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

Raluwe Don Francisco Sunil Chandradasa,
No. 119, Chandra Niwasa,
Welikala, Pokunuwita.
Plaintiff-Respondent-Appellant

SC/APPEAL/19/2020
HCCA/KAL/193/2013
DC HORANA 2265/SPL

Vs.

Seylan Bank Limited,
No. 33, Sir Baron Jayathilake Mawatha,
Colombo 1.
1st Defendant-Appellant-Respondent

2. Raluwa Don Francisco Chandrasiri,
3. Pushpa Manoranjani Chandrasiri,
   No. 41, Bellantara Road,
   Dehiwala.
4. I.W. Jayasooriya,
   No. 332/1, Mount Pleasant Gardens,
   Bowalawatta, Kandy.

   2nd to 4th Defendant-Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando
Hon. Justice Menaka Wijesundera

Counsel: Saliya Pieris, P.C., with Varuna de Saram for the Plaintiff-Respondent-Appellant.

Anura Ranawaka for the 1st Defendant-Appellant-Respondent.

Argued on: 27.08.2025

Written submissions:

By the Plaintiff-Respondent-Appellant on 19.09.2025.

By the 1st Defendant-Appellant-Respondent on 22.05.2020.

Decided on: 13.01.2026

Samayawardhena, J.

The 1st defendant bank passed a resolution under the provisions of the Recovery of Loans (Special Provisions) Act No. 4 of 1990 to sell the mortgaged property which is the subject matter of this case, in order to recover its dues from the 2nd defendant borrower. The 2nd defendant is the owner of the property and had mortgaged it to the bank in order to obtain financial facilities from the bank. The plaintiff is residing on the property.

When the public auction was about to be held, the plaintiff instituted this action in the District Court of Horana, naming the bank as the 1st defendant, the owner and mortgagor as the 2nd defendant, the 2nd defendant's wife as the 3rd defendant and the auctioneer as the 4th defendant. The only substantive relief sought by the plaintiff in the prayer to the plaint was a declaration that he had acquired title to the property by prescription. In addition, the plaintiff sought an enjoining order and an interim injunction restraining the bank from proceeding with the *parate* execution of the property pending the determination of the action.

The District Court issued the enjoining order *ex parte*. Although the bank objected to the grant of interim injunction, the Court proceeded to issue the interim injunction as well. The bank thereafter filed answer seeking dismissal of the plaintiff's action.

After trial, the District Court granted the substantive relief sought by the plaintiff. On appeal, the High Court of Civil Appeal of Kalutara set aside the judgment of the District Court. A previous Bench of this Court granted leave to appeal against the judgment of the High Court on the question whether the High Court erred in law in holding that the plaintiff had failed to discharge the burden of proving prescriptive title to the property.

There cannot be any dispute that the plaintiff hurriedly instituted this action to prevent the auction from being held. He succeeded in that attempt, with respect, due to the failure to properly appreciate the basic principles of law applicable to the case. At the time the action was instituted, admittedly, the plaintiff was not the owner of the land. The owner was the 2nd defendant by deed No. 17716 marked 1V2. The plaintiff sought a declaration that he be declared the owner by prescriptive possession, a declaration which, if at all, could only have been considered after a full trial. Moreover, prescriptive possession operates only as a shield of defence and not as a sword of attack (*Terunnanse v. Menike* (1895) 1 NLR 200 at 202). Viewed in that backdrop, the learned District Judge could not, in my view, have granted either the enjoining order or the interim injunction, as the plaintiff could not have established a strong *prima facie* case, which is the first and foundational test in considering an application for interim injunction.

The 2nd defendant is the plaintiff's half-brother, being a son of the plaintiff's father from his first marriage. The property was gifted to the 2nd defendant by deed marked 1V2 by the father. The house standing on the property was constructed by the father. The plaintiff's case was that he had been in

continuous possession of the property without disturbance from any person. However, he did not assert that such possession was adverse either to his father or to his half-brother.

Where the relationship between the parties is so close, an overt act clearly manifesting the commencement of adverse possession, together with strong and affirmative evidence of the continuation of such adverse possession for a period exceeding ten years, becomes all the more essential to sustain a claim of prescriptive title (*De Silva v. Commissioner of Inland Revenue* (1978) 80 NLR 292, *Podihamy v. Elaris* [1988] 2 Sri LR 129). As the High Court has correctly pointed out, the plaintiff failed to establish these essential elements in the present case.

I am mindful that, in the instant case, the 2nd defendant did not contest the plaintiff's claim. As already noted, he is the borrower and mortgagor who has defaulted on his obligations to the bank, and therefore had little incentive to oppose the plaintiff's assertion. However, if the plaintiff's claim of prescriptive title were to be upheld on that basis, it would cause serious injustice to the bank. A statutory right conferred on the bank cannot be defeated by a collusive action or by an abuse of the process of Court.

I accordingly answer the question of law on which leave to appeal was granted in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.
I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.
I agree.

Judge of the Supreme Court