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

1. Senaratne Mudiyanselage Subaneris Appuhamy alias Subaneris Senaratne,
   Paddawala, Kirindiwela.
   1st Defendant (since deceased)

1B. Kalidasage Kanchana Dilruksha Wijewardena,
   225/1, Bogahawatte, Kirindiwela.
   Substituted 1B Defendant-Appellant-Appellant

Vs.

SC/APPEAL/95/2021
CA/381/2000(F)
DC PUGODA 81/L

1. Danee Kadinappuli Piyasiri Manawasinghe,
   43, Walpola Road, Kirindiwela.
2. Robert Kadinappuli Rathnasiri Manawasinghe,
   43, Walpola Road, Kirindiwela.
   (since deceased)

2A. Wijitha Surendra Manawasinghe,
   43/2, Ihalagama, Kirindiwela.

3. Muthugala Pedige Premadasa,
   Sri Kanthi Saloon, Nittambuwa Road,
   Kirindiwela. (since deceased)

3A. Ranthilakage Kamalawathie alias
Ranthilakalage Kamalawathie,
3B. Muthugala Pathiranage Vajira
Priyadarshana Mutugala,
3C. Muthugala Pathiranage Indika
Priyadarshana Mutugala,
3D. Muthugala Pathiranage Nirosha
Priyadarshani Mutugala,
All of 41/F, Udumillawatta,
Kirindiwela.
Plaintiff-Respondent-Respondents

2. Sammandapperuma Mohotti
Appuhamilage Don Jemis Wijewardena
Jayasekera Bandara,
Obawatte Walawwa, Radawana.
(since deceased)
2A. Sammandapperuma Mohotti
Appuhamilage Burty Jayasekera,
Obawatte Walawwa, Radawana.
(since deceased)
2B. Aruna Wijesinghe Kannangara,
2C. Sammandapperuma Mohottilage
Padmaranjani Jayasekera,
2D. Sammandapperuma Mohottilage
Leelakanthi Wijewardena Jayasekera,
2E. Sammandapperuma Ramani
Wijewardena Jayasekera,
2F. Sammandapperuma Mohottilage
Wijayanthimala Wijewardena Jayasekera,

All of No. 172, Obawatte Walawwa,
Radawana.
Substituted 2B-2F Defendant-
Respondent-Respondents

Before: Hon. Chief Justice Murdu N.B. Fernando, P.C.
Hon. Justice A. L. Shiran Gooneratne
Hon. Justice Mahinda Samayawardhena

Counsel: Dr. Sunil Coorey with Sudarshani Coorey for the 1B Defendant-Appellant-Appellant.
Romesh Samarakkody for the Plaintiff-Respondent-Respondents.

Argued on: 18.10.2024

Post-Argument Written Submissions on:
By the Plaintiff-Respondent-Respondents on 19.11.2024
By the 1B Defendant-Appellant-Appellant on 07.01.2025

Decided on: 14.03.2025

Samayawardhena, J.

The three plaintiffs filed this action in the District Court of Gampaha on 05.12.1980 against the 1st and 2nd defendants, seeking a declaration of title to the land described in the schedule to the plaint, the ejectment of the 1st defendant therefrom, and damages. The 1st defendant passed away after the institution of the action, and his daughter was thereafter substituted in his place as the 1(a) defendant. The 1(a) defendant filed answer seeking a dismissal of the action. After trial, the District Court held in favour of the plaintiffs. On appeal, the Court of Appeal affirmed the judgment of the District Court. In the meantime, the 1(a) defendant

also passed away. This appeal by the 1(b) defendant, with leave obtained from this Court, is against the judgment of the Court of Appeal.

There is no dispute that the land in suit is Lot "ඊ" in Plan No. ග1075, which was marked as X at the trial.

The case for the plaintiffs is that the 2nd defendant was the owner of the land by virtue of Partition Deed (සමගි ඛෙදුම් ඔප්පුව) No. 3965 dated 02.05.1928 marked P3 and he sold it to the plaintiffs by Deed No. 1974 dated 04.01.1980 marked P4. The position of the plaintiffs was that at the time of purchase, the land was unoccupied, and the 1st defendant forcibly took possession of the land on 29.01.1980—*vide* issue No. 3 raised by the plaintiffs.

The position of the 1st defendant, Subaneris, was that he was the owner of the land by prescriptive possession.

At the trial, the 2nd defendant, who sold the land to the plaintiffs, testified as a witness for the plaintiffs. He was 83 years old at the time he gave evidence in 1984. In his evidence-in-chief, the 2nd defendant stated that the 1st defendant had been employed as a servant by his family and had looked after the land on their behalf as a licensee. However, I must note that although this assertion goes to the root of the plaintiffs' case, the plaintiffs neither pleaded nor raised it as an issue at the trial.

However, during cross-examination, the 2nd defendant resiled from his earlier position and admitted that the 1st defendant's grandfather was the brother of his mother. He further conceded that the 1st defendant had been in possession of the land for as long as he could remember and that he was unaware of how the 1st defendant initially came into possession of the land. The 1st defendant was residing on the land at the time Deed P4 was executed in favour of the plaintiffs. The 2nd defendant also acknowledged that he had never paid any rates to the local authority for

the land and that the 1st defendant had constructed a new house on the land, which he had leased to various individuals. Given the crucial nature of the 2nd defendant's testimony in determining this appeal, and in light of the fact that both lower Courts held against the 1st defendant, I shall reproduce the entirety of the 2nd defendant's cross-examination for a better understanding of the plaintiffs' case.

ප්‍ර: මේ උසාවියේ අංක 18404 කියා බෙදුම් නඩුවක් තිබුනා තමා දන්නවාද නඩු කියන ඉඩමට යාව ඉඩමකට?
උ: දන්නවා.

ප්‍ර: ඒ නඩුවේ තමා විත්තිකාරයෙක්ද?
උ: මට අඩගහල නැහැ.
සම්පත්පෙරුම දොන් ජේම්ස් විජයවර්ධන කියන්නේ මම. පදිංචිය රඳාවාන.

ප්‍ර: ඒ නඩුවේ 8 වෙනි විත්තිකරු හැටියට ඒ නම සඳහන් වෙලා තිබෙනවා තමා නොවේද?
උ: මතක නැහැ.

ප්‍ර: සේනාරත්න මුදියන්සේලාගේ සුබනේරිස් අප්පුහාමි කියන අය ගැන කලින් තමා කතා කලා. ඒ තැනැත්තාගේ තාත්තා තමාගේ අම්මාගේ සහෝදරයෙක් නේද?
උ: එහෙමයි.

ප්‍ර: ඒ ඥාතිසහෝදරයෙක් නේද තමාගේ. ඒ තැනැත්තාට නේද තමා වැඩකාරයා කියා මෙච්චර වෙලා කතා කලේ ?
උ: ඔව්.

ප්‍ර: මේ නඩු කියන ඉඩමේ අද දවසේ ගොඩනැගිලි කීයක් තිබෙනවාද?
උ: එක ගොඩනැගිල්ලයි තිබෙන්නේ.

ප්‍ර: තමා මේ නඩු කියන ඉඩමේ සිට කොපමණ දුරකින්ද පදිංචි වී සිටින්නේ?
උ: හැතැප්ම 2 ක් පමණ තිබෙනවා.

නඩු කියන ඉඩම තිබෙන්නේ මම මුලාදැනිකම් කල වසම තුල.
ප්‍ර: නඩු කියන ඉඩමට තමා නොයෙක් විට නිතර නිතර දකිනවා ඇතිනේද?
උ: ඔව්.

ප්‍ර: අද උසාවියට ඒමට කලින් අවසාන වතාවට මේ නඩු කියන ඉඩම දැක්කේ කවදාද?
උ: දවස් 15කට පෙර දැකල තිබෙනවා.
මාසයකට සැරයක් දෙකක් දකිනවා මේ නඩු කියන ඉඩම.

ප්‍ර: තමාට ස්ථිරයි නඩු කියන ඉඩම ඇතුලේ තිබෙන්නේ එක ගොඩනැගිල්ලයි කියා?
උ: ඔව්.

ප්‍ර: ඒ ගොඩනැගිල්ල කොයි කාලයේ හදපු ගොඩනැගිල්ලක් ද?
උ: මම දන්නේ නැහැ. කොයි කාලයේ හැදුවාද කියා.

ප්‍ර: අද දවසේ තිබෙන එක ගොඩනැගිල්ල හැරෙන්න වෙනත් ගොඩනැගිලි කවදාවත් ඔය ඉඩමේ තිබුනාද?
උ: පරණ එකක් තිබුනා. ඒක කඩා වැටුනා. වෙන මොනවත් නැහැ.

ප්‍ර: පරණ එක කඩා වැටෙන්නට පෙර තිබුනේ ඒ පරණ ගොඩනැගිල්ල පමණද?
උ: ඔව්.

ප්‍ර: පරණ එක කඩා වැටුනේ කවදාද?
උ: අවුරුදු 15ක් විතර වෙනවා කඩා වැටිලා.

ප්‍ර: පරණ ගොඩනැගිල්ල කඩා වැටී කොපමණ කලකට පසුද අලුත් ගොඩනැගිල්ල හැදුවේ?
උ: අවුරුදු 2 කට විතර පසුව.
අවුරුදු 13ක් ඇති අලුත් ගොඩනැගිල්ලට. ඒක පමණයි අද දවසේ තිබෙන්නේ.

ප්‍ර: කව්ද ඒ ගොඩනැගිල්ල හැදුවේ?
උ: වෙන මිනිස්සු අඩගසාගෙන හදාගෙන ඇති. කාගේ වියදමින් හැදුවාද ඒක හරියට කියන්න දන්නේ නැහැ.

ප්‍ර: දැන් තිබෙනවා කියන එක ගොඩනැගිල්ලේ වරිපනම් අංකය දන්නවාද?
උ: දන්නේ නැහැ.

ප්‍ර: ග්‍රාම සේවක අංකය දන්නවාද?
උ: එහෙම නොම්මරයක් ඇති. මම දන්නේ නැහැ.
කඩා වැටුන ගොඩනැගිල්ලට තිබුන වරිපනම් අංකය දන්නේ නැහැ. කඩා වැටුන ගොඩනැගිල්ලේ ග්‍රාම සේවක අංකය දන්නේ නැහැ.

ප්‍ර: තමා මේ ගොඩනැගිලි දෙකෙන් එකකටවත් වරිපනම් ගෙවා තිබෙනවාද?
උ: නැහැ.

ප්‍ර: ඔය ඉඩමට තමා කවදා හෝ වරිපනම් ගෙවා තිබෙනවා ද?
උ: නැහැ.
සේනාරත්න මුදියන්සේලාගේ සුබනේරිස්ගේ පියා තමා සේනාරත්න මුදියන්සේලාගේ ජුලියස් සේනාරත්න. මගේ අම්මගේ සහෝදරයා.

ප්‍ර: තමා දන්න කාලයේ සිටම මේ නඩු කියන ඉඩමේ පදිංචිව සිටියේ සුබනේරිස් කියන තැනැත්තා?
උ: ඔව්.

ප්‍ර: සුබනේරිස්ගේ දරුවෙක් තමා විත්තිකාර රොසලින් නෝනා?
උ: ඔව්.

ප්‍ර: සුබනේරිස් කියන තැනැත්තා මේ නඩු කියන ඉඩමේ දන්න කාලයේ සිට ඉන්නවා මිසක් මොන අයිතියක් පිට ඉන්නවාද?

උ: මොන විදියට ආවාද කියන්න මම දන්නේ නැහැ.

ප්‍ර: තමා ඔප්පු ලියා දුන්නේ 1980 අවුරුද්දේ ජයසිරි, පියසිරි, රත්නසිරි සහ ප්‍රේමදාස කියන පැමිණිලිකරුවන්ට?
උ: ඔව්.

ප්‍ර: ඒ ඔප්පු ලීවේ මේ නඩුවට දැමීමට ඒ අයට ඉදිරිපත් වීම සඳහා?
උ: ඔව්.

ප්‍ර: ඒ ඔප්පු ලියන අවස්ථාවේ ඒ ඉඩමේ පදිංචිව සිටියේ සුබනේරිස් සහ මේ විත්තිකාරිය?
උ: විත්තිකරු සිටියා. වෙන ගෙදරක.
සුබනේරිස් සිටියේ ඒ වෙලාවේ මේ ඉඩමේ.

ප්‍ර: තමා දන්නා හැටියට 1 අ විත්තිකාරිය සිටියේ වෙන ගෙදරක කියා කිව්වා?
උ: ඔව්.

ප්‍ර: සුබනේරිස් තමා ඔප්පු දෙන අවස්ථාවේදීත්, ඊට කලිනුත්, මැරෙන තුරුත් සිටියේ ඔය ඉඩමේ?
උ: ඔව්.

ප්‍ර: සුබනේරිස් ඔතනින් පිටවෙලා සිටියාද ?
උ: සුබනේරිස් ඔතනින් පිටවෙලා සිටිය බවක් මම දන්නේ නැහැ.
පැමිණිලිකරුට මේ ඉඩම පෙන්වීමට මම ගියා. ඒ අවස්ථාවෙදී මේ ඉඩම පෙන්නුවා. සුබනේරිස් සමඟ කතා කලා.

ප්‍ර: ඒ ගිය වෙලාවේ කතා කලේ මොනවාද ?
උ: මේකටයි ආවේ කියා කිව්වා. සාමාන්‍යයෙන් කතා කලා.
එක අවස්ථාවක පමණයි පැමිණිලිකරුට ඉඩම පෙන්වන්නට ගියේ.

ප්‍ර: පැමිණිල්ලේ කියා තිබෙනවා නම්, "ඒ ගිය අවස්ථාවෙදී කිසිවෙක් සිටියේ නැත" කියා කිව්ව ප්‍රකාශය වැරදියි?
උ: වැරදියි.
මම කලින් කිව්වා මේ නඩු කියන ඉඩමේ උතුරු පැත්තට තිබෙනවා වැලිවේරියේ සිට කිරිඳිවැලට යන පාර. ඒ පාර මට කාරනා තේරෙන කාලෙක සිට තිබුනා. නැගෙනහිර පැත්තට දියවාලේ සිට යන මහ පාර වැලිවේරිය පැත්තට. ඒ පාරත් මට කාරනා තේරෙන කාලෙයේ සිට තිබුනා. ඔය පාරවල් මට ඔප්පු ලියා ගන්න කාලයේ සිට තිබුනා.

ප්‍ර: අද දවසේ ඔය නඩු කියන ඉඩමේ බස්නාහිරට තිබෙන ඉඩම සම්බන්ධව තිබුනේ මේ උසාවියේ කලින් මම සඳහන් කල බෙදුම් නඩුව පවරා තිබුනා?
උ: ඔව්.

ප්‍ර: අද නඩු කියන ඉඩමේ දකුණු පැත්තට තිබෙන්නේ ඩී. එල්. වික්‍රමසිංහ මහතාට අයිති කුඹුර?
උ: ඔව්.

ප්‍ර: ඒ කුඹුරත් තමා දන්නා කාලයේ සිටම තිබුන කුඹුරක්?
උ: ඔව්.

ප්‍ර: තමා පැමිණිලිකරුට විකුණන වේලාවේ සුබනේරිස් අප්පුහාමි නඩු කියන ඉඩමේ ඉන්න බව පැමිනිලිකරුට කිව්වාද?
උ: කිව්වා.

ප්‍ර: එතකොට පැමිණිලිකරු මොකද කිව්වේ? අස්කරගන්නම් කිව්වාද?
උ: මොකවත් කිව්වේ නැහැ.

ප්‍ර: ඇල්බට් කියන කෙනෙක් නඩු කියන ඉඩමේ කඩයක් දමාගෙන සිටියා?
උ: කඩයක් තිබුනා මතකයි.
කඩේ කරගෙන ගිය මනුස්සයා මතකයි. නම මතක නැහැ. ඒ මනුෂ්‍යයා අවුරුදු 4ක් 5ක් ඒ කඩේ කරගෙන ගියා.

ප්‍ර: ඒ කඩේ කරගෙන ගියේ සුබනේරිස්ගෙන් කුලියට හෝ බද්දක් අරගෙන නේද?
උ: වෙන්න ඇති. මගේ සම්බන්ධයක් නැහැ.

ප්‍ර: ඒ අය හැර වෙනත් වෙනත් අය ඒ ඉඩම බද්දට හෝ කුලියට අරගෙන සිටියා?
උ: වෙන්න ඇති. මට ඒ අය එක්ක සම්බන්ධයක් තිබුනේ නැහැ.

ප්‍ර: බදු කාරයෙක් මතකයිද? විතාන වික්‍රමසිංහ ආරච්චිගේ දොන් කුලසේකර වික්‍රමසිංහ කියා?
උ: ඔව්.

ප්‍ර: එයත් ඔතැන බද්දක් අරගෙන සිටි කෙනෙක්?
උ: ඔව්.

ප්‍ර: මම තමාට යෝජනා කරන්නේ අද නඩු කියන ඉඩම සම්පූර්ණයෙන්ම එක අවස්ථාවක 1 වෙනි විත්තිකරු සුබනේරිස්ට අයිතිව තිබුන ඉඩමක් කියා?
උ: සුබනේරිස්ට පියාගෙන් උරුම කොටසක් ගිහින් තිබෙනවා. සුබනේරිස්ගේ පියා ජුලියස් සේනාරත්න. මගේ මාමා. ජුලියස් සේනාරත්න ඔහුගේ ඉඩම් දරුවන්ට බෙදල දෙන්න ඇති.

ප්‍ර: අද නඩු කියන ඉඩම ඒ බෙදිල්ලෙදී බෙදා දුන්නේ සුබනේරිස්ට?
උ: සුබනේරිස්ටයි, සරනේලිස්ටයි.

One-time *Gammuladani* (ගම්මුලාදැනී) of the area, Ukku Banda, was called by the 1st defendant to give evidence. He was 75 years old at the time of giving evidence in 1985. He stated that the 1st defendant had been in possession of the land since around 1915 and the 1st defendant passed away in the house located on the land. The 1st defendant had also been enjoying the plantation. According to the death certificate marked V15, the 1st defendant passed away at the age of 96. This witness further stated that the 1st defendant's father, Julias, had also lived on the land and had passed away there.

According to the Plans marked P1 and X at the trial and the reports thereto, there are two houses in the land—one very old and uninhabitable and the other a recent construction. At the time of the survey in 1982, according to the report to P1, the old house was approximately 50 years old, while the new house was about one year old. It was the evidence of the 1(a) defendant that her grandfather, Julias, and her father, the deceased 1st defendant, lived in the old house. The land also contained an old plantation with coconut, jak, mango, cashew and jak fruit trees, estimated to be around 30 years old.

The documents relating to payment of rates by the 1st defendant and the lessees were collectively marked as V10 and V11 through an officer of the local authority. V13 dated 01.03.1975 is a document which goes to show that the 1st defendant allowed one Saranadasa to occupy the house. V14 dated 01.04.1970 is a notarially executed lease agreement by which the 1st defendant leased out the land for three years to one Kulasena Wickramasinghe. This Deed had been registered in the Land Registry. In his evidence, the 2nd defendant admitted that the land had been rented out to Kulasekara Wickramasinghe. The 1(a) defendant in her evidence stated that at one point the house was leased out to one David. The fact that the land and/or the constructions were leased out to third parties by the 1st defendant without any consent from either the 2nd defendant or the plaintiffs is beyond question.

P8 dated 15.05.1969 is a notarially executed Deed of Gift by which the 1st defendant gifted the land in suit to his daughter, the 1(a) defendant. In this deed the 1st defendant claims that he had been in possession of the land for more than 30 years. This deed was not executed to meet the plaintiffs' case, as it predates the plaintiffs' deed by more than a decade. It was duly registered in the Land Registry.

On the face of the plaintiffs' deed marked P4, the plaintiffs had not done a search at the Land Registry prior to the purchase of the land as the notary has made an endorsement on the deed "search dispensed with". Had the plaintiffs done a search in the Land Registry prior to the purchase of the land, they would have easily realised that there is another party claiming ownership to the land.

In the face of overwhelming evidence in favour of the 1st defendant on long possession, what led the Court of Appeal to hold against him? The Court of Appeal considered P11 and P12 as decisive documents. Had it not been for the interpretation given to P11 and P12, the Court of Appeal would have arrived at a different conclusion.

P11 and P12 are assumed to have been marked during cross-examination of the 1(a) defendant. I read the entire evidence led at the trial before the District Court by both parties, particularly, the evidence of the 1(a) defendant on P11 and P12. It is not clear from the proceedings how they were marked. The witness was confused by being shown various documents. The witness has accepted the signature of her deceased father on P9 and V14. Amidst the confusion, P12 was marked. In the recorded evidence, there is no reference to P11. (vide pages 178-179 of the appeal brief) In my view, the 1(a) defendant had been forced to admit the signature on those documents or one of them as that of her father. However, she explicitly stated that she was unaware of these documents, which were shown to her for the first time during cross-examination.

Let me briefly digress to emphasise another important aspect in conducting trials. Just before these documents were shown to her, it was repeatedly suggested that her deceased father, Subanaris, was an illegitimate child born to a domestic servant named Nonchihamy. She repeatedly stated that she was unaware of her grandparents' conduct. That, however, was irrelevant to the issue before the District Judge. In

my view, this suggestion was made to demoralise and ridicule her in the witness box before the general public, which should not have been permitted by the District Judge. The importance of preservation of human dignity is underscored in the Preamble to our Constitution and in all major international instruments including the Universal Declaration of Human Rights. Indecent and scandalous questions intended to insult or annoy witnesses are prohibited. It is the duty of the trial Judge to control the proceedings and ensure that the trial is conducted in accordance with the law, while maintaining the dignity and decorum of the court.

Section 151 of the Evidence Ordinance and section 176 of the Civil Procedure Code read as follows:

> *The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.*

Section 152 of the Evidence Ordinance and section 177 of the Civil Procedure Code read as follows:

> *The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.*

It is erroneous to assume that any question can be asked during cross-examination. Questions cannot be put to injure the character of the witness without reasonable grounds. Section 150 of the Evidence Ordinance states:

> *If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any attorney-at-law, report the circumstances of the case to the Supreme Court or other authority to which such attorney-at-law is subject in the exercise of his profession.*

P11 and P12 are handwritten letters, but their connection to the land in suit is unclear. Notably, both documents contain identical content but in different handwriting, distinct from the handwriting of the signatures. The reason for preparing two identical documents in different handwriting is unexplained, adding to their questionable nature. The 1(a) defendant never accepted that those documents refer to the land in suit. The plaintiffs have provided no clarification on these issues. Let me reproduce these two identical letters.

> දෙල්ඕවිට,
> පද්දාවල,
> කිරිඳිවැල
> 22/4/67
>
> අද දින පහත අත්සන්කර සහතික කරන වගනම් කහටගහවත්ත නොහොත් දෙල්ඕවිට වත්තේ රදාවානේ ඔබවත්ත වලව්වේ පදිංචි ඇස්. ඩී. ජේ. ඩබ්ලිව්. ජයසේකර බණ්ඩාර රාළහාමිට [2nd defendant] අයිති එම ඉඩමේ කොටස් ඒ උවමනා අන්දමට වෙන්කර ගැනීමට හෝ ඕනෑ දෙයක් කරගැනීමට මගෙන් කිසි අකමැත්තක් නැති හැටියට ප්‍රකාශ කරමි.

Let us assume this was signed by the 1st defendant. This letter has been addressed to the 2nd defendant. Then this should have been produced through the 2nd defendant who gave evidence. It was not done. It was forcefully marked through the 1(a) defendant who was not aware of those letters. In these letters the 1st defendant does not say that Kahatagahawatta entirely belongs to the 2nd defendant and he has no

objection to the 1st defendant dealing with entire Kahatagahawatta in the way he wants. The letters merely state that the 1st defendant had no objection to the 2nd defendant dealing with portions of Kahatagahawatta that belonged to the 2nd defendant. They do not suggest that the 1st defendant relinquished any claim over the entire Kahatagahawatta. Kahatagahawatta is not confined to the land in suit but appears to be a larger land. There was a previous partition action, No. 18404, concerning another portion of Kahatagahawatta, in which both the 1st defendant and the 2nd defendant were parties. The documents related to that partition action were marked in evidence. However, it remains unclear which portion of Kahatagahawatta is referred to in P11 and P12.

P11 and P12 are dated 22.04.1967. This action was filed in 1980. The Court of Appeal states:

> *However, as I observed earlier, the 1st defendant has signed and accepted the ownership and/or title of the 2nd defendant by P11 and P12. Therefore, if the 1st defendant prescribed to the disputed land, he should have done it after the signing of these documents in 1967. (….) However, the evidence of the 1(a) substituted defendant doesn't reveal any overt act by which her predecessor (i.e. the 1st defendant) started holding the disputed land adversely to his principal (i.e. the 2nd defendant) after 1967.*

I am unable to agree with this analysis of evidence and the findings reached thereon. P11 and P12 do not establish that (a) the 1st defendant accepted that the 2nd defendant was the owner of the land in suit and (b) the 2nd defendant is the principal of 1st defendant. Hence the finding of the Court of Appeal that the 1st defendant did not prove an overt act to commence adverse possession after signing P11 and P12 is untenable.

The 1st defendant had been in continuous possession of the land in suit from around 1915 until his death in 1981. He constructed buildings on the land and leased them out, constituting overt acts indicative of the commencement of prescriptive possession. The Deed of Gift marked P8, executed in 1969, and the lease agreement marked V14, executed in 1970, serve as further evidence of such overt acts following P11 and P12. Notably, more than ten years had elapsed between the execution of P8 and V14 and the institution of this action in December 1980.

Although registration of deeds taken in isolation may not constitute overt acts, on the facts and circumstances of this case, where the 2nd defendant himself in his evidence admitted leasing out buildings or land to third parties by the 1st defendant, one cannot say that execution of deeds is a secret act.

There is no evidence whatsoever that the plaintiffs or their predecessor in title (the 2nd defendant) ever occupied, possessed or enjoyed the land or its plantation. Nor is there any evidence to establish that the 1st defendant possessed the land as a licensee of the 2nd defendant.

Even assuming, without conceding, that no overt act was proved to have been committed by the 1st defendant, the Full Bench of the Supreme Court in *Tillekeratne v. Bastian* (1918) 21 NLR 12 held, in the context of prescription among co-owners, that a court may infer that possession, initially that of a co-owner, has subsequently become adverse against other co-owners, based on the lapse of time and the circumstances of the case. Bertram C.J. succinctly articulated this principle at page 24 as follows:

> *It is, in short, a question of fact, wherever long-continued exclusive possession by one co-owner is proved to have existed, whether it is not just and reasonable in all the circumstances of the case that the*

> *parties should be treated as though it had been proved that that separate and exclusive possession had become adverse at some date more than ten years before action brought.*

Bertram C.J. explained at pages 20-21 the artificiality of insisting on an overt act when possession goes back for a period as far as reasonable memory reaches in the following manner:

> *If it is found that one co-owner and his predecessors in interest have been in possession of the whole property for a period as far back as reasonable memory reaches; that he and they have done nothing to recognize the claims of the other co-owners; that he and they have taken the whole produce of the property for themselves; and that these co-owners have never done anything to assert a claim to any share of the produce, it is artificial in the highest degree to say that such a person and his predecessors in interest must be presumed to be possessing all this time in the capacity of co-owners, and that they can never be regarded as having possessed adversely, simply because no definite positive act can be pointed to as originating or demonstrating the adverse possession. Where it is found that presumptions of law lead to such an artificial result, it will generally be found that the law itself provides a remedy for such a situation by means of counter-presumptions. If such a thing were not possible, law would in many cases become out of harmony with justice and good sense.*

This principle applies with even greater force in cases where no co-ownership exists, as in the present case. Given the facts and circumstances, the 1st defendant's exclusive possession of the land—without paying rent or acknowledging the title of any other party—for over 40 years prior to the institution of the action entitles him to claim prescriptive title to the land.

The questions of law on which leave to appeal was granted and the answers thereto are as follows:

Q. Did the Court of Appeal err in accepting P11 and P12 to the exclusion of all other valid evidence adduced by the 1st defendant?

A. Yes.

Q. Did the Court of Appeal err in failing to appreciate that long uninterrupted possession of the land in dispute and constructing buildings by a stranger is an overt act?

A. Yes.

Q. Did the Court of Appeal err in holding that the 1(a) defendant had not proved prescriptive title to the land?

A. Yes.

I set aside the judgments of the District Court and the Court of Appeal and allow the appeal of the 1(a) defendant. The plaintiffs' action of the District Court shall stand dismissed. I make no order as to costs.

Judge of the Supreme Court

Murdu N.B. Fernando, P.C., C.J.
I agree.

Chief Justice

Shiran Gooneratne J.
I agree.

Judge of the Supreme Court