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

In the matter of an Appeal in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC APPEAL No. 35/2024
HCCA/LA/No. 151/2022
WP/HCCA/GAM/23/2021 LA
DC ATTANAGALLE/207/LAND

1. E. M. Kamalawathi
2. H. Anula De Seram
3. H. Mallika De Seram
4. H. Mangalika De Seram
5. H. Mala De Seram
6. H. Mangala De Seram

All of No. 142, Wataddara, Veyangoda.

PLAINTIFFS

Vs.

Uthuwan Pathirannehelage Karunadasa
(Correct Name as Uthuwan Pathirannehelage Karunarathna)
No. 155, Wataddara, Veyangoda.

DEFENDANT

AND THEN BETWEEN

Uthuwan Pathirannehelage Karunadasa
(Correct Name as Uthuwan Pathirannehelage Karunarathna)
No. 155, Wataddara, Veyangoda.

DEFENDANT-PETITIONER

Vs.

1. E. M. Kamalawathi
2. H. Anula De Seram
3. H. Mallika De Seram
4. H. Mangalika De Seram
5. H. Mala De Seram
6. H. Mangala De Seram

All of No. 142, Wataddara, Veyangoda.

PLAINTIFFS-RESPONDENTS

AND NOW BETWEEN

Uthuwan Pathirannehelage Karunadasa
(Correct Name as Uthuwan Pathirannehelage Karunarathna)
No. 155, Wataddara, Veyangoda.

DEFENDANT-PETITIONER-PETITIONER

Vs.

1. E. M. Kamalawathi
2. H. Anula De Seram
3. H. Mallika De Seram
4. H. Mangalika De Seram
5. H. Mala De Seram
6. H. Mangala De Seram

All of No. 142, Wataddara, Veyangoda.

PLAINTIFFS-RESPONDENTS-RESPONDENTS

BEFORE : **P. PADMAN SURASENA, J.**
ACHALA WENGAPPULI, J.
ARJUNA OBEYESEKERE, J.

COUNSEL : Kuvera de Zoysa PC with Sajana de Zoysa for the Defendant-Petitoner-Appellant on the instructions of Sanjay Fonseka

Athula Bandara Herath with Ms. Ama Karunaratne and Ms. Chathusala Jayasinghe instructed by Ms. Nirosha Herath for the Plaintiff-Respondent-Respondents.

ARGUED ON : 21-02-2024

DECIDED ON : 07-07-2025

P. PADMAN SURASENA, J.

The Plaintiff-Respondent-Respondents (hereinafter referred to as the Plaintiffs) instituted action in the District Court of Attanagalla against the Defendant-Petitioner-Appellant (hereinafter referred to as the Defendant) praying inter alia for: a declaration of title to the land in suit (prayer (අ) in the Plaint); an order to demarcate the eastern boundary of the said land as described in the schedule to the Plaint (prayer (ආ) in the Plaint); an order to evict the Defendant from the land described in the schedule to the Plaint (prayer (ඇ) in the Plaint); an order for the payment of damages (prayer (ඈ) in the Plaint); an order for costs (prayer (ඉ) in the Plaint).

The Defendant filed his answer dated 20-07-2005. The Plaintiffs took out a commission to survey the land described in the schedule to the Plaint. Thereafter the Commissioner I. A. Wijethillake Licensed Surveyor, having prepared the Plan No. 390/෴, dated 30-09-2006, returned the Commission.

The Defendant then filed an amended answer dated 28-02-2007. The Defendant in his amended answer prayed for the dismissal of the Plaintiffs' action and a declaration that he has acquired prescriptive title to the land in suit.

The Plaintiffs framed 08 issues while the Defendant has framed 04 issues. I would, at this stage, set out below, the effect of the issues framed by the parties.

Issues framed by the Plaintiffs:

1) Is the land described in the Schedule to the Plaint, the land which the Plaintiff and the Defendant dispute in this case (the subject matter of this case)?

