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

The Appeal under and in terms of Article 154(P)(3) and Article 128 of the Constitution read with Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and also Supreme Court Rule 28 of 1990.

SC/APPEAL/58/2021
HC (Hambantota) No.
APL 11/2017
Agrarian Tribunal
No. ABGR/2016/9/31
Agrarian Tribunal
No. AT/09/04/Sec 7(3)/2015/ N2

A. L. P. Dayanthi,
Mahabolana,
Ruhunu Rideegama,
Ambalanthota.

Complainant

Vs.

T. Kamal Chandrarathna Tharanga,
Punchihenyayagama,
Ruhunu Rideegama,
Ambalanthota.

Respondent

AND

T. Kamal Chandrarathna Tharanga,
Punchihenyayagama,
Ruhunu Rideegama,
Ambalanthota.

Respondent-Appellant

Vs.

1. Chairman, Land Reform Commission,
   C. 82, Hector Kobbakaduwa Mawatha,
   Colombo 07.

2. A. L. P. Dayanthi, Mahabolana,
Ruhunu Rideegama, Ambalanthota.

Complainant-
Respondent-Respondents

AND

T. Kamal Chandrarathna, Tharanga,
Punchihenyayagama, Ruhunu Rideegama,
Ambalanthota.

Respondent-
Appellant- Appellant

Vs.

A. L. P. Dayanthi, Mahabolana,
Ruhunu Rideegama, Ambalanthota.

Complainant-
Respondent-Respondent

1. Chairman, Land Reform Commission,
C. 82, Hector Kobbakaduwa Mawatha,
Colombo 07.

2nd Respondent- Respondent

2. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

AND NOW BETWEEN

A. L. P. Dayanthi, Mahabolana,
Ruhunu Rideegama, Ambalanthota.

Complainant-Respondent-Respondent-Appellant

Vs.

1. T. Kamal Chandrarathna Tharanga, Punchihenyayagama, Ruhunu Rideegama, Ambalanthota.

Respondent-Appellant-Appellant-Respondent (Deceased)

1A. Naveen Kalhara Chandrarathna, "Sandasiri", Kalugalawatta, Halamba, Agalawatta.

Substituted Respondent–Appellant-Appellant-Respondent

2. Chairman, Land Reform Commission, C. 82, Hector Kobbakaduwa Mawatha, Colombo 07.

2nd Respondent-Respondent

3. Honourable Attorney General, Department of the Attorney General, Colombo 12.

Respondent-Respondents

Before : Janak De Silva, J.

Menaka Wijesundera, J.

K. M. G. H. Kulatunga, J.

Counsel : Asthika Devendra with Wasantha Widanage for Complainant Respondent-Respondent-Appellant instructed by Manjula Balasooriya.

A.D.H. Gunawardhana with Shanaka Warnakulasuriya for 2nd Respondent-Respondent instructed by Ayesh Fernando.

S.A. Coollure with Prabhath S. Amarasinghe for Respondent instructed by A.P. Jayaweera.

Written Submissions : Written submissions on behalf of the 2nd Respondent-Respondent filed on 07.08.2024

Written Submissions on behalf of the Complainant-Respondent-Respondent-Appellant filed on 30.04.2026

Argued on : 06.03.2026

Decided on : 19.06.2026

Menaka Wijesundera, J.

The instant appeal has been filed to set aside the judgment dated 29.04.2021 of the High Court of Hambantota.

The Complainant-Respondent-Respondent-Appellant (hereinafter referred to as the "Appellant") in the instant matter had complained under section 7(3) of the Agrarian Development Act No. 46 of 2011 on 23.09.2015, alleging that she had been evicted from "Vilakumbura", a paddy-land, where she had been the tenant cultivator on the same by the now deceased 1st Respondent-Appellant-Appellant-Respondent (hereinafter referred to as the "1st Respondent").

Accordingly, evidence had been led, and the Agrarian Tribunal had delivered an order on 20.10.2016 in favour of the Appellant, but it had been held ex parte as the 1st Respondent had not participated. Thereafter, the 1st Respondent preferred an appeal to the Agrarian Board of Review, which, on 09.10.2017, dismissed the appeal.

Thereafter, the Respondent had preferred an appeal to the High Court of Hambantota, contending that the Agrarian Development Tribunal had erred in dismissing his appeal on the basis that the Appellant had failed, by documents marked P1–P15, to establish that she had cultivated the corpus beyond 28.04.2010. Therefore, the Respondent had submitted to the High Court that the complaint of the Appellant is prescribed under S.7(4) of the Agrarian Development Act. The learned High Court Judge had held with the 1st

Respondent, and against the said judgement, the instant appeal has been lodged by the Appellant.

