

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

*In the matter of an Appeal in terms of Section 5(C) of the
High Court of the Provinces (Special Provisions) Act No. 19
of 1990 as amended by Act No. 54 of 2006 read with Article
128 of the Constitution of the Democratic Socialist Republic
of Sri Lanka*

SC Appeal 27/2016
SC/HC/CA/LA/183/2014
NWP/HCCA/KUR/156/2007 (F)
D.C. Marawila: 130/L

Warankulasooriya Annette
Yvonne Thamel
Pankada Road,
Katuneriya

PLAINTIFF

Vs.

1. W.A. Daniel Appuhamy (Deceased)
 - 1A. Ginigaddarage Rosalin Nona
 - 1B. Wijesuriya Arachchige Juliet Nona
 - 1C. Wijesuriya Arachchige Gunasekara Appuhamy
 - 1D. Wijesuriya Arachchige Somasiri Appuhamy
 - 1E. Wijesuriya Arachchige Seelawathie Nona
 2. W.A. Somasiri Appuhamy
- All of,
Pankada Road, Katuneriya

DEFENDANTS

AND BETWEEN

W.A. Somasiri Appuhamy
Pankada Road, Katuneriya

2ND DEFENDANT -APPELLANT

Vs.

Warankulasooriya Annette
Yvonne Thamel
Pankada Road,
Katuneriya

PLAINTIFF – RESPONDENT

1. W.A. Daniel Appuhamy (Deceased)
- 1A. Ginigaddarage Rosalin Nona
- 1B. Wijesuriya Arachchige Juliet Nona
- 1C. Wijesuriya Arachchige Gunasekara
Appuhamy
- 1D. Wijesuriya Arachchige Somasiri Appuhamy
- 1E. Wijesuriya Arachchige Seelawathie Nona

All of,
Pankada Road, Katuneriya

DEFENDANTS – RESPONDENTS

AND NOW BETWEEN

W.A. Somasiri Appuhamy
Pankada Road, Katuneriya

2ND DEFENDANT -APPELLANT-
APPELLANT

Vs.

Warankulasooriya Annette
Yvonne Thamel
Pankada Road,
Katuneriya

PLAINTIFF -RESPONDENT -
RESPONDENT

- 1A. Ginigaddarage Rosalin Nona (Deceased)
- 1B. Wijesuriya Arachchige Juliet Nona
- 1C. Wijesuriya Arachchige Gunasekara
Appuhamy
- 1CC. Mannamperuma Mohottige Kusumalatha
Jayaweera Bandara
- 1D. Wijesuriya Arachchige Somasiri Appuhamy
- 1E. Wijesuriya Arachchige Seelawathie Nona

All of,
Pankada Road, Katuneriya

DEFENDANTS -RESPONDENTS-
RESPONDENTS

W.A. Somasiri Appuhamy v Warankulasooriya Annette Yvonne Thamel and Others
Case No. SC/APPEAL/27/2016

Before: Mahinda Samayawardhena, J.
Dr Sobhitha Rajakaruna, J.
Menaka Wijesundera, J.

Counsel: Jagath Wickramanayake, PC with Nimesha Rodrigo for the 2nd Defendant-Appellant - Appellant

M.C. Jayaratne, PC with Dananjaya Jayasundara and Nishani H. Hettiarachchi for the Plaintiff-Respondent-Respondent

Written Submissions:

2nd Defendant-Appellant-Appellant : 05 January 2017 & 02 April 2026
Plaintiff-Respondent-Respondent : 02 August 2016

Argued on: 03 March 2026

Decided on: 17 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the ‘Plaintiff’) instituted action bearing No. 130/L in the District Court of *Marawila* (‘District Court’) on 28 July 1986 against the original 1st Defendant and the 2nd Defendant, seeking, inter alia, a declaration of title to the land called “Ambagahawatta”, more fully described in the Schedule to the Complaint, the ejectment of the Defendants therefrom, damages and consequential relief. The Plaintiff also sought an order for the demarcation of the eastern boundary of the land claimed by her, with reference to Plan No. 5917 dated 27 September 1983 prepared by M. D. Fernando, Licensed Surveyor.

The Complaint was subsequently amended on 21 July 1987 and further amended on 29 April 1993. In the amended pleadings, the Plaintiff maintained her claim for a declaration of title, ejectment and damages and, in the further amended Complaint, also sought an order for the demarcation of the eastern boundary of the land in accordance with the relevant survey

plan. The Defendants, in their amended Answer, denied the Plaintiff's title and claimed, inter alia, that they had been in uninterrupted and independent possession of approximately 60 perches of the land for a period exceeding 50 years and had thereby acquired prescriptive title thereto. They accordingly sought, by way of reconvention, a declaration of title in their favour.

