

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

*In the matter of an appeal to the Supreme Court under
Article 128 (2) of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC/Appeal / 30/ 2024
SC/ SPL/ LA/ 81/ 2022
CA Appeal/ 926/ 1997 (F)
DC Balapitiya / L/362

Kalansuriya Arachchige Henry
Addarawatte,
Dolankada,
Ampegama.

PLAINTIFF

Vs.

Kariyawasam Kankanthirige David
Appuhamy
Helagedarawatte,
Manampitiya,
Meethiyagoda.

DEFENDANT

The Attorney General
The Attorney General's Department,
Colombo 12.

ADDED DEFENDANT

AND BETWEEN

The Attorney General
The Attorney General's Department,
Colombo 12.

2ND DEFENDANT-APPELLANT

Vs.

Kalansuriya Arachchige Henry
Addarawatte,
Dolankada,
Ampegama.

PLAINTIFF-RESPONDENT (DECEASED)

Kalansuriya Arachchige Chandralatha
No. 06,
Vishwa Kala Housing Complex,
Mampe,
Piliyandala.

SUBSTITUTED PLAINTIFF- RESPONDENT

- 1A. Weeragoda Gamage Rathu Nona
- 1B. Kariyawasam Kankanam Thanthrige
Lawrance
- 1C. Kariyawasam Kankanam Thanthrige
Thilakaratne
- 1D. Kariyawasam Kankanam Thanthrige
Gamini
- 1E. Kariyawasam Kankanam Thanthrige
Upali
- 1F. Kariyawasam Kankanam Thanthrige
Karunawathi
- 1G. Kariyawasam Kankanam Thanthrige
Gunawathi
- 1H. Kariyawasam Kankanam Thanthrige
Pathmawathi

All are Galagedarawatte, Manampita,
Meetiyaoda

SUBSTITUTED 1A-1H DEFENDANTS
- RESPONDENTS

AND NOW BETWEEN

The Attorney General
The Attorney General's Department,
Colombo 12.

2ND DEFENDANT-APPELLANT
-APPELLANT

Vs.

Kalansuriya Arachchige Henry
Addarawatte,
Dolankada,
Ampegama.

PLAINTIFF-RESPONDENT-RESPONDENT
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Pathmawathi

All are Galagedarawatte, Manampita,
Meetiyagoda

SUBSTITUTED 1A-1H DEFENDANTS
RESPONDENTS - RESPONDENTS

The Attorney General v Kalansuriya Arachchige Chandralatha and Others
Case No. SC/Appeal/30/ 2024

Before: Shiran Gooneratne, J
Dr. Sobhitha Rajakaruna J.
Sampath B. Abayakoon, J

Counsel: Nerin Pulle, PC, ASG with Nayomi Kahawita, SSC for the 2nd Defendant-Appellant-Appellant

J.M. Wijebandara with Dimithri Pandiwita and Parami Edirisinghe for the Substituted Plaintiff-Respondent-Respondent

Nisala Seniya Fernando with Pramod Perera for the Substituted 1B Defendant-Respondent-Respondent

Written Submissions: 2nd Defendant-Appellant-Appellant - 05 May 2025
03 December 2025

Substituted Plaintiff-Respondent-Respondent - 31 October 2025

Substituted 1B Defendant-Respondent-Respondent - 02 September 2024

Argued on: 11 November 2025

Decided on: 18 June 2026

Judgement

Dr. Sobhitha Rajakaruna, J.

Overview of Proceedings

The Plaintiff-Respondent-Respondent (hereinafter referred to as the ‘Plaintiff’) instituted this action in the District Court on or about 26 February 1980 against the original Defendant who was later referred to as the substituted 1st Defendants-Respondents-Respondents (hereinafter referred to as ‘1st Defendant’), seeking a declaration of title to the land described in the Schedule to the Plaintiff and the ejectment of the said original Defendant therefrom.

The original Defendant, by answer dated 26 February 1981, denied the material averments contained in the Plaintiff and disputed the Plaintiff’s entitlement to the relief sought. The original Defendant further averred that the land situated between the roadway and the land described in the Schedule to the Plaintiff belonged to the State, and accordingly sought the dismissal of the Plaintiff’s action. In view of this position, the Attorney General - 2nd Defendant-Appellant-Appellant (hereinafter referred to as the ‘Attorney General’) was added to the proceedings.

In the answer filed in the District Court, on behalf of the State, the Attorney General maintained that the entirety of the corpus in dispute constituted State land; that neither the Plaintiff nor any other person had lawfully acquired title thereto; and that the State had not conveyed or otherwise transferred ownership of the said land to the Plaintiff or to any other person. On that basis, the Attorney General prayed for a declaration that the entirety of the land in dispute belonged to the State, for the ejectment of the original Defendant and any other person occupying the land, and for the dismissal of the Plaintiff's action.

