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

In the matter of an Appeal under Section 5C(1) of the High Court of the Provinces (Special Provisions) Act No: 19 of 1990 as amended by Act No: 54 of 2006.

**SC Appeal No: 97/2014**

SC/HCCA/LA No: 298/2013

EP/HCCA/TRN/Appeal No: 112/09(F)

D.C. Trincomalee Case No: 1016/00

Balachandra Arachchilage
Kalyani Mallika,
Of 280/4, Bodhiya Road Kantale.

**Plaintiff**

**Vs.**

Dharmadasa Munasinghe Wickremarathna,
Of "Kantale Medical" Kantale

**Defendant**

**AND**

Balachandra Arachchilage
Kalyani Mallika,
Of 280/4, Bodhiya Road Kantale.

**Plaintiff- Appellant**

**Vs.**

Dharmadasa Munasinghe Wickremarathna,
Of "Kantale Medical" Kantale.

**Defendant- Respondent**

**AND BETWEEN**

Dharmadasa Munasinghe Wickremarathna,
Of "Kantale Medical" Kantale.
(Deceased)

**Defendant- Respondent-Appellant**

**Vs.**

Balachandra Arachchilage Kalyani Mallika,
Of 280/4, Bodhiya Road Kantale.

**Plaintiff- Appellant-Respondent**

**AND NOW BETWEEN**

Hasitha Nayanjana Munasinghe Wickremaratne,
No.192, Main Street,
Kantale

**Substituted Defendant-Respondent-Appellant**

**Vs.**

Balachandra Arachchilage Kalyani Mallika,
Of 280/4, Bodhiya Road Kantale.

**Plaintiff- Appellant-Respondent**

**BEFORE:** **Hon. S. Thurairaja PC, J.**
**Hon. K. Kumudini Wickremasinghe, J.**
**Hon. Sampath B. Abayakoon, J.**

COUNSEL: J.P. Gamage with Ms. Melisha Perera and Theekshana Ranaweera instructed by

Chamara Nirmal Fernando for the Substituted Defendant-Respondent-Appellant

Rajeev Amarasuriya with Subani Hewapathirana instructed by Ms. Kumari Eriyagama for the Plaintiff-Appellant-Respondent.

WRITTEN SUBMISSIONS: By the Substituted Defendant-Respondent-Appellant on 22.07.2025 and 13.10.2014 .

By the Plaintiff-Appellant-Respondent on 07.08.2025 and 01.08.2024 and 25.02.2015.

ARGUED ON: 12.06.2025

DECIDED ON: 28.01.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an appeal from a judgment of the High Court of Civil Appeals of the Eastern Province, dated 21.06.2013 which set aside the judgment of the District Court of Trincomalee, case bearing No: 1016/00 dated 31.03.2009.

The Plaintiff-Appellant-Respondent (hereinafter referred to as the "Respondent") instituted the initial action before the District Court of Trincomalee against the Defendant-Respondent-Appellant (hereinafter referred to as the "Original Appellant") seeking to eject the Original Appellant from the land described in the schedule of the plaint and to place the Respondent in possession of the said property.

The Respondent's case, as pleaded in the plaint, was founded on an assertion that her father, Balachandra Arachchilage Edin Singho, had been in actual and continuous possession of the said property since 1954 and had cultivated it under authority purportedly granted by the Government Agent of Trincomalee on 3 November 1973. She averred that Edin Singho had cultivated the property until 1977, thereafter let it to the Appellant on ground rent between 1977 and 1981, and then resumed possession in 1982 until

possession was allegedly disturbed by the Original Appellant on 20th January 1999. Notably, the Respondent sought only ejectment and did not seek any declaration of title or entitlement to possession.

The Original Appellant, by answer dated 24 July 2000, denied that the Respondent's father had ever possessed or cultivated the property. He admitted the existence of the temporary permit issued in 1973 but maintained that Edin Singho had never acted upon it, and had instead transferred whatever interest he claimed to the Original Appellant for monetary consideration, expressly agreeing not to assert any claim thereafter. On that basis, the Original Appellant asserted continuous occupation from 1977 to date and prayed for dismissal of what he described as a speculative action.

