

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

In the matter of an application for Leave to Appeal
under Section 5(c) of the High Court of the
Provinces (Special Provisions) (Amendment) Act
No. 54 of 2006.

SC/Appeal No. 189/2018
SC/HCCA/LA /290/2012
SP/HCCA/GA/0154/2004/F
D.C. Galle Case No. 13324/L

David Fredric Wijenarayana,
No. 100, Elliot Road.
Galle.

PLAINTIFF

vs

William Udugama Withana
Galkanda, Urala,
Wanduramba.

DEFENDANT

AND BETWEEN

David Fredric Wijenarayana,
No. 100, Elliot Road.
Galle.

PLAINTIFF-APPELLANT (DECEASED)

1. Chitra Wijenarayana,
2. Prasanna Milinda Wijenarayana,
3. Kamantha Chamath Wijenarayana,
4. Rasanthi Udara Wattagama nee Wijenarayana
(Appearing by her Attorney Chamath Wijenarayana)

All of No. 100, Alliot Road,
Galle.

SUBSTITUTED PLAINTIFFS-APPELLANTS

vs

William Udugama Withana,
Galkanda, Urala,
Wanduramba.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

1. Chitra Wijenarayana, (**Now Deceased**)
 - 1a. Prasanna Milinda Wijenarayana,
 - 1b. Kamantha Chamath Wijenarayana,
 - 1c. Rasanthi Udara Wattagama nee Wijenarayana
(Appearing by her Attorney Chamath Wijenarayana)

All of No. 100, Alliot Road,
Galle.

2. Prasanna Milinda Wijenarayana, (**Deceased**)
 - 2a. Ramani Malkanthi Wijenarayana.
 - 2b. Navindu Radeesha Wijenarayana,
 - 2c. Amadi Nadusha Wijenarayana,
3. Kamantha Chamath Wijenarayana,
4. Rasanthi Udara Wattagama nee Wijenarayana
(Appearing by her Attorney Chamath
Wijenarayana)

All of No. 100, Alliot Road,
Galle.

**SUBSTITUTED PLAINTIFFS-APPELLANTS-
APPELLANTS-APPELLANTS**

VS

1. William Udugama Withana, (**Deceased**)
Galkanda, Urala,
Wanduramba.

- 1a. Widanagamage Premalatha Jayawardhana
- 1b. Sumana Udugamavithana
- 1c. Sumith Shantha Udugamavithana
- 1d. Chandrika Udugamavithana
- 1e. Sunethra Udugamavithana
- 1f. Vijitha Kithsiri Udugamavithana
- 1g. Wickrama Udaya Kumara Udugamavithana,

All of Galkanda, Urala,
Wanduramba.

SUBSTITUTED DEFENDANTS-
RESPONDENTS-RESPONDENTS-
RESPONDENTS

BEFORE

- : Janak De Silva, J.
Dr. Sobhitha Rajakaruna, J.
M. Sampath K. B. Wijeratne J.

COUNSEL

- : Manohara de Silva, P.C., with Hirosha Munasinghe
instructed by Ms. Anusha Perusinghe for the Substituted
Plaintiffs-Petitioners-Appellants-Appellants.

Gamini Hettiarachchi instructed by Sirinanda
Gunawardena for the Substituted Defendant-
Respondents-Respondents-Respondents.

ARGUED ON

- : 08.09.2025

DECIDED ON

- : 08.07.2026

Introduction

The original Plaintiff-Appellant (hereinafter referred to as the “Plaintiff”) instituted action bearing No. 13324/L in the District Court of Galle against the Defendant-Respondent (hereinafter referred to as the “Defendant”), seeking a declaration of title to the land called ‘*Galanahena Deniya*’ and the eviction of the Defendant from the portions of land occupied by him, and for the Plaintiff to be placed in possession thereof.

The said land called ‘*Galanahena Deniya*’ is depicted as Lot 7 in Plan No. 895, containing an extent of 3 Roods and 6 Perches, and was later depicted as Lots A, B, C, D, E, and F in Plan No. 632 dated December 24, 1997, prepared by G. B. S. Bandula, Licensed Surveyor. The said land was subsequently vested in the Land Reform Commission, and the Plaintiff, who also claimed prescriptive title, became the statutory tenant. The Plaintiff made a declaration under Section 18 of the Land Reform Commission Law, and, pursuant to Section 19 of the said Law, the Land Reform Commission made a determination in his favour.

The Defendant was the tenant cultivator of a portion of the said land situated to the south of the ‘*dola*’ (stream) and from or about January 17, 1996, he is alleged to have unlawfully occupied Lots B, C, and D of Plan No. 632.

