

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

1. Samarasinghe Piyaseeli,
2. Paramadige Damith (Deceased),
- 2A. Samarasinghe Piyaseeli

Both of No. 240, Kudagammana 04,
Beralihela, Tissamaharama.

(C/O J.P.P. Bandupala, Karawile Road,
Sellakataragama, Kataragama)

Defendant-Respondent-Appellants

SC/APPEAL/28/2015

SP/HCCA/TA/10/2010 (F)

DC TISSAMAHARAMA L 210

Vs.

Andra Hennadige Aladin,
No. 47, Ambagahawatte Land,
Akkara Wissa,
Sellakataragama, Kataragama (Deceased).

Plaintiff-Appellant-Respondent

Andra Hennadige Pathmasiri,
No. 196/D 96,
3rd Lane, Maduwanwala Colony,
Colambageara.

Substituted Plaintiff-Appellant-Respondent

Before: Hon. Justice A.H.M.D. Nawaz
Hon. Justice Mahinda Samayawardhena
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: W. Dayaratne, PC with Ranjika Jayawardene for the Defendant-Respondent-Appellant.
Dr. Sunil Coorey with Sudarshani Coorey for the Plaintiff-Appellant-Respondent.

Argued on: 14.05.2025

Written submissions:

By the Defendant-Respondent-Appellant on 26.6.2018.
By the Plaintiff-Appellant-Respondent on 20.6.2016.

Decided on: 23.07.2025

Samayawardhena, J.

The plaintiff instituted this action on 26.08.2004 in the District Court of Tissamaharama seeking a declaration that he is entitled to possess the land in accordance with Grant No. ๑๐/ප/26102 dated 14.10.1996 marked P1, issued under the Land Development Ordinance (පැමිණිල්ලේ උපලේඛනයේ විස්තර කර ඇති විෂයවස්තුව ๑๐/ප/26102 බලපත්‍රය අනුව තුක්ති විදිමට පැමිණිලිකරුට අයිතියක් ඇතැයි ප්‍රකාශ කරන ලෙසත්), the ejectment of the defendants therefrom, and damages. The defendants prayed for the dismissal of the plaintiff's action.

According to Grant P1, the plaintiff is entitled to possess the land bounded on the north by the land of Pandula, on the east by the land of Ariyasena, on the south by the land of Bandupala, and on the west by the road reservation leading to the Manik River, in extent of one acre. This is the same land described in the schedule to the plaint.

However, at the time of issuance of the Grant or at any time thereafter, possession of the said parcel of land had not been delivered to the plaintiff by demarcating its boundaries through a survey plan.

For the purposes of the case, Plan No. 50755 marked X was prepared. This Plan depicts a land in extent of 2 Acres, 2 Roods, and 17 Perches—an extent which exceeds that described in the Grant by 1 Acre, 2 Roods, and 17 Perches.

In other words, notwithstanding that the Grant conferred only one acre, the plaintiff now lays claim to a substantially larger extent of land.

Even three months prior to the institution of this action, the Divisional Secretary, by letter dated 17.05.2004 marked V3, informed the plaintiff that he is entitled only to a land extent of one acre in terms of the Grant, and nothing more.

බඩහට රජයෙන් ලබා දී ඇති මො.පු. 26102 දරණ පත්‍රයට අයත් භූමි ප්‍රමාණය අක්කර 1 කි.

එම ප්‍රමාණයට වැඩි කිසිම බිම ප්‍රමාණයක හිමිකමක් ඔබට නොමැත. එබැවින් පරමාඩිගේ කරෝලිස් මහතාට ඉඩමේ ඉතිරි බිම කොටස භුක්ති විදිමට ඉඩ දෙන ලෙසත්, ඊට අවහිර නොකරන ලෙසත් කාරුණිකව දන්වමි.

This clearly demonstrates that the plaintiff was aware of the actual extent granted to him, yet he proceeded to claim a substantially larger portion, contrary to the contents of the Grant.

It is significant to note that the plaintiff did not make the Divisional Secretary a party to the action. However, the officer from the Divisional Secretariat who was called by the defendant to give evidence confirmed that the plaintiff had been granted only one acre of land.

After trial, the learned District Judge, by judgment dated 17.12.2009, held that the plaintiff is entitled to possess one acre of land from the northern

boundary of the land depicted in Plan marked X. The learned Judge further ordered the ejectment of the defendant and her subordinates from the said portion, together with costs.

Being dissatisfied with the judgment of the District Court, the plaintiff preferred an appeal to the High Court of Civil Appeal of Tangalle. The High Court affirmed the judgment of the District Court, subject to the amendment that the entire land depicted in Plan marked X, in extent of 2 Acres, 2 Roods, and 17 Perches, forms part of the land described in the Grant.

It is from this judgment of the High Court that the defendant has preferred the present appeal. A previous Bench of this Court granted leave to appeal against the judgment of the High Court on several questions of law, all of which are encompassed by the first question, whether “the said judgment is erroneous and contrary to law.”

The plaintiff has also raised a question of law, contending that he is entitled to be restored to possession of the entire land depicted in Plan X, on the basis that he instituted a possessory action under section 4 of the Prescription Ordinance.

However, in his written submissions dated 20.06.2016, filed after leave to appeal was granted, the plaintiff categorically stated in paragraph 13 that “the plaintiff’s action is not a possessory action, but a rei vindicatio action.” The plaintiff cannot be permitted to change the character of the action from time to time.

On the facts and circumstances of this case, it is clear that the plaintiff was granted only one acre of land under Grant P1. The plaintiff sought a declaration that he is entitled to possess the land in accordance with the said Grant. It must be emphasised that the plaintiff does not assert any

claim to the excess portion depicted in Plan X on the basis of prescription or any other legal ground.

Accordingly, I hold that the amendment made by the High Court to the judgment of the District Court, extending it to cover the entire land depicted in Plan X, is unsustainable in fact and in law.

I answer the question of law raised by the plaintiff in the affirmative, and that of the defendant in the negative. The judgment of the High Court is accordingly set aside, and the judgment of the District Court is restored. The plaintiff is entitled to costs.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court

Sampath Wijeratne, J.

I agree.

Judge of the Supreme Court