The trial commenced on 5 February 2001, at which point the existence of Primary Court Case No. 1701 (Kantale) was admitted, and the Respondent raised twelve issues, countered by seventeen issues raised on behalf of the Original Appellant. Evidence for the Respondent commenced on 22 April 2002 when Edin Singho testified and produced Temporary Permit No. 5115, issued under an Emergency Food Cultivation Project.

However, the Original Appellant averred that no documentary or cogent oral evidence was adduced to establish that he had ever cultivated or possessed the land pursuant to that permit. The Respondent herself testified on 28 July 2003, attempting to base her claim solely on the said temporary permit. At the close of her case, Exhibit P1 (the temporary permit) remained the only documentary foundation of her claim.

The Original Appellant commenced giving evidence on 5 March 2008, explaining the circumstances under which he entered into occupation and producing exhibits V1–V3 in support thereof. Upon conclusion of submissions, the learned District Judge delivered judgment on 31 March 2009 dismissing the Respondent's action with costs. The Trial Judge held, inter alia, that the temporary permit had never been renewed or extended, that no evidence of cultivation by either Edin Singho or his son had been produced, and that the Respondent had failed to establish any legal basis to

obtain ejectment, particularly in the absence of substantial relief or proof of entitlement.

The Respondent thereafter preferred Civil Appeal No. EP/HCCA/TRN/112/09 to the Civil Appeal High Court of the Eastern Province, Trincomalee. On 21 June 2013, the High Court allowed the appeal, set aside the judgment of the District Court, and entered judgment in favour of the Respondent, relying principally on the temporary permit and overturning the Trial Judge's factual findings.

The Original Appellant, being aggrieved by the said judgment, appealed to the Supreme Court. This Court by Order dated 16.06.2014, granted Leave to Appeal on the questions of law stated as set out below.

**1. Did the Civil Appellate High Court err in failing to consider that the action filed in the District Court is misconceived in law?.**
**2. Did the Civil Appellate High Court err in relying on the exhibit "P1" in granting relief to the Respondent?.**

Thereafter, following the death of the Original Appellant, the substituted Defendant-Respondent-Appellant (hereinafter referred to as the "Substituted Appellant") was substituted in his place.

When this matter was taken up for argument, this court drew attention to the fact the matter in concern was a possessory action which had been filed in the District Court after one year from the date of dispossession and hence whether it is time barred.

It is the contention of the Respondent that the Appellant neither in his pleadings nor in his oral submissions has pleaded any objection pertaining to time bar and that it is the court that *ex mero motu* questioned the Respondent's counsel as to the matter being filed out of time. The Respondent in her plaint before the District Court dated 14.02.2000 has stated that the Appellant on or about 20.01.1999 disturbed the peaceful possession of the

land. Thereafter on 28.01.1999 the Kantalai Police produced the Appellant, her father and sister and the Respondent before the Magistrate in Trincomalee under section 66 of the Primary Court Procedure Act. Thereafter on 24.02.1999, the Appellant again disturbed the peaceful possession of the Respondent which the Respondent had immediately brought to the attention of the court on 25.02.1999 and the Court had severely warned the Appellant. The Respondent stated that she had been in actual and physical possession of the land until 25.02.1999.

The Magistrate of Trincomalee thereafter, on 10.02.2000 had made an order with respect to the section 66 application mentioned above placing the Appellant in possession of the land. The Appellant has been in possession of the land since 10.02.2000. The Respondent stated that she had been in actual and physical possession till 25.02.1999 and she has been dispossessed by the Appellant from the land since 10.02.2000. The Learned District Court Judge has concluded that since the Respondent had instituted the District Court action within one year from 24.02.1999 there is no impediment to proceed with the same.

The Respondent further contended that there was no undue delay on their part as the order of the Primary Court case was delivered on 10.02.2000 conferring possession of the land to the Appellant, thereafter the Respondent being aggrieved by the same had instituted this action in the District Court within 4 days and that the Respondent has not slept over her rights but has been pursuing a section 66 case and on adjudication of same has initiated the possessory action before the district court.

