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 No19 of 1990 as amended by Act No.54 of 2006.

Sellapperuma Thilakasiri Fernando of
No.12, Nirmala Mawatha
Panadura.
Plaintiff

Vs.

S.C. Appeal No.54/2018
SCHCCA LA No. 253/2017
Civil Appellate High Court
No. WP/HCCA/KAL/ 216/2012(F)
D.C. Panadura Case No.1783/L

Meregngnage Somasiri Salgadu
(**Deceased**)

1a. Gamage Siriyawathie
1b. Meregngnage Dinesha Sanjeewani Salgadu
1c. Meregngnage Nadeesha Dilhani Salgadu
1d. Meregngnage Sadun Kanchana Salgadu
All of No.10, Uyan Kele Cross Road,
Panadura
Substituted- Defendants

AND
Sellapperuma Thilakasiri Fernando of
No.12, Nirmala Mawatha
Panadura.
Plaintiff-Appellant

Vs.

1a. Gamage Siriyawathie
1b. Meregngnage Dinesha Sanjeewani Salgadu
1c. Meregngnage Nadeesha Dilhani Salgadu
1d. Meregngnage Sadun Kanchana Salgadu
All of No.10, Uyan Kele Cross Road,
Panadura
Substituted- Defendant-Respondents

And Now Between

1a. Gamage Siriyawathie
1b. Meregngnage Dinesha Sanjeewani Salgadu
1c. Meregngnage Nadeesha Dilhani Salgadu
1d. Meregngnage Sadun Kanchana Salgadu
All of No.10, Uyan Kele Cross Road,
Panadura
Substituted- Defendant-Respondent-Appellants

Vs.

Sellapperuma Thilakasiri Fernando of
No.12, Nirmala Mawatha
Panadura.
Plaintiff-Appellant-Respondent

BEFORE : **S. THURAIRAJA, PC, J.**
ACHALA WENGAPPULI, J.
ARJUNA OBEYESEKERE, J.

COUNSEL : Rasika Dissanayake with Punarjith Isuranga for the Substituted-Defendant-Respondent-Appellants

Harindra R. Banagala for the Plaintiff-Appellant-Respondent

ARGUED ON : **07**th November, 2023

DECIDED ON : 25th, February, 2026

ACHALA WENGAPPULI, J.

The Plaintiff instituted a *Rei Vindicatio* action in the District Court of *Panadura* and sought *inter alia* a declaration of title to the property described in the schedule to the Plaint, eviction of the Defendant and damages calculated in a sum of Rs.500.00 a month until vacant possession is handed over. The Plaintiff, in describing the devolution of paper title claimed that he acquired title to the land upon execution of Deed of Transfer No. 5990, attested by *Weerasekera* Notary Public on 15.06.2002. The Plaintiff further averred that, despite his demand for the possession of the property made by serving a Notice to Quit, the Defendant continued to remain in possession of the same, without any legal right or any entitlement to do so, from 01.05.1995. The Plaintiff also asserted that the Defendant disputed his ownership to the property on the basis that the latter had acquired prescriptive title over the *corpus*.

In his Answer, the Defendant denied the Plaintiff's title to the *corpus* and took up the position that his parents, who had paper title to the disputed property, made a verbal promise that he would be given the ownership to the same. He further claimed that in fulfilling that promise, his siblings have vacated from the property sometime around 1979, after handing over its possession to him. The Defendant accordingly claims that, since then he has held that property

adverse to the interests of any other claimants and thereby acquired prescriptive title to the same. On that assertion, the Defendant made a cross claim against the Plaintiff, by which he sought a declaration of title to the *corpus*.

The parties have thereupon proceeded to trial. They recorded two admissions and a total of 11 issues between them. Issue No. 10 was amended later on expanding the scope of the original issue, which has been raised over the claim of prescription of the Defendant.

The Plaintiff gave evidence on his behalf and called no other witnesses before closing his case. The original Defendant had passed away mid trial and his wife, the substituted Defendant (hereafter referred to as the Defendant) has offered evidence under oath and called an official witness from the Election Commission, in order to prove the extract of the electoral register, which were tendered to Court marked V3, V4, V5, V6 and V7 respectively.