Following a protracted trial, the learned District Judge, by judgement dated 24 October 1997, answered the issues in favour of the Plaintiff and granted the relief sought. Aggrieved by that decision, the Attorney General preferred an appeal to the Court of Appeal. The Court of Appeal affirmed the judgement of the District Court. Being dissatisfied with the judgement of the Court of Appeal, the Attorney General has now invoked the appellate jurisdiction of this Court.

Among the principal questions arising for determination in this appeal are whether the Court of Appeal erred in failing to properly evaluate the evidentiary significance of documents marked '2V46', '2V47' and '2V50' in light of the evidence adduced on behalf of the State before the District Court, and whether the Court of Appeal failed to appreciate that the land more fully described in the Plaintiff had not been lawfully owned by the Plaintiff or his predecessors in title. This Court granted Special Leave to Appeal upon the following Questions of Law set out in paragraph 40 (c) and (d) of the Petition of the Attorney General:

- c) Did the Court of Appeal err in failing to consider the testimonial relevance of documents marked as '2V46', '2V47' and '2V50' in accordance with the evidence led on behalf of the State before the District Court?
- d) Did the Court of Appeal err in failing to consider that the land as described more fully in the Plaintiff has not been legally owned by the Plaintiff or his predecessors?

Summary of the Attorney General's Contention

The learned Attorney General contended that the Plaintiff's claim of title based on the chain of deeds marked 'P3' to 'P8' is untenable, as both the Plaintiff and his predecessors in title had, by their own conduct and documentary admissions, acknowledged the title of the State to the corpus. It was submitted that K.L.G. Henry, from whom the Plaintiff derived title under Deed No. 36196 dated 31 August 1978 ('P6'), had himself applied for and obtained a permit under the Land Development Ordinance in respect of the land by documents marked '2V26' and '2V40'. Accordingly, K.L.G. Henry occupied the land as a permit-holder and licensee of the State, thereby recognising State ownership.

The Attorney General further submitted that the Plaintiff similarly acknowledged State title by applying for a permit under the Land Development Ordinance by document '2V1' and by admitting, in statements marked '2V3' and '2V3A', that after purchasing the land under the mistaken belief that it was private property, he subsequently discovered it to be State land and procured the transfer of the permit previously issued to K.L.G. Henry. Reliance was also placed on documents marked '2V4', '2V26', '2V32' and '2V37' as further evidence of such acknowledgement.

It was further contended that the Surveyor General's superimposed Plan and Tenement Lists, marked '2V46', '2V46A' and '2V46B', established that the entirety of the corpus falls within lands claimed by the State. The Attorney General submitted that the relevant allotments were traced through the Surveyor General's plans referring to the *Olabedde Polhunnawa* and that, by the Order produced as '2V50' under the Waste Lands Ordinance, those lands had been declared to be State property. Accordingly, the survey and tenement evidence conclusively demonstrated that the corpus formed part of State land.

The Attorney General also challenged the evidentiary value of document 'P13', which was produced by the Plaintiff at a later stage of the proceedings. It was submitted that the document had not been properly identified by the relevant Government authority (during testimony), that no corresponding official record could be traced, and that the Court ought not to place reliance upon it. The production of 'P13' was characterised as an unsuccessful attempt to strengthen an otherwise deficient claim to title.

Finally, the Attorney General contended that neither the Plaintiff nor his predecessors could rely on possession or prescription against the State, particularly in view of their repeated acknowledgements of State ownership and their occupation under permits issued pursuant to the Land Development Ordinance. It was therefore submitted that the corpus is State land, that the Plaintiff is precluded from claiming the reliefs sought in the Plaintiff, and that the learned District Judge erred in failing to dismiss the action and grant possession to the State, as prayed for by the Attorney General.

Submissions of the Plaintiff

The Plaintiff contended that the Plaintiff had established a valid and uninterrupted chain of title to the corpus through a series of duly registered deeds extending from 1923 to the conveyance in his favour by Deed No. 36196 dated 31 August 1978. It was submitted that the Plaintiff's title was derived through predecessors in title commencing with Don Andiris De Silva Jayasekara and passing successively through Lokugamage Odiris Appuhamy, Caroline Beatrix Gurusinghe and K.L.G. Henry. The relevant deeds were produced, marked at the trial without objection and argued, thereby becoming admissible evidence of title.

The Plaintiff submitted that he had discharged the burden of proving title by producing the documentary chain of title and by leading evidence of long possession and enjoyment of the land by himself and his predecessors. Reliance was placed on the evidence of the Licensed Surveyor who made Plan No. 980 and identified the corpus, reporting that the Plaintiff was in possession of part of the land while the 1st Defendant was in unauthorised occupation of the remainder. It was further contended that the survey evidence established that the lands surrounding the corpus were not State lands, thereby undermining the State's claim.

It was further submitted that there had been a prior dispute concerning the same land in District Court Case No. L/834 between the Plaintiff's predecessor in title and the said original Defendant, which was settled in 1960. According to the learned Counsel, neither the 1st Defendant nor the State had asserted State ownership in those proceedings. Reliance was placed on documents produced by the State itself, namely '2V17', '2V31', '2V33' and '2V34', to demonstrate that the State was aware of the earlier litigation yet

took no steps to intervene or assert ownership, thereby lending support to the Plaintiff's claim that the land was privately owned.

The Plaintiff contended that the documentary and oral evidence relied upon by the State, particularly documents marked '2V46', '2V47' and '2V50', did not establish that the corpus formed part of State land. It was submitted that both the District Court and the Court of Appeal had carefully examined those documents and correctly concluded that the land in dispute was not depicted in Plan '2V47' and was not included in the Gazette Notification marked '2V50'. It was also argued that the evidence of the Assistant Surveyor General confirmed that the disputed land merely adjoined State land and did not itself form part of State property.

The Plaintiff further relied on document 'P13', a receipt issued by the Government Agent in 1920, which was referred to in the earliest title deed produced by the Plaintiff. The learned Counsel submitted that this document demonstrated that the State had divested itself of ownership and transferred rights to the Plaintiff's predecessor in title. It was contended that neither the authenticity nor the contents of 'P13' had been successfully challenged and that both the District Court and the Court of Appeal were correct in attaching evidentiary value to that document.

The learned Counsel also submitted on behalf of the Plaintiff that the State had failed to discharge the burden of proving its claim to ownership. Reliance was placed on the decision in *Kiri Mudiyanse v The Attorney-General* [1947] 48 NLR 438, wherein it was held; "As the defendants are in possession the burden of proof of title lies on the Crown and the only question for decision is whether the District Judge was right in holding that this burden has been discharged."

It was argued that the State's witnesses were unable to produce cogent documentary evidence connecting the corpus to State land and that the survey evidence relied upon by the State was insufficient and inconsistent.

Finally, the Plaintiff contended that he and his predecessors had enjoyed, possessed and cultivated the land openly and continuously for several decades and that the evidence overwhelmingly established that the land was private property. It was submitted that both the District Court and the Court of Appeal had correctly evaluated the evidence and the applicable law, and had properly concluded that the corpus was not State land.

Accordingly, the learned Counsel urged this Court to affirm the judgement of the Court of Appeal and dismiss the instant Appeal with costs.

Analysis

At the outset, it is necessary to distinguish between proof of possession and proof of title based on the nature of the action filed by a plaintiff in the District Court. The evidence led before the District Court, including the proceedings marked 'P7' and 'P8,' demonstrates that the Plaintiff and his predecessors in title had been in possession and enjoyment of the subject land for a considerable period of time. The evidence further establishes that the 1st Defendant had on several occasions interfered with such possession and that legal proceedings had been instituted against him by the Plaintiff's predecessors. The settlement entered into in District Court Case No. L/834, wherein the 1st Defendant agreed to accept a limited extent of land depicted in Plan No. 211A, and the findings made in the proceedings before the Rural Court lent support to the conclusion that the Plaintiff's predecessors exercised acts of possession over the corpus.

Accordingly, I agree with the concurrent findings of the learned District Judge and the Court of Appeal that the Plaintiff and his predecessors had established long and continuous possession of the subject land.

However, possession by itself does not necessarily establish ownership, especially when there is an ambiguity on whether the corpus is State land. The right and title to the soil of State Land at all times remain in the Republic until such land is dispossessed by the State following the due process provided in law. The crucial question before this Court is whether the Plaintiff had satisfactorily established title to the corpus.

The learned District Judge appears to have concluded, that title was established principally on the basis that the Plaintiff's predecessor had derived rights from the Government, as recited in Deed No. 29220 ('P3'), wherein reference is made to the release of the land from the Government upon payment allegedly evidenced by Receipt No. P06333 dated 02 July 1920. The receipt relied upon for this purpose was produced and marked as 'P13'.

In my view, considerable caution must be exercised before accepting such a document as proof of a lawful divestiture of State ownership. The evidence led on behalf of the State reveals that no corresponding official record of the said receipt could be traced.

Furthermore, 'P13' was produced only on a very later stage of the proceedings during the cross-examination of the Assistant Superintendent of Survey. Although both the District Court and the Court of Appeal attached substantial weight to that document, neither Court sufficiently addressed the legal question as to the manner in which State land could lawfully be alienated or released.

State land cannot cease to be State land merely upon the production of a receipt of payment. A lawful alienation of State land must be effected in accordance with the procedure prescribed by law. Neither the recitals contained in 'P3' nor the production of 'P13' establishes the legal mechanism by which the State allegedly divested itself of ownership of the corpus. In the absence of evidence demonstrating compliance with the applicable legal provisions governing the disposition of State land, I am unable to conclude that title had passed from the State, solely on the basis of the documents relied upon by the Plaintiff.

Further, the conduct of both K.L.G. Henry and the Plaintiff himself raises substantial doubt regarding the assertion that the land was regarded by them as private property. The evidence reveals that K.L.G. Henry applied for and obtained a permit in respect of the subject land under the Land Development Ordinance. Similarly, the Plaintiff himself applied to the Government Agent seeking a permit in respect of the same land. Such conduct is difficult to reconcile with a belief that absolute private title already existed. On the contrary, these actions constitute strong evidence that both the Plaintiff and his predecessor recognised, either expressly or impliedly, that the land was regarded as State land.

At the same time, I am unable to accept the Attorney General's contention that the State has affirmatively established title to the corpus. The documents marked '2V46', '2V47' and '2V50', although relied upon by the State, do not satisfactorily identify the corpus as forming part of land vested in the State. As correctly observed by both the District Court and the Court of Appeal, the disputed land is not expressly depicted in Plan '2V47', nor has a proper superimposition been carried out connecting the corpus to the lands referred to in the State documents. The Surveyor General's mere opinion, without adequate supporting survey evidence or documentation establishing such identification, is insufficient to conclusively prove State ownership.

This Court is therefore confronted with a situation where neither party has succeeded in establishing title to the requisite legal standard. The Attorney General has failed to produce compelling documentary or survey evidence connecting the corpus to the State Land claimed by the Attorney General. Equally, the Plaintiff has failed to establish a lawful root of title, particularly in light of the doubts arising from the alleged release from the State and the subsequent conduct of the Plaintiff and his predecessor acknowledging State ownership.

The law requires a plaintiff seeking a declaration of title to succeed on the strength of his own title and not on the weakness of the defendant's case. In the instant Case, the Plaintiff has undoubtedly established possession but has failed to establish ownership.

The position of the 1st Defendant stands on a different footing. The 1st Defendant has not asserted any independent title to the corpus. His defence throughout has been that the land belongs to the State. Consequently, as between the Plaintiff, who has proved prior and long-standing possession, and the 1st Defendant, who has failed to establish any lawful entitlement to remain upon the land, the Plaintiff is entitled to protection of his possessory rights, only over the 1st Defendant but not against the State.

Conclusion

For these reasons, I hold that the Court of Appeal erred in affirming the declaration of title granted by the District Court. However, both Courts were correct in finding that the Plaintiff had established possession of the corpus as against the 1st Defendant. Similarly, I have no reason to interfere with the decision of the District Court, which was affirmed by the High Court, that the Plaintiff is entitled to seek for an order for the eviction of the 1st Defendant.

Having carefully considered the entirety of the evidence placed before the District Court, the judgement of the learned District Judge, the judgement of the Court of Appeal, and the submissions advanced on behalf of the parties, this Court is of the view that the instant Appeal must succeed in part.

Accordingly, the answers provided by the learned District judge in reference to Issue No. 1 and Issue No. 4 framed by the District Court, should be varied. The Issue No. 1, which inquires whether the Plaintiff is the owner of the land described in the schedule to the

Plaint, should be answered as “Not Proven”. The Issue No. 4, which inquires whether the State is the owner of the subject land described in Lots A1, A2 and B in Surveyor - D.G. Mendis’ Plan No. 980, should likewise be answered as “Not Proven”. Notwithstanding the above, the answers given by the District Court to Issues No. 2 and 3, to the effect that the Plaintiff is entitled to seek for an order for the eviction of the 1st Defendant, should remain unchanged.

Thus, the above Questions of Law upon which this Court granted Special Leave to Appeal, should be answered as follows;

(c) The Attorney General has not proved substantially that the subject land belongs to the State.

(d) The Plaintiff has not proved his title to the corpus.

The judgement of the Court of Appeal and the judgement of the District Court must be varied as mentioned above and the Appeal is partly allowed to the extent above. I take the view that based on the above reasons the order for costs awarded by the Court of Appeal against the Attorney General should be quashed. I order no cost in relation to the proceedings before this Court.

Judge of the Supreme Court

Shiran Gooneratne, J

I agree.

Judge of the Supreme Court

Sampath B. Abayakoon, J

I agree.

Judge of the Supreme Court