

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

In the matter of an application for Leave to Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006.

1. Wickrama Arachchige Dona Juliana,
Girathalana, Hettipola.
2. Karunanayake Mudiyanseelage
Buddhika Gayani Karunanayake,
Girathalana, Hettipola.

Supreme Court Case No.

PLAINTIFFS

SC/Appeal No. 94/2025

SC/HCCA/LA Case No. 52/2023

NWP/HCCA/KUR/

Case No. 32/2017F

D.C. Kuliypitiya

Vs.

Case No. 13850/P

1. Chandrasekara Wasala
Mudiyanseelage Somawathie
Chandrasekara,
Girathalana, Hettipola.
2. Chandrasekara Mudiyanseelage
Shanthi Manel Choolakanthi
Kumarihami,
No. 38/2, Negalla Road,
Dewalegama.

3. Chandrasekara Mudiyansele
Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.

4. Chandrasekara Mudiyansele
Ranjani Malkanthi Kumarihami,
Puttalam Road, Mahakeliya.

5. People's Bank, Hettipola.

Deceased

6. Wijesinghe Mudiyansele
Karunawathie Kumarihami,
Girathalana, Hettipola.

6A. Karunanayake Mudiyansele Tikiri
Banda Karunanayake,
Girathalana, Hettipola.

7. Chandrasekara Mudiyansele
Amitha Chandrakanthi
Kumarihami,
No. 226, Kubutiyawa, Nittabuwa.

8. Chandrasekara Mudiyansele
Deepa Nayanakanthi Kumarihami,
Weragala, Doralanda Watta,
Thalawathugoda.

9. Chandrasekara Mudiyansele
Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.

DEFENDANTS

AND

1. Chandrasekara Wasala
Mudiyanselage Somawathie
Chandrasekara,
Girathalana, Hettipola.
2. Chandrasekara Mudiyanselage
Shanthi Manel Choolakanthi
Kumarihami,
No. 38/2, Negalla Road,
Dewalegama.
3. Chandrasekara Mudiyanselage
Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.
4. Chandrasekara Mudiyanselage
Ranjani Malkanthi Kumarihami,
Puttalam Road, Mahakeliya.
7. Chandrasekara Mudiyanselage
Amitha Chandrakanthi
Kumarihami,
No. 226, Kubutiyawa, Nittabuwa.
8. Chandrasekara Mudiyanselage
Deepa Nayanakanthi Kumarihami,
Weragala, Doralanda Watta,
Thalawathugoda.
9. Chandrasekara Mudiyanselage
Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.

1st, 2nd, 3rd, 4th, 7th, 8th & 9th

DEFENDANTS-APPELLANTS

Vs.

1. Wickrama Arachchige Dona Juliana,
Girathalana, Hettipola.
2. Karunanayake Mudiyansele
Buddhika Gayani Karunanayake,
Girathalana, Hettipola.

PLAINTIFFS-RESPONDENTS

5. People's Bank, Hettipola.
- 6A. Karunanayake Mudiyansele Tikiri
Banda Karunanayake,
Girathalana, Hettipola.

**5th and 6A DEFENDANTS-
RESPONDENTS**

AND NOW BETWEEN

- 6A. Karunanayake Mudiyansele Tikiri
Banda Karunanayake,
Girathalana, Hettipola.

**6A DEFENDANT-
RESPONDENT-PETITIONER**

Vs.

1. Chandrasekara Wasala
Mudiyansele Somawathie
Chandrasekara,
Girathalana, Hettipola.
2. Chandrasekara Mudiyansele
Shanthi Manel Choolakanthi
Kumarihami,

No. 38/2, Negalla Road,
Dewalegama.

3. Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.
4. Chandrasekara Mudiyansele
Ranjani Malkanthi Kumarihami,
Puttalam Road, Mahakeliya.
7. Chandrasekara Mudiyansele
Amitha Chandrakanthi
Kumarihami,
No. 226, Kubutiyawa, Nittabuwa.
8. Chandrasekara Mudiyansele
Deepa Nayanakanthi Kumarihami,
Weragala, Doralanda Watta,
Thalawathugoda.
9. Chandrasekara Mudiyansele
Padma Swarnakanthi Kumarihami,
Girathalana, Hettipola.

