

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

Medawala Lekamalage Sujatha Medawala,
Nape, Nelundeniya.

PLAINTIFF

Vs.

SC Case No. SC/Appeal/41/2024

SC/HCCA/LA/90/2023

**High Court (Civil Appellate
Court) Kegalle Case No**

SP/HCCA/KEG 27/2021/(F)

DC Kegalle Case No. 8228/L

1. Medawala Lekamalage Laxman
Medawala.
Medawala, Wathura.
2. Medawala Lekamalage Nirodhi Lakmali
Medawala.
Medawala, Wathura.
3. Medawala Lekamalage Shashanika
Chathumali Medawala.
Medawala, Wathura.

DEFENDANTS

AND BETWEEN

1. Medawala Lekamalage Laxman
Medawala.
Medawala, Wathura.
2. Medawala Lekamalage Nirodhi
Lakmali Medawala.
Madawala, Wathura.

3. Medawala Lekamalage Shashanika
Chathumali Medawala
Madawala, Wathura.

DEFENDANT-APPELLANTS

Vs.

Medawalal Lekamalage Sujatha Medawala,
Nape, Nelundeniya.

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

Medawalal Lekamalage Sujatha Medawala,
Nape, Nelundeniya.

**PLAINTIFF-RESPONDENT-
APPELLANT**

Vs.

1. Medawala Lekamalage Laxman
Medawala.
Madawala, Wathura.
2. Medawala Lekamalage Nirodhi
Lakmali Medawala.
Madawala, Wathura.
3. Medawala Lekamalage Shashanika
Chathumali Medawala.
Madawala, Wathura.

**DEFENDANT-APPELLANT-
RESPONDENTS**

Before: **Justice A. L. Shiran Gooneratne**
Justice Janak De Silva
Justice Dr. Sobhitha Rajakaruna

Counsel: Seevali Amitirigala, PC instructed by Pathum Wijepala for the
Plaintiff-Respondent-Appellant.

Ruvendra Weerasinghe instructed by Kaushalya Hapuarachchi
through the Legal Aid Commission of Sri Lanka for the
Defendant-Appellant-Respondents.

Argued on: 23/01/2026

Decided on: 04/03/2026

A. L. Shiran Gooneratne J.

By Amended Complaint dated 29/08/2014, the Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff-Appellant) filed action No. D.C. Kegalle 8228/L against the Defendant-Appellant-Respondent (hereinafter referred to as the Defendant-Respondent), and sought a declaration that she be declared the owner of the land described in the schedule to the Complaint, and a decree to eject the Defendant-Respondent from the said land.

The Defendant-Respondent, by answer dated 31/10/2014, pleaded that the action is *res judicata*, that no land is identified as what is claimed in the Complaint, and moved for a dismissal of the action.

This Appeal was filed by the Plaintiff-Appellant against the Judgment dated 19/01/2023 of the Civil Appellate High Court of Sabaragamuwa Holden in Kegalle, (“the Appellate Court”), which set aside the Judgment of the learned District Judge of Kegalle dated 18/01/2021, which held in favour of the Plaintiff-Appellant.

The Appellate Court allowed the Appeal and set aside the judgment of the District Court primarily on the basis that the Plaintiff-Appellant had failed to identify the *corpus* as required in a *rei vindicatio* action.

Leave to Appeal was granted by this Court on the following questions of law;

1. Has the Learned High Court Judges erred in law in deciding that the land has not been identified when in fact the land has been identified.
2. Has the Learned High Court Judges erred in law by not applying the legal principle that a claim for a greater relief than entitled to by a party should not prevent him from getting judgement for a lesser relief.
3. The Learned High Court Judges erred in law by not considering the legal principle that an owner of an undivided share of land is entitled to sue a trespasser in order to get a declaration to his undivided share and the ejection of the trespasser.

The land described in the schedule to the Plaint is named “Berawa Kumbura Gawa Hena,” with an extent of 7 Lahas. The title deeds to the said land were marked in evidence by the Plaintiff-Appellant as P2 to P5, with no objections.

