

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

**C. A. APPEAL No. 628/99 (F)**  
 D. C., Negambo Case No. 3413/L

1. Jayasinghage Paul Condred  
Ravindra Perera
2. Jayasinghage Carlu George  
Perera

Both of 'Shriyaniya', Thudella,  
Ja-ela.

**PLAINTIFFS**

**VS.**

1. Jayasinghage Catherine Teresa  
Fonseka nee Perera
2. Pannambarage Arthur Wilfred  
Fonseka

'Sinhagiri', Thudella, Ja-ela

**DEFENDANTS**

**AND**

1. Jayasinghage Paul Condred  
Ravindra Perera

**1<sup>ST</sup> PLAINTIFF-APPELLANT**

2. Jayasinghage Carlu George  
Perera (*Deceased*)

**2<sup>ND</sup> PLAINTIFF-APPELLANT**

- 2A. Jayasinghage Marie Clotilda  
Sriya Perera  
62, Thudella, Ja-ela
- 2B. Jayasinghage Paul Condred  
Ravindra Perera  
'Shiriyaniya', Thudella, Ja-ela
- 2C. Jayasinghage Rieney Carlo  
Ranjith Perera  
49/J, Thudella East, Thudella,  
Ja-ela

2D. Jayasinghage Jude Anton  
 Kumara Perera  
 “Shriyaniya”, Thudella, Ja-ela

**SUBSTITUTED PLAINTIFF-  
 APPELLANTS**

**VS.**

1. Panambarage Alfred  
 Chandana Fonseka
2. Jayasinghage Catherine  
 Teresa Fonseka nee Perera

**DECEASED DEFENDANT-  
 RESPONDENTS**

1. Panambarage Arthur Wilfred /  
 Fonseka  
 “Sinhagiri”, Thudella, Ja-ela
2. Panambarage Alfred  
 Chandama Fonseka  
 11/3, Katuwapitiya Road,  
 Negambo
3. Rev. Father Panambarage  
 Terrence Wickrama Fonseka  
 Basilikawa, Thewaththa,  
 Ragama
4. Panambarage Winifreeda  
 Chandrani Fonseka  
 293/1. Moragoda, Gampaha

**SUBSTITUTED DEFENDANT-  
 RESPONDENTS**

**Before** : M. M. A. Gaffoor, J.

**Counsel** : Rohan Sahabandu P. C. with R. Wimalarachchi for the  
Substituted Plaintiff-Appellants

Dr. Sunil Cooray with Amanda Cooray for the Defendant-  
Respondents

**Written Submission**

**Filed on** : 27.08.2018 (by the Substituted Plaintiff-Appellants)]

31.08.2018 (by the 1A and 2A Substituted Defendant-  
Respondents)

**Decided on** : **27.02.2019**

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**M. M. A. GAFFOOR, J**

This is an appeal from the judgment of the Learned District Judge of Negombo in respect of a Land action bearing case Number 3413/L.

The Plaintiffs-Appellants (hereinafter referred to as the Plaintiffs) instituted this action seeking for a Declaration of Title to the property described in the 4<sup>th</sup> schedule to the amended plaint and for the ejectment of the Defendant-Respondents (hereinafter referred to as the Defendants).

The Plaintiffs submitted that 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are son and father and the Defendants are husband and wife. The 1<sup>st</sup> Defendant is the sister of the 2<sup>nd</sup> Plaintiff. The **Ladis Laus Perera** who is a brother of the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant. Both Defendants had come to reside with their mother in the Mulgedara house with the leave and license and after the death of the mother refused to vacate the house and the premises.

The Defendants submitted that they have prescribed the premises and denied leave and license and claimed to the corpus on prescription.

The learned District Judge delivered his judgment on 04.06.1999 dismissing the Plaintiffs action.

Being aggrieved with the judgment of the learned District Judge of Negombo, this appeal preferred by the Plaintiff-Appellant to set aside the judgment on the ground stating that the said judgment is contrary to law and the weight of evidence led at the trial.

The Plaintiffs contended that the title of the land described in the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> schedule to the plaint have got amalgamated and form one land and the amended plaint described the amalgamated land in the 4<sup>th</sup> schedule to the plaint.

The Plaintiffs further contended that this land originally entitled to one Ladis Laus Perera and the 2<sup>nd</sup> Plaintiff subject to life interest of B. Dona Dorthina, the mother of the Ladis Laus Perera, 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant; and the Defendants reside in the land without any title to it.

According to evidence led by **Ladis Laus Perera** that he, the 2<sup>nd</sup> Plaintiff and the 1<sup>st</sup> Defendant lived with their mother in the Mulgedera which is the house in suit and the Mulgethara belongs to Ladis Laus Perera, the 2<sup>nd</sup> plaintiff moved to a new house in the same land and the 1<sup>st</sup> Defendant along with her husband (2<sup>nd</sup> Defendant) continued to live with her mother and mother died in 1976.

Further, the said Ladis Laus Perera in his evidence stated that after the mother's death the both Defendants with his permission continued to live in the Mulgedara and had given a promise that they would the leave the premises. Later the said Ladis Laus Perera by way of a deed of Gift No. 442 in 1984 gifted all his rights including the Mulgeara which is belonged to him to

the 1<sup>st</sup> Plaintiff. Thereafter the Defendants refused to vacate the premises and the said Ladis Laus Perera also send a notice to quit.

The Plaintiffs pleaded that they also issued notices to quit to the Defendants, produced and marked as P5 and P6. The paper title of the Plaintiffs also has been admitted by the Defendants.

However, the Defendants argued that they were living on the said land and possessed the same as their own from 1958.

The facts that germane to the issue are whether the Defendants had prescribed the Mulgedara house and the premises in terms of Section 3 of Prescription Ordinance.

Under Section 3 of the Prescription Ordinance, No. 2 of 1889 the claimant must prove,

1. *Undisturbed and uninterrupted possession;*
2. *Such possession to be independent or adverse to the claimant plaintiff;*  
*and*
3. *Ten years previous to the bringing of a such action*

In order to initiate a prescriptive title, it is necessary to show a change in the nature of the possession and the party claiming prescriptive right should show an ouster

The 2<sup>nd</sup> Defendant in his evidence stated that he had told to Ladis Laus Perera that he would pay to Ladis Laus Perera for the property and that Ladis Laus Perera had told to him that if necessary he would get money from the 2<sup>nd</sup> defendant and the 2<sup>nd</sup> Defendant had admitted that he has given Rs 2000/- to Ladis Laus Perera in concern of the property.

It is to be noted that the above admission of the 2<sup>nd</sup> Defendant creates an absurdity to the adverse possession claimed by him and also he himself admitted that the Ladis Laus Perera is the owner of the house.

In ***Tillekaratne Vs. Bastian*** [(1918) 21 NLR 12] it is an established principle of law that a person who has entered into possession of land as a licensee is presumed to continue to possess it in the same capacity.

Where a licensee claims that his original possession has later become adverse, he must prove of the manifestation of his intention to possess adversely to the true owner by what is sometimes referred to as an 'overt unequivocal act'.

In ***De Silva Vs. Commissioner General of Inland Revenue*** [80 NLR 292] Sharvananda J. intensely observed that,

*“the principle of law is well established that a person who bases his title in adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In order to constitute adverse possession, the possession must be in denial of the title of the true owner. The acts of the person in possession should be irreconcilable with the rights of the true owner; the person in possession must claim to be so as of right as against the true owner. Where there is no hostility to a denial of the title of the true owner there can be no adverse possession. In deciding whether the alleged acts of the person constitute adverse possession, regard must be ascertained from the facts and circumstances of each case and the relationship of the parties. 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. The presumption represents the most likely inference that may be drawn in the context of the relationship of the parties. The court will always attribute possession to a lawful title where that is possible. Where the possession may be either lawful or unlawful, it must be assumed, in the absence of evidence, that the possession is lawful. Thus, where property belonging to the mother is held by the son, the presumption will be that the enjoyment of the son was on behalf of and with the permission of the mother. Such permissive possession is not in denial of the title of the mother and is consequently not adverse to her. It will not enable the possession to acquire title by adverse possession. Where possession commenced with permission, it will be presumed to so continue until and unless something adverse occurred about it. The onus is on the licensee to show when and how the possession became adverse. Continued appropriation of income and payment of taxes will not be sufficient to convert permissive possession into adverse possession, unless such conduct unequivocally manifests denial of the permitter's title. In order to discharge such onus, there must be clear and affirmative evidence of the change in the character of the possession. The evidence must point to the time of commencement of adverse possession. Where the parties were not at arm's length, strong evidence of a positive character is necessary to establish the change of character."*

It is important to consider the evidence led by the Ladis Laus Perera that the Defendants left the said land in dispute when they got married and lived

elsewhere for some time. Thereafter they came to Mulgedara as the 1<sup>st</sup> Defendant was teaching in a school nearby.

It is to be noted the Defendants need to stay at Mulgedara for a purpose to fulfill their needs but there was no proper intention to possess the land the adversely to the true owner to claim the prescriptive title.

Therefore, I am of the firm view, that the learned District Judge who heard the evidence has decided in favour of the Defendants only by bearing the fact that they lived in the house from 1958 and *failed to consider the important evidence given by Ladis Laus Perera and had misdirected himself and given bare answers to some of the issues without evaluating the evidence.*

For the foregoing reasons, I set aside the judgment of the learned District Judge of Negambo and allow the appeal in favour of the Plaintiffs.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**