

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

In the matter of an Appeal to the
Honourable Supreme Court after
grant of Special Leave to Appeal

M.J. Ahamed Azwar,
No. 51/35, Sri Vipulasena Mawatha,
Maradana, Colombo 10.

Plaintiff

SC Appeal No. 08/2015

SC (SPL) L.A. No 263/2013

CA 261/99 (F)

D.C. Colombo Case No. 16769/L

Vs.

1. Sunil Silva
2. Chandrani Silva,

Both of No 2812,
Havelock Road,
Colombo 05.
3. Shyamali Silva,

No. 471, Lake Road,
Boralesgamuwa.

Defendants

AND THEN BETWEEN

M.J. Ahamed Azwar,
No. 51/35, Sri Vipulasena Mawatha,
Maradana, Colombo 10.

Plaintiff-Appellant

Vs.

1. Sunil Silva
2. Chandrani Silva,
Both of No 2812,
Havelock Road,
Colombo 05.
3. Shyamali Silva,
No. 471, Lake Road,
Boralesgamuwa.

Defendants-Respondents

AND NOW BETWEEN

1. M.J. Ahamed Azwar
No. 51/35, Sri Vipulasena Mawatha,
Maradana, Colombo 10.
- 1(a) Fathima Mahiya Hussain,
- 1(b) Fathima Silmiya,
- 1(c) Ahamed Azwer Mohomed Azam,
- 1(d) Ahamed Infaz

All of: No 22/7, Elias Place,
Ketawalamulla,
Colombo 09.

**Substituted-Plaintiff-Appellant-
Appellants**

Vs

1. Sunil Silva

also known as Sunil de Silva,
No. 2812, Havelock Road,
Colombo 05

1(a). Chandrani Silva

also known as Chandrani de Silva,
No. 2812, Havelock Road,
Colombo 05.

1(b). Shyamali Silva,

also known as Shyamali de Silva,
No. 2812, Havelock Road,
Colombo 05.

Presently at:

No. 1586/5, Malabe Road,
Kottawa, Pannipitiya.

And also at:

No. 67, Rosemary Avenue,
Hounslow, Middlesex TW4 7JQ,
United Kingdom.

1(c). Lakmali Roshani de Silva,

No. 515, Havelock Road,
Wellawatta.

1(d). Atukoralalage Padmalatha,

No. 515, Havelock Road,
Pamankade, Wellawatta.

1(e). Kaluthota Hewage Hemapala,
No. 469, Wewa Road,
Boralesgamuwa.

1(f). Harsha Dananjaya,
No. 469, Wewa Road,
Boralesgamuwa.

1(g). Sriyani De Silva,
No. 281, Havelock Road,
Wellawatta, Colombo 06.

**Substituted-Defendant-Respondent-
Respondents**

(2). Chandrani Silva,
also known as Chandrani de
Silva,
No. 2812, Havelock Road,
Colombo 05.

(3). Shyamali Silva
also known as Shyamali de Silva,
No. 2812, Havelock Road,
Colombo 05.

Presently at:

No. 1586/5, Malabe Road,
Kottawa, Pannipitiya.

And also at:

No. 67, Rosemary Avenue,

Hounslow, Middlesex TW4 7JQ,
United Kingdom.

Defendant-Respondent-
Respondents

Before: Justice A.L. Shiran Gooneratne

Justice Achala Wengappuli

Justice Arjuna Obeyesekere

Counsel: Harsha Soza, PC with Niranjan Arulpragasam instructed by G.G. Arulpragasam for the Substituted Plaintiff-Appellant-Appellants.

Canishka G. Witharana with Sathmi Witharana instructed by Medha N. Gamage for the 1(a), 1(c), 1(f) & 1(g) Substituted Defendant-Respondent-Respondents and 2nd and 3rd Defendant-Respondent-Respondents.

Argued on: 03/03/2026

Decided on: 14/05/2026

A.L. Shiran Gooneratne J.

The Factual Background

By Plaint dated 13/07/1994, the Plaintiff-Appellant-Appellant (hereinafter referred to as the Plaintiff-Appellant) instituted action in case No. D.C. Colombo 16769/L against the Defendants-Respondents-Respondents (hereinafter referred to as the Defendant-Respondents), and sought a declaration of title to the premises more fully described in the schedule to the Plaint, ejectment of the Defendant-

Respondents, and damages until the Plaintiff obtains possession of the said premises in suit.

In paragraphs 2 and 3 of the Plaintiff, the Plaintiff sets out the devolution of title to the premises in suit. The Plaintiff-Appellant contends that S. M. Saleem died in 1975, leaving a Last Will bearing No. 21 dated 02/09/1971, which was duly admitted to probate in Testamentary Case No. 852/T in the District Court of Colombo. It is his position that, by virtue of the said Last Will and the probate, the property in suit was devised to S. M. Junaid. The Plaintiff-Appellant further relies on Deed No. 2336 marked P1, an Executor's Conveyance executed by Yoosuf Rabia Saleem as Executrix in favour of Samsudeen Mohamed Junaid, and the schedule to the deed describes Lot No. 1152 in Plan No. 2854 dated 21/01/1982, in extent five perches, with the premises bearing Assessment Nos. 281 and 283, Havelock Road.

It is further pleaded that, following the death of the said S. M. Junaid on 27/09/1992, his estate was administered through the testamentary action No. 32999/T. Subsequently, the Plaintiff has derived title to the premises in suit by Deed of Gift No. 173 dated 30/03/1994.

According to paragraph 5 of the Plaintiff, it is stated that one Stephen Silva, the father of the 1st and 2nd Defendants, was the original tenant of the premises in suit under the original owner, S. M. Saleem. Upon the death of the said Stephen Silva, his widow has succeeded to the tenancy. It is further stated that, notwithstanding her acknowledgment of S. M. Junaid as the lawful landlord of the premises in suit, she failed and/or neglected to pay rent to the said S. M. Junaid, and continued in occupation of the premises without lawful authority.

The Defendants-Respondents, by their joint answer dated 30/11/1994, inter alia, prayed for the dismissal of the Plaintiff's action and pleaded a claim in re-convention in the said answer, seeking a declaration that the Defendants are the owners of the premises in suit.

At the conclusion of the trial, the Additional District Judge, by Judgment dated 25/03/1999, dismissed both the action of the Plaintiff and the claim in re-convention of the Defendants.

Being aggrieved by the said judgment, the Plaintiff-Appellant preferred an appeal to the Court of Appeal by way of Petition of Appeal dated 14/05/1999. The Court of Appeal, having considered the submissions of learned Counsel for both parties, by its judgment dated 05/09/2013 *inter alia*, held that the Plaintiff-Appellant had failed to establish his title in the manner required in a *rei vindicatio* action. The Court further observed that the Defendant-Respondents had also failed to substantiate their claim of prescriptive title to the premises in suit, and the Appeal was dismissed.

The Plaintiff-Appellant, by Petition dated 15/10/2013, is before this Court to set aside the said Judgment dated 05/09/2013, delivered by the Court of Appeal.

By Order dated 21/01/2015, this Court granted leave to appeal. By order dated 06/09/2023, the questions of law were re-framed as follows;

1. Has the Court of Appeal erred in law by failing to appreciate that the Plaintiff-Appellant-Appellant has established his paper title to the corpus?
2. Whether the learned Judges of the Court of Appeal erred in law by holding that the Appellant failed to prove the title as pleaded in the plaint in terms of issue No. 01 raised at the District Court?

The Plaintiff-Appellant claimed entitlement to the land and premises described as Lot No. 1152 in Plan No. 2854 dated 21/01/1982, made by C. Loganathan, Licensed Surveyor, in extent five perches. It is to be noted that the identity of the *corpus* is not in dispute between the parties.

The first issue raised by the Plaintiff required the learned District Judge to determine whether the Plaintiff had established title to the *corpus* as described in the schedule to the Plaint, in terms of the averments contained in paragraphs 2 to

4. Therefore, it is manifest that the Plaintiff placed his title pleaded in the Plaint in issue to prove the same in accordance with the law.

The title as pleaded by the Plaintiff in those paragraphs are as follows.

1. Upon the death of S. M. Saleem on 01/07/1975, title to the property in suit devolved on S. M. Junaid by virtue of Last Will No. 21 dated 02/09/1971 and Executor's Conveyance No. 2336 dated 07/09/1982.
2. Upon the death of S. M. Junaid on 27/09/1992, his estate was said to have been administered through Testamentary Case No. 32999/T.
3. By Deed of Gift No. 173 dated 30/03/1994, the title of the property in suit has been conveyed to the Plaintiff.