**1ST, 2ND, 3RD, 4TH, 7TH, 8TH &
9TH DEFENDANTS-**
APPELLANTS-RESPONDENTS

People's Bank, Hettipola.

5TH DEFENDANT-
RESPONDENT-RESPONDENT

1. Wickrama Arachchige Dona Juliana,
Girathalana, Hettipola.

2. Karunanayake Mudiyansele
Buddhika Gayani Karunanayake,
Girathalana, Hettipola.

1ST & 2ND PLAINTIFFS-

RESPONDENTS-RESPONDENTS

BEFORE : **YASANTHA KODAGODA, P.C., J.**
 K. PRIYANTHA FERNANDO, J.
 K. M. G. H. KULATUNGA, J.

COUNSEL: M. C. Jayaratne, PC, with Dananjaya Jayasundara,
 Instructed by H. A. Nishani H. Hettiarachchi, for the
 6A Defendant-Respondent-Appellant.

Sapumal Bandara, with Vishmi Yapa Abeywardena,
instructed by Praveen Premathilaka, for the 2nd, 3rd, 4th, 7th
to the 9th Defendant-Appellant-Respondents.

Amarasiri Panditharathna for the Plaintiff-Respondent-
Respondents.

ARGUED ON: 22.01.2026

DECIDED ON: 26.03.2026

JUDGMENT

K. M. G. H. KULATUNGA, J.

1. The 1st and 2nd Plaintiffs-Respondents-Respondents (hereinafter referred to as “the plaintiffs”) instituted this partition action in the District Court of Kuliyaipitiya on 07.07.2003, originally with five defendants. They are the 1st, 2nd, 3rd, 4th, and 5th Defendant-Appellant-Respondents (hereinafter referred to as the respective “defendant”). This action was instituted to partition the land called “*Pigan Katugalagawa*

Hena”, morefully described in the schedule to the plaint, in extent 2 acres, 1 rood, and 20 perches. The plaintiffs initially prayed for the allotment of a 3/8 share to the 1st plaintiff and a 1/8 share to the 2nd plaintiff. The 6th defendant subsequently moved to be added as a party by motion dated 20.04.2004. The 6th defendant, upon being added, filed her statement of claim and moved that she be allotted an undivided half share of the corpus based on her title deed bearing No. 927, dated 14.03.1964, attested by Milton Sumanaratne, Notary Public. Subsequently the 7th and 8th defendants also intervened and tendered their statements of claim. The 1st, 3rd, and 4th defendants tendered a joint statement of claim and denied the pedigree set out by the plaintiffs and pleaded relief and claimed that they be allotted their entitled shares. In the alternative, these defendants claimed prescriptive title to the Lots No. 1, 3, 4, 5, and 6 of the preliminary plan bearing No. 936 marked “X”, and sought the exclusion of the said Lots 1, 3, 4, 5, and 6.

2. After trial, the learned District Judge of Kuliypitiya, by her judgment dated 06.12.2016, allotted an undivided 3/8 share to the 1st plaintiff, an undivided 1/8 share to the 2nd plaintiff, and an undivided 4/8 share to the 6th defendant. The claims of the other defendants were rejected. Being aggrieved by the said judgment, the 1st, 2nd, 3rd, 4th, 7th, 8th, and 9th defendants appealed to the Provincial High Court of the North Western Province holden in Kurunegala. The Provincial High Court by its judgment dated 15.12.2022, allowed the appeal of the appellants and granted prayers ‘අ’ and ‘අූ’ of the petition of appeal. The relief prayed for by prayers ‘අ’ and ‘අූ’ of the petition of appeal are:

අ. to set aside the judgment dated 06.12.2016 and the interlocutory decree; and

අූ. to grant the relief sought by the 1st – 4th and 7th – 9th defendants in their respective statements of claim.

