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

In the matter of an appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended

SC Appeal No: 26/2011
SC/HC/CALA No: 308/2009
NCP/HCCA/ARP/00234/2002 (F)
DC Anuradhapura Case No: 17585/Land

T.M.K. Somawathie,
Karambewa, Kalakaramba Wewa.

PLAINTIFF

Vs.

(1) H.M. Sediris Appuhamy

(2) H.M. Wimalawathie

(3) H.M. Premarathne

All at, Palugaswewa No.1,
Kalakaramba Wewa.

DEFENDANTS

(1) H.M. Wimalawathie

(2) H.M. Premarathne

Both at Palugaswewa No.1,
Kalakaramba Wewa.

2ND & 3RD DEFENDANTS – APPELLANTS

Vs.

T.M.K. Somawathie,
Karambewa, Kalakaramba Wewa.

PLAINTIFF – RESPONDENT

H.M. Sediris Appuhamy,
Karambewa, Kalakaramba Wewa.

1ST DEFENDANT – RESPONDENT

And Now between

T.M.K. Somawathie,
Karambewa, Kalakaramba Wewa.

Dissanayake Mudiyanselage Susila
Kumarihami Dissanayake,
Karambewa, Kalakaramba Wewa.

SUBSTITUTED – PLAINTIFF – RESPONDENT – APPELLANT

Vs

(1) H.M. Wimalawathie

(2) H.M. Premarathne

Both at Palugaswewa No.1, Kalakaramba Wewa.

2ND & 3RD DEFENDANTS – APPELLANTS – RESPONDENTS

H.M. Sediris Appuhamy,
Karambewa, Kalakaramba Wewa.

DEFENDANT – RESPONDENT – RESPONDENT

Before: **Kumudini Wickremasinghe, J**
Arjuna Obeyesekere, J
M. Sampath K.B. Wijeratne, J

Counsel: Razik Zarook, PC with Rohana Deshapriya and Chanakya Liyanage for the Substituted Plaintiff – Respondent – Appellant

Rohan Sahabandu, PC with Chathurika Elvitigala for the 2nd and 3rd Defendants – Appellants – Respondents

Argued on: 27th March 2025

Written Submissions: Tendered on behalf of the Substituted Plaintiff – Respondent – Appellant on 8th October 2015

Tendered on behalf of the 2nd and 3rd Defendants – Appellants – Respondents on 2nd October 2015

Decided on: 31st March 2026

Obeyesekere, J

(1) This is an appeal arising from the judgment delivered by the Provincial High Court of the North Central Province holden at Anuradhapura exercising civil appellate jurisdiction [the High Court] by which the High Court set aside the judgment of the District Court, Anuradhapura [the District Court] and dismissed the plaint.

Facts in brief

(2) In her plaint filed on 23rd February 2000, the Plaintiff – Respondent – Appellant [the Plaintiff] stated as follows:

(a) She became the owner of the land referred to in the First Schedule, in extent of 1 acre, by maternal inheritance;

(b) She has been in possession of the said land for over 45 years;

(c) About 15 years prior to the filing of action, she had handed over to the 1st Defendant – Respondent – Respondent [the 1st Defendant] who was occupying the land adjacent to the land possessed by the Plaintiff, 1 rood out of the said land [i.e. the land referred to in the Second Schedule] to enable the 1st Defendant to cultivate the said land;

(d) The 1st Defendant had thereafter planted coconut trees and other crops on the said land;

(e) While the Plaintiff took the income from the coconut trees, the 1st Defendant took the income from the other crops;

(f) In 1991, she had informed the 1st Defendant that she requires the said land to be given to her daughter;

(g) Since the 1st Defendant was not willing to hand over the property, she had lodged a complaint with the Mediation Board. At the inquiry held at the Mediation Board, the 1st Defendant had agreed in writing [**P1**] to hand over the premises to the Plaintiff by 5th September 1992 subject to the Plaintiff paying the Defendant a sum of Rs. 1500 for expenses incurred in developing the land and the 1st Defendant being permitted to remove the temporary hut erected by the 1st Defendant;

(h) Even though she tried to pay to the 1st Defendant the payment that was agreed before the Mediation Board, he had refused to accept the money and leave the premises, resulting in the Plaintiff making a complaint to the Mediation Board and the Mediation Board issuing a Certificate of Non-settlement [**P2**] on 4th October 1992;

(i) While continuing to occupy the said land, the 1st Defendant had obstructed the pathway that was used by the Plaintiff to access her paddy field situated on the western boundary of the land referred to in the First Schedule, which resulted in the Plaintiff making a complaint at the Kekirawa Police Station;

(j) The 2nd Defendant – Appellant – Respondent, who is the daughter of the 1st Defendant, and her husband, the 3rd Defendant – Appellant – Respondent [the 2nd Defendant / 3rd Defendant] had thereafter entered the land and together with the 1st Defendant, commenced the construction of a house with bricks and cement;

(k) The Plaintiff had lodged a complaint with the Kekirawa Police on 30th January 2000 about the obstruction caused to the pathway and the construction.

(3) It is only thereafter that the Plaintiff filed action in the District Court, seeking *inter alia* a declaration of title to the land in the First Schedule and an order for the ejectment of all three Defendants from the land referred to in the Second Schedule.

(4) The Plaintiff had also sought an enjoining order preventing the Defendants from proceeding with the construction of the house. The District Court had initially issued an enjoining order and after inquiry, issued an interim injunction.

(5) In their answer, the Defendants admitted the situation of the land in dispute. While denying the claim of the Plaintiff that she is the owner of the land and that she was in possession of the said land as well as the fact that the 1st Defendant entered the land as a licensee of the Plaintiff, the 2nd and 3rd Defendants claimed that they had been in possession of the said land since 1968 and that they have prescribed to the said land. With regard to the settlement before the Mediation Board, the 2nd and 3rd Defendants pleaded that the 1st Defendant had no interest or connection with the said land nor was he in possession of the said land and therefore the 1st Defendant had no authority to enter into any settlement with the Plaintiff relating to the said land.

(6) It is clear from the answer that the Defendants were not relying on paper title but were claiming prescriptive title to the land in the Second Schedule. It is also clear that the position of the Plaintiff was that the 1st Defendant was in occupation of the land with the leave and license of the Plaintiff. The relief prayed for by the Plaintiff must be understood in accordance with what the Plaintiff has set out in the body of the plaint, which is to have her entitlement to the land in the Second schedule asserted and enforced.

Trial before the District Court

(7) The trial commenced on 28th November 2000 with the parties admitting the situation of the corpus followed by the raising of issues. The Plaintiff commenced her evidence on 25th July 2001 with her evidence-in-chief being led before the then District Judge. Her evidence was on the same lines as pleaded in her plaint, and was corroborated by Illangasinghe, who was a neighbour of both the Plaintiff and the Defendants. The cross examination of the Plaintiff commenced on 17th January 2002

and the rest of the evidence of the Plaintiff, the witnesses called on her behalf, the 2nd and 3rd Defendants and the witnesses called on their behalf were all led before the learned District Judge who delivered the judgment.

(8) The 1st Defendant did not give evidence. While both the 2nd and 3rd Defendants gave evidence, they sought to distance themselves from the 1st Defendant and stated that the 1st Defendant was not in occupation of the said land at any time but that it has been the 2nd and 3rd Defendants who have been in occupation of such land since 1968. The 2nd and 3rd Defendants had to take up such a position in view of the settlement arrived at by the 1st Defendant before the Mediation Board to vacate the land and hand over possession to the Plaintiff within an year, and to prevent being estopped from denying the title of the Plaintiff to the said land. The 2nd Defendant went a step further and feigned ignorance of the settlement reached before the Mediation Board, although her husband admitted that he was aware of such settlement. The settlement would however be binding on all Defendants since the evidence was that the 2nd and 3rd Defendants entered the land and commenced construction only after the 1st Defendant declined to honour the settlement.

(9) The 2nd Defendant also stated that her mother had purchased the disputed land for a sum of Rs. 500 from Heen Banda Welvidana. Further details relating to such purchase was not provided. While this position was not suggested to the Plaintiff during her cross examination, the 2nd Defendant admitted that no deed was executed with regard to such purchase.

(10) The 2nd Defendant also admitted during the evidence-in-chief that she entered in to the land on the assumption that the said land belonged to her [මෙම ඉඩමට ඇතුල් වුණේ මේ ඉඩම පැමිණිලිකාරියගේ බව හිතාගෙන නොවේ. අපේ ඉඩම බව හිතාගෙන]

(11) The following questions and answers during cross examination of the 2nd Defendant demonstrate that the Defendants had no claim to the land:

"ප්‍ර : පැමිණිලිකාරියට මේ ඉඩම මව් උරුමයෙන් ලැබුණ බව කීවා?
උ : ඔව්
ප්‍ර : දැන් පිළිගන්නවාද මේ කුඹුර පැමිණිලිකාරියගේ බව?
උ : ඇගේ වෙන්න ඇති. මම දන්නේ නැහැ."

(12) By its judgment delivered on 25th October 2004, the District Court held that, (a) the 1st Defendant was in occupation of the said land with the leave and license of the Plaintiff, (b) the Plaintiff had thereby established her title to the land, and (c) the 2nd and 3rd Defendants have not established that they have been in occupation of the said land since 1968 and that they have acquired prescriptive title to the said land.

The judgment of the High Court

(13) Aggrieved, the 2nd and 3rd Defendants filed an appeal which was heard by the High Court. The High Court took the view that:

> "මෙම නඩුවේ පාර්ශවයන් මුල් අවස්ථාවේදී විෂය වස්තුවේ අනන්‍යතාවය පිළිගෙන ඇත ද විත්තියේ උත්තරයේ උප ලේඛනයේ සඳහන්ව නොමැති වුව ද ආරවුලට අදාළ ඉඩම හඳුනා ගෙන ඔප්පු කිරීම පැමිණිල්ලේ වගකීම වේ. පැමිණිල්ල විසින් ඉදිරිපත් කර ඇති පැමිණිල්ලේ උපලේඛනයේ සඳහන් ඉඩම ආරවුලට විෂය වී ඇති ඉඩම බවට ඉදිරිපත් කර ඇති ලේඛන මගින් සනාථ කිරීමක් සිදු වී නොමැත. එබැවින් පාර්ශවකරුවන් ඉඩමේ අනන්‍යතාවය පිළිගැනීමක් වශයෙන් සඳහන් කළ ද රේ වින්ඩිකාටියෝ නඩුකරයකදී එය ප්‍රමාණවත් නොවේ.
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> එසේ ඉඩමේ පිහිටීම ඔප්පු කළ නොහැකි අවස්ථාවක දී පැමිණිලිකරුට තම නඩුව පවත්වා ගෙන යාමට හැකියාවක් නොමැත."

(14) This confusion on the part of the High Court with regard to the identity of the land appears to have arisen from the fact that (a) the area in which the land was situated was known as Palugaswewa, (b) with the introduction of a new post office for the area, Palugaswewa was split in to two, namely Palugaswewa One and Palugaswewa Two, (c) the land in dispute was situated right in the middle of Palugaswewa One and Palugaswewa Two, and (d) almost adjacent to Palugaswewa Two was a village known as Karabewa where the Plaintiff had her house. The evidence however revealed that these lands were all situated adjacent to one another and that the situation of the land or its identity was not in issue between the parties.

(15) Thus, the High Court took the view that even though (a) the parties had admitted the situation of the land in dispute and its identity, and (b) the documents tendered by the Plaintiff had been marked without any objection being raised by the Defendants, the Plaintiff has not established that the documents produced by the Plaintiff relate to the land which is the subject matter of the dispute and that in a *rei*

vindicatio action, failure to establish the identity of the land is fatal to the maintainability of an action.

(16) This was the basis on which the High Court proceeded to set aside the judgment of the District Court. Given the evidence that was led by both parties and the position taken up by the 2nd Defendant that her mother had purchased the said land from Heen Banda Welvidana, I am of the view that such a conclusion was not only irrelevant but was erroneous. Thus, on that basis alone, the judgment of the High Court is liable to be set aside.

(17) With regard to the prescriptive claim of the Defendants, the High Court took the view that the Defendants had not established that it has acquired prescriptive rights. This is borne out by the following passage:

> "විත්තියේ කාලාවරෝධි අයිතිවාසිකම ඔප්පු වී නොතිබුණ ද පැමිණිලිකාර පාර්ශවය ස්වකීය අයිතිවාසිකම් දිසා අධිකරණය ඉදිරියේ ලේඛන සහ සාක්ෂි මගින් නිසි ලෙස තහවුරු කර නොමැති බව පෙනී යන හෙයින් පැමිණිල්ලේ ඉල්ලා ඇති කිසිදු සහනයක් ලබා දීම නුසුදුසු බවට තීරණය කරමු.
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> විත්තිකාර පාර්ශවයේ ස්වකීය කාලාවරෝධී අයිතිවාසිකම සම්බන්ධයෙන් කරන ලද ඉල්ලීම් තහවුරු කර නොමැති නිසා එකී ඉල්ලීම සම්බන්ධයෙන් ද සළකා බැලීමට නීත්‍යානුකූල හැකියාවක් නොමැති බව තීරණය කරමු."

Questions of Law

(18) This appeal arises from the said judgment of the High Court. While the Plaintiff sought and obtained leave to appeal on the questions of law set out in paragraph 14 of its petition, the learned President's Counsel for the Defendants had raised one question of law. However, when this matter was taken up for hearing, the learned President's Counsel for the Plaintiff and the 2nd and 3rd Defendants moved that the question of law to be decided by this Court shall be as follows:

"Whether the learned District Judge has analysed the evidence with regard to the title of the Plaintiff to the land in question."

(19) Thus, whether the 1st Defendant and/or the 2nd and 3rd Defendants have prescribed to the said land is not a matter that I am required to consider in this judgment.

Nature of the action

(20) The starting point in deciding this appeal is to identify the nature of the action filed by the Plaintiff. True enough, the Plaintiff is seeking a declaration of title but what is critical is the claim of the Plaintiff that the 1st Defendant came into occupation of the land at her request and with her permission but did not leave after being requested to leave. Thus, even though the Plaintiff was seeking a declaration of title, that was on the basis that the 1st Defendant had initially possessed the land with the leave and license of the Plaintiff. The District Court has accepted this position in its judgment and this conclusion has not been challenged by the Defendants. The mere fact that the Plaintiff was seeking a declaration of title did not make her action a *rei vindicatio* action where a plaintiff must establish on a balance of probability that he/she has title to the land. Furthermore, if the action was purely a *rei vindicatio*, the necessity to aver such relationship and to raise issues on that basis does not arise since the *rei vindicatio* action is based on title of the Plaintiff and the possession of the Defendant against such title.

(21) That being so, the claim of the Plaintiff that the 1st Defendant came into occupation of the land at her request and with her permission, if successfully established, brings into play Section 116 of the Evidence Ordinance, in terms of which, "*No person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given*."

(22) A clear explanation of the difference between a *rei vindicatio* action based on ownership and an action for ejectment based on the breach of contract is found in **Pathirana v Jayasundara** [(1955) 58 NLR 169; at 172 and 173] where Gratiaen, J stated as follows:

> "*In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. "The plaintiff's ownership of the thing is of the very essence of the action". Maasdorp's Institutes (7th Ed.) Vol. 2, 96."*

"The scope of an action by a lessor against an overholding lessee for restoration and ejectment, however, is different. Privity of contract (whether it be by original agreement or by attornment) is the foundation of the right to relief and issues as to title are irrelevant to the proceedings. Indeed, a lessee who has entered into occupation is precluded from disputing his lessor's title until he has first restored the property in fulfilment of his contractual obligation. "The lessee (conductor) cannot plead the exceptio dominii, although he may be able easily to prove his own ownership, but he must by all means first surrender his possession and then litigate as to proprietorship . . . . " Voet 19.2.32.

Both these forms of action referred to are no doubt designed to secure the same primary relief, namely, the recovery of property. But the cause of action in one case is the violation of the plaintiff's rights of ownership, in the other it is the breach of the lessee's contractual obligation.

A decree for a declaration of title may, of course, be obtained by way of additional relief either in a rei vindicatio action proper (which is in truth an action in rem) or in a lessor's action against his overholding tenant (which is an action in personam). But in the former case, the declaration is based on proof of ownership; in the latter, on proof of the contractual relationship which forbids a denial that the lessor is the true owner."

(23) Having considered whether a prayer for a declaration of title would make such action a *rei vindicatio* action, H.N.G. Fernando, J (as he was then) stated as follows:

"*There is however the further point that the plaintiff in his prayer sought not only ejectment but also a declaration of title, a prayer for which latter relief is probably unusual in an action against an overholding tenant. I have no doubt that it is open to a lessor in an action for ejectment to ask for a declaration of title, but the question of difficulty which arises is whether the action thereby becomes a rei vindicatio for which strict proof of the plaintiff's title would be required, or else is merely one for a declaration (without strict proof) of a title which the tenant is by law precluded from denying. If the essential element of a rei vindicatio is that the right of ownership must be strictly proved, it is difficult to accept the proposition that an action in which the plaintiff can automatically obtain a declaration of title through the operation of a rule of estoppel should be regarded as a vindicatory*

action. The fact that the person in possession of property originally held as lessee would not preclude the lessor owner from choosing to proceed against him by a rei vindicatio. But this choice can I think be properly exercised only by pleadings clearly setting out the claim of title and sounding in delict." [page 171]

(24) In **Chandrasena v Lokubanda** [SC Appeal No. 20/2010; SC minutes of 18th December 2020], Amarasekara, J opined that:

"*Since rei vindicatio is based on ownership and violation of rights of ownership, strict proof of title is needed in a proper rei vindicatio action. Even though, Attanayake v. Aladin [(1997) 3 Sri LR 386] held that our common Law recognizes two actions, namely rei vindicatio and possessory action as remedies that can be sought by an individual who is dispossessed, our law has developed and recognized a valid cause of action on certain occasions to a dispossessed individual when strict proof of title or ownership is not necessary to evict a person who is in unlawful possession; for example in an action for declaration of title to evict an overholding lessee by a lessor, strict proof of title like in a rei vindicatio proper is not necessary due to the estoppel taking place owing to section 116 of the Evidence Ordinance. Thus, if one comes to the property accepting the Plaintiff as landlord on a contractual relationship, he cannot put the plaintiff to strict proof of title*."

(25) As held in **Ruberu and another v Wijesooriya** [(1998) 1 Sri L R 58; at page 60]:

"*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 setup want of title in that person*. …"

(26) A similar view was taken by Samayawardhena, J in **Nawaz and others v Bopage** [SC Appeal No. 92/2014; SC minutes of 12th February 2024] where he held as follows:

"*The second question of law is on the burden of proof. The plaintiff did not file a rei vindicatio action. The plaintiff filed the action as the landlord against the defendant as the overholding monthly tenant. As I explained earlier, the monthly*

tenancy has unequivocally been admitted by the defendant. The termination of monthly tenancy was proved by P3 and P3(a). The plaintiff's action is based not on ownership but on the violation of the privity of contract. ***The plaintiff's main relief is the ejectment of the defendant, not the declaration of title to the premises****. In cases of this nature, seeking a declaration of title is customary, yet it is superfluous. Although the plaintiff produced the title deed, it was not necessary as the defendant tenant cannot question the plaintiff's ownership to the property by operation of the principle of estoppel embodied in section 116 of the Evidence Ordinance*." [emphasis added]

(27) Thus, the answer to the question of law is dependent on whether the Plaintiff has established that the Defendants were in possession of the land on the leave and license of the Plaintiff.

Reasoning of the District Court

(28) The District Court has relied on two documents in support of its position that the 1st Defendant came into possession of the disputed land with the leave and license of the Plaintiff and that all three Defendants are thus estopped from denying this fact and that the title to the land was with the Plaintiff. The first document is P1, that being the terms of settlement entered into before the Mediation Board. In terms of P1, the 1st Defendant had agreed to hand over the land within one year of P1, and for the Plaintiff to pay the 1st Defendant a sum of Rs. 1500 as a cultivation gratuity. While P1 was marked without any objection, it was not suggested to the Plaintiff during cross examination that P1 does not relate to the land in the Second Schedule to the plaint. P1 serves as an acknowledgement on the part of the Defendants that the 1st Defendant was a licensee of the Plaintiff.

(29) The second document relied upon by the District Court, which necessarily does not show leave and license, was the acreage tax receipts produced by the Plaintiff for the disputed land for the years 1980-1981 [P6], 1982-1985 [P7], 1986 [P8] and 1987-1988 [P9] which showed that the Plaintiff had paid acreage tax for the disputed land. These receipts were marked without any objection from the Defendants and the Plaintiff was not questioned on the non-applicability of these documents to the disputed land.

(30) With the finding of the District Court that the Defendants were occupying the land with the leave and license of the Plaintiff, and in view of the provisions of Section 116, I am of the view that it was not necessary for the District Court to have examined the title of the Plaintiff as in a *rei vindicatio* action. The District Court was therefore right when it granted the Plaintiff the relief prayed for.

(31) I must also state that the learned District Judge who delivered the judgment had the benefit of hearing the entirety of the evidence of all witnesses except the evidence-in-chief of the Plaintiff and thereby had the opportunity of seeing for himself the demeanour of the witnesses including the Plaintiff and the 2nd and 3rd Defendants. It has been held in a long series of cases that due regard must be had of such circumstances when considering a judgment of a trial court, and that an appellate Court must especially be slow to interfere with the findings of the trial court in such a situation. [**M.P. Munasinghe v C.P. Vidanage and another** [69 NLR 97] and **De Silva and others v Senevirathne and another** [(1981) 2 Sri LR 7]].

Conclusion

(32) In the above circumstances, I am of the view that the High Court erred when it considered a matter which was not in dispute between the parties. I have considered carefully the judgment of the District Court and I am satisfied that the findings of the District Court are supported by the evidence. Accordingly, the question of law is answered in the affirmative. The judgment of the High Court is set aside, the judgment of the District Court is affirmed and this appeal is allowed, without costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J
I agree

JUDGE OF THE SUPREME COURT

M. Sampath K. B Wijeratne, J
I agree.

JUDGE OF THE SUPREME COURT