The Defendant’s position, however, was that he had acquired prescriptive title to the aforesaid portions of land on his possession since the year 1977.

Facts presented by the parties.

The case presented by the Plaintiff was that he was the owner of an agricultural land exceeding 50 acres, which included the portion of land described in paragraph 2 of the plaint, namely Lot 7 in Plan No. P.P.Ga. 895 made by the Surveyor General and marked ‘P2’ at the trial, and that the entire land was vested in the Land Reform Commission by operation of the Land Reform Law. Consequent to such vesting, the

Plaintiff continued to possess the land as the statutory lessee until the statutory determination was made. By the statutory determination marked 'P3' dated February 6, 1981, the Plaintiff was declared entitled to his statutory entitlement, which included Lot 7 in the aforesaid Plan No. P.P.Ga. 895. According to the Plaintiff, the land depicted as Lot 7 is known as '*Galanehena Deniya*'.

The Plaintiff, in his plaint, complained that the Defendant, who was the tenant cultivator of the portion of land situated to the South of the watercourse ('*dola*') running across the said land, commenced disputing his title from January 17, 1996. It was his evidence that he initially complained to the Deputy Commissioner of Agrarian Services, before whom the Defendant denied the Plaintiff's title as owner. Consequently, the Plaintiff withdrew the application, as borne out by the order of the Deputy Commissioner marked 'P5', and thereafter preferred a complaint to the Mediation Board. As no settlement could be arrived at the Mediation Board, the certificate of non-settlement marked 'P4' was issued. Thereupon, the Plaintiff instituted the present action.

Upon the issuance of a commission to identify the land in dispute, G. B. Bandula Silva Licensed Surveyor, surveyed the disputed portion of land and superimposed Lot 7 in Plan No. P.P.Ga. 895, depicting the same as Lots 'A' to 'F' in his Plan No. 632 dated December 24, 1997, marked 'P2'. In Plan No. 632, Lot 'F' represents the watercourse, while the disputed portion of land is depicted as Lots 'B', 'C', and 'D'. The superimposition clearly demonstrates that the said lots, which constitute the land in dispute, fall within Lot 7 in Plan No. P.P.Ga. 895.

At the commencement of the trial, the parties admitted the identity of the *corpus* as depicted in Plan No. 632 marked 'P2'. It is the Plaintiff's case that the land in dispute identified in Plan No. 632 is a paddy land bearing the name '*Galanehena Deniya*'. Since the *corpus* was expressly admitted, and the *corpus* is described as '*Galanehena Deniya*', in my view, the identity of the land in dispute as '*Galanehena Deniya*', depicted as Lot 7 in Plan No. P.P.Ga. 895, has been sufficiently established. This conclusion is further supported by the statutory determination marked 'P3' and the schedule attached to Plan No. 895 marked 'P2'. The statutory determination refers to Plan No. 895, and the schedule attached to the said plan describes the land depicted as Lot 7 as '*Galanehena Deniya*'.

The Defendant tendered his answer claiming that he entered into possession of the land in suit in 1977. According to the Defendant, it was an abandoned land which he cleared and initially attempted to cultivate as a paddy field, but failed due to the lack of water. Thereafter, he commenced cultivating minor crops such as vegetables and subsequently planted tea. He states that he paid acreage taxes, for which the receipts issued were marked 'V1' to 'V10'.

It was highlighted in cross-examination that the land in respect of which acreage taxes had been paid was described as a land called '*Thalagasdeniya*'. However, the Defendant maintained that the taxes were paid in respect of the land in dispute which he possessed.

He further stated that, in 1986, the Plaintiff, claiming title to the land, made a complaint against him to the Agrarian Services Centre demanding the landlord's share of the harvest. In support of this position, he tendered a notice dated October 26, 1986, marked 'V12', summoning him for an inquiry. By letter dated April 24, 1987, the Divisional Officer of Agrarian Services directed the Defendant to pay all rentals due for the *Maha* season of 1986/1987 together with dues for all previous seasons. A copy of the said order was marked 'V14'. This clearly supports the Defendant's position that he had not paid any share of the harvest to the Plaintiff. At the trial, the Divisional Officer of Agrarian Services testified, and it emerged from his evidence that the Defendant had failed to pay the landlord's share despite the order made.

In his answer, the Defendant, while denying the averments in the plaint, stated that he had been in possession of the land in dispute since September 1977, having cultivated the same and paid acreage taxes. However, it is significant that the Defendant had not pleaded prescriptive title in his answer. Nevertheless, despite having omitted to plead prescription, the Defendant had framed issue No. 8 claiming prescriptive title to the *corpus*. It appears that the Plaintiff had not objected to the said issue and, accordingly, it had been accepted by the Court.

