

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

In the matter of an Appeal against under  
Section 5C of the High Court of the  
Provinces (Special Provisions)  
(Amendment) Act No.54 of 2006.

1. Jayalath Arachchige Premawathi,  
No.522, Weboda North, Weboda.
2. Mudunkotuwaage Preethi Janaki,
3. Mudunkotuwaage Jagath Ravindra,
4. Mudunkotuwaage Sithara Himali,  
All of No. 522, Weboda North, Weboda.

**Plaintiffs**

Vs.

**S.C. Appeal No.40/2012**  
**SCHCCA LA No. 173/2011**  
**Civil Appellate High Court**  
**No. WP/HCCA/GPH 07/2004**  
**DC Gampaha Case No. 29293/L**

Samabandeperuma Mohotti Appuhamilage  
Alice Nona  
(deceased)

**Defendant**

1. Mudunkotuwaage Don Karunawathi
2. Mudunkotuwaage Don Piyatissa
3. Mudunkotuwaage Don Lal Jayatissa
4. Mudunkotuwaage Don Seelawathi
5. Mudunkotuwaage Don Siriyawathi
6. Mudunkotuwaage Don Yasawathi
7. Mudunkotuwaage Don Karunawathi  
All of Weboda South, Weboda.

**Substituted-Defendants**

**AND BETWEEN**

1. Jayalath Arachchige Premawathi,
2. Mudunkotuwaage Preethi Janaki,

3. Mudunkotuwege Jagath Ravindra
4. Mudunkotuwege Sithara Himali,  
All of No. 522, Weboda North, Weboda.

**Plaintiff-Appellants**

**Vs.**

1. Mudunkotuwege Don Karunawathi
2. Mudunkotuwege Don Piyatissa
3. Mudunkotuwege Don Lal Jayatissa
4. Mudunkotuwege Don Seelawathi
5. Mudunkotuwege Don Siriyawathi
6. Mudunkotuwege Don Yasawathi
7. Mudunkotuwege Don Karunawathi  
All of Weboda South, Weboda.

**Substituted-Defendant-Respondents**

**And Now Between**

1. Jayalath Arachchige Premawathi,
2. Mudunkotuwege Preethi Janaki,
3. Mudunkotuwege Jagath Ravindra
4. Mudunkotuwege Sithara Himali,  
All of No. 522, Weboda North, Weboda.

**Plaintiff-Appellant-Appellants**

**Vs.**

1. Mudunkotuwege Don Karunawathi  
No.498, Weboda West,  
Weboda.
2. Mudunkotuwege Don Piyatissa  
No.498/2, Weboda West,  
Weboda.
3. Mudunkotuwege Don Lal Jayatissa  
No.492/ A, Weboda West,  
Weboda.

4. Mudunkotuwage Don Seelawathi  
No.498/B/2,Weboda West,  
Weboda.
5. Mudunkotuwage Don Siriyawathi  
No.138/1, Mahena.  
Mandawala.
6. Mudunkotuwage Don Yasawathi  
No.372/C,  
Mandawala Road, Radawana.
7. Mudunkotuwage Don Karunawathi  
Dangollagoda, Waduwwa,  
Yatigoluwa, Polgahawela  
**Substituted-Defendant-Respondent-  
Respondents**

**BEFORE** : K. KUMUDINI WICKREMASINGHE, J.  
ACHALA WENGAPPULI, J.  
MENAKA WIJESUNDERA, J.

**COUNSEL** : Manohara de Silva, PC with Hirosha Munasinghe, Kaveesha  
Gamage, and Harithriya Kumarage instructed by Anusha  
Perusinghe for the Plaintiff-Appellant-Appellants.  
Harshana Ananda with Lahiru Widushanka instructed  
by Suranga Zoysa for the Defendant-Respondent-  
Respondents

**ARGUED ON** : 19<sup>th</sup> February,2025

**DECIDED ON** : 27<sup>th</sup> March, 2026

ACHALA WENGAPPULI, J.

