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

In the matter of an Appeal from the Judgement dated 30.08.2012 of the Civil High Court of Appeal of the North Central Province in case bearing No. NCP/HCCA/ART/784/2012.

Lakshmi Karaliyadde,
Stage III No 2894,
Anuradhapura

PLAINTIFF (DECEASED)

Neville Wijesooriya Karaliyadde,
No 7, UC Quarters,
Thammennakulama,
Anuradhapura

SC Appeal No. 60/2014
SC (HCCA) LA 400/2012
NCP/HCCA/ARP/784/2010
D.C.Anuradhapura Case No 14353/L

SUBSTITUTED PLAINTIFF

Vs.

Sunethra Gajanayake
"Anoma" Pullaiyar Junction
Anuradhapura

DEFENDANT

BETWEEN

Neville Wijesooriya,
No 07, UC Quarters

Thamennakulama,
Anuradhapura

SUBSTITUTED PLAINTIFF APPELLANT

Vs.
Sunethra Gajanayake
"Anoma" Pullaiyar Junction
Anuradhapura

DEFENDANT-RESPONDENT

AND BETWEEN

Sunethra Gajanayake
"Anoma" Pullaiyar Junction
Anuradhapura

DEFENDANT- RESPONDENT-APPELLANT

Vs.

Neville Wijesooriya,
No 07, UC Quarters
Thamennakulama,
Anuradhapura

SUBSTITUTED-PLAINTIFF-APPELLANT-RESPONDENT

BEFORE: **HON. A.H.M.D.NAWAZ, J.**
HON. K.K WICKREMASINGHE,J
HON.M.SAMPATH K.B.WIJERATNE, J.

COUNSEL: H.Ghazali Hussain instructed by Nishmi Godellawatte for the Defendant-Respondent

Appellant
Murshid Maharoof with Manil Madugalle
Instructed by A. Premalingam for the
Substituted- Plaintiff- Appellant-Respondant

WRITTEN SUBMISSIONS: Written Submissions by the
Defendant- Respondent-Petitioner
on 10.04.2025.
Written Submissions by the
Substituted- Plaintiff- Appellant
Respondent on 30.04.2025

ARGUED ON: 28.02.2025

DECIDED ON: 23.03.2026

K.KUMUDINI WICKREMASINGHE

This is an appeal arising from the judgment of the Civil Appellate High Court of the North Central Province dated 30.08.2012 in Case No. NCP/HCCA/ARP/784/2010, wherein the said Court allowed the appeal of the Substituted Plaintiff-Appellant-Respondent(hereinafter referred as the Respondent) and set aside the judgment of the learned District Judge dated 10.03.2010. The Defendant- Respondent- Appellant (hereinafter referred as the Appellant), being aggrieved by the said judgment of the Civil Appellate High Court, sought leave to appeal to this Court. Leave to appeal was granted by this Court on the following substantial questions of law set out in paragraph 13.

(a) Whether the Civil Appellate High Court erred in holding that the permit marked “P1” was valid in law, notwithstanding the fact that the

said permit was not renewed or extended on 31.08.1992 upon the expiry of one year;

(b) Whether the Civil Appellate High Court erred in law by failing to consider that the permit marked "P1" was personal to the permit holder to whom it was issued, in terms of the conditions embodied in the said permit;

(e) Whether the Civil Appellate High Court misconstrued Section 103 of the Evidence Ordinance in the context of a *rei vindicatio* action.

Factual Matrix

The original Plaintiff instituted the present action on 20.03.1992, seeking, inter alia, a declaration that she was the lawful permit holder of the land described in the schedule to the Plaint. She also sought an order for the ejectment of the Defendant, together with all persons occupying the land under or through her, from the said premises. Further, the Plaintiff claimed damages for the alleged wrongful occupation of the property.