The learned District Judge, by his judgment, dismissed the Plaintiff's action and held that the Defendant had acquired prescriptive title to the land in dispute.

The Plaintiff, being dissatisfied with the judgment, preferred an appeal to the High Court of Civil Appeals holden in Galle. The learned Judges of the High Court, sitting

in appeal, dismissed the appeal and affirmed the judgment of the learned District Judge.

While the appeal was pending, the Plaintiff passed away, and the substituted Plaintiff-Appellants were duly substituted in his place.

The substituted Plaintiffs thereupon made an application to this Court seeking leave to appeal against the judgment of the learned Judges of the High Court of Civil Appeals. Upon hearing the application and the Counsel appearing for the parties, this Court granted leave to appeal on the following issues set out in subparagraphs (b) to (d) of paragraph 10 of the petition, namely:

10. b) The learned Judges of the High Court and District Court failed to consider that once the Plaintiff has established paper title, there is no further burden on the Plaintiff to establish possession and that the burden of proving prescriptive title rests on the Defendant;

c) The High Court erred in upholding the findings of learned District Judge that the Plaintiff has not established through evidence that the Plaintiff was in possession of the land and that accordingly as the Defendant has established by evidence that he has uninterrupted and undisturbed possession of the land for over ten years and acquired prescriptive rights;

d) The learned Judges of the High Court and District Court failed to consider that the Defendant has failed to discharge the burden of proof that he has acquired prescriptive title to the entire corpus and /or to Lots B, C and D of Plan No.632;

Although the above matters were not specifically formulated as questions of law, this Court nevertheless granted leave to appeal on the said grounds.

Analysis on facts

As I observed above, the Defendant, in his answer, had neither pleaded prescription as a defence nor prayed for a decree based on prescriptive title by way of a claim in reconvention.

However, in this case, the issue of prescription was raised as an issue and evidence was led throughout the trial without any objection. The Plaintiff was represented by Counsel, who cross-examined the Defendant and his witnesses. In addition, the

Plaintiff raised Issues Nos. 12 and 13 to the effect that the prescription could not be claimed as the land in dispute was State land in 1977.

It is settled law that when issues are framed and accepted by Court, the pleadings recede to the background. In *Peiris and Another vs Siripala (CA)*¹, Ranjith Silva J. observed at page 78:

“Once issues are accepted by court the case goes to trial on those issues and the case is tried and determined on the admissions and issues raised at the trial.”

G.P.S. de Silva C.J. has observed in *Hanaffi vs Nallamma*² “..what is relevant for the present purposes and what needs to be stressed is that once issues are framed, the case which the court has to hear and determined is crystalized in issues. It is the duty of court to record the issues on which the right decision of the case appears to the court to depend. (section 146(2) of the Civil Procedure Code). Since the case is not tried on the pleadings, once issues are raised and accepted by court the pleadings recede to the background.”

Therefore, I am of the view that the Defendant's claim to prescriptive title was rightly considered by both the trial court and the High Court of Civil Appeal, notwithstanding the fact that it had not been pleaded.

I now proceed to refer to the conclusions arrived at by the learned District Judge and the learned Judges of the High Court of Civil Appeal.

In a *rei vindicatio* action, the plaintiff must primarily establish two essential ingredients. First, the plaintiff must prove a valid title to the land in dispute, failing which the action cannot succeed. Secondly, the plaintiff must establish that the defendant is in possession of the land sought to be recovered. Sharvananda C. J. observed in *Theivandran vs Ramanathan Chettiar*³ , “In a vindicatory action the claimant needs merely prove two facts; namely, that he is the owner of the thing and that the thing to which he is entitled to possession by virtue of his ownership is in the possession of the defendant. Basing his claim on his ownership, which entitles him to possession, he may sue for the ejectment of any person in possession of it without his consent. Hence when the legal title to the premises is admitted or proved to be in the

1 2009 (1) Sri LR 75.

2 1998(1) Sri LR 73 at p.77.

3 1986 (2) Sri LR 219 at 222.

plaintiff, the burden of proof is on the defendant to show that he is in lawful possession.”

This is a rule that is well rooted in our law. (*Beebi Johara vs Warusavithana*⁴, *Pathirana vs Jayasundara*⁵, *Wijetunge vs Tangarajah*⁶, *Leisa and another vs Simon and another*⁷, *Banda vs Soyza*⁸)

As I have already stated, the identity of the land as well as the title of the Plaintiff has been clearly established by the statutory determination marked ‘P3’. The fact that the Defendant is in possession of the said land has also been established. Therefore, all the ingredients required to be proved by a plaintiff in a *rei vindicatio* action have been established by the Plaintiff.