The District Court, in delivering its judgment at the conclusion of the evidence, dismissed the action of the Plaintiff and decided to grant the declaratory relief sought by the Defendant after accepting his acquisition of prescriptive title over the *corpus.*

The Plaintiff preferred an appeal against the said judgment. The primary complaint presented before the appellate Court by the Plaintiff was that the Defendant had accepted the position suggested by the Plaintiff that they merely resided in the corpus with the acceptance of *Evylin Soysa* as its lawful owner and, with that acknowledgement of someone else's title, the Defendant thereafter cannot claim acquisition of title to the *corpus* merely on the fact of long possession, which she expects the trial Court to be taken as an adverse or independent possession against the interests of other claimants. The High Court

of Civil Appeal accepted this contention and has proceeded to set aside the judgment of the original Court and allowed the appeal. The appellate Court is of the view that once the Plaintiff proved title to the property the substituted Defendant is expected to establish her right to be in possession. It also held that the evidence indicate that she is in possession of the *corpus* as a mere licensee of the original owner. The appellate Court has taken '*admission*' as a factor that ran contrary to the claim of adverse and independent possession against the true owner and the Defendant is not entitled to claim prescription.

Thereupon, the Defendant, by her petition dated 08.05.2017, sought Leave to Appeal against the said judgment. After the said petition of the Defendant was supported on 19.02.2018, this Court decided to grant Leave to Appeal to the questions of law that are set out in paragraph 17(a), (b), (c), (d), (e) and (f) of the said petition. However, at the hearing of the instant appeal, the parties have re-framed those questions of law, with permission of Court, which are now read as follows;

(a) Were the original defendant or the substituted defendant licensees of the plaintiff as held by the High Court of Civil Appeal?

(b) Did the plaintiff come to Court and based his case on the footing that the original defendant was a licensee of the plaintiff?

(c) Has the High Court of Civil Appeal, in allowing the appeal of the plaintiff, considered the prescriptive rights of the defendant in the correct perspective?

(d) In the circumstance pleaded, has the original defendant prescribed to the corpus?

(e) Is granting damages to the plaintiff correct and according to law in the circumstance pleaded in the case?

(f) In the circumstances, is the judgment of the High Court of Civil Appeal correct and according to law?

Since the determination of these six questions of law necessarily involves the examination of the relevant factual considerations relied on by the Courts below, I think it is important that a brief narrative of the evidence presented by the contesting parties before the trial Court should be made at this stage of the judgment.

The original Defendant, who was born in 1952, lived in the thatched house constructed by his parents on the *corpus*. The parents of the Defendant have indicated their intention to confer their rights over the *corpus* to the Defendant. It appears that the Defendant is the only male child of his parents. Since 1979, the Defendant continued his possession of the *corpus* and developed same by planting several coconut and king coconut trees and enjoyed the fruits. He also made improvements to the house from time to time.

Merennage Indrani Salgado is the original Defendant's sister, who married the Plaintiff in the year 1980. The Plaintiff claimed that he derived title to the *corpus* from the Deed of Gift No. 5990 (P1) of 15.06.2002, executed by his wife, who in turn had acquired that title upon execution of the Deed of Transfer No. 2306 (P2) of 23.12.1997 by her own sister *Merennage Chitrani Salgado. Chitrani Salgado* acquired title to the *corpus* from her mother *Warusahennedige Evlyn Soysa,* upon execution of Deed of Transfer No. 5058 (P3) on 01.11.1995. *Evlyn Soysa* in

turn had acquired her title from *Lewishennedige Newton Nanadapala Fernando,* with the execution of the Deed of Transfer No. 25240 (P4) on 12.05.1984. This was after a period of little over six months from the execution of the Deed of Transfer No. 24700 (P5) on 24.10.1983, executed by *Warusahennedige Evlyn Soysa* in favour of said *Lewishennedige Newton Nanadapala Fernando.*

It is to be noted that *Evlyn Soysa* and *Lewishennedige Newton Nanadapala Fernando* are the parents of the Defendant.