The Plaintiffs have instituted the instant action in the District Court of *Gampaha*, by their amended Plaint, seeking to define the Southern boundary to their land depicted in Plan No. 892A drawn by licensed surveyor *S.A.D. Perera* on 27.09.1972. The same allotment of land is depicted as Lot No. 37, in partition action No. 9009/P, which had already been determined by the same Court. The Plaintiffs have inherited the title to that land from *Mudunkotuwege Marthelis Singho*, who in turn received same from *Rajapakse Brahmanage Seelawathie Rajapakse*, on a Deed of Transfer No. 942 (P4). The Defendant owns and occupies the adjoining Lot No. 38, which has its Northern boundary, which also is the Southern boundary of Lot No. 37. It is alleged by the Plaintiffs that the Defendant has destroyed the fence (පැළ ඉවත් වැට) they have put up on their Southern boundary on 10.07.1986 and thereafter prevented them from installing a new fence along that boundary. The Plaintiffs accordingly prayed from Court for *inter alia* a demarcation of the said common boundary in terms of Plan No. 892A.

In her answer, the Defendant has taken up the position that even though Lot No. 37 was given to the predecessor in title of the Plaintiffs, *Rajapakse Brahmanage Seelawathie Rajapakse*, by a decree of the said partition action, it is the Defendant who in fact possessed that land for over a 10-year period annexing same to her own Lot No. 38, and thereby acquired prescriptive title over the same. On that account, she moves Court for the dismissal of the Plaint.

With the commencement of the trial on 03.01.1989, the parties framed a total of six issues in line with their respective pleadings and proceeded to trial on them. But on 29.03.1989, the Defendant raised another issue, this time a question of law, to the effect (issue No. 7) that whether the Plaintiffs could have and maintain an action for definition of boundaries, when the Defendant deny their title to the land over which they claim ownership. The Plaintiffs had no objection to that issue being raised. At the conclusion of the trial, the District Court held with the Defendant and dismissed the action of the Plaintiffs.

The Plaintiffs preferred an appeal to the High Court of Civil Appeal challenging the dismissal of the Plaintiff. Their appeal was also dismissed by that Court. The Plaintiffs thereupon sought Leave to Appeal from this Court against the judgment of the High Court of Civil Appeal.

On 23.02.2012 this Court granted Leave to Appeal to the Plaintiffs on the following seven questions of law, as set out in sub paragraphs (b), (c), (d), (e), (f), (g), and (h) of paragraph 9 of their petition dated 31.05.2012, addressed to this Court.

1. Did the High Court misdirect itself in holding that the Plaintiffs not being in possession of the land in suit is the real crux of the dispute and not a definition of boundaries?
2. Did the High Court err in failing to consider that having possession of the land is not a requirement in an action for definition of boundaries?

3. Did the High Court err in holding that the Plaintiffs have admitted the position of the Defendant that Lot 37 and 38 were possessed together and they have prescribed to the land referred to in schedule “*අ*” to the Plaintiffs?
4. Did the High Court err in agreeing with the findings of the learned District Judge in relation to the maintainability of this case as an issue of definition of boundary for the reason that Plaintiffs were not occupiers of the land and the Defendant challenged their title?
5. Did the High Court misdirect itself in applying the decisions of *Jacolis Appu v David Perera* 69 NLR 548, *Leelawathie Hamine v Gunasiri* (1989) 1 Sri LR 322 and *Maria v Fernando* 17 NLR 65 to the instant case and by failing to distinguish the said cases on the ground that they involved a situation where both parties claimed ownership to both lots?
6. Did the High Court err in law by failing to consider that the Licensed Surveyor Hubert Perera in his report has stated that the plantation standing on the Plaintiffs’ land Lot 37, was claimed only by them?
7. Did the High Court fail to consider that the Defendants failed to establish prescriptive title?

Of these seven questions of law, I am of the view that the determination of the third question; whether the High Court erred in holding that the Plaintiffs admitted the position of the Defendant that Lot 37 and 38 were possessed

together by her and therefore prescribed to the land referred to in schedule “a” to the Plaintiff, would determine the core dispute between the parties.

Before proceeding to consider the said question of law, it is necessary to make a brief reference to the evidence presented before the trial Court by the contesting parties.

The 1<sup>st</sup> Plaintiff’s husband acquired the title to Lot No. 37 upon the Deed of Transfer No. 942 (P4) executed by *Rajapakse Brahmanage Seelawathie* on 12.10.1982. She is supported in her action by other Plaintiffs who are their children. It is undisputed that *Seelawathie* has received her title to that parcel of land, in terms of a Final Decree of Partition issued by District Court of *Gampaha* on 13.10.1975 (P5) in the partition action No. 9009/P. That partition action was in respect of a larger land within which the Lot Nos. 37 and 38 too are located. Similarly, the Defendant too received her title to Lot No. 38 from the said Final Decree, being the widowed wife of *Mudunkotuwege Don Julis Appu*, who was the 24<sup>th</sup> defendant in the said partition action. The Defendant was substituted in that partition action, in the room and place of her deceased husband *Mudunkotuwege Don Julis Appu*.