The Plaintiff-Appellant claimed entitlement to the land shown in the Survey Plan No. K/14/08, dated 27/05/2014, prepared by K. Gamunu Kulasiri, licensed surveyor, and the report marked as P1 and P1(a) respectively. The surveyor identified the surveyed land as “Berawa Kumbura Gawa Hena,” with an extent of 2R, 7.57P.

In cross-examination, the Plaintiff-Appellant claimed that she was in possession of the land in suit, enjoying its produce since 1985, since the property was gifted to her by her father. She further stated that Partition Action No. 27363 was instituted in respect of the same land. However, in terms of the survey report marked V1(a), the 3rd Defendant in the said Partition Action was found to be in possession of the land.

In that context, when questioned regarding the 3rd Defendant, the Plaintiff-Appellant stated thus:

ප්‍ර: මහත්මිය 2002 වෙන කොට බුක්ති විඳලා නැහැ. මහත්මිය අසත්‍යයක් නේද කියන්නේ?

උ: අපි ඒකට යනවා එනවා අසත්‍යයක් නොවේ. එයා පදිංචි වෙලා ඉන්න නිසා එහෙම කියලා තිබෙන්නේ.

During cross-examination, the Plaintiff-Appellant admitted that the land depicted in Survey Plan No. K/14/08 dated 27.05.2014, prepared by K. Gamunu Kulasiri, Licensed Surveyor, materially differs in its boundaries from the land described in the report marked P1 and P1(a).

ප්‍ර: පැ.2 ලේඛණයේ දකුණු මායිමට තිබෙන්නේ මුගුණුමුලහේන කියලා තිබෙන්නේ නමුත් පැ.1 පිඹුරේ දකුණු මායිමට තිබෙන්නේ ලේකමයලාගේ වත්ත නේද?

උ: දකුණු පැත්තට ලේකමයලාගේ වත්ත ඒකට මුගුණුමුලහේනේ ටිකක් අයිති වෙනවා.

ප්‍ර: දකුණු මායිමට මොකද්ද තිබෙන්නේ?

උ: ලේකමයලාගේ වත්ත.

ප්‍ර: පැ.2 ලේඛණයේ දකුණු මායිම මුගුණුමුලහේන?

උ: ඉස්සර එහෙම දාලා තිබෙන්නේ දැන් ලේකමයලාගේ වත්ත. පැරණි ඔප්පු වල මායිම් එහාට මෙහාට වෙලා තිබෙන්නේ.

ප්‍ර: මායිම් එහාට මෙහාට වෙන්න විදිහක් නැහැ නේද?

උ: භාවිතා කර නැහැ.

ප්‍ර: පැ.2 ඔප්පුවෙහි මායිම් පැ.1 පිම්බුරට ගැලපෙන්නේ නැහැ?

උ: එහෙම කියලා තිබෙනවා.

The Defendant-Respondent's position is that Berawa Kumbura Watta and Berawa Kumbura Gawa Hena are two contiguous lands, described separately in the 1st schedule, and that the Defendant-Respondent and his children are in possession of the said land as an amalgamated land, as described in the 2nd schedule to the Answer. The Plaintiff-Appellant's action for a declaration of title is only to the land

called Berawa Kumbura Gawa Hena. According to the survey plan, the names of the land boundaries to the west and to the north of the land Berawa Kumbura Gawa Hena are not the same as described in the schedule to the Plaint.

It is the position of the Defendant-Respondent, that the Plaintiff-Appellant had instituted Partition Action No. 27363 in the District Court of Kegalle to partition the said two lands separately described in the 1st schedule, where the Plaintiff-Appellant and the Defendant-Respondent were the 3rd Plaintiff and the 3rd Defendant, respectively.

In paragraphs 13 and 14 of the Answer, the Defendant-Respondent states that the survey plan No. 511, dated 23/06/2003, commissioned by the Plaintiff-Appellant, and its report marked V1 and V1(a) in the partition action, showed that the Defendant-Respondent was in possession of the two lands described in the 1st schedule to the Answer.

In paragraphs 15 and 16 of the Answer, the Defendant-Respondent states that the Plaintiff-Appellant's position when seeking an interim injunction in the partition action No. 27363 was based on the title deeds marked as P2 to P5, in which she claimed an undivided right to the land described in the 1st schedule to the Answer. However, the Court ruled that the said deeds had no application to the lands described in those schedules.

The Plaintiff-Appellant admits the institution of the Partition Case No. 27363, in which the Plaintiff-Appellant was the 3rd Plaintiff. The judgment of that action was marked as V5; the survey plan No. 511, and the report was marked V1 and V1(a). The Plaintiff-Appellant's position is that the Partition Action was filed to partition three distinct lands, namely Berawa Kumbura Watta, Berawa Kumbura Gawa Hena, and Berawa Kumbura Langa Hena, which the Plaintiff-Appellant states are more fully established by documents marked as P10 to P14. It is an admitted fact that the Partition Action was dismissed because the *corpus* was not identified.

According to the Plaintiff-Appellant's own admission, the Plaintiff-Appellant clearly knew of the outcome of the Partition Case that the *corpus* sought to be partitioned

consisted of two or more distinct lands, and not of one land, before filing the present action.

The Plaintiff-Appellant submits that the plan marked V1 in the Partition Action depicts more than one parcel of land. Notably, the schedule to the Plaint describes the land sought to be declared as owned by the Plaintiff-Appellant as Berawa Kumbura Gawa Hena, one of the lands that form the amalgamation. Therefore, it is clear that the land depicted in plan P1 in the present action is part of the amalgamated land depicted in plan V1 in the Partition Action.

The Plaintiff-Appellant filed the Partition Action claiming that the land described in the schedule to the Plaint consisted of three lands considered as one. However, the evidence showed that the property actually consisted of several separate lands, and because there was no proper identification of the corpus, the matter was dismissed.

The 4th and 5th issues raised by the Plaintiff-Appellant in the trial court are as follows;

4. පැමිණිලිකාරිය සංශෝධිත පැමිණිල්ලේ සඳහන් පරිදි ඔප්පු මත ලබන අයිතිවාසිකම් සඳහා සංශෝධිත පැමිණිල්ලේ උපලේඛණ ගත ඉඩම ඇතුළුව තවත් ඉඩම් දෙකක අයිතිවාසිකම් ලබමින් එකී ඉඩම් බුක්ති විදිනු ලබන්නේද?
5. සංශෝධිත පැමිණිල්ලේ 07 වන සම්ප්‍රකාශයේ සඳහන් මුදියන්සේගේ අයිතිවාසිකම් වලින් පැමිණිලිකාරිය එහි සඳහන් පරිදි එකී ඉඩම් තුනෙහි අයිතිවාසිකම් වෙනුවට සංශෝධිත පැමිණිල්ලේ උපලේඛණගත ඉඩම බුක්ති විදිනු ලබන්නේද?

Before filing the present action, the Plaintiff-Appellant was well aware of the fact that the *corpus*, as described in the schedule to the Plaint, and in respect of which the prescriptive title is claimed, consisted of several lands amalgamated into one. According to the surveyor's evidence, the boundaries of the land were identified by the Plaintiff-Appellant. Having identified the land claimed to be in possession, the Plaintiff-Appellant concealed from the surveyor the fact that the *corpus* had previously been surveyed pursuant to a Court commission in the Partition Action.

The surveyor, in his report marked P1(a), has noted certain discrepancies in the extent of the *corpus* and the absence of physical identification of its boundaries. In the cross-examination, the surveyor was posed pointed questions when he was asked;

ප්‍ර: ඔබට පැමිණිලිකාරිය ප්‍රකාශ කලාද මීට පෙර මෙම ඉඩමට නඩුවක් එහෙම තිබුනා කියලා?