In recital of the Deed of Transfer No. 24700 (P5), *Warusahennedige Evlyn Soysa* claims that her title to the *corpus* is derived upon a Deed of Gift No. 1710 of 05.08.1982. The Plaintiff tendered a notarial document, bearing No. 1710 marked as P6. The instrument P6, which had been executed on 06.12.1968, in fact refers to a partnership agreement between two parties who had nothing to do with the title to the *corpus*. The document P6, is supposed to be the instrument by which the title was acquired by the original owner of the *corpus* from whom it was allegedly devolved up to the Plaintiff, through P5 to P1. All these instruments were objected to by the Defendant and marked subject to proof. The Defendant also moved the trial Court to exclude these documents from the proceedings by renewing his objection at the close of the Plaintiff's case as they were not proved by him presenting any evidence of due execution. The Examination in Chief of the Plaintiff consists only of a description of the devolution of title as pleaded in his Plaint.

The claim of acquiring title to the *corpus* made by the Defendant was put to the Plaintiff during cross-examination in support of the issue raised on that point. The Plaintiff stated in his evidence that when he visited the *corpus* soon after acquisition of its title in 2002, his brother-in-law, the original Defendant,

had acted in a hostile manner towards him and declared his ownership to the same. The Plaintiff conceded that he could not make even a survey plan of the *corpus* for the purpose of annexing it to his Plaint. But he was unable to attribute any reason for that failure. When the Defendant suggested that he was already in possession, even before his sister executed the notarial instrument in 1997 by which his wife has acquired paper title to the *corpus* the latter conceded.

The Plaintiff also admitted that when the mother of the Defendant was living, he was made aware of a prior family arrangement that had been resolved in favour of the Defendant for him to get the ownership of the *corpus,* the then family home. The Plaintiff had no answer to offer when he was suggested that all he did was write a deed to a land which had already been prescribed by the Defendant. He also conceded that he could neither accept nor reject the suggestion that the Defendant occupied the *corpus* since 1979. However, the Plaintiff, in support of his position has taken up in his evidence that the Defendant is occupying the land with leave and license, and stated that they have allowed the Defendant to occupy the *corpus* with their permission, from about eight years ago, when the latter complained that he had no place to go.

Since the original Defendant has died before the Plaintiff's case was closed, his wife, who was substituted, gave evidence in support of the Defendant's case. She married the Defendant in March 1976 and settled in the house built on the *corpus* taking it as their matrimonial home. She tendered a survey plan No. 2775, marked as V1, prepared by licensed surveyor *L.W.L. de Silva* on 01.06.1982, in which the *corpus* is depicted as an allotment of land shown therein as Lot No. C, which is in an extent of 8.65 perches. The Defendants have planted four coconut trees which are now over 20 years. She also stated that after the wattle-and-daub house that stood on that land had collapsed, it was the Defendant who put up

the wooden planked house with a corrugated sheet roof, which is now standing on the *corpus* and that they had lived on that land for nearly 35 years.

The original Defendant's parents too apparently lived in that house. The Defendant's mother *Evlyn Soysa* died in 2002 and his father died in 1990. The Defendant had other 8 siblings. The substituted Defendant also became aware of the family arrangement that the Defendant was to be given the ownership of the *corpus.*

The connection to the main water supply for the *corpus* was applied under the name of *Evlyn Soysa,* the mother of the Defendant, but it was they who paid for the water consumption, despite the fact that the Plaintiff has taken steps to transfer the connection of water supply under his name but at a later point in time.

In cross-examination, the substituted Defendant conceded that the Defendant's parents never made a notarial instrument to transfer the ownership of the *corpus* in favour of their son, the original Defendant, although they promised to do so.

Learned Counsel for the Defendant, during the hearing of the instant appeal, submitted that the High Court of Civil Appeal, in setting aside the judgment of the original Court was satisfied that the Plaintiff has established his title to the *corpus* and it was for the Defendant to establish her right to occupy the same, but the appellate Court failed to note that in fact the Plaintiff has failed to establish his title to the *corpus*. Learned Counsel thereupon invited attention of this Court that the title deeds relied on by the Plaintiff marked P1 to P7 were marked subject to proof when they were tendered by him in evidence. At the close of the case for the Plaintiff, the substituted Defendant re-iterated her

objection to the admissibility of those title deeds as they were not proved. He then referred to the judgment of ***Sri Lanka Ports Authority and another v Jugolina Boat East*** (1981) 1 Sri L.R. 18, where it was held " *[i]f no objection is taken when at the close of the case documents are read in evidence, they are evidence for all purposes of the law. This is the cursus curiae of the original Civil Courts.*" Hence, the learned Counsel for the Defendant submitted that there was no evidence establishing the title of the Plaintiff to the *corpus* before Court and therefore the order of dismissal of his action, rightly made by the District Court, should not have been interfered with by the appellate Court.