The contention advanced by the Appellant is that the 1st Respondent has, for the first time, raised the issue of prescription in the written submissions filed before the Agrarian Board of Review. The Appellant had stated that a prescription constitutes a question of fact and that the High Court cannot entertain a question of fact under Section 42 of the Agrarian Services Act of No. 46 of 2002.

Therefore, the Appellant had filed a leave to appeal application in the High Court of Hambantota on the following questions of law, and the learned High Court Judge had granted leave on the same. The three questions of law are as follows,

1) Is the Respondent estopped from taking the objection that the complaint is prescribed under S 7(4) of the Agrarian Development Act No.46 of 2000 in the appeal for the first time without taking up such objection in the Agrarian Tribunal?
2) Is the learned High Court Judge in error according to the law, holding that the complaint is prescribed under Section 7 (4) of the Agrarian Development Act No.46 of 2000, when the said objection has not been taken up in the first instance and has been taken up for the first time in the Appeal?
3) When the Respondent has not established that the Appellant has been removed from the capacity of Tenant Cultivator on a date other than the date of the Complaint, has the learned High Court Judge erred, in holding that the Appellant has been dispossessed on a date different to the date stated in the complaint?

Hence, she had prayed that the judgement of the High Court of Hambantota dated 29.04.2021 be set aside.

According to the submissions of both parties, the Appellant in the instant matter had complained to the Agrarian Services Tribunal on 28.04.2015, that she had been evicted by the 1st Respondent from the Paddy land "Vilakumbura" under the provisions of the Agrarian Development Act No.46 of 2000, the said complaint is at page 258 of the brief. Thereafter, an inquiry was held.

There is a complaint made by the Appellant to the Ambalanthota police marked and produced as P7, on page 229 of the brief, that she had been evicted by the 1st Respondent on the above date. In the said complaint, she had also stated that there is a case pending in the High Court of Hambantota by the No. HCRA 3-2013 of 2015 regarding the same matter.

The order of the Agrarian Development Tribunal is on page 218 of the Appeal brief. The said order had referred to the documentation submitted by the Appellant from P1 to P17 and has also referred to P18, which is the Magistrate's Court case which had been instituted against the 1st Respondent for causing mischief to the paddy land where the Appellant had been cultivating. The 1st Respondent has paid Rs. 7500 as damages to the Appellant. The order had also noted that the 1st Respondent had not appeared before the Tribunal. Therefore, it had been held ex parte and held in favour of the Appellant.

Against the said order, the 1st Respondent had appealed to the Agrarian Board of Review on 21.11.2016, pleading that the order of the Agrarian Development Tribunal be set aside.

In the said petition of appeal, there is no averment with regard to prescription being pleaded by the 1st Respondent.

The documentation for the Appellant starts from P1 to P18. According to P1, which is the statement made to the Ambalanthota police, lodged on 28.04.2015, alleging that the Appellant had entered the corpus in the instant matter and had caused mischief, although there had been a case pending against him in the High Court of Hambantota in which the date of the incident is 08.04.2013.

In the written submissions filed by the 1st Respondent before the Board of Review, it had been stated that the Appellant's complaint was prescribed and that, in the complaint she had lodged at the Ambalanthota Police, she had referred to the mischief case in which the 1st Respondent had been ordered by the Court to pay a sum of Rs. 7,500 as compensation for the mischief caused on 08.04.2013. Therefore, he has pleaded that the complaint is prescribed.

The decision of the Agrarian Board of Review had been that the date of eviction was 28.04.2015 and not 08.04.2013, as contended by the 1st Respondent.

Against the said order, the 1st Respondent had appealed to the High Court, and it had held in favour of the 1st Respondent on the basis that the complaint of the Appellant is prescribed in law.

At this point, I will first consider the 3rd question of law mentioned above. Upon perusal of the documents marked and produced by the Appellant, including the police statement marked as P1, it is evident that the alleged eviction took place in 2013. This fact is clearly established by the complaint made by the Appellant to the Magistrate under Section 66 of the Primary Courts Ordinance. The Magistrate, having considered the matter, held that the dispute ought to be resolved before the Agrarian Development Tribunal. Thereafter, when the matter

was taken before the High Court by way of revision applications, the High Court likewise affirmed that the dispute should be determined by the Agrarian Development Tribunal.

Thereafter, although the Appellant had made a complaint to the police in 2015, it also refers to the incident and the Court case which had already been filed with regard to the incident in 2013. But I observe that there is no material to say that she was in possession of the corpus in question from 2013 to 2015. Hence, I am of the view that the learned High Court Judge has not erred in holding that the Appellant was dispossessed on a date different from that stated in the complaint. The finding of the learned Judge is supported by the material available on record and is consistent with the evidence given before the Tribunal. As such, I answer the third question of law in the negative

I shall now consider the first and second questions of law together, as both questions relate to the same legal issue. The questions that arise for determination are whether the 1st Respondent can object to prescription at the appeal stage, and if so, can the High Court Judge decide on a question of fact at the appeal stage under Section 7 (4) of the Agrarian Development Act No.46 of 2000.

In the instant matter, the 1st Respondent failed to raise the defence of prescription at the first available opportunity, which was before the Agrarian Development Tribunal, as he had not been present. However, despite having participated in the proceedings before the Agrarian Board of Review, the 1st Respondent did not raise the plea of prescription. Rather, the defence of prescription was introduced only through his written submissions at the Board of Review and thereafter, relied upon before the High Court.

It has been held in our legal precedents that, where a defendant intends to rely upon the defence of prescription, such defence must be raised at the earliest opportunity; failing which, the plaintiff would be deprived of a fair opportunity to meet and rebut the said defence.

The principle that a plea of prescription cannot be advanced for the first time at the appellate stage was clearly articulated by Basnayake J. in **Brampy Appuhamy v. Gunasekere (1948) 50 NLR 253 at 255**. In the aforementioned case, the defendant-appellant sought to rely on prescription on appeal despite having failed to plead the defence or raise it as an issue before the trial court. Rejecting that attempt, His Lordship held that such a defence was not properly available at the appellate stage. The pertinent observations of Basnayake J. are set out below,

"An attempt was made to argue that the defendant's claim was barred by the Prescription Ordinance (Cap. 55). The plea is not taken in the plaintiff's replication. There is no issue on the point, nor is there any evidence touching it. The plaintiff was represented by counsel throughout the trial. In these circumstances the plaintiff is not entitled to raise the question at this stage. It is settled law that when, as in the case of sections 5, 6, 7, 8, 9, 10 and 11 of the Prescription Ordinance, the effect of the statute is merely to limit the time in which an action may be brought and not to extinguish the right, the court will not take the statute into account unless it is specially pleaded by way of defence."

Furthermore, in ***Tilakaratne v. Chandrasiri and Another*** **(SC/APPEAL/172/2013, decided on 27.01.2017)**, the defendants raised the plea of prescription for the first time on appeal, despite having neither pleaded it nor raised it as an issue at trial. Although the High Court upheld the plea and dismissed the action, Prasanna Jayawardena J., following ***Brampy Appuhamy v. Gunasekere***, held that the defence of prescription was not available to the defendants at the appellate stage. The relevant passage from His Lordship's judgement is reproduced below.

"[I]t is settled Law that, a party is prohibited from raising an issue regarding prescription for the first time in appeal. As Bonser C.J. described in the early case of TERUNNANSE vs. MENIKE [1 NLR 200 at p.202], a defence of prescription is a "shield" and not a "weapon of offence". Adopting the phraseology used by the learned Chief Justice over a century ago, it may be said that, if a Defendant chooses not to pick up the shield of prescription when he goes into battle at the trial, the 'rules of combat' are that he forfeits the use of that shield in appeal."

Moreover, in ***SC/APPEAL/48/2017***, decided on 10.05.2024, Mahinda Samayawardhena J. reaffirmed the well-established principle in the above-mentioned cases that a plea of prescription must be raised at the earliest opportunity before the court of first instance and cannot be introduced, for the first time, at the appellate stage. The relevant passage from His Lordship's judgement is reproduced below,

"Prescription can be divided into two categories: acquisitive prescription and extinctive prescription. The former operates to acquire a right whilst the latter operates to extinguish a right. In either category, a defendant who intends to take up the plea of prescription must do so in the answer and raise it as an issue. The defendant cannot take the plea of prescription for

the first time on appeal. The Prescription Ordinance only limits the time within which an action may be instituted but it does not prohibit an action being instituted outside the stipulated time limit. If the objection is not raised by the opposite party in the pleadings, the opposite party is deemed to have waived it and acquiesced in the action being tried on the merits."

Accordingly, in the instant case, while the 1st Respondent did not participate in the proceedings before the Agrarian Development Tribunal, he actively participated in the proceedings before the Board of Review. However, at no stage during the proceedings did he raise the defence of prescription, seeking instead to advance it for the first time in his written submissions. In view of the foregoing authorities, a party seeking to rely on prescription is required to raise such a plea at the earliest available stage of the proceedings, and a failure to do so precludes that party from advancing the defence thereafter. Hence, I answer the first two questions of law in the affirmative

As such, the instant appeal is dismissed.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree.

JUDGE OF THE SUPREME COURT

K. M. G. H. Kulatunga, J

I agree.

JUDGE OF THE SUPREME COURT