The Plaintiffs have strongly relied on the 76 years old *Seelawathie’s* evidence in support of their case. Her evidence was recorded upon issuance of a commission, as she was not in a position to physically attend Court, due to certain health issues.

In her evidence *Seelawathie* described the manner in which the handing over of possession of Lot No. 37 by the Court officials, has taken place. She remembered that the surveyor has marked the boundaries of Lot No. 37 by installing stakes on the common boundary between the two lots. Her husband has followed up that demarcation by putting up a barbed wire fence on that common boundary after the surveyor marked and identified that boundary. She also stated that when transferring her title to the Plaintiffs, she merely signed on the deeds and did not physically hand over the possession of the parcel of land identified as Lot No. 37 to the husband of the 1<sup>st</sup> Plaintiff, in whose favour the deed was executed.

During cross-examination, *Seelawathie* admitted that one *Mudunkotuwege Don Julis* has “mortgaged” his share off the land (lot No. 37) which was to be partitioned in the partition action No. 9009/P in her favour for a sum of Rs. 350.00. This has taken place prior to the institution of that partition action. This was the reason that she was allocated a share in the *corpus* to that partition action. She also admitted that, it was *Julis* who possessed both Lots 37 and 38 as one contiguous land during this time, before it was bisected by the partition decree. She also admitted in cross-examination that she has mistakenly said in Examination-in-Chief that there was in fact a barbed wire fence erected by her husband, soon after she was placed in possession of Lot No. 37 by the Court officials.

The High Court of Civil Appeal, in affirming the judgment of the trial Court, considered the evidence of the 1<sup>st</sup> Plaintiff, during which she admitted

that despite the execution of Deed P4 in 1982, they never possessed Lot No. 37 at any point in time. The attempt made by the late husband of *Seelawathie* to erect a fence, separating her land from the said two allotments, was thwarted by the Defendant. With the resistance offered by the Defendant, *Seelawathie's* husband has decided to put off the task of fencing the property for some time. He has died in the following year and as a result, there was no fence put up separating the two lands by the predecessors in title to the Plaintiff's land.

The appellate Court, acting on that evidence, arrived at the finding that the real dispute between the parties is not the undefined boundary that existed between the two allotments of land, but in fact about the right to possess Lot No. 37. That Court relied on the judgment in *Jacolis Appu v David Perera* (1967) 69 NLR 548 to support the said finding it has arrived at. The appeal of the Plaintiffs was dismissed by the High Court of Civil Appeal as it was of the view "... maintainability of this case as an issue of definition of boundaries" is not warranted. Of course, in the process, the appellate Court also considered the factors that the Plaintiffs were not the occupiers of the land and the Defendant also has challenged their title to the land.

The challenge posed by the Defendant to the Plaintiffs' title to the land, as referred to in the judgment of the High Court of Civil Appeal, was based on a conditional transfer made by *Mudunkotuwege Don Julis* in favour of the original owner of Lot No. 37, namely *Rajapakse Brahmanage Seelawathie* by execution of the Deed of Transfer No. 2470 on 26.04.1960 (V1). It is stated in the recital of V1, *Julis* has obtained a sum of Rs. 350.00 from *Seelawathie*, and permitted her to have the

ownership of the property, but reserving him a period of six year to redeem that debt and reclaim the property. That six-year period ended in 1966, but on 03.09.1969, *Seelawathie* accepted a sum of Rs. 250.00 from the Defendant as part payment of that debt. There appears to have been an attempt made by the Defendant to present a contention before Court therefore no rights were accrued on *Seelawathie* over the conditional transfer V1. However, it is important to note in this respect that these alleged encumbrances that may have existed over the rights, title and interest the respective parties over the *corpus* cannot exist or given effect to, after the final decree was pronounced by the trial Court in the partition action No. 9009/P on 13.10.1975, in terms of Section 48(1) of the Partition Law No. 21 of 1977.

In relation to the issue of “*occupation*” of Lot No. 37 by the Plaintiffs, the High Court of Civil Appeal considered the claim laid by the Defendant to the effect “ ... *that Lot Nos. 37 and 38 were possessed together and have prescribed to the land referred to in the schedule & to the Plaint.*”

Turning to consider the question of law; whether the High Court of Civil Appeal erred in failing to consider that having possession of the land is not a requirement in an action for definition of boundaries (even though this question was accepted by this Court for consideration), it must be noted at this juncture that the reasoning of the High Court appears to indicate that it adopted altogether a different position to the question of possession in arriving at the conclusion that the appeal should be dismissed.

The High Court of Civil Appeal, while dealing with the point of contest No. 7, raised and suggested by the Defendant, stated that the “ ... *learned District Judge answered to this issue in favour of the defendant. The 1<sup>st</sup> Plaintiff again admitted in evidence that the defendant possessed the two lands amalgamated as one after the partition action was concluded*”. The appellate Court relied on the admission made by the 1<sup>st</sup> Plaintiff in her evidence to that effect.

Thereupon, that Court concludes, in the penultimate paragraph of its judgment, as follows;

*“[U]nder those circumstances, it is clear that the plaintiffs were not occupiers of the land and the defendants had challenged their title. Therefore, this Court agrees with the findings of the learned District Judge in relation to the maintainability of this case as an issue of definition of boundary.”*

Since the High Court of Civil Appeal concurred with the view adopted by the trial Court in determining the point of contest No. 7 and with its answer, it is of importance to consider the reasoning adopted by the trial Court in answering the said point in favour of the Defendant.

Perusal of the judgement of the District Court reveals that it has answered the point of contest No. 7 on the premise that the Defendant has prescribed to the land and, on that basis, now disputes the title of the Plaintiff over same. It proceeded on the basis that since the Defendant has prescribed to Lot No. 37, the

Plaintiffs cannot maintain an action against her for demarcation of boundaries. Both these Courts have primarily relied on the undisputed fact that, when the instant action was instituted or, and for that matter, at any point of time since the pronouncement of the final decree in partition action No. 9009/P, there was no boundary that ever existed, by which Lot Nos. 37 and 38 were separated into two allotments of land. The 1<sup>st</sup> Plaintiff candidly admitted that they never had physical possession of the land and it was the Defendant who enjoyed its produce throughout.

Thus, the point of contest No. 6 raised by the Defendant whether she acquired prescriptive title by adverse and uninterrupted possession for over a period of ten years was answered in the affirmative by the trial Court and the said finding was affirmed by the High Court of Civil Appeal. The evidence clearly points to the reasonable conclusion that, except for the brief interruption due to execution of the partition decree, it was the Defendant's predecessors in title who were throughout in possession of Lot Nos. 37 and 38, as a one continuous land.

Clearly, neither the District Court nor the High Court of Civil Appeal made any clear pronouncement in the respective judgments indicating the position that, in an action for demarcation of boundaries, and the plaintiff, in order to succeed in such an action, must have possession of the land, in addition to the paper title. It is very evident from the examination of the reasoning adopted by the Judges of the Courts below that they have decided to hold in favour of the Defendant, primarily due to the admitted fact that the Lot Nos. 37

and 38 were possessed by the Defendant as one contiguous land since the conclusion of the partition action and not because the Plaintiffs were unable to establish that they ever had possession of that particular parcel of land with an obliterated boundary.

There is no dispute that the Plaintiffs have instituted the instant action to have the Southern boundary of Lot No. 37 be re-demarcated by an order of Court. In that respect it was incumbent upon the Plaintiffs to establish, in addition to ownership of the land, that the Southern boundary of Lot No. 37, that existed between that land and Lot No. 38, became obscure either due to actions of Defendant, as alleged in their Plaint. It is inbuilt in that requirement that the Plaintiffs must first establish that in fact there was a boundary between the two allotments of land that existed and second, that it became obscure either due to action by someone or due to mere passage of time.

In *Somawathie and Others v Illangakoon* (2013) 1 Sri L.R. 94, this Court has held (at p.99) that “[I]n an action for the definition of the boundaries plaintiff has to aver (i) that an ascertainable common boundary previously existed physically on the ground and (ii) that such common boundary had been obliterated subsequently”. In the instant appeal, not only the Plaintiffs did aver that there was a common boundary that existed between the two allotments of land, they also averred that it has been removed by the Defendant on a specific date. The Plaintiffs have thereupon framed an issue (issue No. 3) to the effect whether the “උරුම ඉනි වැට” forming the Southern boundary of their land was obliterated. This particular issue was answered by the trial Court in the negative as the evidence indicated

there was no such “පැළ ඉනි වැට” that ever existed on the boundary, prior to institution of the instant action.

This primary fact is confirmed by the surveyor who surveyed the land on commission issued by Court. Thus, based on this vital factor alone, the Plaintiffs’ action should fail. This is because the Plaintiffs’ own evidence established that the first component of their action for definition of boundary could not be established when themselves admitted that the Defendant possessed the two lands as one contiguous land without a boundary in between them.

The appellate Court affirmed the finding made by the trial Court that the Defendant established her acquisition of a prescriptive title over the Lot No. 37, although interrupted by the execution of the partition decree for a brief period, had otherwise uninterrupted possession, adverse to that of the Plaintiffs, since the year 1975. The instant action was instituted by the Plaintiffs only in 1986 and therefore the required ten-year period, in terms of Section 3 of the Prescription Ordinance, was complete by then. This Court accordingly concurs with the affirmation of the High Court of Civil Appeal made on that finding made by the trial Court.

Lastly, the question of law whether the Courts below erred in failing to distinguish the facts of *Jacolis Appu v David Perera* (*supra*), *Leelawathie Hamine v Gunasiri* (*supra*) and *Maria v Fernando* (*supra*), the facts of the instant matter should be considered.

It would suffice to refer to the facts of *Jacolis Appu v David Perera* (*ibid*) since the trial Court as well as the High Court of Civil Appeal acted on the reasoning of that judgment in arriving at the impugned decisions.

Perusal of the said judgment revealed that the dispute presented before that Court had arisen between the owners of Lot Nos. 4A and 4B, which were demarcated as separate allotments of land, following a partition decree. The plaintiffs of that action owned Lot No. 4B while the defendants owned Lot No. 4A. It was alleged by the plaintiffs that the live fence forming the Western boundary of their lot, forming the common boundary between the two allotments of land, has been pulled out by the defendant and thus obliterated the boundary that existed until then. The defendant denied existence of any fence prior to institution of action and claimed acquisition of prescriptive title over Lot No. 4B.

It need not emphasise here that the facts of *Jacolis Appu v David Perera* (*supra*) are almost identical to the facts of the instant appeal. After reviewing the evidence and the judgment of the trial Court, *Siva Supramaniam J* was of view (at p.551), “[I]n seeking a definition of boundaries between lots 4A and 4B the respondent [the plaintiff] was in reality seeking a declaration of title to lot 4B” and proceeded to dismiss the appeal of the plaintiff. This finding, in my opinion is applicable to the instant appeal with equal, if not more, force. This is exactly what the High Court of Civil Appeal observed in its judgment on the appeal preferred by the Plaintiffs.

In view of the reasoning contained in the preceding paragraphs of this judgment I proceed to answer the questions of law in the following manner;

1. Did the High Court misdirect itself in holding that the Plaintiffs not being in possession of the land in suit is the real crux of the dispute and not a definition of boundaries ?

*Does not arise for consideration in view of the above reasoning.*

2. Did the High Court err in failing to consider that having possession of the land is not a requirement in an action for definition of boundaries?

*Does not arise for consideration in view of the above reasoning.*

3. Did the High Court err in holding that the Plaintiffs admitted the position of the Defendant that Lot 37 and 38 were possessed together and they have prescribed to the land referred to in schedule “a” to the Plaint ?

*No.*

4. Did the High Court err in agreeing with the findings of the learned District Judge in relation to the maintainability of this case as an issue of definition of boundary for the reason that Plaintiffs were not occupiers of the land and the Defendant challenged their title?

*The High Court of Civil Appeal did not proceed on this line of reasoning.*

5. Did the High Court misdirect itself in applying the decisions of *Jacolis Appu v David Perera* 69 NLR 548, *Leelawathie Hamine v Gunasiri* (1989) 1 Sri LR 322 and *Maria v Fernando* 17 NLR 65 to the instant case and by failing to distinguish the said cases on the

ground that they involved a situation where both parties claimed ownership to both lots ?

*No.*

6. Did the High Court err in law by failing to consider that the Licensed Surveyor Hubert Perera in his report has stated that the plantation standing on the Plaintiffs' land Lot 37, was claimed only by them ?

*No.*

7. Did the High Court fail to consider that the Defendant failed to establish prescriptive title ?

*High Court of Civil Appeal affirmed the finding of the District Court that she did.*

The judgments of the District Court and the High Court of Civil Appeal are hereby affirmed and the appeal of the Plaintiffs is accordingly dismissed with costs.

**JUDGE OF THE SUPREME COURT**

**K. KUMUDINI WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MENAKA WIJESUNDERA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**