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

Ipitakaduwa Gamage Sarath,
"Ruwan", Wewahamanduwa,
Mathara.
Substituted Plaintiff-Appellant-Appellant

SC/APPEAL/07/2021
SP/HCCA/MA/03/2018(F)
DC MATHARA 11792/L

Vs.

1. Hellakala Gamage Siril,
   Adikaramwatte,
   Wewahamanduwa,
   Mathara.
2. Hellakala Gamage Sugathadasa,
   Adikaramwatte,
   Wewahamanduwa,
   Mathara. (Deceased)

2a. Rupaningal Lalani Indrani,
Adikaramwatte,
Wewahamanduwa, Mathara.

2b. Hellakala Gamage Cyril,
Edirisooriyage Hena,
Wewahamanduwa, Mathara.
Substituted 2nd Defendant-Respondent-Respondents

3. Talpe Merenchige Lalith De Silva, Walgama, Matara.
   Defendant-Respondent-Respondents

Before: Mahinda Samayawardhena, J.
Sampath K.B. Wijeratne, J.
K.M.G.H. Kulatunga, J.

Counsel: Janaka Prathapasinghe for the Plaintiff-Appellant-Appellant.
Rushdhie Habeeb with K.U.S. Dissanayake for the 1st and 2nd Defendant-Respondent-Respondents.

Written submissions:
by the Plaintiff-Appellant-Appellant on 19.07.2021.
by the 1st and 2nd Defendant-Respondent-Respondents on 20.05.2021.

Argued on: 05.03.2026

Decided on: 17.03.2026

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Matara in 2009 against three defendants seeking, *inter alia*, a declaration of title to the land described in paragraph 2 of the plaint (being Lot 4 of the final partition plan marked P1 at the trial), the ejectment of the defendants therefrom, the permission to erect a wall on the northern boundary of her land, damages and costs.

The case was fixed for *ex parte* trial against the 1st and 3rd defendants. The 2nd defendant is said to be the owner of Lot 3 of the said plan, which lies immediately to the north of Lot 4.

The 2nd defendant filed answer admitting that he is in possession of Lot 3. He also asserted that he had acquired title to Lot 4 by prescriptive possession. On that basis, he sought dismissal of the plaintiff's action.

At the trial, a surveyor and the plaintiff gave evidence, and on behalf of the plaintiff documents P1–P15 were marked. None of them were marked

subject to proof at the time of marking them in evidence or when the plaintiff closed her case reading them in evidence. The 2nd defendant neither gave evidence nor called any witness to establish his prescriptive claim over Lot 4.

At the hearing before this Court, learned counsel for the 2nd defendant candidly admitted that the 2nd defendant has no claim over Lot 4, as he had failed to establish prescriptive title to that Lot. He further accepted that no evidence had been led in support of the plea of prescription and that even the 2nd defendant himself had not given evidence.

However, quite strangely, the District Judge dismissed the plaintiff's action on a hypothetical ground. In the judgment, the District Judge states that he *observes* that the plaintiff had *abandoned* her principal reliefs for a declaration of title to Lot 4 and the ejectment of the defendants therefrom, and had confined herself only to the relief permitting her to erect a wall on the northern boundary separating Lots 3 and 4 (මෙම අවස්ථාව වන විට පැමිණිලිකාරිය සිය පැමිණිල්ලේ "අ" සහ "ආ" ජේද යටතේ ඉල්ලා ඇති සහන අතහැර දමා ඇති බව මා හට නිරීක්ෂණය වන අතර ඇය රැඳී සිටින්නේ "ඇ" යන්න සහනය මත බව පැහැදිලිව පෙනී යයි). The District Judge made these observations on assumptions drawn from certain answers given by the plaintiff during cross-examination under pressure. It is relevant to note that the plaintiff was a 75-year-old lady, brought up in a village environment, at the time she was giving evidence. She commenced giving evidence on 19.12.2013 and concluded her evidence only on 24.04.2017. This speaks volumes of the ordeal she had to undergo during this period. The evidence of a witness must be read contextually and as a whole. The Court cannot select isolated answers given during cross-examination and proceed to assume facts which the witness never intended.

The District Judge then proceeds to state that, since the northern boundary between Lots 3 and 4 had not been established by the plan marked P2, the plaintiff's action must fail.

Regrettably, the High Court of Civil Appeal of Matara, on appeal, affirmed this judgment.

A previous bench of this Court granted leave to appeal on the following questions of law:

(1) Did the District Court and the High Court completely misdirect themselves in interpreting the plaintiff's action as an action for definition of boundaries when in fact it was mainly an action for declaration of title?
(2) Did the District Court and the High Court fail to consider that the 2nd defendant set up the defence of prescriptive possession in respect of the property described in paragraph 2 of the plaint, namely Lot 4 of plan P1?

The following two questions of law were raised on behalf of the 2nd defendant:

(3) Has the plaintiff withdrawn her reliefs for declaration of title and ejectment, leaving the District Judge to consider only the boundary dispute as reflected in paragraph (c) of the prayer to the plaint?
(4) Has the plaintiff failed to comply with sections 41 and 46(2)(a) of the Civil Procedure Code so as to render the plaint liable to rejection *in limine*?

The plaintiff's entitlement to Lot 4 emanates from the final partition plan P1 prepared in 1956. The final decree of partition was not produced as it had decayed due to lapse of time, but Land Registry extracts relevant to the registration of the final decree of partition were marked P4. According to P4, Lot 4 had been allotted to Haththotuwa Gamage Don Gunasekera. By deed of transfer marked P6 he transferred the land to the mother of the plaintiff. After the demise of her mother (as evidenced by the death certificate marked P12) the land devolved upon her five children including the plaintiff (whose birth certificates were marked P7–P11). The

other siblings gifted their rights to the plaintiff by deed of gift marked P13. As I have already stated, none of these documents were marked subject to proof and the District Judge accepted the devolution of title of the plaintiff.

As I have held in several cases, including *Pinto v. Fernando* [2024/25] BLR 474, the standard of proof in a *rei vindicatio* action is that of a balance of probabilities, as in any other civil action. The expression "*strict proof of the plaintiff's title*" used in *Pathirana v. Jayasundara* (1955) 58 NLR 169 does not mean that the plaintiff in a *rei vindicatio* action is required to establish title beyond a reasonable doubt or to any high degree of proof. That expression was employed to distinguish the nature of proof required in a declaration of title action arising from a contractual relationship between the parties, such as that of lessor and lessee, from a *rei vindicatio* action proper which is founded upon ownership of the property. In a *rei vindicatio* action, the plaintiff is required to establish that he has "sufficient", "superior", or "better" title than that of the defendant. If such title is established on a balance of probabilities, the plaintiff is entitled to succeed. No rigid rule can be laid down as to the circumstances in which the Court should hold that the plaintiff has discharged this burden. The question whether the plaintiff has proved title must be determined upon a consideration of the totality of the evidence led in the case, including the evidence adduced by the defendant. The observation in *Wanigaratne v. Juwanis Appuhamy* (1962) 65 NLR 167 that "*the defendant in a rei vindicatio action need not prove anything, still less his own title*" should not be misconstrued as precluding the Court from taking into consideration the defendant's evidence or his claim when evaluating the evidence to come to a correct conclusion. A *rei vindicatio* action is not an action *in rem* but an action *in personam*. Accordingly, the decree entered in such an action binds only the parties and their privies.

The plaintiff in this case has established her title to Lot 4 even beyond the standard of proof expected of a plaintiff in a *rei vindicatio* action.

Above all, when the 2nd defendant now states that he has no claim over Lot 4, the plaintiff becomes entitled to judgment for declaration of title and ejectment.

Let me now briefly consider why the District Judge patently erred on the question of identification of the land. In the instant case, the plaintiff claimed title to Lot 4 of the final partition plan marked P1, while the 2nd defendant claimed prescriptive possession of that same Lot. The plaintiff also produced another plan marked P2, which had been prepared in connection with an attempt at settlement before the Mediation Board and which appears to have unnecessarily complicated matters. Plan P2 is wholly redundant when plan P1 is available. Plan P1 is more than sufficient to identify the land claimed by the plaintiff. There is no indispensable requirement in a *rei vindicatio* action that the plaintiff must obtain a commission to prepare a plan for the purposes of the case. Where a plan already exists identifying the land in dispute, there is no necessity to obtain a commission to superimpose that plan on a new plan unless there is a genuine dispute as to the identity of the corpus. How can there be a dispute as to the identification of Lot 4 when the 2nd defendant claims that he acquired Lot 4 by prescription?

Ultimately, the District Judge dismissed the plaintiff's action on the basis that plan P1 had not been properly superimposed on plan P2. That reasoning is wholly misplaced. The boundaries of Lot 4 are already clearly identified in the final partition plan marked P1, and there was therefore no necessity to superimpose P1 on any other plan for the purpose of identifying the corpus. The boundaries of Lot 4 in plan P1 can readily be demarcated on the ground with the assistance of a surveyor and thereafter the plaintiff can erect a wall or fence around Lot 4 as she pleases.

I answer the 1st and 2nd questions of law in the affirmative and the 3rd and 4th questions of law in the negative.

The judgment of the District Court and the judgment of the High Court affirming it are set aside. The District Judge is directed to enter judgment in favour of the plaintiff as prayed for in paragraphs (ඌ) and (ඌ) of the prayer to the plaint, namely the declaration of title to Lot 4 in plan P1 and the ejectment of the defendants therefrom.

The 2nd defendant shall pay taxed costs in all three Courts to the plaintiff.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court

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

Judge of the Supreme Court