It is further contended that the Appellant (Defendant) filed her Answer on 02.11.1992 denying the averments contained in the amended Plaint and moved for the dismissal of the action. In her Answer, the Appellant (Defendant) claimed that her father had been in occupation of the land from around 1950, having cleared and developed it, and that he had handed over the property to her in 1986. She also claimed that she had applied for a permit in respect of the said land and that the Divisional Secretary of Mihinthale had undertaken to consider her application. According to the Defendant, she had effected substantial improvements on the land.

The Appellant stated that, after trial, the learned District Judge delivered judgment on 26.10.1994 in favour of the Plaintiff. Being dissatisfied with the said judgment, the Appellant (Defendant) preferred an appeal to the Court of

Appeal in Case No. CA 499/94. By judgment dated 05.11.2001, the Court of Appeal set aside the judgment of the District Court and ordered a retrial, observing that the material issue to be determined was whether a valid permit existed at the time the action was instituted and whether such permit continued to subsist during the course of the action.

At the hearing, the substituted Plaintiff testified and produced three witnesses: his brother, the Registrar of the District Court, and the Land Officer attached to the Mihinthale Divisional Secretariat. Documents marked **P1** to **P4** and **X** to **X1** were produced on behalf of the Plaintiff. The Defendant gave evidence and produced documents marked **Y1**, **Y2**, and **Y3.**

According to the evidence led through the Land Officer, the permit marked **P1**, issued to the original Plaintiff on 08.08.1991, was an annual permit which would expire on 31.08.1992 unless renewed at the discretion of the relevant authority. It was further indicated that the permit had not been extended after that date. The Petitioner maintains that the permit was personal to the permit holder and could be cancelled at the discretion of the Government Agent after notice to the permit holder.

The Appellant claimed to have come into occupation of the land in or about 1987. Evidence was led to the effect that a recommendation had been made by the Assistant Government Agent of Mihinthale in favour of issuing a permit to the Appellant (Defendant) in respect of the land in dispute, noting that improvements valued at approximately Rs. 40,000 per acre had been effected on the land.

It is further submitted that the original Plaintiff had not made any application for the extension of the permit during her lifetime. The Appellant also referred to evidence indicating that the permit had subsequently been revoked under Section 109 of the Land Development Ordinance.

The Appellant stated that following the retrial, the learned District Judge, by judgment dated 10.03.2010, dismissed the Plaintiff's action on the basis that the Plaintiff had failed to establish that a valid permit subsisted during the relevant period. The Respondent (substituted Plaintiff) thereafter appealed to the Civil Appellate High Court of the North Central Province, which by judgment dated 30.08.2012 allowed the appeal and set aside the judgment of the District Court.

Legal analysis

(a) Whether the Civil Appellate High Court erred in holding that the permit marked "P1" was valid in law, notwithstanding the fact that the said permit was not renewed or extended on 31.08.1992 upon the expiry of one year;

The first question of law concerns the validity of the permit marked P1 and whether the Civil Appellate High Court erred in holding it to be valid notwithstanding its non-renewal or extension upon the expiry of one year on 31.08.1992. At the outset, it must be recognised that P1 was issued under Section 8(1) of the **State Lands Ordinance, No. 8 of 1947 (previously known as the Crown Lands Ordinance)** and constitutes an "Instrument of Disposition" within the meaning of Section 110 of the said Ordinance (Appeal Brief, pages 292–293). The essential legal issue is whether a permit, valid at the time of the filing of the action, loses its effect by mere non-renewal thereafter, or whether the holder's rights vested at the date of filing and may be enforced notwithstanding subsequent administrative inaction. This Court is therefore called upon to examine both the statutory framework governing State land permits and the settled jurisprudence on the temporal determination of rights in civil actions.

The validity of the permit must also be considered in light of the principle that rights arising from an instrument of disposition are enforceable against third

parties, including persons in unauthorised occupation. In the present case, the Appellant admits that she never obtained any permit or permission from the State authorities to occupy the land (Appeal Brief, pages 106–107). Consequently, she was in **forcible occupation** of state land, and her mere physical presence could not defeat the Respondent's statutory rights under P1. Document X1 further corroborates that the State continued to recognise the Respondent as the lawful permit holder, even after the demise of her grandmother and the administrative process to extend the permit to her father was ongoing (Appeal Brief, page 318).

