

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

*In the matter of an Appeal in terms of Section 5(C) of  
the High Court of the Provinces (Special Provisions)  
Act No. 19 of 1990 as amended by Act No. 54 of 2006  
read with Article 128 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**SC/Appeal/ 84/2016**  
SC/HC/CA/LA/645/2014  
UVA/HCCA/BDL/74/2013(F)  
DC Badulla L/1627/11

D.M Seelawathi  
Kammal Watta,  
Meegahakiula.

**PLAINTIFF**

Vs.

D.M Wijesekara  
Wendesiyaya,  
Kalugahakandura.

**DEFENDANT**

**AND**

D.M Seelawathi  
Kammal Watta,  
Meegahakiula.

**PLAINTIFF-APPELLANT**

Vs.

D.M Wijesekara  
Wendesiyaya,  
Kalugahakandura.

**DEFENDANT-RESPONDENT**

**AND NOW BETWEEN**

D.M Wijesekara  
Wendesiyaya,  
Kalugahakandura.

**DEFENDANT-RESPONDENT-  
APPELLANT**

Vs.

D.M Seelawathi  
Kammal Watta,  
Meegahakiula.

**PLAINTIFF-APPELLANT -RESPONDENT**

**Before:** Yasantha Kodagoda PC., J.

Arjuna Obeyesekere J.

Dr. Sobhitha Rajakaruna J.

**Counsel:** Rohan Sahabandu, PC, with Chathurika Elvitigala, Sachini Senanayake and

Pubudu Weerasuriya for the Defendant-Respondent-Appellant.

Pubudu De Silva For the Plaintiff-Appellant-Respondent

**Written Submissions:** Defendant-Respondent-Appellant -13 July 2016, 16 November 2016,

22 September 2025

Plaintiff-Appellant-Respondent - 17 June 2016, 17 November 2016

18 September 2025

**Argued on:** 01 September 2025

**Decided on:** 27 March 2026

**Dr. Sobhitha Rajakaruna J.**

This Court granted leave to appeal on the following questions of law set out in paragraph 23 (b), 23(c) and 23(f) of the Petition dated 08 December 2014.

(b) Did the High Court of Civil Appeal err in law by admitting the informal mortgage marked 'P1' when it was not proved in terms of law?

(c) Did the High Court of Civil Appeal err in law by concluding that the Defendant had made a clear admission that he had come into the possession of the land in dispute on the strength of the informal usufructuary mortgage, whereas the Plaintiff's in her evidence admitted that said document had been signed by the son of the Defendant and not by the Defendant?

(f) Did the High Court of Civil Appeal err in law by relying on the document marked 'P1', which is not in conformity with section 2 of the Prevention of Fraud Ordinance?

The Plaintiff-Appellant-Respondent ('Plaintiff') initiated proceedings in the District Court of *Badulla* ('District Court'), seeking, inter alia, declarations that she is the rightful owner (title holder) of the subject paddy land and its long-standing possessor, along with an order ejecting the Defendant-Respondent-Appellant ('Defendant').

The Plaintiff, in her Complaint, averred inter alia that the Defendant obtained possession of the land in question pursuant to an informal usufructuary mortgage bond executed on 20 October 1994 (appears to be the document marked as 'P1' at page 47 of the Brief) for a sum of Rs. 15,000/-; that despite the Plaintiff's repeated requests to redeem the said mortgage, the Defendant unlawfully refused to honour those requests or to restore possession. The Plaintiff further pleaded that at an inquiry conducted before the Agrarian Development Officer, the Defendant agreed to deliver vacant possession of the land upon payment of Rs. 60,000/-, and however, at a subsequent inquiry before the Mediation Board, the Defendant refused to settle the dispute or abide by his earlier undertaking. Thus, the Plaintiff states that, as a direct consequence of the Defendant's wrongful withholding of possession and the aforesaid conduct, the Plaintiff has suffered loss and damage at the rate of Rs. 50,000/- per annum.

The Defendant, in his Answer dated 20 April 2012 (appearing at page 25 of the Brief), denied all and singular the several averments contained in the Plaint and pleaded inter alia that: the land more fully described in the schedule to the Plaint belongs to the 'Muthiyangana Raja Maha Viharaya'; on or about 1992, the Plaintiff's husband had relinquished possession of the land upon receiving a sum of Rs. 15,000/-; since 1992, the Defendant has been cultivating the land under an annual lease permit granted by the 'Muthiyangana Raja Maha Viharaya', by regularly paying lease rentals to the said Viharaya. Furthermore, the Defendant avers that at the inquiry held before the Agrarian Service Officer, no settlement was entered into, and in fact, he had not signed any document. He states that the document marked 'P1' is a fraudulent document and such purported informal mortgage bond has no force or avail in law; and since the land in dispute is *Sangika* property of the 'Muthiyangana Raja Maha Viharaya', the Plaintiff has named the chief priest of the said Viharaya as a party to the said action.

On 5 April 2013, the learned District Judge delivered the judgment dismissing the Plaintiffs action in its entirety. In its reasoning, the District Court held, inter alia, that the Plaintiff herself had admitted in her evidence that the land in question belonged to the 'Muthiyangana Raja Maha Viharaya', a fact corroborated by the testimony of the Viharaya's representative given at the inquiry before the Agrarian Development Officer, thereby failing to establish her title to the property. The Court further found that the Plaintiff had not proved her possession of the land, nor had she demonstrated that she had advanced any money to the Defendant in exchange for possession. It was noted that the Plaintiff admitted the informal mortgage bond had been signed not by the Defendant but by his son. Moreover, the District Court observed that Document 'V1' clearly showed that the Defendant had been paying lease rentals to the 'Muthiyangana Raja Maha Viharaya', thereby reinforcing the conclusion that the land was under the said Viharaya's authority.

Being aggrieved by the said judgement of the District Court, the Plaintiff preferred an appeal to the Provincial High Court of the Uva Province holden in *Badulla* ('High Court') by which the judgement of the District Court was set aside. The High Court delivered its judgment on 05 November 2014.

The District Court action was a *rei vindicatio* claim concerning an undisputed corpus of land. The Plaintiff asserted ownership of the land, claiming it was originally held by her grandmother, Heen Manika, and subsequently by herself through long and uninterrupted possession. However, the Plaintiff failed to produce a title deed or adduce evidence to establish the origin of her title. Notably, during her testimony on 3 September 2012, the Plaintiff conceded in the trial court that the paddy land in question belonged to the 'Muthiyangana Raja Maha Viharaya' in *Badulla* and further admitted that her grandmother had cultivated it as a tenant, with her own occupation deriving from the rights held by her grandmother and father.

The aforementioned letter dated 20 October 1994, marked 'P1' and signed by one Wijesekara, purportedly indicated that the paddy land, allegedly belonging to the Plaintiff, would be returned even after 50 years. The Plaintiff acknowledged in evidence that 'P1' was signed not by the Defendant but by his son, and the document, which purported to be an unattested mortgage of an interest in the land, was challenged by the Defendant as fraudulent, void in law, and in violation of Section 2 of the Prevention of Frauds Ordinance. The Defendant maintained that he had been paying lease rentals to the Viharaya since 1994, refuting the Plaintiff's claim that he was her licensee. Instead, the Defendant contended that the land belonged to the Viharaya, asserting that he had paid Rs. 12,000 to the Plaintiff's husband to secure possession. Additionally, the Defendant questioned the Plaintiff's claim to title through inheritance, noting that she allegedly derived her title from her grandparents rather than her parents.

The Defendant strongly argues that the core principle consistently upheld across Sri Lankan case law in a *rei vindicatio* action (an action for declaration of title to immovable property and ejectment of a wrongful possessor) is that the burden of proof lies squarely on the Plaintiff to establish his or her title (dominium or ownership) to the corpus in dispute. The Plaintiff must succeed, if at all, on the strength of his own title and not on the weaknesses or deficiencies in the Defendant's case. This foundational rule has been reiterated in numerous authoritative decisions and the Defendant places his reliance on the Judgements in *De Silva vs Goonathilaka* (32 NLR 217), *Abeykoon Hamine vs Appu Hamy* (52 NLR 49), *Peiris vs Saunhamy* (54 NLR 207), *Muttusamy vs Seneviratne* (1946, 31 CLW 91), *Silva vs Hendrick Silva*

(1 NLR 13), *Ponnamah vs Weerasuriya* (11 NLR 217), *Fernando vs Appu Hamy* (23 NLR 476), *Silva vs Fernando* (15 NLR 499) (Privy Council), *Thalagune vs De Livera* ([1997] 1 SLR 253), *Ahamadulevve Kaddubawa vs Sanmugam* (54 NLR 467), *Palisena vs Perera* (56 NLR 407), *Jamaldeen Abdul Latheef vs Mansoor* ([2010] 2 SLR 333), *Jinawathei vs Emalin Perera* ([1986] 2 SLR 121 SC), *Wanigaratne vs Juwanis Appu Hamy* (65 NLR 167), *Luwis Singho vs Ponnamparuma* ([1996] 2 SLR 320), *Sirisena Navalage vs Wilfred Bandara Kalawana* (SC Ap 78/2010), *Wijethunga vs Thangaraja* ([1999] 1 SLR 53), and *Theivandran vs Chettiar* ([1986] 2 SLR 219 SC).

In essence, ownership forms the fundamental basis of the rei vindicatio action; without establishing clear title on a balance of probabilities, the claim must fail, irrespective of any shortcomings in the Defendant's position.

Based on the circumstances of this case, I take the view that the action instituted by the Plaintiff was fundamentally a rei vindicatio claim, in which the burden rests squarely upon the Plaintiff to establish her title to the corpus on a balance of probabilities. As consistently affirmed in authoritative Sri Lankan jurisprudence, the Plaintiff must succeed, if at all, on the strength of her own title and not upon any perceived weaknesses in the Defendant's position. The Plaintiff failed to adduce any title deed or substantive evidence tracing the origin of her alleged ownership. Critically, she herself admitted in evidence on 3 September 2012 that the paddy land belonged to the 'Muthiyangana Raja Maha Viharaya', that her grandmother cultivated it as a tenant, and that her occupation derived from tenancy rights held by her grandmother and father. This admission, corroborated by the Viharaya's representative, fatally undermined her claim to dominium.

The document 'P1' (dated 20 October 1994), purporting to be an informal usufructuary mortgage, was unattested and signed not by the Defendant but by his son. The Plaintiff relies on Section 116 of the Evidence Ordinance, contending that the Defendant is estopped from denying Plaintiff's title by virtue of the document marked 'P1', and that, consequently, any argument asserting that the land belongs to the 'Muthiyangana Raja Maha Viharaya' does not arise. It was correctly challenged by the Defendant as fraudulent and void under Section 2 of the Prevention of Frauds Ordinance, rendering it inadmissible and unenforceable to

establish any mortgage, possession thereunder, or right of redemption. Although the High Court appears to have rested its decision on the footing of a leave-and-licence relationship, I am unable to discern any legally enforceable contract or agreement between the Plaintiff and the Defendant that would sustain such a finding.

In light of the reasons above, I am of the view that the High Court erred in law by admitting and relying upon the document marked 'P1', and further erred in attributing an admission to the Defendant regarding possession pursuant to it. The District Court's findings that the Plaintiff failed to prove title, possession, or any advance of money to the Defendant, and that the Defendant's payments of lease rentals to the Viharaya confirmed the land's status as temple property, were amply supported by the evidence and free from legal error.

In these circumstances, the High Court manifestly erred in setting aside the District Court's judgment of 5 April 2013, which correctly dismissed the Plaintiff's action in its entirety. Having carefully considered the aforementioned questions of law on which leave to appeal was granted, I proceed to answer them in favour of the Defendant. Hence, I allow the appeal of the Defendant-Respondent-Appellant. The judgment of the High Court dated 5 November 2014 is set aside, and the judgment of the District Court is hereby affirmed. I order no costs.

**Judge of the Supreme Court**

**Yasantha Kodagoda PC., J.**

I agree.

**Judge of the Supreme Court**

**Arjuna Obeyesekere J.**

I agree.

**Judge of the Supreme Court**