Hence, the issue that now remains to be resolved is whether the Defendant has established prescriptive title by adverse possession for a period exceeding ten years.

An argument was advanced on behalf of the substituted Plaintiff that the acreage tax receipts relate to a land called ‘*Thalahren Deniya*’, which is not the land in dispute. The Defendant has clearly testified that the acreage taxes were paid, as evidenced by receipts marked ‘V1’ to ‘V10’, in respect of the land in suit. Maddawaththa Kankanamge Upul Priyashantha, the Agricultural Research and Production Assistant of the area, testified that the receipts marked ‘V1’ to ‘V10’ were issued in respect of the land cultivated by the Defendant. He further stated that the Defendant does not cultivate any other land apart from that for which the acreage taxes were paid.

In contrast, the Plaintiff failed to produce any acreage tax receipts for the land known as ‘*Galanaheena Deniya*’. Thus, the learned District Judge rightly held that the Defendant’s possession of the land in dispute is supported by the acreage tax receipts. The commissioner’s report marked ‘P1(a)’ states that there are approximately 1,000 tea bushes of 3 to 8 years of age within the land in dispute claimed by the Defendant. It appears from the report that the Plaintiff has not raised any claim to the tea plantation. If the Defendant was granted permission only to cultivate paddy, how could there be a tea plantation of 3 to 8 years’ standing?

4 1998(3) Sri LR 227.

5 58 NLR 169.

6 1999 (1) Sri LR 53.

7 2002(1) Sri LR 148.

8 1998 (1) Sri LR 255.

The dispute, as pleaded by the Plaintiff, arose on January 17, 1996, and the surveyor surveyed the land on December 24, 1997, approximately two years after the commencement of the dispute. Nowhere in the plaint is there any reference to a tea plantation established by the Defendant on the basis of any license or permission granted.

The pleadings as presented by the Plaintiff in his plaint do not clearly state when the Defendant entered into possession of the land in suit. In paragraph 6 of the plaint, it is stated that the Defendant was the tenant cultivator and that he disputed the Plaintiff's title on January 17, 1996. In his evidence, however, the Plaintiff stated that the Defendant was cultivating the field with his leave and license and that he, in turn, was given a share of the harvest.

It is to be observed that the Plaintiff, in his evidence, was not clear as to whether the share of the harvest was given as the landlord's share under the Agrarian Law or merely as a matter of courtesy to the owner. Even with regard to the alleged payment of a share of the harvest, the Plaintiff's evidence was not consistent.

On the contrary, it is clear that the Defendant has been in continuous possession of the land in suit long before the statutory determination was made. The fact that the Defendant was in physical possession was admitted by the Plaintiff. Hence, it was for the Plaintiff to establish that the Defendant was his licensee or tenant, as he claims (*Ahriff vs Razik*⁹). The learned District Judge and the learned Judges of the High Court of Civil Appeals have rightly held that the Plaintiff failed to establish the grant of a license or the existence of a contract of tenancy.

Therefore, on the evidence, I am of the view that the Defendant has established that he has been in possession of the land in suit since 1977.

Was the Defendant's possession unknown to the Plaintiff?

The evidence adduced at the trial amply demonstrates that the Plaintiff was aware that the Defendant was in possession of the land, cultivating it, and had in fact planted tea thereon. The Plaintiff made two abortive attempts to claim a share of the produce in 1986 and 1996 by preferring complaints before the Agrarian authorities. The first such instance appears to be in 1986, as evidenced by documents marked 'V12' and 'V14', wherein the Plaintiff complained to the Divisional Officer of Agrarian Services that the Defendant had failed to pay the landlord's share of the harvest.

⁹ 1985 (1) Sri LR 162.

The Divisional Officer thereafter directed the Defendant to make the requisite payment.

The Plaintiff remained silent regarding this complaint and has led no evidence to show that the Defendant made any such payment. On the contrary, the evidence of the Agrarian Services Officer was to the effect that the Defendant had never made any payment of rent or any share of the harvest.

The next was the complaint he made to the Assistant Commissioner of Agrarian Services in January 1996, where the Defendant denied his title. 'P5'. Therefore, the evidence adduced at the trial demonstrates that the Plaintiff was well aware that the Defendant had been in possession of the land in suit, denying his title, at least since 1986.

Was the Defendant's possession adverse to the Plaintiff's title?