The statutory position is clearly articulated in **Section 103 of the State Lands Ordinance No. 8 of 1947**, which provides that:

> *".....no person shall, by possession or user of such land, acquire any prescriptive title thereto against the State."*

The provision applies to lands that have been declared State property under the Land Settlement Ordinance, acquired under the Land Acquisition law, or resumed by the State, where such lands have been duly surveyed and marked by the authority of the Surveyor-General. The legislative intent is clear: **mere possession, occupation, or use of State land cannot ripen into ownership or any prescriptive right against the State**.

The statutory position is expressly provided in **Section 161** of the **Land Development Ordinance No. 19 of 1935 (as amended)**, which states:

> *"No person shall, by possession of any land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State."*

This provision clearly excludes the operation of the doctrine of prescription in respect of lands alienated by the State under a permit. The legislative intent is to ensure that rights to such lands arise only through the statutory scheme

governing State land alienation and not through long possession or use. In the present case, the Appellant relied on alleged occupation of the land by her father from around 1950 and by herself thereafter. However, even if such occupation were accepted, Section 161 of the Land Development Ordinance expressly prevents such possession from ripening into prescriptive title either against the State or against the lawful permit holder. Accordingly, the Appellant cannot rely on long possession or improvements made on the land to defeat the Respondent's entitlement arising from the permit marked **P1.**

In the present case, the Appellant sought to rely on the alleged long occupation of the land by her father from around 1950 and by herself thereafter. However, such possession, even if proved, cannot confer any legal title in view of the express prohibition contained in Section 103 of the State Lands Ordinance. Consequently, the Appellant cannot rely on the duration of occupation or improvements effected on the land to defeat the rights arising from the permit issued by the State. The absence of any lawful permit or authorization in favour of the Appellant further reinforces the conclusion that her occupation was without legal foundation.

In matters concerning state land, a third party cannot acquire rights by occupation where a valid instrument of disposition exists. Further, it is apparent from the evidence adduced that the Appellant had no permit or lawful authority to occupy the land in dispute and her possession was entirely without State sanction (Appeal Brief, pp. 106–107). The Respondent, on the other hand, held Permit **P1** issued under **Section 8(1)** of the **State Lands Ordinance, No. 8 of 1947** and the State authorities recognised her rights even after the demise of the original permit holder, as confirmed by document **X1** indicating that the administrative process to extend the permit to the Respondent's father was in progress (Appeal Brief, p. 318). It is well established that rights to State land cannot be acquired by mere occupation and any action challenging a permit holder's entitlement must be supported by strict proof of

cancellation of the permit. As emphasised in the case of ***Wimala Herath v. Kamalawathie, SC Appeal No. 119/2010 decided on 07.11.2012 at page 7*** Her Ladyship Eva Wanasundera held that

> *"...once a permit is given for a particular allotment of land, without a cancellation of that permit, no other permit granted for the same could be legally valid" and further emphasised that "no other permit granted for part of the same land could be legally valid" .*

Moreover, the Appellant's argument that the permit P1 ceased to be valid due to the absence of formal renewal on 31.08.1992 is **untenable in law**. The principle established in ***Jayaratna v. Jayaratne and Another*** **(2002) 3 SLR 331 at page 332** is directly applicable, wherein the Court of Appeal held that *"Rights of the parties are determined as at the date of the plaint,"* and the pendency of subsequent events or administrative formalities does not defeat a validly instituted action. In the present case, the Respondent instituted action on 20.03.1992, well within the effective period of P1 (Appeal Brief, pages 93 & 292). Accordingly, the subsequent non-renewal cannot retroactively negate her status as lawful permit holder at the time the action was filed.