Turning to the established principles of law governing a possessory action in Sri Lanka, which is a special, summary, and provisional remedy, firmly rooted in Roman–Dutch law and given statutory recognition by section 4 of the **Prescription Ordinance No. 22 of 1871** which sets out that:

*"It shall be lawful for any person who shall have been dispossessed of any immovable property otherwise than by process of law, to institute proceedings*

*against the person dispossessing him at any time within one year of such dispossession. And on proof of such dispossession within one year before action brought, the plaintiff in such action shall be entitled to a decree against the defendant for the restoration of such possession without proof of title: Provided that nothing herein contained shall be held to affect the other requirements of the law as respects possessory cases".*

The section does not create the possessory remedy *ex nihilo*; rather, it assimilates pre-existing Roman–Dutch possessory interdicts into statutory form, while expressly preserving their substantive requirements through the *proviso*. Consequently, section 4 must be construed not in isolation or by a narrow literalism, but in harmony with the common law principles governing possessory relief.

Section 4 permits the institution of proceedings only where a person has been *dispossessed of immovable property otherwise than by process of law* and requires that such proceedings be instituted *within one year of such dispossession*. These requirements are not merely procedural but are conditions precedent to the exercise of jurisdiction. A failure to satisfy them deprives the court of authority to grant possessory relief, regardless of the merits or equities of the case.

The content of these statutory requirements has been authoritatively clarified by the Supreme Court in ***P. R. Michael Gunaratne v. Delkadura Danapala Mudiyanselage Sarathchandra Bandara*** **(SC Appeal No. 83/2013, decided on 29.02.2024)**. In that decision, Nawaz J. undertook a comprehensive analysis of Roman and Roman–Dutch possessory interdicts—*uti possidetis*, *unde vi*, *mandament van maintenue* and *mandament van spolie*—and reaffirmed that the Sri Lankan possessory action reflects these doctrines in substance. Drawing from this lineage, His Lordship restated the cumulative elements that a plaintiff must establish in order to succeed in a possessory action, namely that the plaintiff:

(a) was in possession of the corpus *ut dominus*;
(b) enjoyed such possession quietly and peaceably;

(c) possessed the corpus for a year and a day; and
(d) was ousted or disturbed within the year preceding the institution of the action.

These elements serve a gatekeeping function. The possessory remedy is not designed to protect mere assertions of entitlement or transient control, but to safeguard a factual possession that is sufficiently settled, exclusive, and proprietary in character. Possession *ut dominus* does not require proof of legal title, but it does require proof of possession exercised as of right and not on behalf of another, nor under a temporary, precarious, or derivative authority. The insistence on possession for a year and a day reflects the Roman–Dutch law's concern with stability of possession and the avoidance of precipitous litigation arising from fleeting or equivocal acts of control.

The Supreme Court in *Michael Gunaratne* further clarified that the term "dispossession" in section 4 is not confined to physical eviction. In appropriate circumstances, substantial disturbance or obstruction which effectively deprives the possessor of the free exercise of her possessory rights may amount to dispossession. This interpretation, endorsed in earlier authorities such as ***Perera v. Wijesuriya* (1957) 59 NLR 529** and ***Edirisuriya v. Edirisuriya* (1975) 78 NLR 388,** reflects the underlying policy of the possessory remedy: to prevent breaches of the peace and the taking of the law into one's own hands.

However, this extended meaning of dispossession operates only where the plaintiff first establishes qualifying possession. The law does not recognise a possessory action in favour of a person who was never in possession. Disturbance presupposes possession; it cannot exist *in vacuo*. Nor can a plaintiff rely on the prior possession of another unless such possession has lawfully devolved upon her without interruption.

Equally fundamental is the statutory exclusion of dispossession effected by process of law.

Section 4 draws a clear and deliberate distinction between unlawful self-help and dispossession pursuant to judicial or statutory authority. Where possession is lost by virtue of an order of a competent court exercising jurisdiction, whether under the Primary Court Procedure Act or otherwise, the dispossession is by process of law, and the possessory remedy is unavailable. The proper recourse in such circumstances lies in appellate or review proceedings, or in an action based on title, but not in a possessory suit under section 4.

The one-year limitation prescribed by section 4 is absolute. It reflects the provisional and emergency character of the possessory remedy. Courts have consistently held that this period cannot be enlarged on grounds of equity, diligence, or absence of laches. Where the record discloses a clear failure to institute proceedings within the statutory period, or a failure to satisfy the jurisdictional preconditions of the remedy, the court is entitled, and indeed duty-bound, to take cognisance of such defects *ex mero motu*, notwithstanding the absence of a specific plea.

The Respondent's case, as pleaded in the plaint dated 14.02.2000, is that her peaceful possession of the corpus was first disturbed on or about 20.01.1999 and again on 24.02.1999, following which the parties were produced before the Magistrate's Court of Trincomalee under section 66 of the Primary Court Procedure Act. She further pleads that she remained in actual and physical possession until 25.02.1999. These assertions, however, must be tested against the evidence adduced and the legal requirements of possession *ut dominus*.

The Respondent relies principally on a temporary cultivation permit issued in 1973 to her father, Edin Singho. That permit was limited in duration to a single cultivation season and did not confer any enduring possessory right, nor did it vest a heritable or transferable interest capable of grounding a claim of possession decades later. Standing alone, such a permit is manifestly insufficient to establish possession *ut dominus* in the Respondent.

More critically, the oral evidence of Edin Singho, who testified on behalf of the Respondent herself, decisively undermines her pleaded claim of possession. His testimony is unambiguous:

> "මගේ බාල දුව වන මෙම නඩුවේ පැමිණිලිකාරිය කොයිම අවස්ථාවක හෝ මෙම ඉඩමේ පදිංචි වී සිටියේ නැහැ"

This evidence admits two matters of fundamental legal consequence. First, that the Respondent was never in possession of the corpus at any point in time. Secondly, that possession of the corpus was handed over to the Appellant by written instrument. This testimony is corroborated by receipts V1, V2 and V3, executed by the same witness, which record that possession of the land was transferred to the Appellant for monetary consideration and that the Appellant's possessory rights would thereafter be defended by the transferor in the event of dispute. These documents and admissions are wholly inconsistent with the Respondent's assertion that she possessed the land *ut dominus*, quietly and peaceably.

In these circumstances, the Respondent cannot succeed by asserting succession to her father's possession. The evidence establishes that her father voluntarily divested himself of possession in 1977, long before the Respondent claims to have exercised any possessory control. Possession having passed to the Appellant prior to any alleged succession, the Respondent is not entitled in law to rely upon her father's prior possession so as to establish continuity of possession in herself. One who has never been in possession cannot maintain a complaint of dispossession, for disturbance is conceptually and legally dependent upon the prior existence of possession.

Even assuming, for the sake of completeness, that the Respondent's pleaded assertion of possession until 25.02.1999 is accepted at face value, the nature and duration of such possession still fall short of the Roman–Dutch law standard. The Respondent has not established possession *ut dominus* for a year and a day prior to the alleged disturbances. Possession that is contested,

derivative, precarious, or unsupported by clear evidence of exclusive control does not satisfy the threshold required to invoke a possessory remedy under section 4 of the Prescription Ordinance.

The analysis must then turn to the nature of the alleged dispossession. The Respondent expressly pleads that the Magistrate's Court of Trincomalee, upon inquiry under section 66 of the Primary Court Procedure Act, made an order on 10.02.2000 placing the Appellant in possession, and that she was dispossessed as a result of that order. Such dispossession is, by definition, one effected by process of law. Section 4 of the Prescription Ordinance affords no remedy in respect of dispossession so effected. The fact that the Respondent instituted the District Court action within four days of the Magistrate's Court order, or that she had been diligently pursuing proceedings before the Primary Court, cannot alter the legal character of that dispossession.

The Respondent's reliance on alleged disturbances of 20.01.1999 and 24.02.1999 does not advance her case. Once the parties were before the Magistrate's Court under section 66 and subject to its supervisory jurisdiction pending determination, any alleged interference occurring during that period cannot be divorced from the judicial process and re-characterised as dispossession otherwise than by process of law. Further, the Respondent herself pleads that she remained in possession until 25.02.1999, thereby acknowledging that no dispossession occurred on those earlier dates.

In any event, even if the disturbance of 24.02.1999 were to be treated as the relevant act of dispossession, the Respondent has not satisfied the temporal requirement imposed by section 4. The pleadings as per the plaint is an earlier disturbance on 20.01.1999. The law does not permit a plaintiff to selectively rely on one pleaded act of disturbance while disregarding another in order to overcome the statutory bar of limitation. Where the pleaded cause of action discloses an initial disturbance occurring more than one year prior to the institution of proceedings, the action is time barred.

The possessory jurisdiction of the District Court is not an elastic or discretionary jurisdiction; it is a narrowly circumscribed statutory and Roman–Dutch law remedy, the availability of which depends upon the strict satisfaction of defined legal conditions. Those conditions are not procedural niceties capable of being waived by omission or cured by equitable considerations. They go to the jurisdiction itself.

In the present matter, the attempt to sustain the District Court action on the footing that time began to run from a later "disturbance" is, in law, untenable. The plaint itself discloses an earlier disturbance. Once a cause of action of disturbance is pleaded, the law does not permit a court to isolate a subsequent incident in order to circumvent the statutory bar imposed by section 4 of the Prescription Ordinance. Limitation in possessory actions is not a matter of convenience or impression; it is rigidly tethered to the first pleaded invasion of possession. A litigant cannot be permitted to approbate and reprobate by pleading multiple disturbances and then selectively relying on one to preserve the action.

More fundamentally, even if the later date were to be accepted as the relevant point of computation, the action remains legally misconceived. A possessory action presupposes the existence of possession *ut dominus* and a dispossession otherwise than by process of law. These are cumulative, not alternative, requirements. Where the alleged loss of possession arises directly from an order made by a court of competent jurisdiction under section 66 of the Primary Court Procedure Act, the law is clear that such dispossession falls outside the protective ambit of section 4 of the Prescription Ordinance. The possessory remedy is designed to suppress self-help, not to undermine judicial determinations by collateral attack.

The Respondent's emphasis on diligence, promptitude, and continuous pursuit of remedies, however sympathetic it may appear, is legally irrelevant to the maintainability of a possessory action. Roman–Dutch law does not reward vigilance in the abstract; it protects possession in fact and in law. Where the essential juridical character of possession is absent, and where

dispossession occurs by operation of a judicial order, no amount of procedural expedition can confer jurisdiction where none exists.

The Civil Appellate High Court, in affirming the maintainability of the District Court action, failed to appreciate that the defect was not one of evidence or evaluation but of principle. It failed to recognise that the Respondent's claim did not fall within the legally cognisable boundaries of a possessory action at all. In doing so, it permitted the possessory jurisdiction to be invoked in circumstances expressly excluded by law, thereby diluting the doctrinal coherence and certainty that underpin this area of jurisprudence.

Accordingly, the action instituted in the District Court is misconceived in law. The Respondent has failed to establish that she was in possession *ut dominus*, quietly and peaceably, for the requisite period, or that she was dispossessed otherwise than by process of law. The pleaded disturbances disclose an earlier cause of action which renders the institution of proceedings outside the statutory period prescribed by section 4 of the Prescription Ordinance, and the subsequent order made under section 66 of the Primary Court Procedure Act cannot, in law, give rise to a possessory claim.

In these circumstances, the mandatory legal conditions governing possessory actions not having been satisfied, the District Court was bereft of jurisdiction to entertain the action, and the Civil Appellate High Court erred in law in upholding it. The questions of law on which leave to appeal was granted are accordingly answered in the affirmative, and this appeal is entitled to succeed.

Therefore, having examined the facts of the case, and the material placed before this court, I allow the appeal of the Appellant by setting aside the judgment of the Civil Appeal High Court of the Eastern Province, Trincomalee and uphold the judgement of the District Court of Trincomalee.

**JUDGE OF THE SUPREME COURT**

**S Thurairaja PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sampath B. Abayakoon , J.**

I agree.

**JUDGE OF THE SUPREME COURT**