The other contention advanced by the learned Counsel for the Defendant was that the premise on which the High Court of Civil Appeal allowed the Plaintiff's appeal was that the substituted Defendant in her evidence has accepted that they possessed the *corpus* with leave and license and thereby defeated the claim of acquiring prescriptive title over it. He pointed out from the pleadings and issues that it never was the Plaintiff's case and even in his evidence no such factual claim was made by him. Therefore, learned Counsel argues that, when the Plaintiff has failed to establish his paper title to the *corpus* which made him disentitle to the declaratory relief he has sought from Court; and in contrast, the Defendant has clearly established that they held *corpus* adverse to the interest of the Plaintiff and his predecessors in title, the Defendant is entitled to the declaratory relief that has been prayed for.

In order to counter the submissions of the Defendant, learned Counsel for the Plaintiff contended that there was no challenge whatsoever to the evidence of the Plaintiff when he presented his devolution of title to the *corpus*, and the objection of the Defendant to the title deeds taken was belatedly and that too was taken only at the stage of marking P2 onwards. Since the title deed P1 conveyed

title to *Evlyn Soysa*, and the admission made by the Defendant, while conceding to the position that, it was *Evlyn Soysa* who owned the *corpus* before the Plaintiff derived his title to it, clearly established the primary requisite imposed on a plaintiff in a *Rei Vindicatio* action of proving the paper title to the disputed property. Moving on to the claim of prescription, learned Counsel for the Plaintiff further submitted that as the substituted Defendant accepted the lawful ownership of *Evlyn Soysa* to the *corpus*, that admission made her disentitle to maintain the position that her possession could be treated as one, adverse or independent to that of the title of the said *Evlyn Soysa.* This is further buttressed with the admission of the substituted Defendant that the water bills are issued in the name of the Plaintiff, who is the true owner of the property.

Considering the tenor of the questions of law that were raised in the appeal of the Defendant and the different contentions that were advanced during the submissions of the learned Counsel for the contesting parties, it appears to me that the primary contention presented before this Court could be identified as the one made regarding the failure of the Plaintiff to prove his title to the *corpus.* Hence, the decision to restore his action, made by the High Court of Civil Appeal, after overturning the dismissal of same made by the trial Court, becomes erroneous.

Perusal of the proceedings of 28.06.2007 before the District Court revealed that the Plaintiff had tendered the Deed No. 5990, marked as P1 and its schedule as P1a, followed by Deed No. 2306, marked as P2. Only at that stage, the Defendant raised objections to the admission of deeds P1 and P2 as evidence in the case. The Court, acting on the said objection has accepted them '*subject to proof*'. This is the reason why the learned Counsel for the Plaintiff contended that

P1, by which conferred title to his client, was marked without any objection by the original Defendant.

The Plaintiff, in his endeavour to establish the devolution of title in relation to the *corpus*, commenced that process by making the Deed No. 5990 (P1) as the first title deed and thereafter proceeded to mark the said title deed that preceded the already marked one. In that, the Plaintiff followed the order of devolution of title in the reverse order, as he commenced marking a series of title deeds, commencing with P1 and ending with the Deed No. 1710 (P6). It appears that the Plaintiff, in tendering the Deed No. 1710 (P6) as an item of evidence in support of his claim to the title, expected the trial Court to treat the said deed P6, as the one executed by the 'original owner' of the *corpus,* by which its title was transferred in favour of his mother-in-law, *Evlyn Soysa.* After *Evlyn Soysa,* all the deeds that were executed in relation to *corpus*, are the transfers of title made within the family members of the Plaintiff, barring two.