2) Is that the land which is depicted as Lot No. 01 and 02 in Plan No. 390/෴ prepared by I. A. Wijethilleke Licenced Surveyor?

3) Is the Plaintiff entitled to the title of the said land?

4) Is the Defendant being not entitled to any title disturbing and disputing the Plaintiff's title in this case?

5) If the answer to the above issues are in the affirmative, are the Plaintiffs entitled to succeed with prayers (අ), (ඇ) and (ඈ) in the Plaint?

6) Is the Defendant disputing the eastern boundary of the land relevant to the suit?

7) Due to the above, has a damage been caused to the Plaintiffs?

8) If so, are the Plaintiffs entitled to the relief in prayer (ඇ)

Issues framed by the Defendant:

1) Is the Defendant entitled to the title of the land more fully described in the amended answer?

2) Is Lot No. 01, which is of the extent of 10 perches depicted in Plan No. 2753/ඉ, prepared by Suriyarachchi, Licensed Surveyor, the property referred to in the above issue?

3) Is the Defendant entitled to the prescriptive title of the property referred to in the Defendant's amended answer upon the settlement entered into in the Gampaha District Court Case No. 36610?

4) If the answers to the above issues are in the affirmative, is the Defendant entitled to the prayers in the amended answer?

After the trial, the learned District Judge, for the reasons set out in his judgment dated 25-03-2009, dismissed the Plaintiff's action. The said dismissal is primarily on the basis that the Plaintiffs have failed to explain how the corpus relevant to the action has become 14.62 perches in extent as per Plan No. 390/ඉ, prepared by the Commissioner I.A. Wijethillake, Licensed Surveyor. In other words, the learned District Judge dismissed the action of the Plaintiffs on the basis that the Plaintiffs have failed to prove the identity of the Corpus relevant to the action.

Being aggrieved by the judgment of the learned District Judge of Attanagalle, the Plaintiffs preferred an appeal to the Provincial High Court of Civil Appeals holden at Gampaha. After conclusion of the said appeal, the Provincial High Court of Civil Appeals, by its judgment dated 09-07-2015, proceeded to hold that the learned District Judge's conclusion in his judgment

dated 25-03-2009 is erroneous. The learned judges of the Civil Appellate High Court have considered the discrepancy of the extent of the land in suit (i.e. 10.625 perches as per the plan referred to in the Schedule to the Plaint, as opposed to 14.62 perches as per the Plan prepared upon the commission issued by court). The Provincial High Court of Civil Appeals, for the reasons set out in its judgment dated 09-07-2015, has clearly held that the Plaintiffs have established their title to the land the extent of which is 14.62 perches which is more fully depicted as Lots No. 01 and 02 of the Plan 390/ඉ prepared by I.A. Wijethillake, Licensed Surveyor. In the course of the trial, this plan has been produced by the Plaintiffs marked ඒ. It is not disputed by the parties that this Plan is the one prepared by the Commissioner upon the Commission issued by the District Court.

The corpus of the action has been depicted as Lots No. 01 and 02 in Plan No. 390/ඉ prepared by I.A. Wijethillake, Licensed Surveyor. He has identified Lot No. 01 as the part of the land which is presently occupied by the Plaintiffs and Lot No. 02 (which is 5.12 perches in extent) as the part of the land which is presently encroached by the Defendant.

I observe that the extent mentioned in the Schedule to the Plaint is 10 perches. That is a reference to Lot No. 01 in Plan No. 390/ඉ. I also observe that it is Lot No. 02, in Plan No. 390/ඉ, which the Plaintiffs have complained in this action as the part of the land wrongfully occupied by the Defendant. It is the addition of Lots No. 01 and 02 which has made the Plaintiffs' land to be 14.62 perches in extent in extent.

The Commissioner has tendered to Court, a report by way of an affidavit. In the said report, the Commissioner has specifically stated that Lots No. 01 and 02 have jointly formed the land in suit claimed by the Plaintiffs. The Commissioner has also stated in his report that it was not possible for him to superimpose the Plan prepared by him on the plan dated 24-05-1915 prepared by M.D. Alwis, Licensed Surveyor, which is the plan referred to in the Schedule to the Plaint. This was because the said plan dated 24-05-1915 was not available for the superimposition. The Commissioner has also reported to Court that the Defendant was present at the time he conducted the survey.

Moreover, the Commissioner has also reported that the part of the construction made by the Defendant, adding a new part to the Defendant's old house, has been constructed within Lot No. 02, claimed by the Plaintiff. I would reproduce below, the relevant portion from the affidavit of the Commissioner.

" දෙපාර්ශවයන්ට නිසිපරිදි දන්වා යවා නියමිත දින මැනීම සඳහා ඉඩමට ගියෙමි. 1 වන 2 වන සහ 4 වන පැමිණිලිකරුවන් සහ විත්තිකරු පැමිණ සිටී. 1, 2, හ 4 වන පැමිණිලිකරුවන් පෙන්වා දෙන ලද පරිදි ඉඩම මනින ලදී. 1 වන ඡේදයේ සඳහන් කරුණ පරිදි පැරණි පිඹුර නොමැති නිසා අධිස්ථාපනයක් නොකරණ ලදී. විත්තිකරු විසින් ඇඳගෙන භුක්ති විඳින බවට සඳහන් කරණ ඉඩම් කොටසක් වෙන්කර මනින ලදී.

පැමිණිලිකරුවන් දැනට භුක්ති විඳින කොටස කැබැලි අංක 1 වශයෙන් ද, පැමිණිලිකරුවන් විසින් හිමිකම් කියන දැනට විත්තිකරු විසින් ඇඳගෙන ඇති ඉඩම් කොටස අංක 2 වශයෙන් ද අංක යොදා පිඹුර සකස්කරන ලදී.

කැබැලි අංක 2 තුලට විත්තිකරු විසින් ඔහුගේ පැරණි නිවසට යාකර, අළුතින් ඉදිකර ඇති ගොඩනැගිලි කොටසෙන් ඇතුලත් වේ. පැරණි නිවස සිංහල උළු සෙවලිකර ඇති අතර අලුතින් ඉදිකර ඇති කොටස තහඩු සෙවලිකර ඇත. එම නිසා එය අළුතින් එකතුකරනවා ඇති බව පෙනේ. එම කොටස තුල කොන්ක්‍රීට් ලැල්ලක් දමන ලද වැසිකිලි වලක් ද ඇත. සිංහල උළු සෙවලිකල පැරණි නිවසේ කොටස පිඹුරේ 'B 'ලෙස දක්වා ඇත. කැබැලි අංක 2 ප්‍රමාණය හෙක්. 0.01296 කි (පර්. 5.12 යි.)"

Being aggrieved by the judgment dated 09-07-2015, pronounced by the Provincial High Court of Civil Appeals, the Defendant filed the Leave to Appeal Petition bearing No. SC/HCCA/LA 250/2015 in this Court. After concluding the hearing of the said Leave to Appeal Petition, this Court by its order dated 03-03-2017, has decided to refuse to grant Leave to Appeal to the said Petition. Thus, with the pronouncement of the order refusing to grant Leave to Appeal by this Court on 03-03-2017, the final judgment of the case must be taken as the judgment dated 09-07-2015 pronounced by the Provincial High Court of Civil Appeals. The said judgment of the Provincial High Court of Civil Appeals has been entered in favour of the Plaintiff. The said judgment of the Provincial High Court of Civil Appeals also has directed that a decree be entered as prayed for, in favour of the Plaintiff.

After this Court refused to grant Leave to Appeal, the Plaintiffs have attempted to execute the writ as per the decree dated 03-03-2017 which is produced in this proceeding, marked **P6**.[1] However, the Fiscal of the District Court of Attanagalla has not executed the writ complaining about a discrepancy in the extent of the land mentioned in the decree. While there is a Schedule to the decree, the Schedule is a mere reproduction of the Schedule to the Plaint. Therefore, the extent of the land is mentioned as 10.625 perches in the Schedule to the

[1] At page 339 of the brief.

decree. This is despite the fact that the judgment has been entered in favour of the Plaintiff by the Provincial High Court of Civil Appeals in respect of the land, the extent of which is 14.62 perches.

Thereafter, the Plaintiffs by way of the Petition dated 26-06-2018, sought to amend the decree in terms of Section 189 of the Civil Procedure Code, as amended. This is to include in the amended decree, the land of 14.62 perches in extent instead of the land in extent of 10.625 perches referred to in both the Schedule to the decree and the Schedule to the Plaint. The Defendant has objected to the said application. After inquiry, the learned District Judge, by his order dated 29-04-2021, allowed the application of the Plaintiffs to amend the decree to include the land in extent of 14.62 perches, instead of the land in extent of 10.625 perches.

Being aggrieved by the said order dated 29-04-2021, the Defendant again appealed to the Provincial High Court of Civil Appeals holden in Gampaha. The Provincial High Court of Civil Appeals by its order dated 18-05-2022, for the reasons set out in that order, concluded that there is no merit in the said Leave to Appeal Petition filed by the Defendant.

Being aggrieved by the order dated 18-05-2022, pronounced by the Provincial High Court of Civil Appeals, the Defendant filed the Leave to Appeal Application relevant to the instant appeal in this Court. Having heard the submission of the Counsel, this Court, by its order dated 21-02-2024, decided to grant Leave to Appeal in respect of the questions of law set out in paragraphs 22(b) and 22(c) of the Petition dated 20-06-2022. These two questions of law are to the following effect:

> 22. (b) Have the Judges of the Civil Appellate High Court failed to identify the fact that the amendment sought by the Plaintiffs fall outside the scope of Section 189 of the Civil Procedure Code?
>
> (c) Have the Judges of the Civil Appellate High Court erred in law by disregarding the fact that the District Court is not entitled to and lacked jurisdiction to grant relief to the plaintiffs which is not prayed for in the prayer to the plaint?

Thereafter, with the concurrence of the learned Counsel for both parties, the necessity for further oral submissions was dispensed with; the learned Counsel for both parties agreed to file written submissions pertaining to the questions of law set out above; and thereafter the Court reserved the judgment.

I have already set out above that the Provincial High Court of Civil Appeals has entered a judgment in favour of the Plaintiffs. The same judgment has concluded that the Plaintiffs have established their title to Lots No. 01 and 02 of the Plan No. 390/ඉ. The aggregate extent of Lots No. 01 and 02 of Plan No. 390/ඉ is 14.62 perches. Therefore, the decree which should have been entered by the learned District Judge, as per the judgment of the Provincial High Court of Civil Appeals, should have been in respect of a land in extent of 14.62 perches. Therefore, the reference to a land in extent of 10.625 perches in the Schedule to the decree is clearly erroneous. Our courts have consistently held that courts have the power to ensure the enjoyment of the fruits of the litigation by the judgment-creditor. It is in that spirit that our courts have consistently interpreted Section 189 of the Civil Procedure Code.

S. 189 of the Civil Procedure Code is reproduced below.

> *(1) The Court may at any time, either on its own motion or on that of any of the parties, correct any clerical or arithmetical mistake in any judgment or order or any error arising therein from any accidental slip or omission, or may make any amendment which is necessary to bring a decree into conformity with the judgment.*
> *(2) Reasonable notice of any proposed amendment under this Section shall in all cases be given to the parties or their proctors.*

In Carpen Chetty v. Majidu,[2] the learned District Judge had entered the judgment in favour of the plaintiff stating as follows:

> *I consider the plaintiff's title superior to that of the third defendant because plaintiff's transfer was registered before the transfer in favour of the third defendant. Let a declaration of title be entered in plaintiff's favour for the 13 perches extent of land and house conveyed to them by Fiscal's transfer No. 7,270; dated 8th March, 1895; third defendant will pay plaintiff's costs.*

At the time of execution, it was found that the decree contained no order directing the ejectment of the third defendant or the placing of the plaintiff in possession. The third defendant took advantage of the omission to resist the plaintiff's endeavours to take possession of the land. Subsequently, the plaintiff applied to the District Court for amendment of the decree to add an order for the ejectment of the third defendant and to place the plaintiff

[2] (1903) 7 NLR 145.

in possession of the land. The third defendant resisted this application also on the ground that the original decree was not at variance with the judgment (Section 189, Civil Procedure Code) and that it came under the head (g) of Section 217 and that the Court had no power to vary the judgment. The District Judge over-ruled the objection and allowed the amendment of the decree sought by the Plaintiff on the ground that the right of possession was consequential on the exclusive title being given to the plaintiff, and that Section 207 of the Civil Procedure Code, would debar the plaintiff from obtaining any remedy by separate action so that the relief they were obviously entitled to, must of necessity be granted to them on that application. The third defendant appealed to the Supreme Court. Wendt J (with Middleton J agreeing) dismissing that appeal in his judgment stated as follows:

> *I think, in the ordinary course, it would have been proper for the officer of the Court drawing up the decree to have included in it the further relief prayed for by the plaintiffs, viz., a restoration to possession, without which the judgment was absolutely valueless; and had he done so, I think it would have been difficult for the third defendant to persuade the Appellate Court that the decree was at variance with the judgment. If this view be correct, the decree as drawn up was at variance with the judgment in omitting to include something which the judgment intended to grant, and therefore the present application would come within the strict reading of section 189.*

In the instant case, the reliefs which the Provincial High Court of Civil Appeals intended to grant to the Plaintiffs by its judgment dated 09-07-2015, are reliefs in respect of a land in extent of 14.62 perches. This is because the Provincial High Court of Civil Appeals, for the reasons set out in its judgment dated 09-07-2015, has clearly stated that the Plaintiffs have established their title to the land the extent of which is 14.62 perches which is more fully depicted as Lots No. 01 and 02 of the plan 390/ prepared by I.A. Wijethillake, Licensed Surveyor. Therefore, the original decree dated 03-03-2017 (**P6**) is at variance with the judgment dated 09-07-2015 pronounced by the Provincial High Court of Civil Appeals. In order to bring it in line with the judgment entered, the proposed amendment must be granted as of necessity. Failure to do so would definitely render the judgment entered by the Provincial High Court of Civil Appeals absolutely valueless.

As regards the question of law No. 02, I have already stated above that this Court by its order dated 03-03-2017, has decided to refuse to grant Leave to Appeal to the said Petition filed by the Defendant to challenge the judgment dated 09-07-2015 pronounced by the Provincial

High Court of Civil Appeals. With that refusal, the final judgment of the case must be taken as the judgment dated 09-07-2015 pronounced by the Provincial High Court of Civil Appeals. It has been entered in favour of the Plaintiffs. It has also directed that a decree be entered as prayed for, by the Plaintiff. The prayer (ඌ) in the Plaint which is for a declaration of title to the land in suit must be read with the prayer (ඏ) in the Plaint which is for an order to demarcate the Eastern boundary of the said land. Thus, the reference to 10.625 perches in the original decree must be taken as an arithmetical mistake or as an accidental slip or omission, the rectification of which would necessarily bring the decree into conformity with the judgment dated 09-07-2015 pronounced by the Provincial High Court of Civil Appeals.

Thus, I am also of the view that the learned District Judge, by his order dated 29-04-2021, rightly allowed the application of the Plaintiffs to amend the decree to include the land in extent of 14.62 perches, instead of the land in extent of 10.625 perches in accordance with Section 189 of the Civil Procedure Code. I also agree with the Provincial High Court of Civil Appeals when it concluded in its order dated 18-05-2022, that there is no merit in the Leave to Appeal Application filed by the Defendant in the Provincial High Court of Civil Appeals.

For the foregoing reasons, I answer both the questions of law set out above, in the negative. This appeal must therefore stand dismissed with 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