උ: නැහැ.

ප්‍ර: එහෙම ජෙනවා දුන්නේ නැද්ද මීට පෙර මෙම අධිකරණයේ 27363 කියලා බෙදුම් නඩුවක් තිබුනා කියලා පෙන්වා දුන්නාද?

උ: නැහැ. එහෙම කීවේ නැහැ.

ප්‍ර: ඒ බෙදුම් නඩුවට අනුව එයට මැනීම කළ පිඹුරේ ලේකමලාගේ වත්ත කියන ඉඩමට නිදන් වත්ත කියලා කියනවා කියලා පැමිණිලිකාරිය පෙන්වා දුන්නා කියලා ඔබට අවබෝධයක් නැහැ?

උ: ඔව්.

The Plaintiff-Appellant, being well aware that the *corpus* described in the schedule to the Plaint consisted of several other lands as determined by the learned District Judge of Kegalle in the said Partition Action and also disclosed by the Plaintiff-Appellant in the plaint filed in the present action, failed to disclose those material facts to the Surveyor.

In view of the Plaintiff-Appellant's aforesaid disclosure, it was incumbent upon the Plaintiff-Appellant to question the Surveyor specifically regarding the non-identification of the boundaries to the west and to the north in the survey plan. When these infirmities were revealed during cross-examination, the Plaintiff-Appellant did not pose a single question to the Surveyor in re-examination. The position that several lands had been amalgamated into the *corpus* claimed was conveniently kept away from the Surveyor's attention.

The learned District Judge relied on Deeds marked P2 to P5 and also considered the acreage tax receipts marked as P6 to P10, and concluded that the Plaintiff-Appellant had proved title to the *corpus*. The learned President's Counsel, in his submissions

before this Court, conceded that in Deed No. 35794 dated 13/12/1907, marked P2, there is a reference to title passing to one Ukkuhamy and another unknown party. When the Plaintiff-Appellant was questioned, she stated that she was not aware of the person referred to as the “unknown party”. However, when it was suggested that the Defendant-Respondent also had rights to the said property, the Plaintiff-Appellant admitted the same, thereby creating an uncertainty as to the title claimed by the Plaintiff-Appellant.

It is therefore clear that, apart from the Plaintiff-Appellant’s own assertion that the *corpus* consisted of several other parcels of land, there were other material infirmities in the Plaintiff-Appellant’s failure to identify the *corpus* before the Trial Court. The Judges of the Appellate Court subscribed to the said assertion when concluding;

“අංක: 27363/බෙදුම් දරණ නඩුවේ විෂය වස්තුවෙන් “පැ.01” දරණ පිඹුරේ සඳහන් කැබලි අංක 01 දරණ ඉඩම් කොටස වෙන්වූ ආකාරය පිළිබඳව පැහැදිලි කිරීමට පැමිණිලිකාරිය අපොහොසත් වී ඇති බව ඇයගේ සාක්ෂිවිභවය විශ්ලේෂණය කිරීමේදී පැහැදිලි වී ඇත.

ඒ අනුව පෙර සඳහන් කළ ආකාරයට පැමිණිල්ල විසින් නඩුවට අදාළ විෂය වස්තුව නිසිලෙස හඳුනාගෙන ඇති බවට එළැඹි නිගමනය විවාදයට ලක් වන බව පැහැදිලිය.”

In discussing the duties and obligations of the Plaintiff-Appellant and the Defendant-Respondent, respectively, in an Action for declaration of title to land (as in this instance), reference can be made to the following cases decided by our Appellate Courts.

In ***Dharmadasa Vs. Jayasena*** (1997) 3 SLR 327 it was stated that, “*the Plaintiff sued the Defendant for a declaration of title and ejectment. The Plaintiff based his claim on a Grant from the Urban Council, Anuradhapura. Held, in a rei vindicatio action the burden is on the Plaintiff to establish the title pleaded and relied on by him. The Defendant need not prove anything. The Grant relied on by the Plaintiff was invalid. Hence the Plaintiff has failed to establish his title.*”

In the course of the Judgement in the above case, the Supreme Court stated that, “*the Authorities unite in holding that the Plaintiff must show title to corpus in dispute and that if he cannot, the action will not lie*”. Per Macdonell C.J., in **De Silva Vs. Goonetilleke** (1931) 32 NLR 217, the principle was lucidly stated by Stuart J. in **Wanigaratne Vs. Juwanis Appuhamy** (1964) 65 NLR 167 in the following terms “*the defendant in a rei vindicatio action need not prove anything, still less his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant’s title is poor or not established. The plaintiff must prove an establish his title. Thus, the plaintiff has failed to do, and his action must therefore fail.*”

In **Terrence Clinton Percival Thirunayake Vs. M George Anthony Fernando** (SC Appeal No.18B of 2009), the Plaintiff instituted a *rei vindicatio* action in 1994, in the District Court of Kurunegala, inter alia, seeking a declaration of title that the Plaintiff is the owner of the land described in the second schedule to the plaint, and for an order ejecting the Defendant and his agents occupying a portion of the land. The learned District Judge decided in favour of the Plaintiff, against whom the Defendant appealed to the Civil Appellate High Court.

The Civil Appellate High Court allowed the Appeal and dismissed the Judgment of the learned District Judge on the basis that the land in dispute has not been precisely identified and the land described in the schedule to the plaint is different in that the land is a larger land, against which order of the Civil Appellate High Court, the Plaintiff filed an Appeal to the Supreme Court.

In the course of the Judgement in the said Appeal, the Supreme Court –

- I. citing the decision in **Peiris Vs. Sinnathamby**, 54 NLR 207, stated that “... *in a rei vindicatio action claiming a declaration of title and ejectment, it is a paramount duty on the part of the petitioner (appellant in this case) to establish correct boundaries in order to identify the Corpus.*” Referring to the evidence produced by the Appellant the Court stated further, “*Therefore, it is obviously clear that the Appellant has failed to produce evidence to*

identify the land in dispute” and that “this burden on the part of the Appellant to prove not only that he has a domination to the land in dispute but also the specific precise and definite boundaries when claiming a declaration of title”, and

- II. agreeing with the submissions of the Counsel for the Respondent, concluded that “[...] *the land in dispute has not been precisely and definitely described in the schedule to the Plaint in terms of the Law [...]*” dismissed the Appeal, affirming the Judgement of the Civil Appellate High Court.

In view of the above, and from what has been stated earlier in this Judgement, it is clear that the Plaintiff-Appellant has failed to fulfil the obligations and duties and duly discharged the burden of proof, which is required of a Plaintiff in a *rei vindicatio* action, which has been described above, particularly, in regard to the establishment of the identity of the property in respect of which declarations are sought in such a *rei vindicatio* action; and the due establishment of the title of the Plaintiff-Appellant thereto.

It is of crucial importance that the land sought to be vindicated by the party asserting title be identified, primarily by reference to a survey plan. Where that plan creates a doubt in establishing the identity of the land, resort to an equally effective method, which still leaves room for reasonable doubt, plainly establishes a failure to meet the requisite standard of proof.

On the said premise, I am satisfied that the Plaintiff-Appellant has not satisfied this Court of sufficient title to the land claimed on a balance of probabilities.

In the circumstances set out above, I have no hesitation in agreeing with the findings of the Appellate Court.

The question of law No. 1 is answered in the negative.

Accordingly, I am of the view that, in deciding on this Appeal, the questions of law No. 2 and 3 on which Leave to Appeal to this Court has been granted, and which

have been quoted earlier in this judgment, need not be considered, and therefore, I answer these two questions accordingly.

In these reasons, the Judgement dated 19/01/2023 of the Appellate Court is thereby affirmed.

Appeal is dismissed. No order for Costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree

Judge of the Supreme Court