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

In the matter of an appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended

SC Appeal No. 76/2012
SC/HCCA/LA Application No. 447/2011
NWP/HCCA/Kuru No. 78/2005(F)
DC Maho Case No. 2478/Land

(1) Gajaweera Arachchige Seelawathie

(2) Weerawardhena Harriet Silva

(3) Weerawardhena Nanda Silva

All of, Puttalam Road, Nikaweratiya.

PLAINTIFFS

- Vs -

Ankunna Gamage Harins alias Gorin,
78, Puttalam Road, Nikaweratiya.

DEFENDANT

And between

Ankunna Gamage Harins alias Gorin,
78, Puttalam Road, Nikaweratiya.

DEFENDANT – APPELLANT

- Vs –

(1) Gajaweera Arachchige Seelawathie

(2) Weerawardhena Harriet Silva

(3) Weerawardhena Nanda Silva

All of, Puttalam Road, Nikaweratiya.

PLAINTIFFS – RESPONDENTS

And now between

(1) Gajaweera Arachchige Seelawathie

(1A) Weerawardhena Nanda Silva,
Puttalam Road, Nikaweratiya.

(1B) Weerawardhena Prasanna Indika De Silva,
No. 112, Puttalam Road, Nikaweratiya.

(2) Weerawardhena Harriet Silva

(2A) Weerawardhena Prasanna Indika De Silva,
No. 112, Puttalam Road, Nikaweratiya.

(3) Weerawardhena Nanda Silva

(3A) Weerawardhena Prasanna Indika De Silva,
No. 112, Puttalam Road, Nikaweratiya.

SUBSTITUTED PLAINTIFFS – RESPONDENTS – APPELLANTS

- Vs -

Ankunna Gamage Harins alias Gorin,
78, Puttalam Road, Nikaweratiya.

Ankunna Gamage Saumya Dilakshi,
78, Puttalam Road, Nikaweratiya.

SUBSTITUTED DEFENDANT – APPELLANT – RESPONDENT

Before: **S. Thurairaja, PC, J**
Yasantha Kodagoda, PC, J
Arjuna Obeyesekere, J

Counsel: Navin Marapana, PC with Uchitha Wickremasinghe and Thanuja Meegahawatte for the Substituted Plaintiffs – Respondents – Appellants

Vidura Guneratne for the Substituted Defendant – Appellant – Respondent

Argued on: 14th September 2023 and 21st November 2023

Written Submissions: Tendered on behalf of the Substituted Plaintiffs – Respondents – Appellants on 9th May 2012 and 31st January 2024

Tendered on behalf of the Substituted Defendant – Appellant – Respondent on 11th September 2023 and 11th January 2024

Decided on: 19th March 2026

Obeyesekere, J

(1) The primary issue that needs to be determined in this appeal is whether a plaintiff in a *rei vindicatio* action can rely on prescriptive title in the event his/her paper title to the land for which he/she is seeking a declaration of title is found to be defective.

Facts in brief

(2) In their plaint filed in the District Court of Maho [the District Court] on 10th September 1986, the Plaintiffs – Respondents – Appellants [the Plaintiffs] stated as follows:

(a) Nomis Silva, who was the husband of the 1st Plaintiff and the father of the 2nd and 3rd Plaintiffs purchased the land referred to in the Schedule to the plaint from Jayakody Arachchige Christinahamy by Deed No. 10922 dated 25th October 1954;

(b) Nomis Silva passed away on 16th March 1959, without leaving a last will;

(c) Pursuant to the order made in the testamentary case filed in respect of the estate of Nomis Silva, the said land had devolved on the Plaintiffs;

(d) The Plaintiffs have been in possession of the said land since 1954 and have acquired prescriptive possession to the said land [පැමිණිළිකාරියන් එසේ මෙම ඉඩම බුක්ති විඳගෙන එන අතර දිර්ඝකාලීන භුක්තිය පිටද ඔවුන්ගේ හිමිකම් තහවුරුවී ඇති බවද ඔවුන් කියා සිටියි.].

(3) The Plaintiffs were therefore relying on paper title and prescriptive title they claim to have acquired by long and uninterrupted possession since 1954.

(4) The Plaintiffs stated further that the Defendant – Respondent – Appellant [the Defendant] had forcibly entered the said land on which a commercial building was situated, on 10th January 1986. The Defendant is said to have initially constructed a hut and later commenced construction of a permanent structure on the said land. The Plaintiffs had lodged four complaints with the Police [P7 – P10] and proceedings had been instituted under and in terms of Section 66 of the Primary Courts Procedure Act. It is thereafter that the Plaintiffs filed action in the District Court seeking a declaration of title to the said land and the ejectment of the Defendant from the said land.

(5) In his answer, the Defendant admitted that Nomis Silva had acquired ownership to the said land by virtue of Deed No. 10922. However, the Defendant stated that Nomis Silva had executed a conditional transfer in relation to the said land by Deed No. 12416 dated 30th June 1956 [D2] in favour of Haramanis Jayamanne. In terms of D2, Nomis Silva had borrowed a sum of Rs. 3000 from Jayamanne and undertaken to repay Jayamanne the capital sum borrowed together with interest at 12% per annum within five years. The Defendant did not claim that Jayamanne had taken possession of the said land at the end of the five year period or at any time thereafter and it is therefore safe to assume that Nomis Silva and his family continued to possess the said land without any interference by Jayamanne.

(6) The Plaintiffs admit that (a) Nomis Silva had executed the said conditional transfer D2, (b) the conditional transfer was in existence at the time Nomis Silva passed away in 1959, and (c) the conditional transfer and the amounts due on such transfer are reflected as a liability of the estate of Nomis Silva in the testamentary proceedings.

(7) The Defendant stated further that:

(a) Jayamanne had transferred the said land to Mohamed Mohideen in 1963 [D9];

(b) Pursuant to the death of Mohideen and through testamentary proceedings instituted in respect of the estate of Mohideen, the land devolved on his wife and two others who in turn had transferred the said land to the Defendant by Deed No. 1137 dated 18th December 1985 [D14];

(c) Together with his predecessors in title, he has prescribed to the said land.

(8) The Defendant too prayed for a declaration of title to the said land.

Trial before the District Court

(9) The only admission marked at the commencement of the trial was that Nomis Silva was the owner of the said property by virtue of Deed No. 10922.

(10) The Plaintiffs raised *inter alia* the following issues:

1. "එකී වීරවර්ධන නෝමිස් සිල්වා යන අය 1954 ඔක්තෝබර් මස 25 වෙනි දින අංක 10922 දරන ඔප්පුව මත හිමි වූ දේපල ඔහු මිය යන තෙක් ඔහු විසින්ම බුක්ති විඳින ලද්දේද?
2. ඔහු මිය යාමෙන් පසු එකී දේපල කුරුණෑගල දිසා අධිකරණයේ අංක 5504/බුදල් දරණ නඩුවෙන් බුදල් වන ලද්දේද?
3. එම නෝමිස් සිල්වා එසේ දිර්ඝ කාලයක් බුක්ති විඳිමින් එකී දේපලවලට බුක්ති විඳිමේ පදනම මතද මෙම දේපලවලට අයිතිවාසිකම් ලබාගෙන ඇත්ද?
4. එම නෝමිස් සිල්වා මිය යාමෙන් අනතුරුව පැමිණිලි පත්‍රයේ සඳහන් පරිදි එම අයිතිවාසිකම් 1,2,3 යන පැමිණිලිකරුවන්ට හිමි වුයේද?
5. 1,2,3 පැමිණිලිකරුවන් මෙම ඉඩම දිර්ඝ කාලයක් බුක්ති විඳිමෙන් එම දේපලවලට කාලාවරෝධී අයිතියක් ද හිමිකරගෙන තිබේද?"

(11) The Defendant raised the following three issues:

"11. පැමිණිල්ලේ සඳහන් නෝමිස් සිල්වා යන අය 1956.06.30 වෙනි දින කරුණාතිලක නොතාරිස් සහතික කල අංක 12416 දරන ඔප්පුව පිට ඔහුගේ අයිතිවාසිකම් හරමානිස් ජයමාන්නට විකුනා ඇත්ද?
12. එම හරමානිස් ජයමාන්න ගේ අයිතිවාසිකම් උත්තරයේ සඳහන් අන්දමට විත්තිකරුට හිමි වේද?
13. විත්තිකරු සහ ඔහුට පෙර හිමිකරුවන් මෙම ඉඩම අවුරුදු 10 කට වැඩි කාලයක් අබාණ්ඩව හා නිරවුල්ව බුක්ති විඳිමෙන් විත්තිකරුට මෙම සම්පුර්ණ ඉඩම හිමිවේද?"

(12) Thus, both parties took up the position that paper title to the land is with them and that in any event, they and their predecessors in title have acquired prescriptive title, as well.

Judgment of the District Court

(13) The Plaintiffs led the evidence of four witnesses including the evidence of (a) the 3rd Plaintiff, (b) the Revenue Officer of the Nikaweratiya Pradeshiya Sabha who confirmed that the name of Nomis Silva had been registered as the owner of the said premises since 1962, (c) Danapala who had rented the said premises from the Plaintiffs and had carried on the business of a photography studio at the premises since September 1975 until he was interrupted by the Defendant in January 1986, and (d) W.A. Sumith who had confirmed that he handed over to the Plaintiffs the rental collected from Danapala. It was clear from their evidence that the Plaintiffs continued to possess the land even after the death of Nomis Silva in 1959, that the Plaintiffs possession had not been interrupted by Mohideen or his family, and that the Plaintiffs had undisturbed and uninterrupted possession of the said land until 1986.

(14) While the Defendant and another gave evidence on behalf of the Defendant, no evidence was led to establish that Jayamanne, Mohideen or their successors sought to enforce their rights under D2 and/or D9 after the expiry of the five year period, or that Jayamanne or Mohideen had possession of the said land until the Defendant, having "purchased the land" in December 1985, forcibly entered the said land in January 1986.

(15) By its judgment dated 18th April 2005, the District Court answered the aforementioned Issues raised by the Plaintiffs and Issue No. 11 raised by the Defendant in the affirmative, and answered in the negative Issue Nos. 12 and 13 raised by the Defendant. The District Court thus accepted the position of the Plaintiffs that they had paper title to the land and had acquired prescriptive title, as well.

(16) With regard to the paper title of the Defendant, the District Court held that the two deeds marked D2 and D9 had been executed over thirty years prior to them being

marked and that they are deemed to have been proved in terms of Section 90 of the Evidence Ordinance. However, the District Court held that the Defendant had not proved D14, which is the deed by which the Defendant is said to have purchased the said land, since the Defendant did not produce the original of D14 nor did he lead the evidence of the Notary before whom D14 was signed or the two witnesses who were said to have been present at the time of execution of D14.

(17) Furthermore, the District Court rejected the claim of the Defendant that he, together with his predecessors in title had prescribed to the said land.

Judgment of the High Court

(18) Aggrieved, the Defendant invoked the appellate jurisdiction of the Provincial High Court of the North Western Province holden at Kurunegala exercising civil appellate jurisdiction [the High Court]. By its judgment delivered on 28th September 2011, the High Court set aside the judgment of the District Court and dismissed the plaint of the Plaintiffs.

(19) With regard to the paper title of the Plaintiffs, the High Court held that the Plaintiffs did not derive paper title to the land upon the demise of Nomis Silva since:

(a) there existed a Conditional Transfer at that time in favour of Jayamanne;

(b) the Plaintiffs did not take steps to re-purchase the land after the testamentary proceedings were concluded; and

(c) Jayamanne thus became entitled to the land in dispute by virtue of the Conditional Transfer.

(20) In arriving at the above conclusion, the High Court failed to appreciate that neither Jayamanne, Mohideen or any other person seeking to claim under them had sought to enforce their rights under D2 and/or D9, and that by the time action was filed in the District Court, any such claim was prescribed.

(21) The High Court however accepted the conclusion of the District Court that D14, by which the Defendant claimed he purchased the property and acquired title, had not been proved in terms of the law and that the Defendant too does not have paper title.

(22) The High Court thereafter cited with approval the following passage from **D. R. Kiriamma v J. A. Podibanda** [(2005) B.L.R. 9], where Udalagama, J held as follows:

> "*Onus probandi or the burden of proving possession is on the party claiming prescriptive possession. Importantly, prescription is a question of fact. Physical possession is a factum probandum. I am inclined to the view that considerable circumspection is necessary to recognize the prescriptive title as undoubtedly it deprives the ownership of the party having paper title.* ***It is in fact said that title by prescription is an illegality made legal due to the other party not taking action****. It is to be reiterated that in Sri Lanka prescriptive title is required to be by title adverse to and independent to that of a claimant or Plaintiff.*
>
> *When a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immoveable property the burden of proof rests on him to establish a starting point of his or her acquisition of prescriptive title*." [emphasis added]

(23) With regard to the prescriptive title of the Plaintiff, the High Court, having referred to Section 3 of the Prescription Ordinance, stated as follows:

> "*From the above provisions, it is clear that a party can claim title by prescription only against the legal title of another. In the instant case neither the plaintiffs nor the defendant could establish legal title to the land as claimed. Accordingly, title by prescription does not arise in this case.*
>
> *In the instant case, both parties claimed paper title to the land in dispute. It is important to note that a party having paper title cannot claim title also by prescription against his own paper title. It has been a practice among the people also to plead title by prescription with their paper title. But that is only to buttress their legal title*."

(24) The above reasoning of the High Court can be summarised as follows:

(a) Legal title to a land can only be claimed by way of paper title;

(b) Prescriptive title can only be claimed against the legal title of another;

(c) A party having paper title cannot claim title by prescription against his own paper title;

(d) In a *rei vindicatio* action, prescription can be used by a plaintiff only to buttress his/her legal title but not independently of paper title.

Questions of Law

(25) Aggrieved, the Plaintiffs sought and obtained leave to appeal of this Court on 27th March 2012 on the following five questions of law:

(a) Whether the learned Judges of the High Court have erred in law in coming to the conclusion that a party having a paper title cannot claim title by way of prescription?

(b) Whether the learned Judges of the High Court have erred in law in coming to the conclusion that the Plaintiffs have failed to prove their title to the subject matter?

(c) Whether the learned Judges of the High Court have failed to consider the fact that the Plaintiffs have acquired prescriptive title to the subject matter?

(d) Whether the learned Judges of the High Court have failed to properly evaluate the evidence adduced at the trial?

(e) Whether the learned Judges of the High Court have erred in law by misinterpreting the principles in relation to prescription?

(26) There are two matters that I must advert to at this stage. The first is that the Defendant did not raise a question of law whether the High Court erred either with regard to his paper title or with regard to his prescriptive title. The second matter is that at the end of the hearing, the learned President's Counsel for the Plaintiffs submitted that he will not be pursuing the question of law at paragraph (b), leaving this Court to determine the rest of the questions of law, the gist of which, in the circumstances of this case, amounts to ascertaining whether a plaintiff in a *rei vindicatio* action can rely on prescriptive title in the event his/her paper title to the land for which he/she is seeking a declaration of title is found to be defective.

The *Rei Vindicatio* action

(27) In **Mihindukulasuriya Sudath Harrison Pinto and Others v Weerappulige Piyaseeli Fernando and Others** [SC Appeal No. 57/2016; SC minutes of 11th September 2023], Samayawardhena, J having carried out an extensive examination of the law relating to a *rei vindicatio* action, stated that, *"In order to succeed in a rei vindicatio action, first and foremost, the plaintiff shall prove his ownership to the property. If he fails to prove it, his action shall fail. This principle is based on the Latin maxim "onus probandi incumbit ei qui agit", which means, the burden of proof lies with the person who brings the action."*

(28) In arriving at the above conclusion, Samayawardhena, J has cited with approval three judgments of this Court. The first is the judgment in **De Silva v Goonetilleke** [32 NLR 217] where Chief Justice Macdonell had stated [at page 219] that, "*There is abundant authority that a party claiming a declaration of title must have title himself: "To bring the action rei vindicatio plaintiff must have ownership actually vested in him". (1 Nathan p. 362, s. 593.) ....The authorities unite in holding that plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie."*

(29) The second is the judgment in **Pathirana v Jayasundera** [58 NLR 169] where, Gratiaen J. declared [at page 172] that, *"In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. 'The plaintiff's ownership of the thing is of the very essence of the action.' Maasdorp's Institutes (7th Ed.) Vol. 2, 96."*

(30) The third is the judgment delivered by G.P.S. De Silva, J (as he then was) in **Mansil v Devaya** [(1985) 2 Sri LR 46] where he stated [at page 51] that, "*In a rei vindicatio action, on the other hand, ownership is of the essence of the action; the action is founded on ownership.*"

Burden of proof in a *rei vindicatio* action – of the Plaintiff

(31) In **Mihindukulasuriya** [supra], this Court referred to with approval the following paragraph in **Wille's Principles of South African Law** [9th Edition (2007); at page 539]:

> "*To succeed with the rei vindicatio, the owner must prove on a balance of probabilities, first, his or her ownership in the property. If a movable is sought to be recovered, the owner must rebut the presumption that the possessor of the movable is the owner thereof.* ***In the case of immovables, it is sufficient as a rule to show that title in the land is registered in his or her name****. Secondly,* ***the property must exist, be clearly identifiable*** *and must not have been destroyed or consumed. Money, in the form of coins and banknotes, is not easily identifiable and thus not easily vindicable. Thirdly,* ***the defendant must be in possession*** *or detention of the thing at the moment the action is instituted. The rationale is to ensure that the defendant is in a position to comply with an order for restoration."* [emphasis added]

(32) Referring to the obligation of a plaintiff in a *rei vindicatio* action to establish the title to the land, Chief Justice Dep stated in **Preethi Anura v William Silva** (SC Appeal No. 116/2014; SC Minutes of 5th June 2017), that the, "*Plaintiff need not establish the title with mathematical precision nor to prove the case beyond reasonable doubt as in a criminal case. The plaintiff's task is to establish the case on a balance of probability.*"

Burden of proof in a *rei vindicatio* action – of the Defendant

(33) In **Theivandran v Ramanathan Chettiar** [(1986)] 2 Sri LR 219; at page 222], Chief Justice Sharvananda stated as follows:

> *"In a vindicatory action the claimant need merely prove two facts; namely, that he is the owner of the thing and that the thing to which he is entitled to possession by virtue of his ownership is in the possession of the defendant.* ***Basing his claim on his ownership, which entitles him to possession****, he may sue for the ejectment of any person in possession of it without his consent.* ***Hence when the legal title to the premises is admitted or proved to be in the plaintiff, the burden of proof is on the defendant to show that he is in lawful possession****."* [emphasis added]

(34) A similar view was expressed in **Mihindukulasuriya** [supra] where it was held that, "*When the paper title to the property is admitted or proved to be in the plaintiff, the burden shifts to the defendant to prove on what right he is in possession of the property."*

(35) In **Wasantha v Premaratne** (SC Appeal No. 176/2014; SC Minutes of 17th May 2021), Samayawardhena, J held that, "*Notwithstanding that in a rei vindicatio action the burden is on the plaintiff to prove title to the land no matter how fragile the case of the defendant is, the Court is not debarred from taking into consideration the evidence of the defendant in deciding whether or not the plaintiff has proved his title. Not only is the Court not debarred from doing so, it is in fact the duty of the Court to give due regard to the defendant's case, for otherwise there is no purpose in a rei vindicatio action in allowing the defendant to lead evidence when all he seeks is for the dismissal of the plaintiff's action.*"

Superior title

(36) Chief Justice G.P.S De Silva referring to the criterion to be adopted in a *rei vindicatio* action in respect of the burden of proof stated in **Banda v Soyza** [(1998) 1 Sri LR 255; at 259] that, "*In a case such as this, the true question that a court has to consider on the question of title is, who has the superior title? The answer has to be reached upon a consideration of the totality of the evidence led in the case.*"

(37) The above position has been summarised in **Mihindukulasuriya** [supra] in the following manner:

"*Whilst emphasising that (a) the initial burden in a rei vindicatio action is on the plaintiff to prove ownership of the property in suit and (b) the standard of proof in a rei vindicatio action is proof on a balance of probabilities, if the plaintiff in such an action has "sufficient title" or "superior title" or "better title" than that of the defendant, the plaintiff shall succeed. No rule of thumb can be laid down in what circumstances the Court shall hold that the plaintiff has discharged his burden.* ***Whether or not the plaintiff proved his title shall be decided upon a consideration of the totality of the evidence led in the case***." [emphasis added]

(38) I must state that the facts of this case are unique. Here are three Plaintiffs whose paper title is said to have been affected by a Conditional Transfer effected by their father in favour of Jayamanne. However, the Plaintiffs have been in possession of the land since 1954, with neither Jayamanne or Mohideen taking any steps to enforce the Conditional Transfer. According to the evidence of both parties which has been accepted by the District Court and the High Court, that possession of the Plaintiffs was interrupted for the first time 30 years after the execution of the Conditional Transfer, by the Defendant who claimed he purchased the said land from the successors in title of Mohideen a month prior to entering into the said land.

(39) The Defendant however has not produced the original of the deed [D14] by which he claimed to have purchased the said land nor has he led the evidence of the Notary who attested the execution of the deed or the two witnesses who were said to have been present at the time the deed was said to have been executed. In this scenario, with the Defendant not having proved his paper title, the reality is that no person who can claim the benefit of the aforementioned Conditional Transfer in favour of Jayamanne and his successors in title is before Court. The resultant position is that, with the Defendant having failed to prove his paper title, he has also failed to prove the nexus between him and Jayamanne and Mohideen which consequentially deprives him from claiming any prescriptive title together with Mohideen and his successors. I must therefore confess that when applying the basic principles of the law relating to *rei vindicatio,* and taking the case for the Plaintiff at its worst, the Plaintiff has a superior title than the Defendant who has no title.

Section 3 of the Prescription Ordinance

(40) I shall now consider the findings arrived at by the High Court with regard to prescription.

(41) The law on prescription in Sri Lanka is governed by the Prescription Ordinance, No.22 of 1871, as amended. Section 3 thereof reads as follows:

> "*Proof of the undisturbed and uninterrupted possession* ***by a defendant*** *in any action, or by those under whom he claims,*
>
> *of land or immovable property,*

by a title adverse to or independent of that of the claimant or plaintiff in such action (that is to say, a possession 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)

for ten years previous to the bringing of such action,

shall entitle the defendant to a decree in his favour with costs.

AND IN LIKE MANNER, ***when any plaintiff shall bring his action****,*

or any third party shall intervene in any action

for the purpose of

being quieted in his possession *of land or other immovable property, or*

to prevent encroachment *or usurpation thereof, or*

to establish his claim in any other manner *to such land or other property,*

proof of such undisturbed or uninterrupted possession *as herein before explained,* ***by such plaintiff*** *or intervenient, or by those under whom he claims,*

shall entitle such plaintiff or intervenient

to a decree in his favour with costs:

Provided that the said period of ten years shall only begin to run against parties claiming estates in remainder or reversion from the time when the parties so claiming acquired a right of possession to the property in dispute."

(42) Having considered what is meant by adverse possession, Samayawardhena, J held in **Dewrage Punchihamy and another v Kalappu Arichchi Liyanage Somawathie** [SC Appeal No. 132/2018; SC Minutes of 05th March 2025] that:

"*Simply stated,* ***adverse possession is possession in a manner incompatible with the title of the true owner****. The parenthetical clause of section 3 of the Prescription Ordinance provides a statutory definition of adverse possession: "that is to say, a possession unaccompanied by payment of rent or produce, or*

performance of service or duty, or by any other act by the possessor, from which an acknowledgment of a right existing in another person would fairly and naturally be inferred." Violence is not a requirement under this definition. The Privy Council in Cadija Umma v. Don Manis Appu (1938) 40 NLR 392 at 396 observed that although "the clause is no mere illustration, it is not so completely successful an attempt to achieve the full and self-contained definition as might be wished.

However, in Nonis v. Peththa (1969) 73 NLR 1 at 3, the Privy Council stated that it constitutes a complete definition, rather than merely an illustration. Whether or not it is a complete definition, this definition underscores that ***for possession to be adverse, it must be exclusive, continuous and exercised as of right, without any recognition of the ownership of another****."* [emphasis added]

Entitlement of a plaintiff under Section 3

(43) A literal reading of Section 3 indicates that the following two situations are encompassed within it:

(a) A defendant who establishes an undisturbed and uninterrupted possession (a) of land or immovable property, (b) by a title adverse to or independent of that of the plaintiff (c) for ten years previous to the action, shall be entitled to a decree provided by Section 3 in his/her favour.

(b) **In like manner to the situation of a defendant**, when a plaintiff brings an action in respect of a land for the purpose of being quieted in possession of such land or to prevent encroachment or usurpation or to establish his claim in any other manner to such land, proof of undisturbed and uninterrupted possession which such plaintiff has had for ten years previous to the bringing of such action 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, shall entitle such plaintiff to a decree provided under Section 3 in his/her favour.

(44) In **Terunnanse v Menike** [(1895) 1 NLR 200], one of the earliest cases to have considered the scope and extent of Section 3, Withers, J stated that, "*If a plaintiff solicits the decree provided for by that section, he must prove that he has had adverse and uninterrupted possession of the immovable property for ten years previous to the bringing of the action; and if a defendant solicits such a decree, he must prove that he has had a similar possession of the immovable property*."

(45) Moncreiff, J held in **Banda v Banda** [(1900) 4 NLR 302] that a plaintiff referred to in Section 3 can fall into either of the following classes: (a) those who wish to be quieted in possession; or (b) those who wish to prevent usurpation and encroachment; or (c) those who wish to establish their claims in any other manner.

(46) In **Dabare v Martelis Appu** [5 NLR 210] Browne, A. J, held as follows in this regard:

> *"A question has been raised as to the meaning of the term " such land or other property, " and I think it is suggested" that " such " must mean " of which he is in possession. " The grounds for such contention would appear to be these:*
>
> *(1) The section commences with the re-enactment of the right of a defendant in respect of a possession which presumably he would be still enjoying. Then, when it proceeds to legislate for the case of a plaintiff, it does so not in a separate section but in the same, and with an additional linking of the one remedy to the other by the words "and in like manner".*
>
> *(2) When it proceeds to enumerate instances in which plaintiff may utilize for legal claims the benefit of past possession, it mentions first, "for the purpose of being quieted in "his possession of lands or other immovable property (which in effect regards him to be in possession and wanting only to be "quieted therein) to prevent encroachment or usurpation thereof" or recover damages therefor" (still suggestive of his holding possession, though with some actual or threatened disturbance of enjoyment), and then adds, possibly ejusdem generis, "or to establish his claim in any other manner to such land. …*" [pages 215-216]
>
> "*… we must hold the law to be that, when a person has once held adverse, &c., possession of a land for fully ten years, and in any way loses possession of it, he has acquired a title by such possession which he can vindicate at any time therefore against anyone who cannot by grant, deed, or like possession in a period*

later than his, establish in his defence a title superior to that of the plaintiff." [page 217]

(47) It would thus be seen that Section 3 is available not only to a defendant but extends to a plaintiff as well in the circumstances strictly envisaged by Section 3. It was therefore open for the Plaintiffs to have relied on the prescriptive title that they had acquired by undisturbed and uninterrupted possession since 1954 and adverse to the title of Jayamanne when confronted with the position taken up by the Defendant.

Is prescriptive title pleaded only to buttress paper title?

(48) The High Court does not dispute or challenge the entitlement of a plaintiff provided under Section 3, but goes on to state that in a *rei vindicatio* action, a party having paper title cannot claim title by prescription, as well, since to do so would be to go against his/her own paper title.

(49) Adopting a somewhat contradictory position, the High Court thereafter concedes that a plaintiff in a *rei* vindicatio action can plead prescriptive title but then limits it to a mere buttressing of the paper title enjoyed by such plaintiff.

(50) In **Appuhamy v Goonatilleke** [(1915) 18 NLR 469; at 471], De Sampayo, J held that:

"Prescription is a mode of acquisition independent of any documentary title which the possessor may at the same time have, and although the one may be defeated by the operation of the Registration Ordinance, the other remains unaffected. At the argument I referred to the class of cases in which it has been held that, although the issue of a Fiscal's transfer divests the execution-debtor's title as from the date of sale, that result does not defeat the new and independent title which the execution debtor may have acquired by adverse possession since the sale. See Sidambaram v. Punchi Banda [1912 16 NLR 805]. The same considerations appear to me to apply much more strongly to such a case as the present, where there is no question of relation back."

(51) Similarly, Browne, A. J, speaking with an experience of nearly thirty years at the Bar and on the Bench, said that he had always understood that ten years' adverse possession gave a title which was capable of being vindicated like any other title to land. He went on to state in **Banda v Banda** [supra; at 306-307] as follows:

"The remedy that section 3 gave to a plaintiff who had held over ten years' possession was one of a larger purpose than to be merely reinstated in possession. In my judgment it was the power to vindicate the title which (as till the doubts expressed in or arising out of the decisions in 8 S. C. C. and 4 N. L. R.), I, for nearly thirty years, have always understood could be acquired by such undisturbed possession. … I would therefore hold it was open to plaintiffs to plead and prove, as they did, that their vendor had at any time previous to her sale to them and to the institution of this action adverse, &c, possession as under section 3, and that having proved the same the title is in them like title adverse to that vendor, or title deduced aliter from her not having been proved by defendant, nor that any title she so acquired accrued to the benefit of any creditors of her insolvent estate under section 71 of Ordinance No. 7 of 1853, and that judgment be entered for plaintiffs accordingly with costs."

(52) The legality of the conclusion arrived by the High Court in this appeal was considered by this Court in **Meezan Estates (Private) Limited v Ahmed Faisal** [SC Appeal No. 93/2015; SC Minutes of 31st May 2021]. In that case, it was argued on behalf of the plaintiffs that the land in the second schedule to the plaint is a portion of the land in the first schedule to the plaint and that the plaintiff is entitled to the said land **on the strength of the deeds referred to in the plaint and by prescription**, and that the defendant was in forcible occupation disputing its entitlement.

(53) Having first clarified that the action is a *rei vindicatio* action, Amarasekara, J responded to the first question of law raised in that case, that being whether a party is entitled to plead legal or paper title and prescriptive title together in the same action and whether Section 3 contemplates a situation where a person claims prescriptive title against his own paper title, in the following manner:

"The 1st question of law queries whether the statement made by the learned High Court Judges that ***"a party is not entitled to plead legal or paper title and prescriptive title together in the same action"*** *is an accurate statement of law;* ***This court also observes a misstatement of law here. A person who has paper title possesses the land as the owner and in a manner adverse to others without accepting anyone else as the owner, there cannot be any obstacle for him to***

plead prescriptive title coupled with the paper title. Even if his paper title fails for some reason such as technical or defect in the title, if he has possessed the property as the owner against others without accepting anyone else as the owner for 10 years or more*, he may be successful in his claim on prescriptive title.*

Further, it is also queried whether the statement of the learned High Court Judges which connote that as per section 3 of the Prescription Ordinance that one cannot plead prescriptive title against one's own legal or paper title is an accurate statement of law. It is pertinent to note that, said section 3 does not contemplate a situation where a person claims prescriptive title against his own paper title. ***It contemplates where a defendant claim prescription on a title adverse to the plaintiff or a claimant*** *and* ***in the like manner*** *a* ***plaintiff*** *or an intervenient party* ***claims on a title adverse to the others****.*

In fact, if one has paper title, his possession relates (to) that title and it can be an adverse possession against others but not against his own paper title. On the other hand, if one has paper title, he need not plead prescription against his own title. In the case at hand, plaintiff has not ***pleaded prescription against its own title but has pleaded it coupled with paper title against the defendant****.*

Thus, making the said statement it appears that the learned High Court Judges have misunderstood the pleading of the plaintiff. … Thus, the answer to the 1st question of law is "yes there seems to be a statement which is inaccurate and a statement made without proper understanding of the pleadings …." [emphasis added]

(54) Incidentally, the judgment of the High Court impugned in this appeal as well as in **Meezan Estates** was delivered by the same learned High Court Judge.

(55) What is important in this appeal is that even though the paper title was encumbered by way of the Conditional Transfer, the Plaintiffs possessed the land as the owner and in a manner adverse to others including Jayamanne and Mohideen, without accepting anyone else as the owner. Therefore, once the Defendant claimed that he had paper title by virtue of D14, the Plaintiffs could resort to Section 3 and claim on a title adverse to or independent to that of the Defendant. In doing so, the Plaintiffs are not claiming prescriptive title against their own title but are claiming prescriptive

title against the title of the Defendant. Thus, it would not be a contradictory position before the law for a person to plead prescriptive title together with the paper title.

(56) The above discussion allows me to conclude as follows:

(a) Prescriptive title is an illegality made legal in consideration of the reasons explained above.

(b) Once made legal, it is a title independent of any documentary title and can be vindicated against anyone challenging such title.

(c) The High Court erred when it held that a prescriptive title is limited to a mere buttressing of the paper title enjoyed by a plaintiff in a *rei vindicatio* action.

(d) The High Court erred by holding that a party having paper title cannot claim title by prescription since to do so would be to claim prescriptive title against his own paper title.

Conclusion

(57) In the above circumstances, I answer the aforementioned questions of law set out in Paragraph 25 (a), (c), (d) and (e) in the affirmative. The judgment of the High Court is set aside and the judgment of the District Court is affirmed. This appeal is accordingly allowed, without costs.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J

I agree.

JUDGE OF THE SUPREME COURT