3. The relief sought by the statements of claim, *inter alia*, are, to dismiss the plaintiff’s action; to determine the defendants’ entitlement and allot

the same; or in the alternative, exclude Lots No. 1, 3, 4, 5, and 6, depicted in Plan No. 936, from the action. The effect of the blanket granting of relief by the High Court was to set aside the judgment of the Additional District Judge of the District Court of Kuliyaipitiya and also the dismissal of the plaintiffs' action.

4. Being aggrieved by this judgment of the High Court, the 6A Defendant-Respondent-Appellant (hereinafter referred to as "the 6A defendant") preferred an application for leave to appeal to this court, and leave was granted on the following question of law:

"Did the learned Hon. Provincial High Court Judges err in law and in fact by holding that the 1st, 2nd, 3rd, 4th, 7th, 8th, and 9th Defendants-Appellants-Respondents have possessed lots of land depicted in plan 4V2 as independent occupiers from 1980, and thereby they acquired prescriptive title?"

5. The corpus was identified by the trial judge (at page 3 of the judgment) as being Lots 1, 3, 4, 5, 6, 7, and 8 of the preliminary plan No. 936 marked "X". The identity of the corpus is based on the preliminary plan bearing No. 936 prepared by Licensed Surveyor J. Rajapaksha, dated 08.12.2003, and the evidence of the plaintiff.
6. The 1st – 4th and 7th – 9th defendants were in possession of Lots No. 1, 2, and 3, of the land depicted in plan marked 4V2 bearing No. 520 (at page 620 of the brief), which is not in dispute. Plan No. 520, had been superimposed on the Commission Plan No. 936 (at page 539 of the brief). Lots 1, 2, and 3 of plan No. 520 correspond to Lots No. 1, 3, 4, 5, and 6 of Plan No. 936. The 1st - 4th defendants, based on the said amicable partition plan and deed of partition bearing No. 77 dated 26.09.1980, has allocated Lot No. 1 to the 2nd defendant, Lot No. 2 to the 3rd defendant, and Lot No. 3 to the 4th defendant, depicted in plan No. 520. It is also common ground that the 2nd – 4th defendants are in possession of the said portions of land, and the 3rd defendant has also constructed her dwelling house in Lot No. 2.

7. The said defendants are claiming that they have acquired prescriptive title to the said lots and pray that the same be excluded. The Provincial High Court, allowing the appeal, found that the said defendants have acquired prescriptive title and held that the said Lots 1, 3, 4, 5 and 6 be excluded.
8. The learned trial judge, in the judgment dated 06.12.2016, held that the 1st – 4th defendants failed to establish their title and thereby failed to establish that they were co-owners. The failure to prove this fact was due to a predecessor in title Dingiri Manika, not being entitled to parental inheritance from her father, Appuhamy Korale, the original owner, as she contracted a marriage in *Diga*. They being persons subject to Kandyan law, it was found that a female contracting a *Diga* marriage is not entitled to intestate parental inheritance. This pronouncement and finding is not in issue in this appeal.
9. The Provincial High Court, in its judgment dated 15.12.2022, considered the correctness of this finding and observed that the 1st – 4th defendants did fail to establish their title and thereby were not successful in proving their title and entitlement to the land sought to be partitioned. It was thus found that they are not co-owners but are strangers, so to say. It is in evidence that for almost 30 years, the said defendants were in possession of defined and demarcated Lots No. 1, 2, and 3 depicted in plan 520 marked 4V2. Thus, the High Court found that they had clearly established adverse, independent, and undisturbed possession of over 10 years, and that the evidence successfully established prescriptive possession and acquisition of title. Considered in the context and content of the question law on which leave was granted, the only legal issue for consideration is whether the 1st - 4th and 7th – 9th defendants had prescriptive possession as *independent occupiers from 1980* to Lots 1, 3, 4, 5, and 6 of the preliminary plan marked “X”.
10. The 6A defendant, impugning the judgment, submitted that the Provincial High Court Judges erred in law by deciding that the 1st, 2nd,

3rd, 4th, 7th, 8th, and 9th Defendants-Appellants-Respondents abovenamed have possessed lots of land depicted in Plan 4V2 (452) as independent occupiers from 1980, and thereby they acquired prescriptive title contrary to the dictum enunciated in the case of ***Maria Fernando and Another v. Anthony Fernando*** [1997] 2 SLR, at pages 356-364. Then it is also submitted that The High Court Judges did not consider the fact that the said 1st, 2nd, 3rd, 4th, 7th, 8th, and 9th Defendants-Appellants-Respondents abovenamed did not have the intention to acquire (*animus possidendi*) title in respect of the land in question so as to claim a prescriptive title, because they have claimed their rights relying on their respective undivided shares.

11. The argument advanced on behalf of the 6A defendant is that the 1st – 4th defendants have not established any overt act to prove the point at which the possession *qua* co-owner shifted to adverse possession. It is argued that their possession continued as co-owners. The written submission makes reference to several judgments where it was opined that one co-owner's possession, in law, is also the possession of the other co-owners and that it is not possible for such a co-owner to put an end to that presumed possession by a secret intention in his mind except with some overt act demonstrating something equivalent to ouster [***Ranasinghe v. Premadharm*** (1985) 1 Sri LR 3, ***Maria Fernando and Another v. Antony Fernando*** (1997) 2 Sri LR 356].

12. The following decisions hold that prescriptive rights between co-owners are governed by a strong legal presumption that possession of one is also the possession of all. To displace this presumption, a co-owner is required to prove 'ouster,' a clear, overt act that manifests and communicates a denial of the other co-owners' rights. The law thus distinguishes between mere exclusive possession and adverse possession, especially within a family context where possession is often viewed as permissive rather than hostile.

13. In ***Maria Fernando and Another v. Anthony Fernando*** (supra), the Court of Appeal reaffirmed that law presumes that every co-owner possesses property on behalf of the entire group, stating that “*the possession of one co-owner could not be held as adverse to that of the other co-owner.*” The court emphasised that a co-owner cannot terminate this shared possession through a hidden motive as follows:

“It is not possible for one co-owner to put an end to such possession by any secret intention in his mind. It is only ‘ouster’ or something equivalent to ‘ouster’ which could bring about that result.”

Furthermore, the judgment confirms that an “*overt act is considered necessary to prove ouster since any secret intention to prescribe may not amount to ouster.*” Consequently, usual acts such as long possession, paying rates, or building a house may be insufficient to establish prescription between co-owners unless there be a clear act of ouster.

14. The case of ***G. Simon Perera v. D. J. Jayatunga and others***, 71 NLR 338, approaches the said issue as a “question of fact” and then opines that while the presumption against adverse possession is strong, it can be rebutted depending on the specific circumstances of the case. The court observed that,

“...where a co-owner seeks to establish prescriptive title against another co-owner by reason of long and continued possession it is a question of fact depending on each case for a court to decide whether it is reasonable to presume an ouster.”

A significant finding in this case was that an informal partition arrangement can trigger the prescriptive period, as the court held that “*an amicable division among the co-owners can be the starting point of prescription although no cross conveyances or other document have been executed by them.*” In that instance, the construction of a permanent parapet wall and exclusive possession for 30 years following such a division were seen as circumstances from which “*ouster of the other co-owners from the divided lot can reasonably be inferred.*” Siva Supramaniam, J. opined as follows:

*“The question whether one of the co-owners has acquired prescriptive title to a divided lot is one of fact and has to be determined by the circumstances of each case. A reference to undivided shares in deeds executed after the date of the alleged division is not conclusive of the question (vide **Danton Obeyesekere v. Endoris (1962) 66 NLR 457**). An amicable division among the co-owners can be the starting point of prescription although no cross conveyances or other document have been executed by them.*

Unlike a fence, a parapet wall is of a permanent nature and the fact that Babynona and Haramanis constructed a parapet wall 144 feet in length (though not covering the entire length of the boundary) between their divided portion and the rest of the land and that they incorporated that divided portion with the eastern land of which they were owners and exclusively possessed the whole as one entity for nearly 30 years are circumstances from which ouster of the other co-owners from the divided lot can reasonably be inferred.”

15. Further, **N. Dinesha Marita Amarasekera v. M.T. Theobald Perera** [SC Appeal No. 117/2020, decided on 07.10.2022] highlights how social and familial relationships influence the interpretation of possession. The Supreme Court observed that,

“...possession which may be presumed to be adverse in the case of a stranger may not attract such a presumption, in the case of persons standing in certain social or legal relationships.”

In a family setting, the law often presumes possession is permissive;

“...where the property belongs to a family member, the presumption will be that it is ‘permissive possession’ which is not in denial of the title of the family member who is the true owner.”

To change this status, the claimant must perform an overt act to notify the owner of the change in the character of their possession. The Court concluded that “*secret intentions of greed or desire in one’s mind cannot put an end to the title of another co-owner,*” and that the requirement for an overt act applies to licensees and family members just as it does to co-owners.

16. This principle, which time and again has been reiterated, of course, remains good and valid even as at today. However, to my mind, as the 1st – 4th defendants were found to have had no title, they are not and cannot be considered to be co-owners. Thus, the presumptive principle will have no application. The said principle had been considered in the backdrop of or between co-owners when a claim to a portion of land exceeding their entitlement is made on prescription. The majority of the cases in which the said principle had been applied is where the character of co-ownership continued and was present. However, in this application, the 1st – 4th defendants relied on the title which they claim to have inherited from Dingiri Manika. The District Court as well as the Provincial High Court clearly found and concluded that the 1st - 4th defendants are not co-owners, as they did not derive and have any title. This was held so, as Dingiri Manika, whose inheritance they relied on, had married in *Diga* and had lost her entitlement of succession to interstate parental inheritance under the Kandyan law. Thus, it is necessary to appreciate and consider the unique factual circumstances and the resulting position, where the 1st – 4th defendants were never co-owners. If they were never co-owners, their relationship will be that of strangers, as far as acquisitive prescriptive possession is concerned.

17. That being so, it is in evidence and common ground that 30 years hence, the 1st - 4th defendants did come into occupation, and they occupied and possessed divided and defined lots of land on a mutual partition plan and deed. This plan, bearing No. 520, was superimposed and depicted in the preliminary plan No. 936 marked “X”.

18. The 1st – 4th defendants are, no doubt, related to the 1st and 2nd plaintiffs. They may have even come into occupation of the said defined and demarcated Lots No. 1 – 7 depicted in the preliminary plan No. 936, on the misconception and maybe in the belief that they were so entitled to do so due to the inheritance and title derived from their Dingiri Manika. But, in fact and in law, as determined by the District Judge as

well as the Provincial High Court, the said defendants never inherited and thus were not co-owners at any stage. In these circumstances, the 1st – 4th defendants are required to establish adverse, independent, and undisturbed possession for more than 10 years as required and contemplated by Section 3 of the Prescription Ordinance, which reads as follows:

“3. Proof of the undisturbed and uninterrupted possession by a defendant in any action, or by those under whom he claims, of lands 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 acknowledgment 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 lands 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 and 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...”

19. When the 1st - 4th defendants are declared never to have been co-owners, there is no basis to apply the principles and attributes of prescriptive possession as required between co-owners. That being so, the 1st - 4th defendants are entitled to succeed merely by establishing the basic attributes of prescriptive acquisition of immovable property applicable to strangers, in view of the mutual partition plan and arrangement. The overt act of ouster required to be proved, which is applicable to co-owners, licensees, lessees, or agents, thus has no application to the 1st – 4th and 7th – 9th defendants.

20. The 1st – 4th defendants have been in occupation of demarcated and defined allotments of land which are identified to be Lots No. 1, 3, 4, 5,

6, and 7 of the plan marked "X". They have, on a mutual partition plan and deed, gone into occupation of such defined and demarcated portions of land 30 years ago. They have been individually and separately enjoying and possessing the said lots of land. Accordingly, the defendants have clearly satisfied the requirements of Section 3 of the Prescription Ordinance, and the said defendants have established prescriptive acquisition of title to Lots No. 1, 3, 4, 5, 6 and 7 of plan marked "X".

21. Accordingly, the finding of the District Judge, that 1st – 4th defendants did not prove their co-ownership or paper title to the corpus, is correct and lawful. However, the learned District Judge's finding, that the defendants have failed to prove prescriptive possession and failed to acquire prescriptive title to the said Lots, is flawed, contrary to the evidence, and is wrong.

22. The learned District Judge had erred in not excluding Lots 1, 3, 4, 5, 6, and 7 of the preliminary plan marked "X". The allotment and partitioning according to the allocation should be in respect of the balance portion of the corpus, namely Lot No. 8 of the preliminary plan marked "X".

23. The Provincial High Court, by granting relief as prayed for by prayers "e" of the petition of appeal, has set aside the judgment dated 06.12.2016 of the District Judge in its entirety. Then, it also granted relief as prayed for by prayer "e" of the petition, thereby granting the relief as prayed for by the statements of claim of the 1st – 4th and 7th – 9th defendants. I observe that the relief so prayed for is in the alternative, and this blanket granting of relief by the High Court should be varied to specify the relief granted.

24. As hereinabove considered and decided, Lots No. 1, 3, 4, 5, 6, and 7 of the plan marked "X" should be excluded from the corpus, and both the judgments of the District Judge as well as the High Court should be amended and varied to that extent. The learned District Judge

determined the undivided share entitlements of the 1st and 2nd plaintiffs and the 6A defendant. In the appeal preferred to the High Court, the said allocation and apportionment of the undivided entitlements were not seriously challenged or put in issue. Considering the evidence, I find that the learned District Judge's finding as to the entitlements of the 1st and 2nd plaintiffs and the 6A defendant is supported by evidence and correct. Accordingly, I find that the High Court judgment has set aside the District Judge's judgment *in toto*. That portion of the High Court judgment requires variation to the extent that relief granted by the High Court will be subject to the findings of this judgment, especially the alternate relief sought.

25. Accordingly, the share entitlements of the 1st and 2nd plaintiffs and 6A defendant as found and determined by the learned District Judge are affirmed. However, the said judgment is varied to the extent that Lots No. 1, 3, 4, 5, 6, and 7 of the plan marked "X" are excluded from the land to be partitioned.

26. Accordingly, it is hereby ordered that the relief granted by the High Court as well as the judgment of the learned District Judge be varied to that extent and be subject to the following:

- i. that Lots No. 1, 3, 4, 5, 6, and 7 of the plan marked "X" be excluded from the corpus; and
- ii. the following entitlements of the parties as found by the trial judge are affirmed:
 - 1st plaintiff: 3/8 undivided share
 - 2nd plaintiff: 1/8 undivided share
 - 6A defendant: 4/8 undivided share

27. Subject to the aforesaid variations and amendments, so much of the impugned decision of the Provincial High Court is hereby affirmed.

28. In view of the above determination, the answers to the following points of contest require to be answered afresh as follows:

04) – Yes. In respect of the balance portion, namely Lot No. 8 of Plan marked “X”.

26) – Yes.

27) – Yes. The 2nd, 3rd, 4th, 7th and 8th respondents are entitled to have Lots No. 1, 3, 4, 5, 6, and 7 of the plan marked “X” excluded from the corpus.

Subject to the above, the answers to the other and the rest of the points of contest may remain unchanged.

29. Accordingly, the question of law on which leave was granted is answered in the negative. Thus, the appeal is dismissed, and the judgment of the High Court is affirmed subject to the aforesaid variations.

The appeal is dismissed; however we make no order as to costs.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT