

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

Kalanchige Chandralatha,
of No. E3, Mahindapura,
Serunuwara.

SC/HC/CA/LA/No. 87/2020

PLAINTIFF

HCCA Case No.

Vs.

EP/HCCA/TCO/FA/239/2018

1. Iddagoda Hewage Somasiri

DC Muthur Case No. L/28/2011

2. Nalagamage Sumanawathie

3. E. G. Premadasa

all of No. 194, Mahindapura,

Serunuwara.

DEFENDANTS

AND BETWEEN

Kalanchige Chandralatha,

of No. E3, Mahindapura,

Serunuwara.

PLAINTIFF – APPELLANT

Vs.

1. Iddagoda Hewage Somasiri

2. Nalagamage Sumanawathie

3. E. G. Premadasa

all of No. 194, Mahindapura,

Serunuwara.

DEFENDANT – RESPONDENTS

AND BETWEEN

In the matter of an application for Leave to Appeal in terms of Section 5C of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, against the Judgment of the High Court of the Eastern Province (Civil Appeal) dated 20.02.2020.

1. Iddagoda Hewage Somasiri (Deceased)

1A. Nalagamage Sumanawathie

1B. Iddagoda Hewage Shriyani

1C. Iddagoda Hewage Santhi

1D. Iddagoda Hewage Jayasantha

1E. Iddagoda Hewage Kalyani

1F. Thilak Chandrasiri

2. Nalagamage Sumanawathie

of No. 194, Mahindapura,

Serunuwara.

DEFENDANT – RESPONDENT – PETITIONERS

Vs.

Kalanchige Chandralatha,

of No. E3, Mahindapura,

Serunuwara.

PLAINTIFF – APPELLANT – RESPONDENT

E. G. Premadasa,

of No. 194, Mahindapura,

Serunuwara.

3RD DEFENDANT – RESPONDENT – RESPONDENT

BEFORE : **JANAK DE SILVA, J**
ARJUNA OBEYESEKERE, J &
MENAKA WIJESUNDERA, J

COUNSEL : Clifford Fernando with Chamindi Diloka Mannakkara instructed by Nalin Samarakoon for the 2nd Defendant-Respondent-Petitioner
Ms. Sudarshani Cooray instructed by Diana Stephnie Rodrigo for the Plaintiff-Appellant-Respondent.

ARGUED &
DECIDED ON : 02nd July 2025

JANAK DE SILVA, J.

Learned Counsel for the 2nd Defendant-Respondent-Petitioner and Plaintiff-Appellant-Respondent heard.

We grant Leave to Appeal on the following question of law:

1) Did the learned Judges of the Civil Appellate High Court of Trincomalee err in law in holding that the title of the Respondent was established at the trial?

With the consent of the parties, and acting under the proviso to Rule 16 of the Supreme Court Rules, we proceeded to determine this question.

The Plaintiff-Appellant-Respondent (Plaintiff) filed this action against the 1st and 2nd Defendant-Respondent-Petitioners and 3rd Defendant-Respondent-Respondent (Defendants) seeking a declaration that LDO permit No. 2/42/160 is valid, a declaration that the Plaintiff is the owner and/or heir of the land described in the schedule to the plaint and ejectment of the Defendants, their agents, servants and others from the corpus and to restore possession thereof to the Plaintiff.

After trial, the learned District Judge dismissed the plaint holding that the Plaintiff had failed to establish title to the corpus. The Plaintiff appealed to the Civil Appellate High Court of Trincomalee (High Court) which set aside the judgment of the District Court and entered judgment as prayed for in the plaint.

Admittedly the corpus is state land. W.G. Rankiri, the mother of the Plaintiff, was issued LDO permit No. 2/42/160 under the Land Development Ordinance. The Plaintiff had been nominated as her lawful successor by Rankiri before her death.

The Defendants claim to have been cultivating the corpus from 2004 and also made an application for the issuance of a permit for the corpus.

It was submitted on behalf of the 2nd Defendant that the Plaintiff had failed to succeed to the corpus in terms of Section 68 of the Land Development Ordinance. However, no such issue was raised at the trial. Neither is it a pure question of law. Hence, this issue cannot be raised in appeal now.

Having examined the evidence led, I hold that the Plaintiff has established her entitlement to maintain this action to evict the Defendants. In ***Palisena v. Perera (56 N.L.R. 407)*** it was held that a permit-holder under the Land Development Ordinance enjoys a sufficient title to enable him to maintain a vindictory action against a trespasser.

However, I am of the view that she is not entitled to obtain a declaration of title to the corpus which is admittedly state land granted on a permit issued under the Land development Ordinance. In ***Attorney General v. Herath (62 N.L.R. 145)*** it was held that

the rights of an owner under the general law of Ceylon are comprised under three heads, namely, (1) the right of possession and the right to recover possession; (2) the right of use and enjoyment; and (3) the right to alienate and that **these three factors are all essential to the idea of ownership but need not all be present in an equal degree at one and the same time.** (emphasis added)

In *Jinawathe et al v. Emalin Perera* [(1986) 2 Sri.L.R. 121] Court adopted a similar approach by defining ownership with reference to the rights a person holds over a thing. Ranasinghe J. (as he was then) stated thus:

"Ownership is the right which a person has in a thing to possess it, to use it and take the fruits, to destroy it, and to alienate it. These rights have been described by the text writers as: jus utendi, jus fruendi, and jus utendi-Grotius 2.3.9, Voet 6. 1. 1. Wille, in his book on the Principles of South African Law (3rd Ed.) discusses at page 190 the "Legal Effects of Ownership" as follows:

"The absolute owner of a thing has the following rights in the thing:

(1) to possess it;

(2) to use and enjoy it; and

(3) to destroy it; and

(4) to alienate it";

The permit (P1) issued to Rankiri has not granted any right of alienation of the state land. The right to possession and use and enjoyment are also subject to certain limitations. In the aforesaid circumstances, I have no hesitation in concluding that the Plaintiff is not entitled to a declaration that she is the owner of the corpus.

The learned High Court Judges erred in granting a declaration that the Plaintiff is the owner of the corpus. Hence, that part of the judgment of the High Court is set aside.

Subject to the above variation, we affirm the judgment of the High Court dated 20.02.2020.

The Appeal is partly allowed.

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT

Wijesundera, J.

I agree.

JUDGE OF THE SUPREME COURT