Furthermore, evidence adduced at the second trial, including the certification from the Land Commissioner, indicates that the Respondent's title was continuously recognised by the State and that she had an active duty to safeguard the property from encroachment (document X1, Appeal Brief, page 318). As the Court in ***Jayaratna (supra)*** emphasised, even if subsequent events occur, they do not affect the rights determined as at the date of the plaint, which reinforces the Respondent's entitlement at the relevant time. The learned District Judge correctly relied on this evidence in concluding that the Respondent possessed enforceable rights under P1. It follows that the Civil Appellate High Court did not err in holding the permit valid in law, as the Appellant failed to discharge the burden of proving any cancellation or extinguishment of P1.

In addition, the learned Provincial High Court of Anuradhapura, in setting aside the District Court's judgment of 10.03.2010, correctly evaluated the totality of evidence presented at the second trial. The Respondent adduced credible testimony from her father, Senerath Karaliyadde, the Registrar of the District Court, and the Land Officer attached to the Mihintale Divisional Secretariat, which established that the permit P1 was issued under Section 8 of the Crown Lands Ordinance and remained valid at the time the action was filed (P1, Appeal Brief, pages 292–293; P2–P4, Appeal Brief, pages 295–302; X–X1, Appeal Brief, pages 317–318). The Appellant, in contrast, offered no documentary proof to demonstrate that P1 had been cancelled or that any administrative irregularity extinguished the Respondent's rights. As held in ***Wimala Herath v. Kamalawathie*, SC Appeal No. 119/2010 *decided on 07.11.2012*** , *"strict proof of due cancellation of the permit issued to A is necessary before his title can be defeated."* Applying this principle, it is evident that the Respondent's status as lawful permit holder remained unimpeached. Therefore, the Civil Appellate High Court did not err in confirming the continued validity of P1.

(b) Whether the Civil Appellate High Court erred in law by failing to consider that the permit marked "P1" was personal to the permit holder to whom it was issued, in terms of the conditions embodied in the said permit;

The second question for determination is whether the Civil Appellate High Court erred in failing to consider that the permit P1 was personal to the permit holder. The material fact is that the Appellant has not adduced any evidence to prove that the permit issued to the Respondent's predecessor-in-title had been lawfully cancelled. In ***Seenithamby v. Ahamadulebbe* (1971) 74 NLR 222**, H.N.G. Fernando, C.J., held that "*strict proof of the due cancellation of the permit issued to the plaintiff was necessary before his title could be defeated.*" The Court further observed that "*the decision of the action turned on the*

question whether the permit P1 had been duly cancelled prior to the grant to the defendant of his permit dated 24th June 1960." Applying this principle to the present case, the absence of proof of cancellation demonstrated that the rights of the Respondent as the lawful permit holder could not be defeated merely on the ground that the permit was personal or had not been renewed. The High Court correctly recognised that the Appellant's argument based on the personal nature of the permit and non-renewal on 31.08.1992 could not extinguish the Respondent's rights under P1 (Appeal Brief, pages 317–318, X1).

The Appellant contended that the permit marked *P1* was personal to the original permit holder and could not be exercised by the Plaintiff's successor. While ***Perera v. Fernando*** **[1999] 3 Sri LR 259 at page 260** arises in the context of partition and prescription, the principles established therein are instructive for the present matter. In that case, it was held that *"mere knowledge of a case in which the plaintiff claimed certain adverse interests vis-à-vis the land occupied by such an outsider would not interrupt the adverse possession by such an outsider."* Analogously, the rights of a lawful permit holder under the Crown Lands Ordinance cannot be deemed extinguished or altered merely by the Appellant occupying the land without formal objection by the competent authorities. The relevant date for determining entitlement is the date when the statutory right arose and the legal action was instituted, not when the Appellant became aware of such rights.

The Civil Appellate High Court did not err in law, as the absence of strict proof of lawful cancellation of permit P1 meant that the Respondent's rights thereunder remained intact and could not be defeated merely on the basis of its personal nature or non-renewal.

(e) Whether the Civil Appellate High Court misconstrued Section 103 of the Evidence Ordinance in the context of a *rei vindicatio* action.

