

**JAMIS PERERA AND ANOTHER**  
**v.**  
**CHARLES DIAS AND OTHERS**

SUPREME COURT  
G. P. S. DE SILVA, CJ.,  
KULATUNGA, J. AND  
RAMANATHAN, J.  
S.C. APPEAL NO. 10/95  
C.A. NO. 898/82 (F)  
D.C. HOMAGAMA NO. 611/L  
JANUARY 26, 1996

*Prescription – Prescription among co-owners – Division and adverse possession of co-owned property.*

The State acquired an extent of 1A, OR. 08 P. out of a 6-acre land called Alubogahawatte which was the Southern portion of the land. Alubogahawatte was originally co-owned. At the trial of the title dispute referred to the District Court by the Acquiring Officer under s. 10 of the Land Acquisition Act, it was established by oral and documentary evidence that the land which was the subject-matter of the acquisition proceedings was possessed entirely for about 60 years by the parents of the 1st, 2nd and 3rd defendants. Consequently, those defendants claimed that they had acquired a prescriptive title to the entire land, which was the land in dispute.

**Held:**

There was cogent evidence of separation, division and adverse possession of the land in dispute by the 1st, 2nd and 3rd defendants and their predecessors in title.

**APPEAL** from the judgment of the Court of Appeal.

*R. K. W. Goonesekera* with *D. F. H. Gunawardhana* for the 5th and 6th defendants-appellants.

*D. R. P. Goonetilleke* with *S. A. D. Suraweera* for the 1st to 3rd defendants-respondents.

*Cur. adv. vult.*

February 1, 1996.

**G. P. S. DE SILVA, CJ.**

These proceedings relate to a 'reference' made to the District Court in terms of section 10 of the Land Acquisition Act by the Acquiring Officer. The dispute (as regards title) was between the 1st, 2nd and 3rd defendants-respondents on the one hand and the 5th and 6th defendants-appellants on the other. The 1st, 2nd and 3rd defendants-respondents claimed that they had acquired a prescriptive title to the entirety of the land, (the subject-matter of the acquisition proceedings), while the 5th and 6th defendants-appellants denied the claim of the defendants-respondents and asserted title to 3/4th share of the land. Both the District Court and the Court of Appeal held with the 1st, 2nd and 3rd defendants on their claim of prescriptive title. Hence the appeal by the 5th and 6th defendants to this Court.

The State acquired an extent of 1A. OR. 08P. out of a 6-acre land called Alubogahawatte which was originally owned by Davith Perera (a 2/3 share), Luwis Perera and Mango Perera (1/3 share). Davith Perera, in lieu of his undivided 2/3 share, possessed a divided lot and on his death the said lot devolved on his widow and children. By deed 5DI of 1909 a half-share of the said lot was conveyed to the daughter Jane and her husband Jamis Silva. By deed 1D2 of 1910 the balance half-share was conveyed to another daughter Lousia and her husband Henderick Dias. Lousia and Henderick are the parents of the 1st, 2nd and 3rd defendants. These facts are not in dispute.

It is the case of the 1st, 2nd and 3rd defendants that Lousia and Henderick, in lieu of the aforesaid 1/2 share possessed the entirety of the land which is the subject of the acquisition proceedings as a distinct and separate land for a period of about 60 years and thus acquired a prescriptive title thereto. Likewise, Jane and her husband Jamis Silva possessed exclusively the balance 1/2 share which was to the *North* of the corpus acquired by the State. The 2nd defendant,

whose evidence was accepted by the District Judge, stated that after the execution of 1D2, his parents separated off their portion of the land and possessed it as a distinct lot to the exclusion of all others. He further testified that after the death of his parents he and the 1st and 3rd defendants continued to possess the land in dispute as a divided and separate lot.

On a consideration of the documents in the case, it seems to me that there are two deeds which tend to support the oral evidence given by the 2nd defendant. The first deed is ID6 of 1935. This deed refers to a sale by Jane and Jamis Silva of half an acre of land on the northern side. The portion conveyed is the portion on which the school stands. The significance of 1D6 is that it shows that as far back as 1935 Jane and her husband Jamis Silva sold half an acre from their rights on the northern side. This is indicative of the division of the land referred to by the 2nd defendant in his evidence.

The other deed which is of relevance is 1D7 of 1944 by which the predecessor in title of the 5th and 6th defendants conveyed one rood to Joseline Silva, a sister of the 6th defendant. It is of importance to note that in this deed (executed about 30 years prior to the present dispute) the southern boundary of the land conveyed is described as the "*land of P. P. Henderick Dias*" (which is the land in dispute). This too is a circumstance which tends to show that the land possessed by Henderick and Lousia was separate and distinct from the land possessed by Jane and Jamis Silva.

The principal point urged by Mr. R. K. W. Goonasekera for the 5th and 6th defendants-appellants against the case of divided possession relied on by the 1st to 3rd defendants-respondents is that the latter claimed rights in the northern portion of the land in two previous acquisition proceedings. Mr. Goonasekera submitted that a claim of that nature could only be on the basis that the entirety of the land was co-owned. This submission is not without attraction. However, on a consideration of the evidence on record as a whole

it seems to me that the conduct of the 1st to 3rd defendants is not of sufficient weight to displace the cogent evidence of separation, division and adverse possession by the 1st, 2nd and 3rd defendants and their predecessors in title.

The appeal turns on what are essentially questions of fact. The findings of the trial Judge are based on credible evidence, both oral and documentary. The concurrent findings of both courts are against the appellants.

I can see no reasonable basis to reverse these findings. In the result, the appeal fails and is dismissed with costs fixed at Rs. 750.

**KULATUNGA, J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Appeal dismissed.*