The learned District Judge has observed that the Plaintiff has failed to establish the manner in which the original owner, S. M. Saleem acquired title to the property in question. The Court has further noted that neither the Last Will said to have been admitted to probate nor the order appointing Yoosuf Rabia Saleem as Executrix of the estate was produced in evidence. In the absence of such material evidence, the said Yoosuf Rabia Saleem's acquired right to execute the Executor's Conveyance bearing No. 2336 marked P1 remains unsubstantiated. The learned District Judge has also observed that the Plaintiff failed to establish the nexus between P1 and the Deed of Gift No. 173 marked P2, particularly how the donors under P2 acquired title to the property from S. M. Junaid so as to convey the same to the Plaintiff.

The learned trial Judge has also rejected the Defendants' plea of prescriptive title. It is noted that no appeal has been preferred against the said finding. Accordingly, that determination stands undisturbed and must be regarded as final and conclusive between the parties.

The Court of Appeal followed a similar line of reasoning. The Court held that, although documents marked P1 and P2 had gone into evidence without objection, the Plaintiff-Appellant had failed to place evidence in line with the title pleaded in

the plaint. The Court took the view that, in an action of this nature, the burden remained on the Plaintiff-Appellant to prove how he derived title to the premises in suit, and that he had failed to establish to the satisfaction of Court the manner in which S. M. Saleem acquired title to the property and how Usoof Rabia Saleem obtained authority to execute P1. The Court further held that the Defendant-Respondents had failed to establish their plea of prescriptive title. Accordingly, the appeal was dismissed.

Analysis

The learned President's Counsel for the Plaintiff-Appellant in his written submissions dated 10/03/2015, states that the fundamental error was that both courts overlooked the fact that S.M. Saleem's last will No. 21 has been duly proved in the District Court Colombo case No. 852/T without any challenge.

The position of the Plaintiff-Appellant is that the evidence of the witness Thabeeth was not challenged in cross-examination, and therefore, must be accepted and no further proof was required to establish that S. M. Saleem was the owner of the property in suit. In support of this contention, reliance is placed on ***Edrick de Silva v. Chandradasa de Silva (70 NLR 169 at 174)*** in which the Court held that where a party has led evidence sufficient in law to prove a material fact, and such evidence remains uncontradicted, that circumstance is a matter which the Court must take into account. The Court further observed that the failure to consider such uncontradicted evidence would amount to a misdirection in law. It is on that limited evidentiary principle that the Plaintiff-Appellant relies on the said authority. Accordingly, it is urged that Thabeeth's testimony regarding the title derived to the property by S. M. Saleem ought to be regarded as proved.

The Plaintiff-Appellant also contends that, once a Plaintiff in a *rei vindicatio* action has established the *facta probanda* necessary to prove his title, the burden shifts to the Defendant, and that a Defendant cannot succeed by remaining silent. The Plaintiff has relied on ***Leisa and another v Simon and another (2002) 1 S.L.R. 148*** where it was held that once the plaintiffs establish their documentary title,

their possession was presumed. They were not required to prove an additional prescriptive title. If the defendants wished to resist the claim, it was for them to prove that they had acquired an independent title by adverse possession.

This, however, arises only if the Plaintiff-Appellant first establishes his paper title to the property in suit. The principle stated in *Leisa and another v Simon and another* (*supra*) does not relieve a plaintiff in a *rei vindicatio* action of his initial burden to prove the title pleaded by him. It becomes relevant only after such title has been established or has become undisputed. Accordingly, before considering whether the Defendants were required to establish an independent right by adverse possession, it is necessary first to determine whether the Plaintiff-Appellant proved the original ownership of S. M. Saleem and the chain of devolution of title pleaded in the plaint.

In the circumstances, the Plaintiff-Appellant challenges both the District Court and the Court of Appeal Judgments on the basis that both courts erred in holding that the Plaintiff-Appellant has failed to prove the original ownership of S. M. Saleem and hence those findings should be set aside.

In an action *rei vindicatio*, it is well settled that the burden rests squarely upon the Plaintiff to establish the title pleaded and relied upon by him. The Plaintiff must succeed on the strength of his own title and not on the weakness or absence of the Defendant's claim. This principle is firmly entrenched in our law.

In *Dharmadasa v. Jayasena* (1997) 3 S.L.R. 327, G. P. S. De Silva C.J. observed that “the authorities unite in holding that the plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie”, citing *Macdonell C.J.* in *De Silva v. Goonetilake* (1931) 32 N.L.R. 217 at 219. His Lordship further noted that the principle was lucidly stated by Herat J. in *Wanigaratne v. Juwanis Appuhamy* (1964) 65 N.L.R. 167 in the following terms: “The defendant in a *rei vindicatio* action need not prove anything, still less, his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the

defendant's title is poor or not established. The plaintiff must prove and establish his title." His Lordship emphasized that in a *rei vindicatio* action the burden is on the plaintiff to establish the title pleaded and relied on by him.

In ***Sirinivasam Prasanth v. Nadaraja Devarajan SC Appeal 163/2019, SC minutes of 22.03.2021*** the Court emphasized that where the plaintiff's title is admitted or clearly established, the inquiry may shift to the nature of the defendant's possession when title is no longer in genuine dispute, the decisive question becomes whether the defendant can establish a legally recognized basis such as prescription to resist the plaintiff's claim. As explained before, ***Wanigaratne v. Juwanis Appuhamy (Supra)*** emphasized that in a *rei vindicatio* action, the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's case. The burden lies squarely on the plaintiff to prove dominium to the property claimed, and absence of such proof, the action must fail irrespective of deficiencies in the defendant's position. This is the established Roman-Dutch law principle governing vindicatory relief.

What is common to both cases is that the Plaintiff bears the initial burden of establishing title to the property in dispute. Such burden must be discharged either through an admission of title or by cogent proof establishing it to the satisfaction of Court.

It is therefore to that anterior question that this Court must first turn. If the Plaintiff-Appellant has failed to prove his own title in the manner required by law, the further contention that the Defendants did not prove an adverse or independent title cannot avail him.

The case for the Plaintiff was that the original owner of the property was S.M. Saleem, from whom the Plaintiff-Appellant claimed to have derived title as pleaded in the Plaint. I am unable to accept that submission. Even if the evidence of Thabeeth is taken at its strongest, the question still remains whether such evidence was sufficient in law to establish the original ownership of S. M. Saleem and the

complete chain of title pleaded by the Plaintiff-Appellant. It is therefore necessary to examine whether the material relied upon by the Plaintiff-Appellant was adequate to discharge that burden. Notably, the Plaintiff did not testify, and witness Thabeeth, who gave evidence on behalf of the Plaintiff, failed to adduce any evidence explaining how Saleem came to acquire title to the property. There was also no sufficient evidence establishing the link between P1 and P2, particularly how the donors under Deed of Gift No. 173 marked P2 derived title from S. M. Junaid so as to convey the property to the Plaintiff.

It is incumbent upon the Plaintiff, who asserts title, to discharge the burden of proof by adducing cogent and credible evidence. Such evidence must be of sufficient probative value to establish the claimed title clearly and unequivocally, to satisfy the Court on a balance of probabilities. Merely asserting that the Executor's Conveyance No. 2336, P1 passes title to S.M. Junaid based on the said Last Will No. 21 will not suffice.

In the absence of Last Will No. 21, the probate or other material from Testamentary Case No. 852/T, and any evidence regarding how Usoof Rabia Saleem obtained the right to execute the Executor's Conveyance No. 2336 marked P1, it was the Plaintiff's responsibility to clearly establish the first link in the pleaded chain of title from S. M. Saleem to S. M. Junaid. Further, although the Plaintiff pleaded that, upon the death of S. M. Junaid, his estate was administered through Testamentary Case No. 32999/T, no grant of administration, administrator's conveyance, or other material from that testamentary case was produced to establish how the five donors under Deed of Gift No. 173 marked P2 derived title from S. M. Junaid. This creates a clear break in the chain of title pleaded in paragraphs 2 to 4 of the Plaintiff. Consequently, the Plaintiff has failed to prove title in the manner in which it was pleaded and has failed to establish a complete and lawful chain of title to the premises in suit.

In the impugned Judgment dated 05/09/2013, having recognized the conclusions arrived at by the District Court that the appellant had failed to prove a valid title to the property to the satisfaction of the court, the Court of Appeal held thus:

“It is very clear that the appellant has failed to place evidence in line with the title pleaded in the Plaint, which is mandatory in an action of this nature. An important feature of the action rei vindicatio is that it has to necessarily fail if the Plaintiff cannot clearly establish his title”.

I have no reason to disagree with the said findings and proceed to answer both questions of law in the negative. The Judgment of the Court of Appeal is accordingly affirmed.

Appeal dismissed. I order no costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree

Judge of the Supreme Court