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

In the matter of an application for leave to appeal under Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C of the High Court of the province (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006.

SC/Appeal No. **SC/APP/52/2024**
SC/LA/Application No.
SC/HCCA/LA/308/2021
Civil Appellate High Court of Gampaha Case No.
WP/HCCA/GAM/27/2017/(F)
DC Gampaha Case No. **1106/L**

Irippuge Benedict Perera,
No. 03, "Chamini",
Wijay Lane, Thudella,
Ja-Ela.

PLAINTIFF

vs

Munna Ajith Thilaksiri Silva,
No.753, Croos Waththa,
Katugoda.

DEFENDANT

And Between

Irippuge Benedict Perera,
No. 03, "Chamini",
Wijay Lane, Thudella,
Ja-Ela.

PLAINTIFF - APPELLANT

vs

Munna Ajith Thilaksiri Silva,
No.753, Croos Waththa,
Katugoda.

DEFENDANT – RESPONDENT

And Now Between

Irippuge Benedict Perera,
No. 03, "Chamini",
Wijay Lane, Thudella,
Ja-Ela.

PLAINTIFF – APPEALLNT – PETITIONER – [APPELLANT]

vs

Munna Ajith Thilaksiri Silva,
No.753, Croos Waththa,
Katugoda.

DEFENDANT – RESPONDENT – RESPONDENT - [RESPONDENT]

BEFORE : Janak De Silva, J.
Dr. Sobhitha Rajakaruna, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL : M.D.J. Bandara instructed by S.A.D.M. Senarath Perera for the Plaintiff- Appellant-Petitioner- [Appellant].

Sudarshani Coorey instructed by Diana Stephanie Rodrigo for the Defendant - Respondent – Respondent- [Respondent].

ARGUED ON : 29.01.2026

DECIDED ON : 18.06.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Plaintiff -Appellant-Petitioner-[Appellant] (hereinafter referred to as 'Plaintiff') originally instituted the instant action in the District Court of Gampaha against the Defendant-Respondent-Respondent-[Respondent] (hereinafter referred to as 'Defendant') seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the Defendant there from, and damages. The Defendant filed the answer seeking a dismissal of the Plaintiff's action and also sought a declaration that he has acquired prescriptive title to the land more fully described in the schedule to the answer.

After trial, the learned Additional District Judge dismissed the action of the Plaintiff as well as the cross-claim of the Defendant. Being dissatisfied with the judgment of the District Court dated July 31, 2017, both parties have preferred appeals. Both appeals were taken up together. Delivering the judgment dated July 14, 2021, the learned Judges of the High Court of Civil Appeal dismissed the appeals of both parties. Being aggrieved by the aforementioned judgment, the Plaintiff sought leave to appeal from this Court against the said judgment.

This Court granted leave to appeal in respect of the questions of law, set out in paragraph 14(a) and 14(b) of the Petition dated October 05, 2021[1] which read as follows;

[1] Journal Enry dated 14.03.2024.

“

14. […]

(a) *Have their Lordships of the High Court of Civil Appeal erred in law by not considering the legal entitlement of the deed marked as ඇ1 1?*

(b) *Have their Lordships of the High Court of Civil Appeal erred in Law by not considering the validity of the deed marked as ඇ1 1 when there is nothing to see any averment contained in his answer and or by any issue raised at the trial?”*

Factual Background

The facts of the case, as presented to the Court by the Plaintiff, are as follows: The Plaintiff came into the possession of the land in dispute by purchasing the same from the National Housing Development Authority (NHDA) by executing a deed of transfer marked as ‘ඇ1 1’. The Plaintiff, upon coming to the knowledge that the Defendant has been living there in a hut, has allowed the Defendant to remain on the premises for two years until he finds another place to live. However, the Defendant has not vacated the premises after the expiration of the agreed two-year period. Though this dispute was referred to the Mediation Board, as parties were unable to reach a settlement, the Plaintiff has instituted the present action before the District Court.

The position of the Defendant is that he has been in possession of the land in dispute since 1994 and has built a house and also obtained electricity for the house. Thus, he claimed to have acquired a prescriptive title to the property in dispute.

The learned District Judge dismissed the action of the Plaintiff primarily on the ground that the deed marked ‘ඇ1 1’ has not been proven. The District Judge also rejected the contention that the Defendant is entitled to possess the *corpus* in dispute as he was possessing it under the permission of a member of parliament, for the reason that a State

Land cannot be transferred to a third party by a mere letter of a Member of Parliament, and that correct procedure has to be followed. Moreover, the learned District Judge observed that the Defendant has failed to establish an undisturbed and uninterrupted 10-year possession, which is an essential ingredient in establishing a prescriptive title. The learned judges of High Court Civil Appeal of Gampaha arrived at a similar conclusion to the conclusion reached by the learned District Judge in dismissing the appeals of both Plaintiff and the Defendant.

Analysis

Marking Documents 'Subject to Proof'

The primary ground on which both the District Court and the High Court Civil Appeal dismissed the Plaintiff's action was the failure to prove due execution of 'පැ 1'. It is the contention of the learned Counsel for the Defendant that when a deed is marked 'subject to proof' when tendering in evidence and at the closure of the case, the Plaintiff must prove the Deed as per section 68 of the Evidence Ordinance. He relies on several cases, including ***Sri Lanka Ports Authority vs. Jugolinija -Boal East,***[2] ***Gunananda Thero vs Thalalle Meththananda Thero,***[3] ***Wanigarathne and another vs Wanigarathne.***[4]

The learned Counsel for the Plaintiff submits that formal proof of 'පැ 1' is not required in the instant case as the Respondent has not impeached the validity of the Deed 'පැ 1' and its content anywhere except marking it subject to proof at the time of tendering evidence and at the closure of the case, which is a mere mechanical objection.

Section 154(1) of the Civil Procedure Code stipulates that every document intended to be used in evidence by a party against his opponent must be formally tendered at the time when its contents or purport are first spoken to by a witness. When a document is tendered

[2] [1981] 1 Sri LR 18.
[3] (1997) 2 Sri LR 101.
[4] (1997) 2 Sri LR 267.

in evidence, the Court may, as the circumstances warrant, either admit it, reject it, or mark it "subject to proof."

Section 154A, which was introduced with Civil Procedure Code (Amendment) Act, No. 17 of 2022 provides that when a deed or any document required by law to be attested is tendered in evidence, it shall be admissible without requiring formal proof, notwithstanding the provisions of the Evidence Ordinance, unless its execution or genuineness is impeached in the pleadings and raised as an issue, or the Court otherwise requires proof.

Accordingly, under the present law marking a document subject to proof does not render it inadmissible for the mere reason that it is not proven by calling witnesses. This is emphasized in the case of ***Niyakulage Dilruk Sanjeewa Fernando vs Diyagama Vidanelage Somawathie Perera***[5] where it was observed by Samayawardhena J. that, "(…) *documents marked "subject to proof" but not technically proved should not be automatically rejected. For instance, when a document is marked by the author himself, and the opposite party moves to have it marked subject to proof, the document need not be rejected on the basis that it was not proved by calling witnesses. The determination of whether a document has been proved, its admissibility in evidence, and the extent of its admissibility should be made at the conclusion of the trial, based on the unique facts and circumstances of each case*." I have also discussed this extensively in the previously decided case of ***H.M. Sugathadasa vs Ceylon Petroleum Corporation***.[6]

In the case of ***Sirinivasam Prasanth and Another vs Nadaraja Devarajan and Another***[7] Samayawardhena J. emphasized the necessity for parties to clearly specify the particular aspect of a document that requires proof when such a document is marked "subject to proof"

[5] S.C. Appeal No. 1 /2025 (S.C Minutes dated 10.02.2025).
[6] SC/Appeal No. 197/2015(S.C Minutes dated 17.12.2025).
[7] S. C. Appeal No.163/2019 S.C. Minutes of 22.03.2021).

"There is a practice among some lawyers to get up and say "subject to proof' whenever a document is marked in evidence by the other party. This they do as a matter of course or as a matter of routine and not with any particular objective in mind, except perhaps to prolong the trial. It is regrettable that most of the time the party who produces the document obliges to this without a murmur. If we are serious about law's delays, we must put an end to this bad practice. When a counsel routinely says "subject to proof', the Judge must ask what he wants the other party to prove in the document. If this simple question is asked, I am certain the objection would be withdrawn or at least the issue to be addressed would be narrowed down. ***On the other hand, if the document is, take for instance, a Deed pleaded in the plaint but no issue has been raised disputing the Deed, the Defendant cannot make a routine application to mark it subject to proof when it is marked in evidence. Against this backdrop, I must emphasise that the Judge shall not mechanically refuse documents marked subject to proof but not technically proved by calling witnesses. The Judge shall decide the question of proof at the end of the trial on the facts and circumstances of each individual case****."*

However, this case was before the District Court prior to the introduction of the Civil Procedure Code (Amendment) Act, No. 17 of 2022. Even if formal proof of due execution is required when a document is objected to at the closure of the case as law stood before the Amendment Act, the transitional provision under section 154A[2] reads as follows;

> *"Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act –*
>
> *a. (i) if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or*
>
> *(ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence, the*

court shall admit such deed or document as evidence without requiring further proof;

b. ***if the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document***." [emphasis added]

The transitional provision applies to all cases and appeals pending as of the date the law came into force. Since this appeal was pending before this Court as of that date, the transitional provision applies to the case before us irrespective of the fact that the District Court proceedings and the proceedings of the High Court of Civil Appeal were concluded prior to the Amendment coming into force. As per the limb (b) of the aforementioned section, if a document is marked 'subject to proof' and objected to at the close of a case when such a document is read in evidence, the Court has the discretion to determine whether formal proof is necessary, considering the merits of the objection taken by the opposing counsel.

In the case before us, no issue has been raised before the District Court regarding the genuineness of the Deed in question. Nor does the Defendant challenge the existence of the Deed marked 'ඇ 1'. The Defendant, however, objects to the document at the closure of the case on the ground that it has not been formally proved. In such circumstances, would it be appropriate to reject it as evidence merely because it has been marked subject to proof when its genuineness or due execution is not impeached?

According to Section 114(d) of the Evidence Ordinance, there is a presumption to the effect that the '*judicial and official acts have been regularly performed.*' However, this presumption can be rebutted by producing cogent evidence to that effect. In the instant case, the evidence has been tendered by the Plaintiff that the document 'ඇ 1' has been

issued by the National Housing Development Authority by calling witness Ms. R.A.R.Pushpalatha from NHDA.

> ප්‍ර- සිතාසියේ සඳහන් ඔප්පුව පෙන්නුවහොත් ඔබට එය NHDA විසින් නිකුත් කළ එකක් කියලා හඳුනා ගන්න පුළුවන්ද?
> උ- ඔව්.
> පැ. 1 පෙන්වා සිටී.
> ප්‍ර-මෙම පැ 1බලලා කියන්න මෙම ඔප්පු ඔබ සේවය කරන NHDA ආයතනය විසින් නිකුත් කරන ලද ලේඛනයක් ද කියලා?
> උ-ඔව්.
>
> [pg. 117 of appeal brief]

The attestation of the said deed also points to the fact that this has been executed in compliance with the section 4 of the Prevention of Fraud Ordinance.

> "ජාතික නිවාස සංවර්ධන අධිකාරියේ සභාපති පල්ලිය මදිනගේ ගුණතිලක සහ එහි අධ්‍යක්ෂක ගමගේ කරුණාරත්න යන අයට ඉහත පැ1 ඔප්පුව කියවා තේරුම් කරදීමෙන් පසුව එකී සභාපති අධ්‍යක්ෂක ඉදිරිපිටදී ජාතික නිවාස සංවර්ධන අධිකාරියේ නිල මුද්‍රාව තබා ඉහත කී සභාපති අධ්‍යක්ෂ සාක්ෂිකරුවන් හා එකී නොතාරිස්වරයා වන මා විසින් මා ඉදිරිපිටදී හා ඔවුනොවුන් ඉදිපිටදී සියළුදෙනා පැමිණ සිටියදීත් වර්ෂ එක්දහස් නවසිය අනුහතරක් වූ ජූලි මස විසිඑක්වන දින කොළඹ දී එයට අත්සන් කළ බව මෙයින් සැබෑ කොට සහතික කරමි."

The Defendant, on the other hand, has failed to lead a single piece of evidence to challenge the due execution or the content of the document 'පැ 1'. In the case of ***Sangarakkita Thero vs Buddarakkita Thero***[8] it was held

"There is, of course, a presumption that a deed which on its face appears to be in order has been duly executed, and it seems to me that the mere framing of an issue as to the due

[8] 53 NLR 457.

execution of the deed followed in due course by a perfunctory question or two on the general matter of execution, without specifying in detail the omissions or illegalities which are relied upon, is insufficient to rebut that presumption."

Considering all the evidence presented before this Court, I am satisfied that admission of 'පැ 1' as evidence without formal proof of the execution or genuineness of the document as per section 68 of the Evidence Ordinance is justifiable, and both the learned District judge and judges of the High Court Civil Appeal have erred in insisting on formal proof of due execution of 'පැ 1'.

Prescriptive title of the Defendant

Since this is a *rei-vindicatio* action, once the Plaintiff establishes his paper title to the portion of land in question, the burden shifts onto the Defendant to prove his entitlement to possess the same. The Defendant argues that he has acquired prescriptive title to the *corpus* in question.

Section 3 of the Prescription Ordinance reads as follows;

Section 3- "*Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands or immovable property, by a title adverse to or independent of that of the claimant or plaintiff in such action […] for ten years previous to the bringing of such action, shall entitle the defendant to a decree in his favour with costs. […]*

However, as rightly held by both the learned District judge and the learned judges of High Court, the Defendant has failed to adduce any evidence of the existence of all the ingredients required to establish a prescriptive title to the property in question under the aforementioned section. The evidence presented by the Defendant regarding when and how he acquired prescriptive title is also contradictory.

According to the evidence of the Defendant's wife, they came to the possession of the land in question on the strength of the letter issued by a member of parliament in 1994.

> ප්‍ර-තමුන් නඩු කියන ඉඩමට පැමිණීම සම්බන්ධයෙන් දේශපාලඥයෙක්ගේ නමක් ගැන සඳහන් කලා?
> උ- ඔව්.
> ප්‍ර-තමුන්ට ඒ දේශපාලඥයා විසින් ලිපියක් ලබා දුන්නා තමුන් මේ ඉඩමේ පදිංචි කියලා?
> උ- ඔව්.
>
> (pg. 239-240 of appeal brief)

However, this position taken by his wife is contradicted by the Defendant.

> ප්‍ර-ඒ අනුව කිසිම දේශපාලඥඥයෙකුගේ අවසරය මත මහත්මයාට මේ දේපලේ ඇතුලත් වුණා කියලා කොයි යම් හෝ පුද්ගලයෙකුට මහත්මයා කිසියම් අවස්ථාවක කීවාද?
> උ-මම කවදාවත් කියලා නැහැ.
> ප්‍ර--එහෙම කුමන හෝ ප්‍රකාශයක් ලේඛනයක සඳහන් වෙලා තිබෙනවා විත්තිකාර තමුන් දේශපාලඥයෙකුගේ අවසරය මත තමයි මේ ඉඩමට ගියේ කියලා යම් ලේඛනයක සඳහන් වෙලා තිබෙනවා නම් ඒක බොරු නේද?
> උ- බොරුවක්.
>
> (pg. 260 of the appeal brief)

Further, documentary evidence produced by the Defendant, including electricity bills and copies of the electoral registry, does not indicate that the Defendant had possession of the *corpus* in dispute for a period of ten years before the instant action was instituted by the Plaintiff. As rightly held by Basnayake C.J. in the Supreme Court case of ***Hassan, Son***

of Mohideen vs Romanishamy [9] *"that mere statements of a witness, "I possessed the land" or "we possessed the land" and "I planted plantain bushes and also vegetables", are not sufficient to entitle him to a decree under section 3 of the Prescription Ordinance, nor is the fact of payment of rates by itself proof of possession for the purposes of this section."*

Accordingly, in the absence of sufficient evidence concerning the prescriptive title, the cross-claim of the Defendant is not entitled to succeed.

Conclusion

I answer both questions of law in the affirmative. I set aside the judgments of both the learned District judge and the judgment of the High Court of Civil Appeal. The Plaintiff is entitled to the relief prayed in sub paragraphs (ඇ) and (ඈ) of the Plaint. The learned District Judge is directed to enter a decree accordingly.

Plaintiff is entitled to costs in all three Courts.

Appeal is allowed.

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

[9] 66 C.L.W 112.