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

SC APPEAL No. 46/2013

CA APPEAL No. 601/ 96F
D.C. Galle No. 11753/L

1. Narawala Gamage Somawathie of
   Pannamaga,
   Poddala
2. Nagoda Liyanaarachchige Somawathie of
   Angurumulla Watta, Pannamaga, Poddala.
3. Narawala Gamage Premawathie of
   Angurumulla Watta, Pannamaga, Poddala.

PLAINTIFFS

-VS-

1. Dabura Withanage Gnanapala of
   Meepawala, Poddala.
2. Narawala Gamage Dayawathie
   209/F, Bokundara Road, Makuuduwa,
   Piliyandala.

DEFENDANTS

1. Narawala Gamage Somawathie of
   Angurumulla Watta, Pannamaga,
   Poddala.
2. Nagoada Liyanaarachchige Somawathie of
   Angurumulla Watta, Pannamaga, Poddala.
3. Narawala Gamage Premawathie of
   Angurumulla Watta, Pannamaga, Poddala.

PLAINTIFFS- APPELLANTS

-VS-

1. Dabura Withanage Gnanapala of Summit
   House, Meepawala, Poddala.
2. Narawala Gamage Dayawathie of
   209/F, Bokundara Road, Makuuduwa,
   Piliyandala.

DEFENDANTS- RESPONDENTS

AND NOW BETWEEN

1. Dabura Withanage Gnanapala of Summit House
   Meepawala, Poddala. (Deceased)

1ST DEFENDANT- RESPONDENT-PETITIONER- APPELLANT
a) Kariyawasam Godakandage Amara Indrani
Nanayakkara
b) Malsha Prabodani
c) Chanuka Dilshan
d) Dinusha Ruvishan
All of, Panwila Road, Narawala, Poddala

SUBSTITUTE 1ST DEFENDANT-RESPONDENTS- APPELLANTS

-VS-

1. Narawala Gamage Somawathie of Angurumulla Watta, Pannamaga, Poddala.
2. Nagoda Liyanaarachchige Somawathie of Angurumulla Watta, Pannamaga, Poddala.
3. Narawalagamage Premawathie of Angurumulla Watta, Pannamaga, Poddala.

PLAINTIFFS- APPELLANTS-RESPONDENTS

2. Narawala Gamage Dayawathie
   209/F, Bokundara Road, Makuuduwa, Piliyandala.

2ND DEFENDANT- RESPONDENT-RESPONDENT

Before: Jayantha Jayasuriya, PC, CJ.
E.A.G.R. Amarasekara, J.
K.K. Wickramasinghe J.

Counsels: Ms. M. Premachandra for the Substituted 1st Defendant-Respondent-Appellants.
Sandamal Rajapakshe for the Plaintiffs- Appellants-Respondents.

Argued on: 07.07.2021

Decided on:22.11.2024

E.A.G.R. Amarasekara, J.

[1] This is an appeal by the 1st Defendant- Respondent-Petitioner-Appellant (hereinafter sometimes referred to as the 1st Defendant) against the Judgment of the Court of Appeal of Sri Lanka dated 07.12.2010 allowing the appeal of the Plaintiffs-Appellant-Respondents (hereinafter sometimes referred to as the Plaintiffs) by which the Court of Appeal set aside the Judgment of the District Court of Galle dated 23.08.1996.

[2] When the leave to appeal application was supported, this Court granted leave on 28.02.2013 on the following questions of law which were raised in paragraph 10 (b), (e) and (f) of the Petition dated 17. 01. 2011- vide journal entry dated 28.02.2013.

1. *"Has the Court of Appeal erred when it held that the 1st Defendant is a co-owner of this corpus deriving co-owned rights from the 2nd Defendant?*
2. *Has the Court of Appeal failed to consider the validity of the Deed No 52081 executed by the 2nd Defendant, in favour of the 1st Defendant?*
3. *Has the Court of Appeal failed and erred to consider that the 1-3rd Plaintiffs have possessed and acquired prescriptive rights, when it had been established that they all*

possessed it with the knowledge and permission of the 2nd Defendant, on her behalf, accepting her rights and operating as her agents, as she was in Colombo?"

[3] The learned Counsel for the Appellant has informed this Court that even though the 2nd Defendant- Respondent- Respondent (hereinafter referred to as the 2nd Defendant) has passed away, no substitution is necessary since her rights has been transferred to the 1st Defendant who is the Appellant in this matter before this Court – vide journal entry dated 27.03.2015.

[4] As per the Plaint filed on 02.05.1990 in the District Court of Galle, the Plaintiffs described the cause of action as follows:

- In terms of the judgment in the Partition Case No. 32217 filed at the District Court of Galle, the land described in the Schedule to the Plaint, namely lot 3 of Gamagewatta alias Pannagewatta of 2 roods and 11.30 perches in extent was allotted to one Narawala Gamage Albert and he became the owner of the said land in the schedule to the plaint. Upon Albert's death, the land devolved on the 2nd Plaintiff (the widow of said Albert) and the offspring of Albert namely, 1st Plaintiff, 3rd Plaintiff and the 2nd Defendant.
- The Plaintiffs and the 2nd Defendant had peaceful and quite possession over this land over 10 years, especially adverse to rights of the 1st Defendant and all others, enjoyed the produce of coconut and jak tress in the land, fenced the land and obtained prescriptive title to the land along with the 2nd defendant.
- The Plaintiffs and the 2nd Defendant resided in the land until the year 1950.
- However, by preparing the fraudulent Deed No. 52081 dated 06.06.1989, the 1st Defendant had forcefully entered the land in August 1989 misusing official powers and thugs. The 1st Defendant's attempt was to destroy all permanent plantation and develop a tea plantation in the land. This intrusion, including damages to the plantation, resulted in causing financial losses amounting to Rs. 500 for the Plaintiffs since 22.08.1989.
- Due to the aforesaid circumstances, a cause of action has accrued for a declaration of title in favour of the Plaintiffs and the 2nd Defendant, for eviction of the 1st Defendant from the said land and for damages.

[5] As a result of the aforesaid cause of action, the Plaintiffs among other things, prayed for a declaration of title for themselves and the 2nd Defendant, against the 1st Defendant, alongside a

claim for damages due to the destruction caused by the 1st Defendant. Further, they prayed for the eviction of the 1st Defendant and his agents and all under them from the subject matter.

[6] By the answer dated 18.07.1990, the 1st Defendant denied the position of the Plaintiffs stated in the plaint except what has been stated with regard to the residence of the parties to the action and the original ownership of said Albert, and stated that the said Albert had two marriages. Narawala Gamage Jayawathie Babahamy, the 2nd Defendant is the child out of Albert's 1st wedlock. Subsequently, Albert married Narangoda Liyanaarachchi Somawathie, the 2nd Plaintiff and had three children namely, Narawala Gamage Somawathie, the 1st Plaintiff; Narawala Gamage Premawathie, the 3rd Plaintiff; and Narawala Gamage Banduwathie who has not been disclosed by the Plaintiffs in the Plaint. The 1st Defendant admitted that the said land in dispute was owned by Narawala Gamage Albert as a result of the decree in Partition action No. 32217. However, the 1st Defendant in his answer has stated that said Albert had transferred the said land to the 2nd Defendant by Deed No. 1549 dated 23.6.1939, and accordingly, no rights to this corpus were devolved on 1-3 Plaintiffs upon the demise of Albert. The 1st Defendant position was that subsequently, the 2nd Defendant, who possessed the said property through her agents, sold it to the 1st Defendant by Deed No. 52081 dated 06.06.1989 for Rs. 35,000. After that, as stated in the said answer, the 1st Defendant had begun a tea plantation on this land in 1989 by cutting down all the unnecessary trees on the same land. The 1st Defendant additionally has claimed prescriptive title owing to the long undisturbed and uninterrupted possession of such land that was exercised exceeding 10 years by him and his predecessors in title. Thus, the 1st Defendant, among other things, has prayed to dismiss the Plaintiffs' action, for a declaration of title of the land in his favour and for damages.

[7] The 2nd Defendant also filed her answer on 16.01.1992 and confirmed the position of the 1st Defendant. The 2nd Defendant specifically stated that she had used and enjoyed the said land without any interruption which she got from her father by Deed No. 1549, and subsequently sold it to the 1st Defendant by Deed No. 52081 on her own without being subject to any force or undue influence. She has further averred that the 1st Defendant took over the possession of the subject matter when she transferred the property to the 1st Defendant. The 2nd Defendant denied that the Plaintiffs had or have any rights to the subject matter. She has also prayed for the dismissal of the Plaintiffs' action.

[8] The trial before the learned District Judge commenced on 23.06.1992 by recording admissions and raising issues between the parties. The parties admitted that the subject matter of the action is the land described in the schedule to the plaint and aforesaid Albert became the owner of it in terms of the final judgment in Partition action No. 32217 in the Galle District Court. On that date, the Plaintiffs raised issues No. 1 to 6 and the 1st Defendant raised the issues No. 7 to 11. In raising issues No.1 and 2, it appears the Plaintiffs have attempted to indicate that it was only the Plaintiffs that should inherit from said Albert which is contrary to their position in the plaint where their position was that they inherited the subject matter along with the 2nd Defendant. However, in raising issue No.3 they have taken the same position stated in the paragraph 3 of the plaint that they have prescribed to the corpus along with the 2nd Defendant as stated in the Plaint.

[9] During the trial at the District Court, the 1st Plaintiff and one Mudalige Jayathunga who lives in the adjoining land gave evidence for Plaintiffs, while the 2nd Defendant and Dabura Withanachchi Dharmadasa, the 1st Defendant's father gave evidence on behalf of the Defendants.

[10] The Plaintiffs' case was closed on 04.10.1994 reading in evidence the documents marked P1 to P6. No objection to any of those documents was reiterated at the close of the Plaintiffs' case if there was any. The Defendants' case was closed on 13.12.1995 reading in evidence the documents marked 1V1, 1V2 and 2V1 to 2V3. No objection to any of those documents was reiterated at the close of the Defendants case if there was any. As such all those documents can be considered as evidence for all the purposes of this case.

[11] The learned District Judge of Galle delivered the Judgment dated 23.08.1996 in favour of the 1st Defendant. The basis of the said judgment can be summarized as follows:

- The parties to the District Court action have admitted that the subject matter of the action is the land described in the schedule to the plaint and, Narawala Gamage Albert became the owner of the said land in terms of the final judgment in partition action No. 32217.
- The 1st Plaintiff has admitted that the 2nd Defendant is the only child of her father from his first marriage. Even though the 2nd Defendant has been named as Narawala Gamage Dayawathie in the plaint, her real name according to the birth certificate is Babahamy

Yasawathie and she has been identified by several names. One who came to Courts as the 2nd Defendant has been identified by the 1st Plaintiff as the only child from the first marriage of her father, Albert. Thus, whatever the name used in the plaint, it is proved that said Babahamy Yasawathie is the child born out of the first wedlock of said Albert, the father of the 1st,3rd Plaintiffs and the 2nd Defendant.

- It was not put in issue or challenged by the Plaintiff in their plaint or through issues raised at the trial that whether a deed has been executed in favour of the 2nd Defendant by the aforesaid Albert or that such deed, if executed, is a valid deed.
- Evidence led at the trial indicates that the 1st Plaintiff had attempted to pretend while giving evidence that she was unaware that her father conveyed the land to the 2nd Defendant but she actually knew it.
- The Plaintiffs have not challenged the deed No.1549(2V3) which conveyed title to the 2nd Defendant on the basis that their father did not sign it. The evidence clarifies how the consideration was paid. When one considers the evidence led at the trial as a whole, there is sufficient material to establish that said Albert during his life time conveyed the subject matter to the 2nd Defendant by deed No. 1549 (2V3).
- The aforesaid 2nd Defendant has transferred her rights to the 1st Defendant by deed No. 52081 (1V1) and it cannot be accepted that the said deed No. 52081 is a fraudulent document as the evidence of the 2nd Defendant stating that she transferred her rights to the 1st Defendant has not been challenged by any means. Hence, it has been proved that the 1st Defendant became the title holder to the subject matter through the said deed marked 1V1.
- The Plaintiffs in their plaint admitted that the 2nd Defendant's ownership to the land along with them. Thus, if the Plaintiffs have enjoyed the fruits of the property, it is with the consent of the 2nd Defendant. Thus, it is not established that the Plaintiffs had adverse possession against the 2nd Defendant and therefore, the claim of the Plaintiffs for prescriptive title has not been proved.

[12] Being aggrieved by the judgment of the learned District judge, the Plaintiffs appealed to the Court of Appeal and the Court of Appeal set aside the District Court Judgment dated

23.08.1996 by its judgment dated 07.12.2010. In the penultimate paragraph of the Court of Appeal judgment, the learned Court of Appeal judge has held as follows;

"*The plaintiff /appellants are claiming title through the same source. And the learned trial judge has misdirected himself when he stated in the impugned judgment that, as the plaintiffs/appellant have admitted in evidence the prescriptive title of the 2nd defendant, they cannot now deny the claim of the 2nd defendant. The correct approach is that as elicited by the evidence the 2nd defendant also has a claim to this land from his father. The plaintiffs/appellants along with the 2nd defendant have rights to this property as heirs of the said Albert.* ***Therefore, the 1st defendant/respondent can claim only the share of what the 2nd defendant/respondent would be entitled, as co-owner of this land.****"* (highlighted by me)

[13] The above highlighted portion of the Court of Appeal judgment clearly indicates that the learned Court of Appeal Judge accepted the transfer made by the 2nd Defendant to the 1st Defendant by executing the deed no.52081 which was challenged by the Plaintiff in their plaint. It also indicates that the Court of Appeal held against the prescriptive title claimed by the Plaintiff against the 1st Defendant as the 1st Defendant was identified as a co-owner. The Plaintiffs have not appealed against this judgment. It is the 1st Defendant who being dissatisfied of the said judgment filed a leave to appeal application to this Court for which leave was granted as aforesaid.

[14] Even for the sake of argument, if it is considered as true that the view of the Court of Appeal that the Plaintiffs are co-owners along with the 1st Defendant is correct (in fact as explained below which is incorrect), the Court of Appeal should have dismissed the Plaintiffs' action to evict the 1st Defendant as the 1st Defendant cannot be a trespasser who came into the land in the manner described in the plaint which in essence was a plaint in a *rei vindicatio* action.

[15] When deed No. 52081 (V1) was tendered in evidence for the first time, Court has rejected the request of the Plaintiffs to mark it subject to proof since, even though it is said that it is a fraudulent document in the plaint, it is not revealed why it is called fraudulent- vide page 93 of the brief. No leave to appeal application was lodged against the said order and as said before no objection has been reiterated at the end of the Defendant's case. Without stating the reason why it is called fraudulent by them, the opposite party is not in a position to meet that allegation and

call necessary witnesses. On the other hand, what the plaint has stated is that the 2nd Defendant is a co-owner along with the Plaintiffs and they all inherited the land from their father Albert and also have prescriptive title to the land in question. However, the 2nd Defendant has filed her answer and given evidence that she transferred her ownership to the 1st Defendant. Thus, there is no sufficient material to state that said deed No.52801 is a fraudulent deed. In that context, the Court of Appeal's conclusion which indicates that the ownership that the 2nd Defendant had, should devolve on the 1st Defendant is correct to that extent.

[16] Even though the learned Court of Appeal Judge has referred to deed No. 1549 executed in 1939 in her judgment, there is a glaring failure in the Court of Appeal judgment as it does not reveal why the transfer of ownership by said Albert through that deed was not accepted by the Court of Appeal. The Court of Appeal has not considered whether it is a valid deed or not. As said before, this Deed No.1549 has not been revealed and challenged in the plaint. Once it was revealed through answers of the Defendants, neither a replication has been filed to challenge the claim made by the 1st Defendant based on that nor has raised any issue challenging the validity of that deed. When it was marked as 2V3, no objection was raised by the Plaintiffs and, no objection, if there was any, was reiterated by the Plaintiff at the close of the case of the Defendants. Thus, 2V3 has to be considered as a proved document and was evidence for the all purposes of the case. Furthermore, it was more than 30 years old at the time it was marked and tendered in evidence. Thus, it can be presumed that it is a genuine deed. During the trial, the Plaintiffs have attempted to indicate that when that deed No.1549 was executed, the 2nd Defendant was only 4 years old and as such she could not have paid the consideration mentioned in the deed. Consideration could even have been paid by another person. However, the 1st Defendant had stated that her father Albert sold a land of which her mother, first wife of Albert had ownership and the money that should have come to her had been used as consideration for the transaction in deed No.1549. There was no issue raised challenging deed No.1549 and also no sufficient material to find that it is not valid. Hence, the 2nd Defendant became the sole owner of the land in issue after the execution of the deed No.1549. Therefore, the learned Court of Appeal judge's conclusion which indicates that the Plaintiffs inherited the land along with the 1st Defendant is incorrect and the said learned judge of the Court of Appeal erred in that regard.

[17] In the backdrop described above, to succeed the Plaintiffs should have proved prescriptive title against the 1st Defendant. The 1st Defendant bought the land by deed No. 52081 on 06.06.1989. The action was filed on 25.05 1990. Thus, without proving the commencement of adverse possession ten years prior to the filing of the action in the District Court against the 2nd Defendant, the predecessor in title to the 1st Defendant, the Plaintiffs cannot succeed. As the learned District Judge correctly observed, the Plaintiffs have admitted ownership of the 2nd Defendant in their plaint. As such they cannot be said to have an adverse possession against the 2nd Defendant.

[18] On the other hand, it is not in dispute that Albert, father of the 1st and 3rd Plaintiffs and the 2nd Defendant, became the owner of the subject matter as a result of the final Judgment in the partition action no. 32217. Thus, the Plaintiffs have naturally commenced their occupation of the land during their father's time along with the 2nd Defendant. Due to the close family relationship, it can be presumed that such occupation commenced under their father, Albert. Albert transferred the title to the 2nd Defendant in 1939, who was a child at that time. As her father he was the lawful guardian and, hence, the said occupation of the land by the Plaintiffs could have been continued under their father in the same capacity as there is no proof of an overt act changing the nature of their occupation to commence an adverse possession. Even their father, Albert, after executing the deed of transfer in favour of the 2nd Defendant could have continued to possess as the lawful guardian admitting the title of the 1st Defendant and as such the Plaintiffs were still continuing occupation under their father.

[19] A person who has entered into possession of land in one capacity is presumed to continue to possess it in the same capacity- vide **Corea Vs Iseris Appuhamy** 15 N L R 65 and **Tillekeratne Vs Bastian** 21 N L R 12. The pith and substance of 'adverse possession' is that its basis is incompatible with the owner's title[1]. Thus, a person who enters into possession in a manner which is not incompatible with the title of the owner needs to prove the change of the nature of his possession by proving an overt act or series of acts indicative of a challenge to the title of the owner. See **Government Agent, Western Province Vs Perera** 11 N L R 337 at 343, **Lebbe Marikkar Vs Salim** 71 N L R 97, **Navaratne Vs Jayatunge** 44 N L R 517, **Siyaneris**

[1] The Law of Property in Sri Lanka, Volume 1 by G. L. Peris page 110

Vs Udenis de Silva 52 N L R 289, **Seeman v. David** [2000] 3 Sri LR 23 **Ashar v. Kareem**, SC Appeal 171/2019, S.C. Minute dated 22.05.2023, **Chaminda Abeykoon v. H. Caralain Pieris,** SC Appeal 54A/2008, S.C. Minute dated 02.10.2018.

[20] The party who asserts that they acquired prescriptive title has to prove it and as such it is the Plaintiffs who must prove adverse possession commencing from an overt act which change their nature of occupation and possession.

[21] It is in evidence that the 2nd Defendant left the premises and started to live with her maternal relatives in or around the period from 1950 to 1955 vide paragraph 4 of the plaint, pages 70,72,79,126 of the brief. The 1st Plaintiff while giving evidence, attempted to indicate that the 2nd Defendant left their father assaulting him when he was sick and the 2nd defendant also made complaint to the police. As per the evidence, the 1st Plaintiff could have been around only 12 years of age when the said purported incident took place. No such police complaint has been marked. However, as per the evidence of the 2nd Defendant after the death of her mother, her father contracted a second marriage and she lived with them in the same house with another maternal aunty. However, after the death of her aunty, due to different treatment she had to face she sent a message to her mother's village and, thereafter, a relation came and after making an entry for which even her father accompanied her to the police station, she on her own went to her mother's ancestral home. This is not sufficient to establish the commencement of an adverse possession. There is a possibility for her father to let her go with maternal relatives willingly for her betterment due to his second marriage. As per the evidence, the 2nd Defendant would have been 16 years of age when this incident occurred. She may have a better recollection of the event that took place on that occasion.

[22] As per the evidence led, Albert died in 1960. However, they have left the land to reside in another land in or around 1955- vide pages 70,72, 79 of the brief. Even though the learned Court of Appeal Judge has stated in the judgment that Plaintiffs returned to the land in 1960, there is no such clear evidence led to support such a proposition. Even the Plaintiffs'' witness Jayatunga has also stated that Plaintiffs were not in the land from the latter part of 1950. However, the Plaintiffs' stance is that they enjoyed the fruits of the property. The 2nd Defendant's position is that she allowed the Plaintiffs, her sisters to enjoy the fruits and they even wanted to buy the

property – vide pages 150, 153 of the brief. If there was adverse possession against the 2nd Defendant, the Plaintiffs should have taken such a position in the plaint itself. Not taking such position in the plaint itself shows that there was no such adverse possession against the 2nd Defendant. On the other hand, Plaintiffs cannot be allowed to change their stance at different stages of the action. Their stance according to the plaint was that they have become co-owners along with the 2nd Defendant inheriting from their father and have prescriptive title along with the 2nd Defendant against the 1st Defendant. As such they cannot be allowed to change their stance and claim prescription against the 2nd Defendant to claim prescriptive title against the 1st Defendant. Hence, no sufficient material was placed to prove an overt act and commencement of adverse possession.

[23] For the reasons discussed above, it is clear that the learned Court of Appeal Judge erred in allowing the appeal made by the Plaintiffs and setting aside the District Court judgment.

[24] As indicated above, the learned District Court judge has correctly found that even though the 2nd Defendant has been referred in different names, it is the same person. Learned Court of Appeal judge has not decided otherwise. Even the Court of Appeal, by admitting that the rights of the 2nd Defendant devolved on the 1st Defendant, has indirectly admitted that the name Baba Hamy Jayawathie mentioned in 1V1 refers to the 2nd Defendant. In V2, birth certificate, her name has been mentioned as Baba Hamy Yasawathie. However, there was no dispute that Albert had only one child from his first marriage. Thus, it should be her birth certificate. She has been named in the plaint as Narawala Gamage Dayawathie and the 1st Plaintiff has not disputed one who appeared and gave evidence is anyone other than her sister from her father's first marriage. The Plaintiffs' witness has referred to her as Hinnihamy. Thus, even though there are differences in the said names, they refer to the one and the same person, namely the 2nd Defendant.

[25] As explained above, the learned Court of Appeal Judge failed to consider the 2nd Defendant's paper title concerning the disputed land as well as that there was no sufficient material to establish prescriptive title of the Plaintiffs against the 2nd Defendant.

[26] The 1st Defendant had purchased the said land from the 2nd Defendant who became the owner after Albert through Deed No. 1549.

[27] For the forgoing reasons, I answer the 1st Question of Law quoted at the beginning of this Judgment in the affirmative in favour of the 1st Defendant-Respondent-Appellant. 2nd Question of Law mentioned above has to be answered stating that 'no, the Court of Appeal has considered the validity of deed No. 52081 but failed to consider the validity of the deed No. 1549'. Third Question of Law has to be answered in the affirmative as Court of Appeal erred as explained above in this judgment.

[28] For the sake of completeness, it is necessary to note an erroneous statement made in the District Court Judgment. The learned District Court Judge has stated that he does not consider documents marked P1 to P 7 as they have not tendered to Court at the end of the trial. Once a document is marked it become part and parcel of the case record and he should have called the relevant parties to file them before the judgment. However, it appears, the Plaintiffs being the Appellants to Court of Appeal have failed to tender them even to the Appeal brief of the Court of Appeal. If they were tendered to Court of Appeal, they could have been part of this brief too. However, as per the evidence recorded those documents can be described as follows;

P1- birth certificate of a child of Albert, P2 to P5 – Acreage tax receipts, P6- a deed executed by the Plaintiffs allegedly with the 2nd Defendant, using her name as stated in the plaint which the 2nd Defendant does not agree, for a different land, P 7- a birth certificate of one Hinnihamy born in 1940, thus, who cannot be the 2nd Defendant.

Even if those documents were tendered and considered, they cannot prove the title of the Plaintiffs or their adverse possession against the defendants.

[29] Therefore, I set aside the Judgment of the Court of Appeal dated 07.12.2010 and restore the final conclusion of the Learned District Judge contained in the judgment dated 23.08.1996 to dismiss the plaint while declaring title of the 1st Defendant to the land mentioned in the schedule to the plaint.

[30] Hence, this Appeal allowed. The 1st defendant is entitled to the costs in all 3 Courts.

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Judge of the Supreme Court

Hon. Jayantha Jayasuriya, PC, CJ.

I agree.

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The Chief Justice

Kumudini. Wickramasinghe, J.

I agree.

……..……..

Judge of the Supreme Court