After P6, *Evlyn Soysa,* by execution of Deed No. 24700 (P5) transferred her title to the *corpus* to one *Lewishennedige Newton Nandapala Fernando,* who thereafter re-transferred the title back to *Evlyn Soysa* by executing Deed No. 25240 (P4) in less than a period of six months. Thereafter, *Evlyn Soysa* transferred her title to one of her daughters *Merennage Yalani Salgado* by execution of Deed of Transfer No. 5058 (P3) on 01.11.1995. *Merennage Yalani Salgado* thereupon transferred title in favour of one of her sisters, *Merennage Indrani Salgado,* by execution of Deed No. 2306 (P2) on 23.12.1997, although *Yalani Salgado* is named in P3 as the transferee, the recital itself states that she only deputised for another sister, who was not in *Sri Lanka* during that time, *Merennage Chitrani Salgado.* It was *Merennage Indrani Salgado* who executed the Deed of Gift No. 5990 (P1) in favour of her husband, the Plaintiff, on 16.06.2002.

Thus, it is clear that the title of the *corpus* could be traced back to the 'original owner', the executant of the Deed No. 1710 (P6). This is because, in the recital of P5, it is stated that *Evlyn Soysa* by execution of that deed, transferred her title conferred on her by "*Deed of Gift No. 1710, executed on 05.08.1982 and attested by Notary Public M.J.T. Silva.*" The said deed is the notarial instrument executed by the 'original owner' of the corpus transferring his title to *Evlyn Soysa*. The Plaintiff tendered a notarially executed document, bearing the No. 1710, marked as P6. This document is bound to the original case record as a production of the case for the Plaintiff, which had been initialled by the trial Judge, as mandated by Section 154 of the Civil Procedure Code, and found in pages 246 to 249. The Plaintiff, by way of a motion dated 23.05.2012, tendered the documents P1 to P9 to Court, after the substituted Defendant closed her case. In that Motion too, the deed P6 is described as "*Deed of Gift No. 1710, executed on 06.07.1968 and attested by Notary Public M.J.T. Silva*" whereas that deed pleaded by the Plaintiff had been executed on 05.08.1982 as per the Plaint and referred to as so in P5.

Strangely, the heading of the document P6, states that it is a "Deed of Partnership", which sets out the several conditions on which the two parties to that instrument, namely *Mohamed Fareed Mohamed Rizam* and *Siri Suriyage Premadasa Fernando.* It is also noted that the P6 was attested by Notary Public *Arthur Neville De Zilva* on 06.07.1968, and not a " *Deed of Gift No. 1710, executed on 05.08.1982 and attested by Notary Public M.J.T. Silva*" as the Plaintiff claimed.

It is obvious that, if the Plaintiff was to derive title to the *corpus* in respect of which he sought a declaration of title from Court, that his mother-in-law, *Evlyn Soysa,* should have the right of ownership to the corpus derived from the

"*Deed of Gift No. 1710, executed on 05.08.1982 and attested by Notary Public M.J.T. Silva*". This Deed of Gift, for the reasons best known to the Plaintiff, was not tendered before the trial Court and instead, a totally irrelevant document had been tendered to Court. This cannot be a mistake on the part of the Plaintiff as the Motion indicates that he was aware of the difference in the date of execution. Thus, it is an incontrovertible fact that there is no evidence to satisfy the trial Court of the title derived from the original owner to *Evlyn Soysa,* which eventually flowed down to the Plaintiff. Due to this very reason, the *Rei Vindicatio* action of the Plaintiff must necessarily fail.

Furthermore, it is highlighted that the reception of the deeds P1 to P6 as evidence for the Plaintiff was objected to by the original Defendant. That objection was re-iterated when the Plaintiff read in the documents P1 to P6 at the close of his case. Therefore, I am inclined to accept the submissions of the learned Counsel for the Defendant, that the documents marked P1 to P6 were not proved by the Plaintiff. In the circumstances, even if the contention of the Plaintiff that the substituted Defendant did not object at the point of marking P1, is accepted, that would not inject life to his already dying case, which he starved of important evidence in relation to the origin of his title. There is no question that the Plaintiff has failed to tender the real "*Deed of Gift No. 1710, executed on 05.08.1982 and attested by Notary Public M.J.T. Silva*" to the trial Court and prove its due execution.

The other contention presented by the learned Counsel for the Defendant before this Court that remains to be considered is the one regarding the determination made by the High Court of Civil Appeal that; the substituted Defendant accepted that they possessed the *corpus* with leave and license of the mother of the original Defendant. He pointed out that it is clear from the

pleadings and issues that it never was the Plaintiff's case and even in his evidence, he made no such factual claim.

This aspect of the case arose for consideration of Court due to an answer given by the substituted Defendant in response to a suggestion made by the Plaintiff. Relevant segment of the proceedings that contain the questions and answers considered by the appellate Court in this regard is reproduced below;

> "ප්‍ර: දැන් සාක්ෂිකරු නඩුවට අදාල දේපලේ තමුන් හිටියේ පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට?
>
> උ: ඔව්. ස්වාමී පුරුෂයා උපන් ස්ථානය.
>
> ප්‍ර: දැන් පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට ඉඳලා **2002** මැරෙන කොට පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට තමුන් හිටිය කියන්නේ?
>
> උ: ඔව්."

The trial Court considered that evidence and concluded that despite the acceptance of the original mother's ownership over the *corpus*, the Defendant continued to possess the same as a property over which he had title. The Court also noted that the continued possession claimed by the original Defendant commenced from 1979 and, in commencing that possession, he did not obtain leave and licence of his mother, and acted on the family arrangement. The Court further noted the fact that the Defendant is a licensee was not raised as a trial issue and the Plaintiff, at that stage but presented a case significantly different to the one he already pleaded in appeal solely placing reliance on that item of evidence.

However, the High Court of Civil Appeal has chosen to act on that item of evidence and decided to allow the appeal of the Plaintiff. The appellate Court held that it is settled law that a licensee cannot claim prescription rights against

the owner. Perusal of the process of reasoning adopted by the appellate Court in arriving at the determination to allow the appeal indicated that it was persuaded by the fact that the original Defendant came into possession and continued to possess the *corpus* under his mother and due to that reason, his long possession cannot be considered as an adverse possession in the light of the principles enunciated in the judgment of ***De Silva v Commissioner of Inland Revenue*** (1978) 80 NLR 292.

Learned Counsel for the Defendant is correct when he submitted that the Defendant is a licensee of his mother was not the Plaintiff's case. But that is not the sole reason why the appellate Court denied the declaratory relief sought by the Defendant. The High Court of Civil Appeal considered the acceptance of the substituted Defendant that her husband possessed the property under his mother as a factor that militates against the claim of acquisition of prescriptive title, apparently following the *dicta* of the judgment in ***Sopinona v Pitipana-Arachchi and Others*** (2010) 1 Sri L.R. 87, " *[W]here any person's possession was not originally adverse, and he claims that it has become adverse, the onus is on him to prove it. In doing so, he is required not only to prove intention on his part to possess adversely, but also a manifestation of that intention to the true owner against whom he sets up his possession.*"

The evidence of the substituted Defendant clearly indicated that her husband, the original Defendant, was born in the thatched house that stood on the corpus and lived there until his death. It is therefore obvious, that since then not only the Defendant, but all his siblings have lived under their parents in that house as one family. The undisputed evidence is that in 1979 there was this family arrangement by which the original Defendant was allowed to acquire ownership of the house. The original Defendant's father died in 1980, after the

said arrangement was made known to all members of the family but his mother died few years later. It is also evident that only the original Defendant and his family occupied and possessed the corpus since 1979 but the other siblings have moved away, obviously acting on that family arrangement.

It is also evident that the first of the deeds in relation to the title of the corpus was executed in 1982, in favour of *Evlyn Soysa,* mother of the original Defendant. Despite the fact that any time before the execution of P1, by which the Plaintiff became the owner, none of his predecessors in title never made any attempt to impose the right of ownership in respect of the *corpus* by taking possession of the *corpus*, until *Evlyn Soysa's* death in 2002. Incidentally, the Plaintiff acquired title in June 2002 and for the first time since 1979, he disputed the original Defendant's possession of the corpus. The instant action was instituted in January 2004, and, by then more than ten years have lapsed since the original Defendant became the *de facto* owner of the corpus, consequent to the said family arrangement in 1979. The Defendant planted coconut and king coconut trees and enjoyed fruits. He constructed a new house when the 35-year-old thatched house became uninhabitable to his family.

Thus, the evidence presented before the trial Court made it is more probable that the original Defendant, who was initially occupying the *corpu*s under his parents, changed the character of his occupation, after the implementation of the said family arrangement by converting his continued occupation into possession, as understood in the law of property, by changing the character of his legal entitlement to remain on that property.

Since the appellate Court convinced itself of the status of the original Defendant as a licensee on the evidence of the substituted Defendant, it is

necessary to examine the question and answer once more to assess the context in which this admission was made.

The section of the proceedings that has direct relevance to this point is as follows;

> "ප්‍ර: දැන් සාක්ෂිකරු නඩුවට අදාල දේපලේ තමුන් හිටියේ පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට?
>
> උ: ඔව්. ස්වාමී පුරුෂයා උපන් ස්ථානය.
>
> ප්‍ර: දැන් පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට ඉඳලා **2002** මැරෙන කොට පැමිණිලිකරුගේ මවගේ කැමැත්ත පිට තමුන් හිටිය කියන්නේ?
>
> උ: ඔව්."

It is clearly discernible from the line of questioning that the substituted Defendant was asked about the manner in which the original Defendant occupied the house in a legalistic sense. The substituted Defendant, being a house wife of a fisherman, who died mid trial because his vessel capsized, was narrating what she learnt from her husband when she declared this is the house, in which her husband had lived since his birth. The 2nd question put to the substituted Defendant is a double barrel question. While questioning her that since his birth the original Defendant lived in that house under his mother, the scope of the question was altered mid-sentence to include that he lived under the mother when she died in 2002. The substituted Defendant answered with a yes, obviously without realising the effects of what she had accepted in answering affirmatively to that question.

Having elicited that answer, the Plaintiff then strangely suggested to the substituted Defendant that there was also a family arrangement, which she also confirmed with a similar answer. This important item of evidence unfortunately

was left out of the consideration when the High Court of Civil Appeal determined the evidence of the substituted Defendant to hold that they lived in that property under leave and license of *Evlyn Soysa.*

The evidence is clear that the original Defendant did not pay rent, did not surrender produce off the property, did make improvements to the property as he wished and did not obtain permission from anyone and possessed the corpus undisturbed and uninterrupted for over ten years prior to the institution of the action.

After undertaking a careful analysis of the evidence presented before the trial Court, I am of the considered view that the substituted Defendant has satisfied the trial Court that her continued possession of the *corpus* since 1979, qualifies to be accepted as proof of undisturbed and uninterrupted possession by a defendant by a title adverse to or independent of that of the Plaintiff, unaccompanied by payment of rent or produce, or performance of service or duty or by any other act by the possessor, from which an acknowledgement of a right existing in another person would fairly and naturally be inferred, in terms of Section 3 of the Prescription Ordinance.

In view of the multiple reasons set out above in detail, I now proceed to answer the several questions of law in the following manner;

(a) Were the original defendant or the substituted defendant licensees of the plaintiff as held by the High Court of Civil Appeal ? *No.*

(b) Did the Plaintiff come to Court and based his case on the footing that the original defendant was a licensee of the Plaintiff ? *No.*

(c) Has the High Court of Civil Appeal, in allowing the appeal of the plaintiff, considered the prescriptive rights of the defendant in the correct perspective ? *No.*

(d) in the circumstance pleaded, has the original Defendant prescribed to the *corpus* ? *Yes.*

(e) is granting damages to the plaintiff correct and according to law in the circumstances pleaded in the case ? *Does not arise as the action should be dismissed.*

(f) in the circumstances, is the judgment of the High Court of Civil Appeal correct and according law ? *No.*

Therefore, the impugned judgment of the High Court of Civil Appeal is hereby set aside and the judgment of the District Court is restored. The District Court is directed to enter decree accordingly.

The appeal of the Defendant is accordingly allowed with costs.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT