

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

*In the nature of an Appeal under and in  
terms of Article 128 of the Constitution.*

**SC Appeal No. 253/2014**  
HCCA Ratnapura  
No. SP/HCCA/RAT 48/2008 (FA)  
DC Balangoda No. 638/L

**Pani Pachchalage Somawathi**  
Peellakumbura,  
Maddakanda,  
Balangoda.  
**Defendant - Respondent - Appellant**

*vs.*

**Waturage Piyadasa**  
Peellakumbura,  
Maddakanda,  
Balangoda.  
**Plaintiff - Appellant - Respondent**

**Before:** **Yasantha Kodagoda, PC, J.**  
**K. Priyantha Fernando, J.**  
**Menaka Wijesundera, J.**

**Appearance:** Chathura Galhena with Viduri Sulakkana  
instructed by Manoja Gunawardena for the  
Defendant - Respondent - Appellant.

Charitha Jayawickrema with Harshani S.  
Wimalaratne instructed by S. Jayasuriya for the  
Plaintiff - Appellant - Respondent.

**Written Submissions:** For the Defendant - Respondent - Appellant filed  
on 12<sup>th</sup> February 2021 and 5<sup>th</sup> May 2025.

For the Plaintiff – Appellant – Respondent filed on  
1<sup>st</sup> April 2021 and 21<sup>st</sup> August 2025.

**Argued on:** 18<sup>th</sup> March 2025

**Decided on:** 2<sup>nd</sup> April 2026

## JUDGMENT

**Yasantha Kodagoda, PC, J.**

### Introduction

- 1) This Appeal arises out of a Judgment dated 10<sup>th</sup> October 2012 delivered by the High Court of Civil Appeals holden in Ratnapura, which had set aside a Judgment dated 7<sup>th</sup> January 2008 of the District Court of Balangoda. Previously, by its Judgment dated 7<sup>th</sup> January 2008, the District Court had dismissed the Plaintiff and held in favour of the Defendant – Respondent – Appellant (hereinafter most of the time referred to as the ‘Defendant’). Aggrieved by the dismissal of the Plaintiff, the Plaintiff (hereinafter most of the time referred to as the ‘Plaintiff’) preferred an Appeal to the High Court. The High Court allowed the Appeal. The effect of the impugned Judgment of the High Court of Civil Appeals amounted to the Plaintiff being granted the reliefs prayed for in his Amended Plaintiff. Consequent thereto, the Defendant preferred a Leave to Appeal Application to this Court.
- 2) Following the Support of that Application, a differently constituted Division of this Court had granted *Leave to Appeal* on the following questions of law:
  - i. Did the Civil Appellate High Court **misdirect itself on the concept of prescriptive title based on adverse and uninterrupted possession?**
  - ii. Did the Civil Appellate High Court **err** in deciding that the **Plaintiff – Appellant – Respondent had established his title** as required by law?
  - iii. Did the Civil Appellate High Court **err** in deciding that the Defendant – Respondent – Petitioner (now Appellant) **had not established prescriptive title** to the land in question?

[Emphasis added by me.]

**The case presented to the District Court by the Plaintiff by his Amended Plaintiff dated 16<sup>th</sup> December 1999**

- 3) The original owner of the land referred to as “*Peellakumbure Godahena*” which is the subject matter of the action (described in Schedule I of the Plaintiff –

depicted in Plan No. 428625 dated 20.11.1933 and in Schedule II of the Plaint – depicted in Plan No. 17 dated 06.01.1999) had been the State. In 1933, the State having acted under and in terms of the Waste Lands Ordinance, had issued a Grant and thereby transferred title of that land to one Peni Pachchalage *alias* Peni Pathkolage Kiriansa (hereinafter referred to as “Kiriansa”). Thus, Kiriansa became the owner of the land. While possessing the land, Kiriansa constructed a house on *Peellakumbure Godahena* and commenced residing there. At some point thereafter, Kiriansa died intestate leaving behind *Peellakumbure Godahena* as his estate. According to law, that land need not have been subject to testamentary proceedings. The death of Kiriansa resulted in his children Peni Pachchalage (P.P.) Saanchi, P.P. Jeemis, P.P. Pabilis, P.P. Martin and P.P. Mendis inheriting the property and each becoming the owner of 1/5<sup>th</sup> share of the land and the house situated thereon. Consequent thereto, in 1997, by Deed of transfer No. 275 dated 30<sup>th</sup> September 1997, Saanchi, Jemis, Pabilis, Martin and Mendis sold their shares of the land to Saanchi’s son, who is the Plaintiff. That transfer resulted in the Plaintiff becoming the sole owner of *Peellakumbure Godahena*.

- 4) A considerable period ago, on a request made by the Defendant’s predecessors, Kiriansa (maternal grandfather of the Plaintiff) had granted ‘leave and license’ to them, to live in the house situated towards the western side of *Peellakumbure Godahena* (depicted in schedule III of the Plaint – House marked ‘B’ in Plan No. 17). Subsequently, the Defendant also lived in the same house.
- 5) By Letter of Demand dated 11<sup>th</sup> March 1998, the Plaintiff notified the Defendant that, with effect from 30<sup>th</sup> April 1998, he was terminating ‘leave and license’ granted to the Defendant by his predecessors. Nevertheless, the Defendant did not abide by the Plaintiff’s demand and remained on the land. She challenged the Plaintiff’s claim of ownership of the land.
- 6) Since the Plaintiff and his predecessors in title possessed *Peellakumbure Godahena* adversely to the interests of the Defendant’s predecessors, the Plaintiff has, through such continuous adverse possession, also acquired prescriptive title to *Peellakumbure Godahena*.
- 7) The Plaintiff prayed for the issuance of (a) a declaration of ownership of the land described in Schedule II - Lots 1 and 2 of Plan No. 17, (b) a decree evicting the Defendant from the land described in Schedule II and the house described in Schedule III of the Plaint, and (c) damages in a sum of Rs. 1,000/= per month.

**The position of the Defendant presented to the District Court by the Amended Answer dated 18<sup>th</sup> October 2001**

- 8) The owner of the land that is the subject matter was one John - the father of the Defendant. Following the demise of John, the Defendant became the owner of the land.
- 9) The house in issue had been constructed by the Defendant's father and its value is approximately Rs. 100,000/=.
- 10) Additionally, the Defendant and her predecessors had been continuously residing in the land for over 40 years, and therefore she has derived prescriptive title to the land.
- 11) The Defendant prayed that the Plaint be dismissed and in the event of the case being decided in favour of the Plaintiff, that compensation in a sum of Rs. 100,000/= be awarded.

**The position taken up by the Plaintiff in the Replication dated 21<sup>st</sup> March 2002**

- 12) The person referred to as 'John' is a brother of Kiriansa.
- 13) As requested by John, the house constructed on the land by Kiriansa had been given to John to reside. Later, the Defendant also resided in that house. It is that house that the Defendant had resided in at the time the action was filed.

**Judgment of the District Court**

- 14) Having considered the evidence, the learned Judge of the District Court has accepted the version of the Plaintiff, and has concluded that the Plaintiff had established that he had acquired paper title in respect of the land in issue in the manner stated in the Amended Plaint.
- 15) The learned Judge has taken into consideration the fact that when the Defendant had lost her father (John) in 1970 and later lost her mother, both of them had been buried in the land in issue. Furthermore, he has taken into consideration that sequel to a dispute relating to the land which arose between Mendis and the Defendant, by virtue of an order of the Primary Court, the Defendant had been placed in possession of the land.

- 16) Furthermore, he has taken into consideration the fact that the house situated on the land had been constructed by the Defendant's father - John. Initially John had resided in that house. Following his demise, the Defendant had continued to reside in the house. Neither the Plaintiff nor his predecessors in title had objected to the Defendant having resided in that house.
- 17) The learned Judge has also taken into consideration the fact that there was no evidence pertaining to the Plaintiff's position that Kiriansa had granted 'leave and license' to John (the Defendant's father) to reside in the land. Furthermore, he has observed that neither the Plaintiff nor his predecessors in title had objected to the Defendant's continued occupation of the land.
- 18) The learned Judge has formed the view that the Defendant had gained prescriptive title to the land, due to continuous and uninterrupted possession of the land for a period of over 40 years.
- 19) Due to the foregoing reasoning, the learned District Judge had concluded that the Plaintiff had failed to establish his ownership to the land in issue. Accordingly, he had dismissed the Plaint.

### **Judgment of the High Court**

- 20) The learned Judge of the High Court of the Provinces (Civil Appeals) has observed that the Plaintiff's (present Respondent's) original ownership of the land in issue has not been successfully contested by the Defendant (present Appellant). The learned Judge of the High Court has observed that the Defendant had failed to establish through cogent evidence prescriptive title to the land in issue. He concluded that the Defendant's father's funeral being held within the land in issue is not necessarily attributable to the Defendant by that time having acquired prescriptive title to the land. Further, he has concluded that the only conclusion that can be reached from the evidence presented by the Defendant is that she lived in the house situated in the land for a prolonged period of time. Such evidence, the learned Judge has held, is insufficient to conclude that the Defendant had acquired prescriptive title to the land.
- 21) In view of the afore-stated reasons, the learned Judge has concluded that the decision arrived at by the learned Judge of the District Court was erroneous, and therefore the Appeal of the Plaintiff (present Respondent) against the Judgment of the District Court should be allowed. Accordingly, he has held that the Plaintiff was entitled to the prayers contained in the Plaint.

**Position advanced before this Court on behalf of the Defendant - Respondent - Appellant**

- 22) Learned Counsel for the Appellant submitted that the purported heirs of Kiriansa had failed to prove that they were in fact his children.
- 23) Furthermore, he also submitted that the Appellant had derived title to the land through prescription by having over 50 years continuously possessed the land. He contested the position of the Respondent that the predecessors of the Appellant had entered the land with the 'leave and license' of the predecessor in title of the Respondent, namely Kiriansa.
- 24) He further submitted that the learned Judge of the District Court had arrived at a correct finding that the Plaintiff had failed to establish paper title through conveyances and that the Defendant had acquired prescriptive title.

**Position advanced before this Court on behalf of the Plaintiff - Appellant - Respondent**

- 25) Learned Counsel for the Respondent submitted that Kiriansa's title to the land had been established by "Pe 1". By "Pe 3", the children of Kiriansa had transferred their title to the land to the Plaintiff. In these circumstances, it was correct for the learned District Judge to have accepted the paper title of the Plaintiff.
- 26) He submitted further that the Defendant had failed to establish prescriptive title to the land. Whereas, in addition to acquiring paper title, the Plaintiff had established that he had acquired prescriptive title too.
- 27) The learned Counsel referred to a series of Judgments of superior courts, including *Sirajudeen and others v. Abbas* [(1994) 2 Sri. LR 365], *Leisa and another v. Simon and another* [(2002) 1 Sri. LR 148 page 149], *Ameen and another v. Amnavasi Ramu* [SC/Appeal No. 232/2017, SC Minutes of 22.01.2019], *Maduanwala v. Ekneligoda* [3 NLR 213], *Saraswathi Duraisamy v. S. Manickarasa* [SC/Appeal No. 69/2020, SC Minutes of 23.01.2024], *Chaminda Abeykoon v. P. Nicholas Anthony Fernando* [SC/Appeal No. 54A/2008, SC Minutes of 02.10.2018], *Athukoralalage Don Chandrasekara v. Athukoralalage Don Sarathchandra and others* [SC/Appeal No. 30/2016, SC Minutes of 04.07.2024], *Punchiralage Keerala v. Dingiribanda* [SC/Appeal No. 188/2011, SC Minutes of 18.07.2018], *Batuwanage Siripala (Deceased), Suneetha Nipuna Arachchi v. R. A. Shirly Anura* [SC/Appeal No. 15/2010, SC Minutes of

02.11.2015], and *Tillekeeatne v. Bastian* [(1918) 21 NLR 12] in support of his submissions.

### **Evidence led at the trial**

- 28) **Evidence for the Plaintiff** - According to the Plaintiff, the subject matter of this case - a land called "*Peellakumbure Godahena*" [described in Schedule I of the Plaintiff and also as Lots 1 and 2 of Plan No. 17 ("Pe 2") described in Schedule II of the Plaintiff] had been originally owned by the State. By conveyance dated 30<sup>th</sup> November 1933 (which had been produced by him marked "Pe 1"), the ownership of this land had been transferred by the State to his maternal grandfather called Kiriansa. Kiriansa had died intestate. Thus, Kiriansa's children Saanchi (the Plaintiff's mother), Jemis, Pabilis, Martin and Mendis had become the joint owners of this land. On 30<sup>th</sup> September 1997, by Deed No. 275 ("Pe 3"), these co-owners of "*Peellakumbure Godahena*" had transferred ownership of this land to the Plaintiff.
- 29) The Defendant is the daughter of the younger brother of Kiriansa named John. Therefore, she is an aunt to the Plaintiff. She has been living in a house situated on a side of "*Peellakumbure Godahena*" (described in Schedule III of the Plaintiff, as Lot 'B') from time immemorial. Following the Plaintiff securing sole ownership of "*Peellakumbure Godahena*" in 1997, he had commenced constructing a boutique on the land. At that stage, a dispute had arisen with the Defendant. She had asserted that the Plaintiff did not have any right in respect of the land and had claimed ownership. Therefore, through his Attorney-at-Law, the Plaintiff had dispatched a Letter of Demand (dated 11<sup>th</sup> March 1997, produced marked "A 1" / "Pe 4") to the Defendant. That letter indicated that the leave and license issued to the Defendant was being withdrawn with effect from 30<sup>th</sup> April 1998. By April 1998, she did not vacate the premises. Therefore, the Plaintiff filed this action.
- 30) Under cross-examination, the Plaintiff has stated that, in 1970, when John passed away, with their permission, the Defendant was allowed to bury John on the land in issue. Similarly, the Defendant's mother Podi Nona had also been buried on the same land with their permission. Consequent to a dispute arising between the Defendant and Mendis (Plaintiff's uncle) in respect of the land, case No. 38198 had been instituted. (It is common ground that this is a reference to a case filed by the police in the Primary Courts.) In that case, Court had directed the Defendant to remain in the land pending a civil action being filed.

- 31) According to the testimony of Licensed Surveyor E.T.P. Perera, on a commission received from the District Court, on 19<sup>th</sup> December 1998, he had surveyed the land in the presence of both the Plaintiff and the Defendant. The entire land claimed by the Plaintiff had been shown to him by the Plaintiff. The Defendant had not objected to it. "Pe 2" is the Plan prepared by him sequel to that survey.
- 32) **Evidence for the Defendant** - According to the Defendant, from the time of her birth, fifty years ago, she had been living in the house referred to in these proceedings along with her parents. The house had been constructed by her father. During the time of her parents, no one had disputed their occupation in the house, and possession of the land in issue. Her father had passed away in 1970 and had been buried on the land. His tomb is situated on that land.
- 33) In 1996, a dispute had arisen when the Plaintiff attempted to commence the construction of a structure on the part of the land she was possessing. Primary Court action No. 38198 had been filed by Mendis when she attempted to construct a toilet pit on the land. (The Defendant has produced marked "V2" a copy of the order made by the learned Judge of the Primary Court, by which she was permitted by the learned Judge to remain in possession.) She and her predecessors had been possessing the land on which her house is situated for approximately 40 years, without any objection from anyone else.
- 34) Under cross-examination, the Defendant has accepted that her father (John) did not obtain the land from the State. He had been staying on the land with his parents (who were Kiriansa's parents as well) for a considerable period of time. She has avoided answering the suggestion that it had been Kiriansa who had in 1933 purchased the land from the State. She has also claimed that she did not know that her father came into the land with the 'leave and license' of Kiriansa. She has insisted that her parents had possessed the land, and they had asked her to remain in the house.

### **The law, its application, analysis of the evidence and conclusions**

- 35) The action instituted by the Plaintiff had been what is commonly referred to as a vindicatory (*rei vindicatio*) action. The need to institute a vindicatory action arises when a person who owns a property is challenged by a person who also claims to be the owner or otherwise obstructs the owner exercising his right of ownership or rights arising out of ownership. In such circumstances, the owner of the property is deprived of possession of the property. Such challenge to ownership is launched by a person who is in *de-facto* or *de-jure* possession of the

property. Thus, to have the right of the owner vindicated, he institutes a vindicatory action for the purpose of gaining to himself the opportunity to enjoy all the ensuing rights of ownership (including the right to possess) without any challenge or encumbrance from the obstructer. While the primary relief sought from Court is a declaration of ownership, in most vindicatory actions, the Plaintiff seeks the eviction of the Defendant from the property. In fact, some jurists have opined that an action for declaration of title is distinct from an action for eviction. However, in contemporary practice, it is common to find both reliefs encapsulated in a single Plaintiff. A vindicatory action constitutes an important legal tool recognized by our residual common civil law, that being the Roman-Dutch law.

36) When a vindicatory action is instituted, the Plaintiff is required to initially establish that he is the owner of the land which is the subject matter of the action. Proving ownership of the land in respect of which the Plaintiff seeks a declaration of title, is an essential ingredient of a vindicatory action. In *Karunatileka Jayasundera Wickramasekara Rajapakse Wahalanayake Nisi Mudiyanselage Mahen Susantha Madugalle vs. Karunatileka Jayasundera Wickramasekara Rajapakse Wahalanayake Nisi Mudiyanselage Chula Swarna Madugalle* [SC Appeal 77/2018, SC Minutes of 9<sup>th</sup> November 2023] Justice E. A. G. R. Amarasekara has quoted from Johannes Voet's *Commentary on the Pandects* (6.1.2.) the following: "*From the right of ownership springs the vindication of a thing, that is to say, an action in rem by which we sue for a thing which is ours, but in the possession of another*". It would thus be seen that a vindicatory action is based on ownership which is held against all others as proof of ownership. In fact, the Plaintiff establishing ownership of the property in issue must be recognized as a pre-condition to enable him to be successful and to secure relief from Court. A similar position was propounded in the case of *De Silva vs. Goonetilleke* 32 NLR 217 where a full bench of the Supreme Court quoted from Nathan's *Common Law of South Africa* [Volume 1, page 362] "*in order to sue by a rei vindicatio, a plaintiff must have the right of ownership vested in him*". Therefore, it would be seen that the basic requirement for a Plaintiff to be successful in a vindicatory action, is to prove his ownership of the property.

37) In *Ballanthuda Arachchige Don Wasantha vs. Morawakage Premawathie and Others* [SC Appeal 176/2014, SC Minutes of 17<sup>th</sup> May 2021], I expressed agreement with the Judgment of my brother Justice Mahinda Samayawardhena, who held as follows:

"... It is well settled law that in a rei vindicatio action the burden is on the Plaintiff to prove title to the land in suit irrespective of weaknesses in the Defendant's case. H.N.G.

*Fernando J. (later C.J.) in Pathirana v. Jayasundara (1955) 58 NLR 169 at 171 required "strict proof of the Plaintiff's title". But this shall not be understood that a Plaintiff in a rei vindicatio action shall prove his title beyond reasonable doubt such as in a criminal prosecution, or on a high degree of proof as in a partition action. The standard of proof of title is on a balance of probabilities as in any other civil suit. The stringent proof of chain of title, which is the norm in a partition action to prove the pedigree, is not required in a rei vindicatio action. ...*

*... Notwithstanding that in a rei vindicatio action the burden is on the Plaintiff to prove title to the land no matter how fragile the case of the Defendant is, the Court is not debarred from taking into consideration the evidence of the Defendant in deciding whether or not the Plaintiff has proved his title. Not only is the Court not debarred from doing so, it is in fact the duty of the Court to give due regard to the Defendant's case, for otherwise there is no purpose in a rei vindicatio action in allowing the Defendant to lead evidence when all he seeks is for the dismissal of the Plaintiff's action."*

- 38) Since the delivery of Justice Mahinda Samayawardhena's Judgment in SC Appeal 176/2014, I have benefitted from extensive consideration of judicial precedent in this regard (including the several Judgments I have cited above). I wish to herein clarify my position, which in effect would now distance myself from the corresponding view of Justice Samayawardhena, to which I had in SC Appeal 176/2014 subscribed to. The clarification I wish to provide is as follows:
- 39) The burden cast on the Plaintiff to establish that he owns the property in respect of which the action has been instituted, should be discharged by him to the degree of 'proof' stipulated in section 3 of the Evidence Ordinance. According to section 3, a fact is said to be proved, when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Furthermore, in terms of section 101 of the Evidence Ordinance, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Illustration (b) of that section is of relevance. It provides that, "A desires a court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies to be true. A must prove the existence of those facts". Thus, unmistakably, the burden of proving that the land in issue is owned by the Plaintiff, lies squarely on the shoulders of the Plaintiff.
- 40) The Plaintiff can discharge that burden with the aid of (i) evidence presented by himself, (ii) evidence he elicited from the Defendant (by cross-examination

of the Defendant's witnesses), (iii) evidential inferences, and (iv) presumptions or by a combination thereof. A Court called upon to adjudicate a vindictory action must initially determine whether the Plaintiff had proved that he is the owner of the subject matter (property in issue) of the case. For that purpose, I do not see a need for the learned Judge to compare the claim of ownership presented by the Plaintiff with the counter-position of the Defendant. If the Court is not satisfied that the Plaintiff has proved that he is the owner of the property (to the extent provided in section 3 and in compliance with section 101 of the Evidence Ordinance), the Plaintiff's case must necessarily fail.

- 41) It is necessary to point out that, indeed the overall burden on a Plaintiff is to prove his case (all ingredients of the applicable cause of action) on a balance of probabilities. That may necessitate the Court to compare the case of the Plaintiff with the case for the Defendant, and determine which case is more probable than the other. In my view, that overall burden of proof should not be mixed-up with the burden of proving individual ingredients of the cause of action invoked by the Plaintiff. In this regard, I wish to place on record that I find myself in respectful agreement with the views which constitutes *obitor dicta* of the Judgements by Justice H.N.G. Fernando (later appointed the Chief Justice) and Justice Gratian in *Pathirana vs. Jayasundera* [58 NLR 169].
- 42) Turning back to the Appeal which must be decided by this Court, I see that there is clear and unimpeachable evidence in proof of the Plaintiff having acquired ownership of the overall land (described in all three schedules of the Plaintiff) through a conveyance which transferred to him ownership of the land, previously held by his predecessors in title. Such form of ownership is often referred to as 'paper title'. That overall land which he owns includes the portion of the land (described in schedule III of the Plaintiff) on which there exists a house in which the Defendant had been occupying since her birth. The authenticity of the two conveyances ("Pe 2" and "Pe 3") by which the Plaintiff derived ownership (title) have not been impugned and both lower Courts have accepted them. There is no basis for this Court to reject them either. Thus, the Plaintiff has been successful in fulfilling the initial requirement (pre-condition) to be satisfied in a vindictory action.
- 43) However, it remains a fact that the Plaintiff did not possess the portion of the land in respect of which the dispute exists (referred to in schedule III of the Plaintiff), and from which he seeks the Defendant to be evicted. It has been the Defendant who has possessed the land in issue. In these circumstances, the question for adjudication is whether such possession of the land in respect of

which the dispute exists resulted in the Plaintiff losing ownership of the property (the title being 'wiped-off'), due to the Defendant generating for herself prescriptive ownership of that land.

44) In *Bank of Ceylon v. A.C. Rajasingham* [SC Appeal No. 40/2014, SC Minutes of 4<sup>th</sup> July 2023], my brother Justice Samayawardhena has cited with approval the Judgment in *Jinawathie v. Emalin Perera* [(1986) 2 Sri LR 121], wherein a full bench of the Supreme Court held that “*In a vindicatory action the plaintiff must himself have title to the property in dispute... and such title is superior to the title, if any, put forward by the defendant in occupation*”. Therefore, the commencing point on which this Appeal must be adjudged is that the title of the Plaintiff is certainly more superior to any other claim that may be established by the Defendant.

45) Upon a consideration of the totality of the evidence presented by both parties, through direct and inferential evidence, the following facts and circumstances can be deduced:

- i. Originally, the entire land in issue had been owned by the State.
- ii. There had been a house on the land on which one Kiribaba, his wife, and their children – Kiriansa and John had lived.
- iii. In 1933, Kiriansa had purchased the land from the State. Accordingly, he had secured title to the entire land.
- iv. At some point of time, Kiribaba and his wife have passed away.
- v. At some point of time, thereafter, Kiriansa had moved out of the house, leaving behind John and his family.
- vi. Since her birth, the Defendant had lived in that house with her father John and the rest of the family.
- vii. Both the Defendant's parents and the Defendant had the 'leave and license' given to them by Kiriansa, his children and the Plaintiff to possess the land on which the house is situated (described in schedule III to the Plaintiff) and occupy the house situated thereon.
- viii. Throughout, the title to the entire land (which includes the portion of the land on which the house is situated) had remained with Kiriansa, and following his demise, it had devolved on Kiriansa's children, namely, Sanchi (Plaintiff's mother), Jeemis, Pabilis, Martin and Mendis. (John was not a child of Kiriansa, but a brother of his.)
- ix. In 1997, by a conveyance, the ownership of the land had been transferred by its co-owners to the Plaintiff.
- x. Though the title to the land had passed on to the Plaintiff, he had permitted the Defendant to continue to remain in the house.

- xi. The first time the Defendant had asserted a right to the land on which the house is situated, had been in 1997. That was when the Plaintiff attempted to construct a small structure on the land in which he planned to run a boutique. It is that incident which sparked the dispute between the parties.
- xii. In 1998, the Plaintiff had cancelled the 'leave and license' given to the Defendant, and demanded that she leaves the land.
- xiii. The Defendant had not refuted the contents of the Letter of Demand sent to her by the Plaintiff's Attorney-at-Law, cancelling the 'leave and license' issued.

46) It would therefore be seen that neither party has presented clear and direct evidence as to the circumstances under which the Defendant's father John had entered the land and had commenced residing in the house situated thereon. It appears from the evidence that the Defendant had resided in the house in issue alongside her father John, and had continued to occupy the house sequel to her parents John and his wife's demise.

47) The Defendant had admitted that her paternal grandfather (who had also been the father of Kiriansa), did not have title to the land in issue. Furthermore, she had also admitted that her father, John, did not have paper title to the land. Nor did she. The claim of the Defendant is that by continuing to reside in the house, she prescribed to the land and it led to the Plaintiff forfeiting his title to the land.

48) In *Bank of Ceylon v. A.C. Rajasingham* my brother Justice Samayawardhena has also held that "*These rights unmistakably point to the conclusion that a person having paper title to the property need not necessarily possess it in order for him to protect his ownership intact. The right to possession is an essential attribute to ownership. Either he can possess it, or leave it as it is. That is his choice. He will not lose title to the property if he does not possess it. Conversely, he has the right to exclude others from its use.*" Therefore, the Plaintiff by permitting the Defendant to continue to reside in the house, has not thereby lost the ownership of the land, but rather conveyed to the Defendant an informal license to reside. Thus, the ownership of the land remained with the Plaintiff.

49) Under such circumstances, if at all, the Defendant's claim is only based on prescription, which is a recognized mode of acquisition of ownership. In order to establish prescriptive title, in the circumstances of this case, in terms of

section 3 of the Prescription Ordinance, the Defendant should have proven the following requirements:

- i. That her possession of the property was continuous and undisturbed / uninterrupted.
- ii. That the possession was independent and adverse to the Plaintiff's title.
- iii. That such possession lasted continuously (and uninterruptedly) for a minimum period of 10 years before the lawsuit.

It is possible that it was upon the appreciation of such requirements, that the Defendant said in her testimony that since her birth, she had occupied the house situated on the disputed land and that a dispute arose when she attempted to construct a latrine on the land. Therefore, the question arises as to whether such continuous possession of the disputed land by the Defendant (for well-over 10 years) was adverse to the Plaintiff's title, and generated in her favour ownership through prescription.

50) At page 12 of the proceedings of 26<sup>th</sup> July 2007, during the cross-examination of the Defendant, the following question and answer appears:

Question: *Even your father entered the premises, not based on a separate right, but based on his elder brother's right?*

Answer: *During the time father and mother was alive, they had given.*

At page 14 of the same proceedings, the following appears:

Question: *Having had complete ownership, he had given permission to your father to stay on the land?*

Answer: *It had been the grandfather and grandmother who had given.*

51) It would also be seen from the afore-mentioned answers that the Defendant's (Appellant's) parents (John and his wife) had entered the land in issue with the permission ('leave and license') given by its owners.

52) Under our law, 'leave and license' is a purely permissive right to occupy land that is owned by another. The permission to occupy the property must originate from the owner of the property and may be granted either formally (through written agreement, formal conveyance, etc.) or informally (which may even be verbal). That 'leave and license' had been granted can be gathered through direct evidence or inferred from circumstantial evidence, including the conduct of the parties. Unless subsequently converted into an assertion of ownership through an overt act denying recognition of ownership by the party that granted 'leave and license', possession based on mere 'leave and license'

cannot give rise to prescriptive title, merely due to long-term possession. Decisions of this Court relating to claims of ownership through prescription makes it abundantly clear that possession under 'leave and license' defeats a claim to prescriptive title, unless and until possession becomes clearly adverse after revocation of 'leave and license'.

53) I must now turn back to the evidence of the case. It would therefore be seen that, while the Plaintiff had acquired title to the land in 1997, prior to that his mother and her siblings and prior to them, his maternal grandfather (Kiriansa) had in 1933 acquired paper title to the entire land. Throughout that period the Defendant, and her parents have lived in the house situated on the land with the permission of the others. Thus, though there is no direct evidence, it must be inferred that the Defendant's parents had resided in the house with the 'leave and license' originally received from Kiriansa in 1933. In the case of *M. M. Ashar v. T. H. Kareem* [SC Appeal No. 171/2019, SC Minutes of 22<sup>nd</sup> May 2023] by brother Justice Samayawardhena has held that "*A defendant who enters into a land in a subordinate character such as a tenant, lessee or a licensee of the plaintiff is estopped from disputing the title of the plaintiff to the land*". In support of this view, his Lordship has cited with approval the Judgment in *Ruberu v. Wijesooriya* [(1998) 1 Sri LR 58 at page 60] wherein Justice Gunawardana has held that "*whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee (the defendant-respondent) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of him, i.e. the plaintiff-appellant without whose permission he would not have got it. The effect of the operation of section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must, first, quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-appellant is perforce an admission of the fact that the title resides in the plaintiff... It is an inflexible rule of law that no lessee or licensee will ever be permitted either to question the title of the person who gave him the lease or the license or the permission to occupy or possess the land or to set up want of title in that person, i.e. of the person who gave the license or the lease. That being so, it is superfluous, in this action, framed as it is on the basis that the defendant-respondent is a licensee, to seek a declaration of title*".

54) Therefore, as the Plaintiff and his predecessors had allowed the Defendant and her predecessors to possess the disputed land and live in the house situated thereon, it must be concluded that the Defendant had possessed the land with a 'leave and license' of the Plaintiff. Hence the Defendant would be barred from claiming the right of ownership of the disputed land. The position of the

Defendant is that she acquired ownership by prescription. That position requires further consideration.

55) In *Chaminda Abeykoon v. P. Nicholas Anthony Fernando* [SC Appeal No. 54A/2008, SC Minutes of 2<sup>nd</sup> October 2018] Justice Prasanna Jayawardena has held that; *“It is a well-established principle of law that, so long as a person possesses a property as the licensee or agent of the owner, that person cannot acquire prescriptive title to that property. Instead, the running of prescription can commence only upon the licensee or agent committing some “overt act” which demonstrates that he has cast aside his subordinate character and is now possessing the property adverse to or independent of the owner of the property and without acknowledging any right of the owner of the property. The overt act is required to give [or deem to give] notice to the owner that his erstwhile licensee or agent is no longer holding the property in the capacity of a licensee or agent, and is from that time onwards, claiming to possess the property adverse to or independent of the owner. The overt act makes the owner aware [or is deemed to make him aware] that he runs the risk of losing title to the property if the licensee or agent completes ten years of such adverse or independent possession and acquires prescriptive title to the property.”*

56) The first time when the Defendant has asserted her rights to the land (which can be deemed to be an overt act challenging the Plaintiff’s ownership) had been in 1997, when she attempted to construct a latrine on the land and the Plaintiff objected to it. The dispute which arose during the construction of the latrine can certainly be considered as an *“overt act”*, as this construction has caused a conflict between the Plaintiff and the Defendant, and has resulted with the Plaintiff dispatching a letter of demand. Hence the day on which the Defendant attempted to construct the latrine is when the time the prescriptive period commenced. That is when the prescription clock started to tick. In such circumstances, it cannot be said that, by the time the action was instituted in the District Court, the Defendant had acquired prescriptive title, since 10 years of adverse and independent possession had not been completed.

57) Furthermore, admittedly, the letter of demand dated 11<sup>th</sup> March 1998 (“Pe 4”) which was sent by Attorney-at-Law M.N. Gunawardene on behalf of the Plaintiff had been received by the Defendant. It contained a reference to the position of the Plaintiff that the Defendant and her predecessors had entered the land and was occupying the house with the ‘leave and license’ of the Plaintiff. It is an admitted fact that even though the Defendant received this letter, she has not either directly or through an Attorney-at-Law respond to that letter of demand.

58) In *Disanayaka Mudiyansele v. Disanayaka Mudiyansele* [SC/Appeal No.112/2018, SC Minutes of 21.05.2021] Justice Samayawardhena observed that; “... if the party receiving a letter, email or the like, disputes the assertions contained in it, he must reply, for failure to do so can be regarded as an admission of the claim made therein”. On account of this, it can be stated that the Defendant had admitted the contents of the letter of demand which stated that the Plaintiff had the title to the land and that the Defendant was required to vacate the land in the manner pleaded in the Plaint. Furthermore, the Defendant had not disputed the position of the Plaintiff that her predecessors and she had remained in the house with the ‘leave and license’ of the Plaintiff.

### **Findings**

59) In view of the foregoing, I conclude that the Plaintiff had acquired ownership of the land in the manner pleaded in the Plaint, and that the Defendant had not been successful in establishing that she had acquired ownership of the property by way of prescription. The Defendant’s failure arises out of her failure to prove adverse, independent and continuous possession commencing from an “*overt act*” as required by law.

### **Outcome of the Appeal to the Supreme Court**

60) Thus, I answer the aforementioned questions of law in the following manner:

- i. The High Court of Civil Appeals did not misdirect itself on the concept of prescriptive title based on adverse and uninterrupted possession.
- ii. The High Court of Civil Appeals did not err in deciding that the Plaintiff – Appellant – Respondent had established his paper title as required by law.
- iii. The High Court of Civil Appeals did not err in deciding that the Defendant – Respondent – Appellant had failed to establish prescriptive title to the land in question.

61) Therefore, I find myself in agreement with the findings reached by the learned Judge of the High Court of Civil Appeals. Accordingly, I affirm the Judgement of the High Court of Civil Appeals dated 10<sup>th</sup> October 2012.

62) Therefore, I dismiss this Appeal.

63) The learned District Court Judge is directed to enter Decree as prayed for by the Plaintiff.

**K. Priyantha Fernando, J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera, J.**

I agree.

**Judge of the Supreme Court**

**Judge of the Supreme Court**