The trial commenced on 5 December 1996 upon the issues raised by the parties. The Plaintiff led both oral and documentary evidence, while the 2nd Defendant- Appellant - Appellant (hereinafter referred to as the '2nd Defendant') gave evidence on behalf of the Defendants and produced documentary evidence in support of their case. During the pendency of the action, the original 1st Defendant died, and the 1A to 1E Defendants were substituted in his place.

By Judgment dated 16 October 2007, the District Court granted the Plaintiff several of the reliefs sought, including an order for the demarcation of the eastern boundary, ejectment of the Defendants, damages and costs, while dismissing the Defendants' claim in reconvention. It is material to note, however, that the learned District Judge did not grant the Plaintiff the declaration of title sought by her, having reached the conclusion that the Plaintiff had failed to establish her title to the land in suit.

Being aggrieved by the said Judgment, the 2nd Defendant preferred an appeal to the Provincial High Court of the North Western Province holden in *Kurunegala* ('High Court'). By Judgment dated 11 March 2014, the High Court dismissed the appeal with costs. The 2nd Defendant thereafter invoked the appellate jurisdiction of this Court and obtained Leave to Appeal on, inter alia, the questions whether the Civil Appellate High Court had erred in holding that the original 1st Defendant and the 2nd Defendant were licensees of the Plaintiff's predecessor-in-title, namely, the Plaintiff's husband, and whether the Plaintiff had acquired title to the land in suit.

The principal controversy before this Court concerns, therefore, the title asserted by the Plaintiff to the land in suit, the nature and legal effect of the possession of the Defendants, the finding that the Defendants were in occupation of the land on the basis of a licence granted by the Plaintiff's predecessor-in-title, and the claim of the Defendants to have acquired prescriptive title. The 2nd Defendant also challenges the manner in which the courts below evaluated the evidence and documentary material placed before them.

2nd Defendant's Position

The principal submission of the 2nd Defendant is that the Plaintiff's action is, in substance, an action *rei vindicatio*, founded upon an assertion of title, and that the Plaintiff was therefore required to establish her title to the corpus in dispute before she could obtain an order for the recovery of possession. It is submitted that the Plaintiff failed to discharge that burden.

The 2nd Defendant contends that the Plaintiff's title is founded principally upon Deed No. 5077 dated 8 March 1984, executed by her husband in her favour. According to the 2nd Defendant, the title of the Plaintiff's husband, in turn, was founded merely upon an alleged period of long possession and cultivation. It is therefore contended that the Deed could not convey a valid title to the Plaintiff unless the Plaintiff's husband had himself acquired title to the land in accordance with law.

In this regard, the 2nd Defendant relies upon the provisions of section 3 of the Prescription Ordinance and submits that mere possession or cultivation does not, by itself, establish prescriptive title. It is his position that a party relying upon prescription must establish, by clear and unequivocal evidence, possession of the land in the manner and for the period prescribed by law. The 2nd Defendant further submits that neither the Plaintiff nor her husband led sufficient evidence to establish the necessary ingredients of prescriptive possession and that the Plaintiff's husband, not being a party to the present action, could not, merely by giving evidence, obtain a decree recognising prescriptive title in his favour.

A further contention advanced on behalf of the 2nd Defendant is that the learned District Judge erred in treating the Defendants as licensees of the Plaintiff's predecessor-in-title. The 2nd Defendant submits that the evidence relied upon by the District Court in reaching that conclusion was principally derived from the proceedings in an earlier case bearing No. 121/L (in the Primary Court of *Vennappuwa*) and that the land which was the subject matter of that action was distinct from the land involved in the present Case. It is therefore contended that the pleadings and evidence in Case No. 121/L could not properly have been relied upon to establish that the Defendants were licensees in respect of the land in the present action.

The 2nd Defendant further submits that the evidence of the Plaintiff and her husband regarding the alleged eviction of the Defendants from the land concerned in Case No. 121/L and their subsequent entry into the land in suit was specifically challenged in cross-examination. He contends that the documentary material relating to Case No. 121/L demonstrates that the said action was dismissed and that the Defendants had not been evicted from the premises in the manner alleged by the Plaintiff. It is accordingly submitted that the finding that the Defendants subsequently entered the land in suit upon the licence or permission of the Plaintiff's husband was unsupported by the evidence.

