on this ground. It has been the practice for the Courts to grant such decrees in actions for declaration of title, and although this has usually been done on the application of the plaintiff at the trial, there is nothing to prevent the Court from granting such a decree ex mero motu when all the necessary evidence is before it.*”

The absence of a prayer for a specific form of possessory relief is not, in itself, a bar to granting such relief, provided that the necessary ingredients are established and there is a general prayer for possession founded on proof of title. In the present case, however, the Plaintiff has not proved title. Nevertheless, the Defendants have also failed to establish that they possess a better title than that

⁹ 15 NLR 297.

of the Plaintiff. Despite having no valid title to the property, the 1st Defendant forcibly deprived the Plaintiff of his possession of the disputed *corpus*.

In such circumstances, possessory relief can be granted in a *rei vindicatio* action if the Plaintiff has satisfied the criteria laid down in Section 4 of the Prescription Act, No. 22 of 1871 (as amended), even where the Plaintiff has failed to prove, on a balance of probabilities, that he is the owner of the disputed *corpus*.

Section 4 of the Prescription Ordinance reads as follows:

Section 4- *“It shall be lawful for any person who shall have been dispossessed of any immovable property otherwise than by process of law, to institute proceedings against the person dispossessing him at any time within one year of such dispossession. And on proof of such dispossession within one year before action brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title.”*

In order to grant possessory relief, *ut dominus possession*, as contended by the 2nd Defendant, is not required under the law of Sri Lanka, provided that the party seeking the relief satisfies the criteria set out in the aforementioned section. In the instant case, considering that the Plaintiff had undisputed possession for at least one year prior to the unlawful ouster by the 1st Defendant, and instituted his action within one year thereafter, the criteria set out in Section 4 can be said to have been met. Thus, the Plaintiff is not required to plead *ut dominus possession*, nor do the learned Judges of the High Court have a duty to examine the nature of the Plaintiff’s possession.

Accordingly, I answer Question of Law (ii) in the negative.

Questions of Law (v) and (vii)

Although the Plaintiff's action is a *rei vindicatio* action, for the reasons stated in this judgment and in light of the facts proved, possessory relief can be granted in the instant case.

Hence, the learned District Judge was correct in answering Issue Nos. 2, 3, and 4 in favour of the Plaintiff, despite answering Issue No. 1 in the negative. In these circumstances, the learned Judges of the High Court also correctly analysed the facts of the instant case in applying Section 4 of the Prescription Ordinance.

Thus, I answer both Questions of Law (v) and (vii) in the negative as well.

Conclusion

I answer all the questions of law raised in the negative.

Accordingly, I affirm the judgments of the learned Judges of the High Court as well as the learned District Judge.

The appeal is dismissed with costs.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT