

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

Nambukara Gamage Sriyalatha,
Galagama-East, Nakulugamuwa.
Plaintiff-Respondent-Appellant

- 1A. Maravila Hewage Chandra
Srimathi,
'Damsiri',
Galagama-East, Nakulugamuwa.
2. Nambukara Gamage
Pushpakumai,
Galagama-East, Nakulugamuwa.
1A and 2nd Defendant-
Respondent-Appellants

SC/APPEAL/7/2020
SP/HCCA/TA/17/2016/F
TANGALLE 3567/P

Vs.

4. Kankani Gamage Kusumawathie,
(deceased)
Mulanahena, Galagama-East,
Nakulugamuwa.
- 4A. Kusumalatha Viviyana Gohagodage,
No. 383/A, Mulanahena,
Galagama-East, Nakulugamuwa.
- 3A. Hewa Kalukapuge Ravindra,
Galalindahena,
Galagama-East, Nakulugamuwa.
4th and 3A Defendant-Respondent-
Respondents

Before: Mahinda Samayawardhena, J.
Dr. Sobhitha Rajakaruna, J.
Sampath K.B. Wijeratne, J.

Counsel: Rohan Sahabandu, P.C., with Chaturika Elvitigala for the
Plaintiff-Respondent-Appellant.
W. Dayaratne, P.C., with Rajika Jayawardena for the 4th
Defendant-Appellant-Respondent.

Argued on: 28.04.2026

Decided on: 30.04.2026

Samayawardhena, J.

The Plaintiff instituted this action in the District Court of Tangalle, naming two defendants, seeking to partition the land described in the second paragraph of the plaint (Lot 56 of F.V.P. 301) among the Plaintiff and the 1st and 2nd Defendants. The 3rd Defendant was later added as a party.

A commission was issued to the Surveyor General to prepare the Preliminary Plan. This Plan dated 16.08.2006, marked X, appears at page 306 of the brief, and the Tenement List marked X2 at pages 307–308. The Surveyor’s report dated 27.07.2006 is found at pages 302–305. According to that report, the Surveyor requested the 4th Defendant to intervene in the action, the reason for which will be explained later.

According to the Preliminary Plan, there are five lots, namely Lots A to E. At the trial, Lots A and B were excluded, and the corpus was confined to Lots C, D and E.

After trial, by judgment dated 21.03.2016, the District Judge ordered partition of Lots C, D and E among the Plaintiff and the 1st and 2nd Defendants. The District Judge also excluded part of the building in Lot

C and a 20-foot-wide strip of land appurtenant thereto in favour of the 3rd Defendant.

Being dissatisfied with that judgment, only the 4th Defendant appealed to the High Court of Civil Appeal of Tangalle. By judgment dated 14.11.2018, the High Court set aside the judgment of the District Court and held that the 3rd Defendant had acquired prescriptive title to Lot C and that the 4th Defendant possessed Lots D and E as land distinct from the subject matter of the action. In short, the Plaintiff's action was dismissed.

This Court granted leave to appeal against the judgment of the High Court on the following questions of law:

- (a) Did the High Court err in law in holding that the 4th defendant has prescribed to lots D and E?
- (b) Did the High Court err in law in holding that the 3rd defendant has prescribed to lots C?

There is no doubt that the High Court erred both in law and in fact in holding that the 3rd Defendant had prescribed to Lot C. No such claim was made by the 3rd Defendant before the High Court. I therefore answer question (b) in the affirmative and set aside that finding.

I now turn to the claim of the 4th Defendant. The justifiability of that claim is amply demonstrated by the Surveyor's report attached to the Preliminary Plan. The Surveyor states that the parties to the action (the Plaintiff and the 1st to 3rd Defendants at that time) identified only Lots A, B and C as the land to be partitioned. However, upon superimposition of Lot 56 of F.V.P. 301, the Surveyor identified Lots D and E as forming part of that land. The parties informed the Surveyor that they had never possessed Lots D and E. In short, they had no claim over Lots D and E.

The Surveyor observed that there is a dwelling house and an old plantation in Lot D, and identified the 4th Defendant as being in

possession of that lot. The tomb of the husband of the 4th Defendant is also in Lot D. According to the Tenement List, the plantation in Lot D includes 78 coconut trees aged 50–60 years and 5 jak trees aged 50–100 years. Lot D is clearly separated from the rest of the land by a live fence. This clearly establishes that the Plaintiff and the 1st to 3rd Defendants have not had possession of Lots D and E for several decades. It was in these circumstances that the Surveyor requested the 4th Defendant to intervene in the action.

There is no doubt that the 4th Defendant has prescribed to Lots D and E by a title adverse to or independent of that of the Plaintiff and the 1st to 3rd Defendants as required by section 3 of the Prescription Ordinance. The Plaintiff and the 1st to 3rd Defendants asserted no claim to those lots, except by reason of the Surveyor's superimposition.

At the argument, learned President's Counsel for the Plaintiff did not accept that the 4th Defendant had acquired prescriptive rights to Lots D and E, solely on the basis that the 4th Defendant had sought the exclusion of Lots D and E as forming part of a different land, namely Mukalahena, and not as a portion of the land sought to be partitioned, namely Gallindagawahena. The crux of the matter is whether the 4th Defendant has possessed Lots D and E as a separate land and thereby acquired prescriptive title to them, and not whether those lots are known as Mukalahena or Gallindagawahena.

The District Judge has misdirected himself on the facts in holding that the 4th Defendant is a co-owner and that she failed to establish ouster. The 4th Defendant is not a co-owner and does not derive title from the Plaintiff's pedigree. Had she been a co-owner, the District Judge ought to have allotted her an undivided share. No such share was allotted. The finding of the District Court is therefore manifestly erroneous.

Although the High Court has not given reasons for its finding that the 4th Defendant possessed Lots D and E as a separate land, that conclusion

is correct on the evidence. Accordingly, I answer question (a) in the negative.

In the result, the District Judge shall confine the corpus to Lot C of Plan X (excluding the part of the building and the appurtenant land as stated in the District Court judgment). Lots D and E shall be excluded from the corpus in favour of the 4th Defendant. The remaining findings of the judgment of the District Court shall stand. The appeal is partly allowed.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Sampath Wijeratne, J.

I agree.

Judge of the Supreme Court