The 2nd Defendant also relies upon the Court Commissioner's Plan No. 593 and the accompanying report, marked 2V35 and 2V35(a), respectively. According to him, the said plan and report demonstrate that the Defendants had been in occupation of the disputed portion of land for a considerable period and that their dwelling house stood upon the land claimed by them. He submits that the physical features depicted in the plan, including the boundary vegetation and the absence of a physical separation between the relevant lots, support his contention that the Defendants had been in long and uninterrupted possession of the land.

It is further submitted that the Defendants had themselves asserted prescriptive title in their Answer, claiming uninterrupted and independent possession of approximately 60 perches for a period exceeding 50 years. The 2nd Defendant maintains that the evidence and documentary material produced on behalf of the Defendants were sufficient to establish their long possession and that the courts below erred in failing to give due weight to such material.

A further ground relied upon by the 2nd Defendant concerns the alleged failure of the District Court and the High Court to consider the entirety of the documentary evidence produced on behalf of the Defendants. It is submitted that documents marked V1 to V37 and 2V1 to 2V65 were produced in evidence, but that only a limited number of those documents were available in the record and considered by the courts below. The 2nd Defendant contends that the absence from the record of a substantial part of the evidence and documentary material led to a miscarriage of justice and materially affected the findings reached by the courts below.

In particular, the 2nd Defendant draws attention to the absence of the proceedings relating to a material portion of his evidence-in-chief and the alleged non-availability of the majority of the documents marked 2V1 to 2V65. He submits that the court below could not properly have determined the dispute without considering the complete body of evidence placed before the District Court.

It is further contended that the learned District Judge herself had answered in the negative the issue concerning the Plaintiff's title to the land in suit. According to the 2nd Defendant, once the District Court had concluded that the Plaintiff failed to establish title, the action, being one *rei vindicatio*, ought to have been dismissed. He submits that the Civil Appellate High Court erred in law in nevertheless affirming the judgment in favour of the Plaintiff and in treating the Defendants as licensees so as to sustain the order for their ejection.

On these grounds, the 2nd Defendant submits that the judgments of the District Court and the High Court cannot be sustained in law. He accordingly seeks that the Judgment of the High Court dated 11 March 2014 and the Judgment of the District Court dated 16 October 2007 be set aside, that the Plaintiff's action be dismissed and that the reliefs sought by the Defendants in reconvention be granted.

Plaintiff's Position

The submissions of the Plaintiff will be considered upon the basis of the submissions made on her behalf before this Court. In substance, the Plaintiff's position, as emerging from the pleadings and the material referred to in the record, is that she acquired title to the land in suit by virtue of Deed No. 5077 dated 8 March 1984 executed by her husband, who had himself acquired rights to the land by reason of long and uninterrupted possession. The Plaintiff further maintains that the Defendants had entered into possession of the disputed land with the leave and licence of her predecessor-in-title and that such possession could not constitute adverse possession capable of founding a prescriptive title.

The Plaintiff relies, inter alia, upon the evidence led by herself and her husband, the documentary material relating to the title claimed by her, and the evidence concerning the manner in which the Defendants came to occupy the land. She disputes the contention that the Defendants acquired prescriptive title and maintains that the findings of the High Court upholding her entitlement to the relief granted by the District Court were justified on the evidence and in law.

The Plaintiff further maintains that the findings reached by the High Court, including its conclusion concerning the nature of the Defendants' possession and the title claimed by the Plaintiff, were properly founded upon the evidence available before that Court. She accordingly seeks the dismissal of the present Appeal and the affirmation of the Judgment of the High Court.

Evaluation

Having considered the pleadings, the evidence led before the District Court, the documentary material referred to by the parties, and the submissions made before this Court, I am of the view that the principal question which requires determination is whether the Plaintiff has established a better title to the land in suit and whether the Defendants have established a prescriptive title adverse to that title.

It is common ground that the Plaintiff's claim to the land is founded upon Deed No. 5077 dated 8 March 1984, executed in her favour by her husband, K. Romel Thamel. The 2nd Defendant contends that the Plaintiff's husband himself had no title to convey, as his purported title was based merely upon long possession and cultivation. In my view, however, the evidence relating to the nature and duration of the possession of the Plaintiff's predecessor cannot be considered in isolation from the evidence concerning the possession of the Defendants.

Of particular significance in this regard is the 3rd paragraph of the Answer dated 10 August 1978 marked P7, filed by Daniel Appuhamy (the original 1st defendant in the present Case) in Case No. 121/L. In that Answer, Daniel Appuhamy expressly stated that the land had been possessed by the said Thamel for a period exceeding 30 years and that he had himself entered into possession under the leave and licence of Thamel. As observed by the High Court and the District Court, this document assumes considerable evidentiary importance because it is an admission made by Daniel Appuhamy, who was the original 1st Defendant in the present Case. It provides contemporaneous evidence concerning the source and nature of the possession under which he entered the land. The learned Judges of the High Court were therefore entitled to take into consideration the said evidence in determining whether the possession of Daniel Appuhamy and Somasiri Appuhamy was adverse to the rights of the Plaintiff's predecessor. I am satisfied with the High Court's

observation that the Plaintiff's predecessor in title, Thamel, had been in adverse possession of the land as against Joselyn Fernando since 1976.

The significance of P7 is further reinforced by the oral evidence concerning the circumstances in which Daniel Appuhamy came to occupy the land. Furthermore, I find that the High Court correctly noted that it was uncontradicted in evidence that the Plaintiff's husband had granted the 1st Defendant temporary permission to occupy the land in question, following the 1st Defendant's eviction by writ of possession in Case No. 121/L. The evidence therefore provides a substantial explanation as to how the Defendants came into occupation of the land. Their initial entry was not in assertion of an independent or hostile title but pursuant to the permission granted by the Plaintiff's predecessor.

This distinction is fundamental when considering the Defendants' claim of prescription. Possession which commences with the permission or licence of the person having title cannot, merely by the passage of time, become adverse possession so as to confer prescriptive title upon the licensee. The character of such possession remains permissive unless and until there is a clear and unequivocal repudiation of the title of the person under whose authority the possession commenced, brought home to that person.

In the circumstances of the present Case, the subsequent conduct of Daniel Appuhamy and the 2nd Defendant assumes particular significance. The permission granted by the Plaintiff's husband was to construct a temporary house on the land. When Daniel Appuhamy and his son thereafter sought to construct a permanent house upon the land, such conduct was inconsistent with the limited permission that had been granted to them. More importantly, viewed in the context of the evidence as a whole, the attempt to construct a permanent structure constituted an unequivocal assertion that they no longer recognised the rights of the Plaintiff's husband in respect of the land. It was, in my view, a clear indication that the Defendants were seeking to assert possession in their own right rather than continuing in possession by virtue of the licence previously granted to them.

The legal consequence of such conduct, however, is not that the entire period of the Defendants' prior permissive occupation can retrospectively be treated as adverse possession. The period during which they occupied the land with the permission of the Plaintiff's predecessor cannot be relied upon for the purpose of establishing prescription.

At the highest, the attempt to construct a permanent house constituted the point at which the Defendants' possession could be regarded as having become adverse, if otherwise established by the evidence. The question then is whether the Defendants established the requisite period of adverse possession thereafter. In my view, they did not.

The 2nd Defendant himself accepted in evidence that he had been away from the land for a substantial period while serving in the Sri Lanka Army. He was therefore not in a position to provide direct evidence concerning the circumstances in which his father initially entered the land or the nature of the possession during the material period. Against this background, the admission contained in P7 by Daniel Appuhamy, who was himself a party to Case No. 121/L, assumes even greater significance.

I am also unable to accept the submission that the proceedings in Case No. 121/L were wholly irrelevant to the present dispute merely because the 2nd Defendant maintains that the land involved in that case was different from the land in the present action. The relevance of P7 does not depend upon the identity of the corpus in Case No. 121/L and the corpus in the present Case. What is material is the admission made by Daniel Appuhamy concerning the source of his possession and the fact that he claimed to have entered into possession under the leave and licence of Thamil. That admission was capable of being considered as evidence of the relationship between the parties and the nature of the possession claimed by Daniel Appuhamy.

I have also considered the argument that the learned District Judge failed to properly examine the evidence about Daniel Appuhamy's alleged eviction. Even if the earlier court cases did not result in a actual physical eviction, as the Plaintiff claims, that fact does not, in my view, weaken the separate evidence showing that Daniel Appuhamy later occupied the land with the permission of the Plaintiff's husband. The key question for this Court is not whether Daniel Appuhamy had previously lived somewhere else, but rather how and why he came to occupy the land involved in this case.

The Court Commissioner's Plan No. 593 and the accompanying report, marked 2V35 and 2V35(a), also have to be considered in their proper context. Those documents may establish the physical occupation of the land by the Defendants at the time of the commission. They do not, however, by themselves establish the legal character of that possession from its inception, nor do they establish that the Defendants had possessed the

land adversely to the title of the Plaintiff or her predecessor for the statutory period. Physical possession and prescriptive possession are not synonymous.

The 2nd Defendant has also relied considerably upon the documentary material marked V1 to V37 and 2V1 to 2V65 and has contended that the failure to have all those documents available in the record resulted in a miscarriage of justice. I have carefully considered this submission. Nevertheless, the central issue concerning the nature of the Defendants' possession can be determined from the material which is available, particularly the admission in P7, the oral evidence concerning the circumstances in which Daniel Appuhamy entered the land, and the subsequent conduct of the Defendants. The mere existence of documentary evidence showing occupation over a period of time does not establish that such occupation was adverse or independent.

It is equally important to distinguish between the burden resting upon a plaintiff in an action *rei vindicatio* and the burden resting upon a defendant who seeks to defeat the plaintiff's title by asserting prescriptive title. I accept the general proposition advanced by the 2nd Defendant that a plaintiff in a vindicatory action must establish title to the corpus claimed. However, in the present Case, the Plaintiff's title cannot be examined solely by reference to the date of her Deed No. 5077. The title conveyed by that deed has to be considered together with the evidence concerning the title and possession of her predecessor. The evidence relating to the long possession of the Plaintiff's husband, coupled with the documentary evidence and the subsequent transfer of the property to the Plaintiff, was capable of establishing the Plaintiff's title.

The fact that the Plaintiff's husband claimed rights to the property by reason of long possession does not, by itself, render the subsequent Deed No. 5077 ineffective. The question is whether the evidence as a whole establishes the requisite title of the Plaintiff's predecessor and the devolution of that title upon the Plaintiff. Having considered the material placed before Court, I am satisfied that the High Court was entitled to conclude that the Plaintiff had established her title.

I therefore do not accept the submission that the learned District Judge's finding concerning the permissive nature of the Defendants' possession amounted to an impermissible conversion of an action *rei vindicatio* into an action based upon a contract of licence. The question whether the Defendants possessed the land adversely to the Plaintiff

is necessarily relevant to the determination of the Plaintiff's claim to recover possession. Evidence concerning the manner in which the Defendants came into occupation was therefore directly relevant to the vindicatory claim.

In my view, the evidence establishes a coherent sequence of events. The Plaintiff's predecessor had been in possession of the land for a substantial period; Daniel Appuhamy acknowledged that Thamil had been in possession for over 30 years and that he himself entered under Thamil's leave and licence; Daniel Appuhamy was subsequently permitted, following his eviction from another premises, to occupy the land temporarily and construct a temporary house; and it was only when the Defendants sought to construct a permanent house that their conduct became inconsistent with the permission previously granted. Such circumstances are fundamentally inconsistent with the proposition that the Defendants had acquired prescriptive title by uninterrupted adverse possession for the requisite statutory period.

I therefore conclude that the 2nd Defendant has failed to establish that the possession of himself and his predecessor was adverse to the title of the Plaintiff or her predecessor for the period required by law. On the contrary, the evidence demonstrates that their possession commenced permissively and that the subsequent assertion of an independent right occurred only at a much later stage.

Conclusion

For the foregoing reasons, I am unable to accept the contention of the 2nd Defendant that the Plaintiff failed to establish her title to the land in suit. In my view, the evidence, considered as a whole, supports the conclusion that the Plaintiff acquired title to the land by virtue of Deed No. 5077 dated 8 March 1984, upon the title and rights of her predecessor-in-title, and that the Defendants have failed to establish any superior or prescriptive title to the disputed land.

I further find that the reliance placed by the 2nd Defendant upon the physical occupation depicted in the Court Commissioner's Plan does not assist his claim to prescriptive title. The fact of occupation is not, by itself, sufficient to establish the legal character of that occupation. In the circumstances of this case, the evidence as to the origin of the Defendants' possession is of greater significance, and that evidence demonstrates that their occupation commenced with permission. I am therefore of the view that the High Court

was correct in affirming the substantive conclusion reached by the District Court that the Defendants were in possession pursuant to the permission granted by the Plaintiff's predecessor and that they had failed to establish prescriptive title adverse to the Plaintiff.

Accordingly, I answer the following Questions of Law (set out in paragraphs 16iii and 16iv of the Petition dated 17 April 2014) upon which Leave to Appeal was granted, in favour of the Plaintiff and against the 2nd Defendant:

16(iii.) Has the Civil Appellate High Court of Kurunegala erred in law in holding that the original 1st Defendant and the Petitioner were licensees of the Plaintiff's predecessor-in-title, namely the Plaintiff's husband?

16(iv.) Has the Civil Appellate High Court of Kurunegala erred in law in holding that the Plaintiff had acquired title to the land in suit?

In the result, I see no sufficient basis to interfere with the Judgment of the High Court dated 11 March 2014, except for the order on costs. The Appeal is accordingly dismissed, without costs. In the circumstances of this Case, I take the view that the Plaintiff should not be entitled to costs in this Court as well as in the court below. I vary the Judgment of the High Court to that extent.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court