Section 03 of the Prescription Ordinance provides as follows:

Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession unaccompanied by payment of rent or produce, or performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred) for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. And in like manner, when any plaintiff shall bring his action, or any third party shall intervene in any action for the purpose of being quieted in his possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish his claim in any other manner to such land or other property, proof of such undisturbed and uninterrupted possession as herein before explained, by such plaintiff or intervenient, or by those under whom he claims, shall entitle such plaintiff or intervenient to a decree in his favour with costs:

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute.

Hence, mere possession by a person does not lead to prescriptive title. Prescription, as has been repeatedly stated in a series of judicial decisions, is a process by which an originally unlawful possession is rendered lawful by the effluxion of time and fulfillment of the statutory requirements. (*Corea vs Iseris Appuhamy*¹⁰, *Kiriamma vs Podibanda*¹¹, *Fathima Naseera vs Mohamed Haris*¹², *Sumanawathie vs Sirisena*¹³)

In *Wijesundera and Others vs Constantine Dasa and Another*¹⁴, the land in suit had been sold consequent to a decree for sale under the Partition Law. The plaintiff's predecessor had purchased the land at the sale, and a certificate of sale had been issued. However, the plaintiff's predecessor failed to take possession of the land, and the defendants and their predecessors, who had been in possession prior to the sale, continued to possess the land.

It was held that the defendants' possession, from the time of issuance of the certificate of sale, was adverse to that of the purchaser at the sale. The Court of Appeal interpreted the term "adverse possession" as "possession incompatible with that of the claimant" (at page 70).

How could possession of a person become incompatible with the title of the owner? It is settled law that possession becomes incompatible with the title of the owner upon knowledge of the owner. Abrew J. observed in *Punchiralage Keerala vs Dingiribanda*¹⁵, "***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. It cannot be done stealthily. 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 is mine)

10 15 NLR 65.

11 [2005] BLR 9 at 11.

12 CA/818/96(F), CA Minutes of 11.07.2012.

13 CA/830/98(F), CA Minutes of 10.03.2014.

14 1987(2) SLR 66.

15 SC/APPEAL/188/2011, SC Minutes of 18.07.2018.

Similarly, Justice Mahinda Samayawardena has held in *Athukoralalage Don Chandrasekera vs Athukoralalage Don Sarathchandra and others*¹⁶

“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. It cannot be done stealthily. 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 is mine)

I have followed this view in *Hewage Lionel Gunarathne vs Hemal Ashmore Peiris*¹⁷. Hence, adverse possession commences from the point at which the claimant becomes aware of the act of possession.

In the instant case, the original Plaintiff was aware that the Defendant was in possession of the land in suit at least by 1981, when the statutory determination was made. From that point onwards, he was either aware or was put on notice that the Defendant was in possession, disputing his title. This is further evidenced by the complaint made to the Divisional Officer of Agrarian Services.

There is no clear evidence as to when the first complaint to the Divisional Officer was made; however, ‘V12’, the notice calling for an inquiry, is dated October 20, 1986. ‘V12’ suggests that the complaint was made prior to the date of the notice. Further, in order for such a complaint to have been made, the Defendant must necessarily have refused the Plaintiff’s demand for the landlord’s share of the harvest.

The present action was instituted on July 23, 1996. Hence, the Defendant had been in adverse possession for a period exceeding ten years, and accordingly I am of the view that the Defendant has established adverse possession satisfying the requirements of section 3 of the Prescription Ordinance.

For the foregoing reasons, I am satisfied that the judgment of the learned District Judge and the judgment of the learned Judges of the High Court of Civil Appeals are correct in law. I therefore affirm both judgments.

¹⁶ SC/APPEAL/30/2016, SC Minutes of 04.07.2024.

¹⁷ SC. Appeal No. 58/2019 S.C. Minutes of 06.03.2026.

Therefore, while dismissing the appeal, I proceed to answer the questions of law raised (as the points of law were not framed in the form of questions) as follows:

(b) The Judges of High Court of Civil Appeals and the District Court have correctly understood and concluded that the Plaintiff has established the paper title and have placed the onus of proof on the Defendant Respondent to establish the defence of prescription.

(c) The Learned Judges of the High Court have held that the Plaintiff has failed to establish grant of license and that the Defendant Respondent has established adverse possession. Hence the Learned Judges of the High Court of Civil Appeals have correctly affirmed the judgment of the Learned District Judge who had dismissed the action of the Plaintiff.

(d) The Defendant Respondent had discharged the onus of proof in establishing his prescriptive title to lots B, C and D in plan 632.

Appeal is dismissed. I make no order for costs.

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