In respect of the third question of law, the issue arises whether the High Court erred in its treatment of the evidential burden under Section 103 of the Evidence Ordinance. Section 103 provides that *"when any fact is required by law to be proved, the burden of proving that fact lies on the person who asserts it"*. In a rei vindicatio action involving State land, the plaintiff asserting title must establish the validity of the instrument of disposition relied upon and show that the defendant's occupation is without legal justification. In the present matter, the Substituted-Plaintiff-Respondent adduced clear documentary evidence, including the original permit P1 (Appeal Brief, page 93), and administrative records X and X1, which collectively establish lawful title to the land and confirm that the Appellant held no permit or authorization from the relevant State authorities. By contrast, the Appellant failed to adduce any evidence to prove cancellation of the permit or the existence of any legally valid right to occupy the land.

It is well-established that in a rei vindicatio action, the burden of proof lies on the plaintiff to establish ownership of the property in dispute. As Macdonell C.J. stated in ***De Silva v. Goonetilleke (1960) 32 NLR 217 at 219***,

> *"To bring the action rei vindicatio plaintiff must have ownership actually vested in him … if he cannot, the action will not lie."*

Similarly, in ***Pathirana v. Jayasundera (1955) 58 NLR 169 at 172,*** it was held that

> *"The plaintiff's ownership of the thing is of the very essence of the action."*

G.P.S. de Silva J., in ***Mansil v. Devaya [1985] 2 Sri LR 46 at 51***, affirmed that

> *"In a rei vindicatio action … ownership is of the essence of the action; the action is founded on ownership."*

In the present case, the Substituted-Plaintiff-Respondent tendered the permit P1 along with supporting administrative records (Appeal Brief, pages 93–95) to establish ownership of the land. The Appellant did not produce any evidence to contest the validity of P1 or to demonstrate that the Respondent lacked ownership at the commencement of the action. The Supreme Court in ***Preethi Anura v. William Silva (SC/APPEAL/116/2014, SC Minutes of 05.06.2017)*** emphasised that *"Plaintiff need not establish the title with mathematical precision nor to prove the case beyond reasonable doubt … The plaintiff's task is to establish the case on a balance of probability."* This principle aligns with the longstanding rule that the standard of proof in a rei vindicatio action is on a balance of probabilities and not an exceptionally high degree of certainty.

Furthermore, as Dr. H.W. Tambiah observed,

> *"As a practical matter, the burden of proof in a rei vindicatio action is not burdensome. The plaintiff must prove only that he is the probable owner of the property"* (Survey of Laws Controlling Ownership of Lands in Sri Lanka, Vol. 2, p. 244).

Consistently, the South African authorities in ***Huawei Technologies South Africa (Pty) Limited v. Redefine Properties Limited [2018] ZAGPJHC 403*** held that

> *"the owner, in instituting a rei vindicatio, need do no more than allege and prove that he is the owner and that the defendant is holding or in possession of the property. The onus is on the Defendant to allege and establish a right to continue to hold against the owner."*

In light of these authorities, the evidence produced by the Respondent was sufficient to discharge the onus imposed under Section 103 of the Evidence

Ordinance. The Appellant, having failed to adduce evidence of a superior title, cancellation of P1, or prescriptive possession, could not shift the burden back to the Respondent. It follows that the High Court's interpretation of Section 103, which required the Respondent to strictly prove title beyond a balance of probabilities, misconstrued the legal standard and imposed an unnecessarily onerous evidential burden.

For the foregoing reasons, this Court is satisfied that the Civil Appellate High Court correctly determined the validity of the permit marked P1, correctly recognised that the permit was personal to the lawful holder without affecting the Respondent's rights, and properly applied the standard of proof in a rei vindicatio action under Section 103 of the Evidence Ordinance. The Appellant has failed to demonstrate any error of law or misapprehension of the facts that would justify interference with the judgment of the Civil Appellate High Court. Accordingly, the appeal is without merit and is hereby dismissed.

The questions of law on which leave to appeal was granted are answered in the negative and dismiss the appeal with costs.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

HON. A.H.M.D.NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT

HON.M.SAMPATH K.B.WIJERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT