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

Cinemas Limited,
No: 117, New Chetty Street,
Colombo-13.

Plaintiff

SC. Appeal No. 21/2005
CA-226/94(F)
DC Colombo 3807/2L

Vs.

The Building Materials Corporation
No: 192/10, Srimath Bandaranayake
Mawatha,
Colombo-12

Defendant

AND BETWEEN

Cinemas Limited,
No: 117, New Chetty Street,
Colombo-13.

Plaintiff – Appellant

Vs.

The Building Materials Corporation
No: 192/10, Srimath Bandaranayake
Mawatha,
Colombo-12

Defendant – Respondent

AND NOW BETWEEN

The Building Materials Corporation
No: 192/10, Srimath Bandaranayake
Mawatha,
Colombo

Defendant – Respondent – Appellant

Vs.

Cinemas Limited,
No: 117, New Chetty Street,
Colombo-13.

Plaintiff – Appellant – Respondent

Before : P. Padman Surasena, J.
E. A. G. R. Amarasekara, J.
Mahinda Samayawardhena, J.

Counsel : Mangala Niyarepola with Ms. Kushani Gunaratne instructed by Mrs. Lakmali Jayasinghe for the Defendant – Respondent – Appellant.

Romesh de Silva, PC. With Harsha Soza, PC., E.R.S.R. Coomaraswami, N.R. Sivendran & Miss Damithri Kodithuwakku instructed by Saravanan Neelakandan for the Plaintiff – Appellant – Respondent.

Argued on : 28.11.2022

Delivered on : 23.05.2025

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

When the Leave to Appeal application was supported in this matter by the Defendant – Respondent – Appellant, the Building Materials Corporation (Hereinafter referred to as the "Defendant-Appellant"), against the Judgement made by the Court of Appeal in Case No. CA-226/94(F) that set aside the Judgement of the learned Additional District Judge in Case No. DC Colombo 3807/ZL, which dismissed the action of the Plaintiff – Appellant – Respondent, Cinemas Limited, (Hereinafter referred to as the "Plaintiff-Respondent"), this Court on 03.03.2005 granted leave on the questions of law set out in paragraphs 15(a) to (e) of the Petition dated 02.03.2004. The learned District Judge, while dismissing the action of the Plaintiff-Respondent as aforesaid, had granted the reliefs prayed by the Defendant-Appellant.

The Plaintiff-Respondent first filed its Plaint dated 28.08.1981 and then amended it by the amended Plaint dated 20.11.1984 in the District Court of Colombo against the Defendant-Appellant. The Position of the Plaintiff-Respondent as per its pleadings is as follows;

- The Plaintiff-Respondent is a body corporate duly incorporated and registered under the provisions of the Companies Ordinance. The Defendant-Appellant is a body corporate duly established under the provisions of the Sri Lanka State Trading Corporation Act No. 33 of 1970.
- The Chettinad Corporation (Private) Limited of Madras in the Republic of India (hereinafter "Chettinad Ltd.") was the owner of and was entitled to all of the land depicted as Lot No. 1 in Plan No. 1215 made by L.S. Wickremeratne, Licensed Surveyor dated 22.04.1946, which is more fully described in the First Schedule to the amended Plaint as a land of 5 Acres and 26 Perches.
- The said Chettinad Ltd. caused the land described in the First Schedule to be surveyed and subdivided into five allotments of land which are depicted as Lots 'A' 'B' 'C' 'D' and 'E' in Plan No. 408B dated 24.02.1962 made by V. Siva Sunderam, Licensed Surveyor. The said Chettinad Ltd. again caused the said Lot A in Plan No. 408B, to be subdivided into three allotments of land, which are depicted as 'A1' 'A2' and 'A3' in Plan No. 913 made by S. Singanayagam, Licensed Surveyor, dated

30.07.1964. The said Lot A of Plan No. 408B is more fully described in the Second Schedule to the amended Plaint as a land of 3 Acres and 15.06 Perches.

- By Deed No. 668 dated 10.08.1964, attested by T. Devarajan, Notary Public, the said Chettinad Ltd. transferred Lots A1 and A2 in the said Plan No. 913 together with the building standing thereon to the Plaintiff-Respondent, Cinemas Limited. The said two allotments of land A1 and A2 are more fully described in the Third Schedule to the amended Plaint as allotments of 1 Rood and 1 Perch and 1 Rood and 28.25 perches respectively.
- The Plaintiff-Respondent caused said Lot A1 and part of Lot A2 in Plan No. 913 to be amalgamated together with the land belonging to it and situated on the Northern boundary of the said Lot A1 and part of A2, and the said amalgamated Lots are depicted as Lot No. 1 in Plan No. 144 made by E. Thanabalasingam, Licensed Surveyor, dated 28.03.1979.
- By Deed No. 850 attested by D.N. Swaminatham, Notary Public, on 25.04.1980, the Plaintiff-Respondent, sold, conveyed and transferred the said amalgamated Lots to Pen Pals Limited and delivered possession.
- The Plaintiff-Respondent abovenamed is the owner of the remaining portion of Lot A2 depicted in Plan No. 913, and the Plaintiff-Respondent and its predecessors in title have been in exclusive and uninterrupted possession of the said part of Lot A2 for a period of well over 20 years. The said Part of Lot A2 is more fully described in the 4th Schedule to the amended Plaint and it is approximately one Rood Eighteen Perches in extent, which is depicted in the sketch annexed and marked 'X' with the amended Plaint. As per the said 4th Schedule it is also depicted as Lot A2A in Plan No.3065 made by K. K. Thirunavukarasu, Licensed Surveyor.
- By Notice of Claim dated 10.02.1972 given by the Chairman of the Defendant-Appellant published in Government Gazette Extra-Ordinary No. 14996/15 of 10.02.1972, the following properties described in the Schedule to the said Notice were declared to be required for the purpose of the Defendant-Appellant. The said schedule reads as follows;

  "The building, fixtures, land and premises presently occupied by Messrs. Chettinad Corporation (Private) Ltd. in extent about 3 acres and 15 perches more or less bearing assessment Nos. 445 and 541 situated at Sri Sangaraja Mawatha and assessment Nos.

224, 222/3, 44A, 5, 11 and 12 situated at Bandaranaike Mawatha and bounded as follows;

- North: Lot B in Plan No. 408B of 24.2.26 made by V. Siva Sunderam, Licensed Surveyor,
- East: Sri Sangaraja Mawatha,
- South: Premises Nos. 443 and 441, Sri Sangaraja Mawatha, and No. 75/35 Abdul Hameed Street,
- West: By premises No. 1920, Bandaranayake Mawatha"

- The lands and buildings described in the 4th Schedule to the amended Plaint were not included in the aforesaid claim and/or the said Chettinad Ltd. ceased to occupy or possess the same since 10.08.1964, and were not in occupation thereof on the 20.02.1972.
- The Defendant-Appellant wrongfully and unlawfully claims that the said land and buildings described in the said 4th Schedule are included in the aforesaid notice of claim, and in or about January 1981 wrongfully entered the said lands and erected buildings thereon and are continuing to build thereon.
- A cause of action has accrued to the Plaintiff-Respondent to sue the Defendant for a declaration that it is entitled to all that land together with the buildings standing thereon described in the 4th Schedule and for the related reliefs prayed for in the action filed.
- An inquiry was held for the purpose of determining the amount of compensation payable in respect of the land vested with the Defendant-Appellant Corporation, under the said notice of claim.
- At the said Inquiry, the Defendant-Appellant declared and/or accepted the position that the land described in the 4th schedule to the Plaint had not vested in the Appellant, under the said notice of claim.
- In view of the said declaration by the Defendant-Appellant and/or in the acceptance of the position that the land described in the 4th Schedule to the Plaint had not vested in the Defendant-Appellant Corporation, the said Chettinad Ltd. and/or the Plaintiff-Respondent refrained from claiming any compensation in respect of the said land described in the 4th Schedule.
- That, therefore, the Appellant is estopped from claiming title to the said land described in the 4th Schedule to the Plaint.

Thereby, the Plaintiff- Respondent among other things prayed for:

(a) A judgement declaring the Plaintiff-Respondent is entitled to the part of the land depicted as lot 'A2' on aforesaid Plan No. 913 and morefully described in the 4th Schedule to the amended Plaint;

(b) An order directing the Defendant-Appellant to demolish all buildings erected by it on the land in question;

(c) A Decree of ejectment directing that the Defendant-Appellant, its servants, employees, tenants, contractors and all those holding under the Defendant-Appellant be ejected from the land in question and the delivery of the vacant possession of the said land,

(d) Damages at the rate of Rs. 90,000/- per month from January 1991 to 31st July 1981 amounting to Rs. 630,000/- and further damages at the said rate from 1st August 1981 until the Defendant-Appellant, its agents, servants and contractors are ejected from the land in question and the Plaintiff-Respondent is placed in quiet possession;

(e) A permanent injunction restraining the Defendant-Appellant its officers, servants, agents and contractors from entering upon the land in question or remaining thereon or erecting any further buildings thereon or continuing any building operations on the said land;

(f) An interim injunction to the effect as in Clause (e) above to be effective until the final determination of this action;

In response to the Plaint and the amended Plaint, the Defendant-Appellant, first filed its Answer dated 06.10.1982 and then amended Answer dated 14.12.1984. The Position of the Defendant-Appellant as per its pleadings is as follows;

- A cause of action has not accrued to the Plaintiff-Respondent as set out in the Plaint, and the Plaintiff-Respondent is not the owner of the allotment of land described in the 4th Schedule to the Plaint.
- As per the Vesting Order made in terms of Section 30(1) of the Sri Lanka State Trading Corporation Act No.37 of 1970, the land described therein is vested in the Defendant-Appellant Corporation. (The Boundaries of the land relevant to the said

vesting order is the same as the boundaries described in the claim notice referred to in the amended Plaint.)

- The land described in the 2nd Schedule to the amended Plaint which is described as Lot A in aforesaid Plan No. 408B and also as Lots A1, A2 and A3 in the aforesaid plan No. 913 is the same land which is vested in the Defendant-Appellant as per the aforesaid Vesting Order published in Government Gazette No. 14996/15 of 11.02.1972. Hence, the disputed land in schedule No.4 of the amended Plaint belongs to the Defendant-Appellant.
- Since around 1978, the Plaintiff-Respondent had been in wrongful and unlawful occupation of Lot A1 and the Northern portion of Lot A2 depicted in Plan No. 913 causing damages to the Defendant-Appellant.
- Further, the Defendant-Appellant counter claimed for title to the land and premises described in the Schedule to the Answer, for ejectment of the Appellant from Lot A1 and the Northern portion of Lot A2 described in the Schedule to the Answer and for damages.

Thus, the Defendant-Appellant prayed for the dismissal of the action of the Plaintiff-Respondent, declaration of title to the land described in the schedule to the answer which is the land described in the Vesting Order, ejectment of the Plaintiff-Respondent from Lot A1 and the northern part of A2 and for damages.

Thereafter, the Plaintiff-Respondent had filed a Replication dated 19.01.1983, stating, inter alia that:

- The Defendant-Appellant's claim for damages, if any, are prescribed.
- The properties described in the Vesting Order referred in paragraph 5 of the Answer were only the buildings, fixtures, land and premises as were occupied by Messrs Chettinad Ltd. as at February 10th, 1972 and no other.

It must be noted that prior to the amendment of the Plaint, the Plaintiff-Respondent had filed an affidavit in support of the interim injunction application in the original plaint, which as per the proceedings dated 11.06.82, was not proceeded further on the request of the Plaintiff-Respondent's Counsel before the District Court. Though the same prayers for interim injunctions were there in the amended Plaint, they too have not been proceeded with. Thus,

there was no injunction inquiry held. However, with the original application of the injunction inquiry, an affidavit (with an English Copy) had been tendered, which referred to certain documents. Those documents are mentioned below with the marking given to them in the affidavit (Vide affidavit dated 07.09.1981in Sinhala and the affidavit in English bearing the same date.).

1. A copy of the aforementioned Plan No. 408B as P1
2. A copy of the aforementioned Plan No. 913 as P2
3. A copy of the Deed No. 668 attested by A. Devarajan N.P. as P3
4. A copy of the aforementioned Plan No.144 as P4
5. A copy of the aforementioned Deed No. 850 as P5
6. A sketch drawn by the Plaintiff-Respondent to show the land described in the 4th Schedule marked as X. (It appears the English copy of the affidavit had not given the marking 'X' to the said document).
7. The notice of claim published in the Gazette on 10.02.1972 as P6 (This may be Gazette No. 14996/15 dated 10.02.1972 as per the contents in paragraph 12 of the said affidavits)

Documents referred to in items No. 1, 2, 6 and 7 appears to have been included in a list at the end of the amended Plaint. However, no documents can be found attached to the said affidavit in the brief.

It appears that the trial commenced on 11.02.86, raising issues No.1 to 9 by the Plaintiff-Respondent and No. 10 to 13 by the Defendant-Appellant. No admissions have been recorded on that date.

At the trial, A.G. Gunaratne, Assistant Valuer of the Department of Valuation and D.M. Swaminathan, Attorney-at-Law provided evidence on behalf of the Plaintiff-Respondent while Anil Pieris, Licensed Surveyor, and L.D. Wilson Joseph, Storekeeper, Building Materials Corporation provided evidence on behalf of the Defendant-Appellant.

The Plaintiff-Respondent, closed its case reading in evidence the documents P1 to P11. However, as per the evidence led at the trial, Plaintiff had marked only P6 to P11 through the aforesaid witnesses it called to give evidence at the trial- vide proceedings at the trial. The said documents are mentioned below;

- Gazette No.14996/15 dated 10.02.1972 as P6 (This seems to be the Gazette that contained the notice of claim referred to as P6 in the affidavit mentioned above. The description of the land in this tallies with the description contained in the Requisitioning Order and Vesting Order which have also been marked as 'V1' with sub markings 'V1a' and 'V1b' during cross examination of the Plaintiff-Respondent's witness Gunaratne).
- Valuation report prepared by One N. Nadarajah, Licensed Valuer as P7.
- Report containing evidence which appears to be of the compensation inquiry as P8.
- Copy of the proceedings which shows certain appearances made before the said compensation inquiry as P9.
- Decision of the Chief Valuer as P10.
- A certified copy of the Plan No. 965 as P11 (However, this Plan No.965 is not available in the brief nor has been tendered with the written submission of the parties. As per 'P8" found in the brief, this plan seems to be a plan that indicated the part of land considered as the part of the land occupied by the Chettinad Ltd. for the compensation inquiry. Although this Court attempted to trace the original case record of the District Court, it was of no avail.)

As this P1 to P5 were not admitted document at the trial at the time the Plaintiff-Respondent closed its case, and they were not marked during the trial through witnesses or admissions made, there is no clear indication what those P1 to P5 were when they were mentioned at the close of the Plaintiff-Respondent's case. However, the Defendant-Appellant had not objected to any of the said documents mentioned as P1 to P11 at the close of the Plaintiff-Respondent's case. Perhaps, as the last document mentioned is P11, without recognizing that P1 to P5 were not marked during the trial through evidence, the Counsel for the Defendant-Appellant might have inadvertently refrained from making any objections to them. However, it appears that aforesaid Plan No.913 had been shown to the 2nd witness of the Plaintiff as P2 during his evidence-in-chief without marking it. It appears that even the Defendant Appellant had used it in preparing the Plan marked V3. Even if P2 is considered as a document marked or tendered at the trial, P1, P3, P4 and P5 had not been marked or tendered or referred to during the trial through witnesses. On the other hand, if any documents which were not marked during the trial were mentioned at the close of the Plaintiff-Respondent's case, in my view, there was a duty on the part of the counsel for the

Plaintiff-Respondent to mention what those documents were, unless there was an agreement to tender them as admitted documents.

Though there was a claim of prescriptive title through long possession raised through issues, in addition to the claim based on paper tile, the Plaintiff-Respondent had not led any witness to establish the nature of possession it had over the land in issue or to indicate who possessed various lots described in the amended Plaint at the time of the Vesting Order. Even the title deed referred to in the amended Plaint, namely Deed No.668 (P3) was not marked during the trial except for being mentioned in the said affidavit tendered to the Court for the purpose of an application for injunction which was not proceeded with as aforesaid. It appears that the documents referred to as P1 to P5, from and out of the documents referred to as P1 to P11 at the close of the case of the Plaintiff-Respondent are the documents referred to in the said affidavit. It should also be noted that the Plaintiff-Respondent's claim is for the land described in the 4th Schedule to the amended Plaint. However, the plan referred to in the said schedule, namely Plan No.3065, had not been tendered in evidence nor had a plan prepared on a commission marked to indicate the land in the 4th Schedule to the Plaint. Although, there was a reference to a sketch marked X in the aforesaid affidavit, it too was not marked during the trial nor referred to at the close of the Plaintiff-Respondent's case.

The Defendant-Appellant had led the evidence of Anil Peris, Licensed Surveyor and of one Wilson Joseph, Store Keeper of the Defendant-Appellant. Through them the Defendant-Appellant had referred to certain documents as explained below;

- V3- as per the marking made on the document, this appears to be Plan No.1471 dated 30.07.1973 made by the said witness, Anil Peiris L.S. It appears this had been prepared using plan No. 913 (which appears to have been referred to as P2 in evidence of said Anil Peiris) and another Plan No.1225. This plan No.1225 appear to have been referred to as Plan No.1275 or 1235 in several places in the evidence of the said Licensed Surveyor but has not been marked and cannot be found in the brief or among the copies of documents tendered along with the written submission. Thus, even though the Plaintiff-Respondent failed to mark Plan No 913 (P2) at the trial, it has been spoken to in evidence as P2 through Defendant-Appellant's witnesses.
- The Defendant-Appellant had closed its case reading in evidence V1, V2 and V3. V1 is the Gazette Notice marked through the Plaintiff-Respondent's witnesses which

contained the Requisitioning Order and the Vesting Order. This is the Gazette No.14996/16 dated 11.02.1972. V2 appears to be the Plan No. 408B which too was marked through Plaintiff-Respondent's witness. No objection has been reiterated at the close of the Defendant-Appellant's case for the said documents marked V1, V2 and V3.

The Counsel for the Plaintiff-Respondent has referred to **Fradd v Fernando** 36 N L R 124 in his submissions. This may be to indicate that even the documents marked in the purported injunction inquiry are part of the case record and they can be considered. In fact, there was no injunction inquiry as it was not proceeded with on the request of the Plaintiff-Respondent's lawyer before the District Court. On the other hand, the facts relevant to the above case only indicates a situation where a Court sitting in appeal considering a document tendered before the Court below but refused by the judge of the Court below. Thus, it is a consideration of a document as part of the case record, which was in fact tendered during the trial but refused to be admitted by the trial Judge, as that refusal was considered as incorrect by the Judges sitting in appeal. It cannot be considered as a decision that allows a document which was not marked or spoken to at the trial to be considered as evidence at the trial. The learned Counsel has also referred to **Adaicappa Chetty v Thomas Cook and Son** 31 N L R 385**.** This Judgment speaks of a document filed with the Plaint and referred to in giving evidence at the trial and considered by the judge. In the case at hand, among the documents not marked during the trial, namely P1, P2, P3, P4 and P5, only P2 has been referred to in giving evidence.

Many years after the conclusion of the recording of evidence in the matter at hand, on 19.01.1994, the case had been called before another Additional District Judge where the learned additional District Judge had observed that the documents available in the case record as tendered during the trial had not been countersigned by the trial judge. On that date, the said learned Judge had obtained the consent of the parties to consider the said documents as documents tendered during the trial which appears to have included the said documents which were not in fact tendered or marked during the trial by the Plaintiff. As P7 to P11 were not available in the case record, on that date, the learned Additional District Judge had directed the Plaintiff-Respondent to tender them and the learned Additional District Judge had adopted the evidence led before the predecessor.

On 26.01.1994, the Additional District Judge delivered the Judgement holding that the Plaintiff-Respondent had failed to prove its case and hence, dismissed the action with cost and granted relief prayed for by the Defendant-Appellant in its claim in reconvention, thereby deciding that the Defendant-Appellant is the rightful owner of the lands described in the Schedule to the Amended Answer for the following reasons:

- The Plaintiff-Respondent, in his replication, admits that even though the Defendant-Appellant had an entitlement to compensation, that claim is prescribed. Thus, it indicates that the Defendant Appellant has some right to the relevant portion of land.
- P1 to P5 had not been tendered in evidence. However, P2 had been shown to the Defendant-Appellant's witness. (This indicates that learned District Judge observed that even the deed No.668 which gives the title to the Plaintiff-Respondent as per its stance had not been marked in evidence at the trial.)
- The Plaintiff-Respondent had not taken any attempt to prove its title to the land at the trial nor had spoken a word about such title through its witnesses. The Plaintiff-Respondent had also not placed any evidence as to the prescriptive title.
- The Defendant-Appellant had placed before the Court the Gazette marked V1. V1 contained two orders, namely a Requisitioning Order (V1a) and a Vesting Order (V1b). V1 had not been challenged at the trial. Land described in V1a and V1b is the same as per the boundaries, and the said land appears to be the land in P2 which is Plan No.913 and V3 which is Plan No.1471. Hence, the land claimed by the Plaintiff-Appellant falls within the land vested in the Defendant-Appellant and as such, the Plaintiff-Respondent cannot claim any title to the land in dispute after the said Vesting Order.
- The Defendant-Appellant has valued the damaged caused by the Plaintiff-Respondent and the Plaintiff-Respondent had not challenged the amount but taken up the position that that claim is prescribed but as the Plaintiff-Respondent is in possession it is a continuing damage and, therefore, the claim for damages by the Defendant-Appellant is not prescribed.

Being aggrieved with the Judgment of the Additional District Judge dated 26.01.1994, the Plaintiff-Respondent appealed to the Court of Appeal. By the Judgment in Case No. CA-226/94(F), dated 20.01.2004, the Court of Appeal set aside the Judgement of the learned Additional District Court Judge allowing the appeal of the Plaintiff-Respondent with cost.

As this appeal is against the said Judgment of the Court of Appeal, now this Court will look into the certain observations and findings of the Court of Appeal that goes to the root of its final conclusion over the Judgment of the learned Additional District Judge, as discussed below, to see whether the Court of Appeal erred in the said Judgment dated 20.01.2004.

The learned Court of Appeal judges observed that it is also the position of the Defendant-Appellant that the land so vested was described in the aforesaid Plan No.913. Since the evidence led at the trial indicates that the Defendant-Appellant has not challenged the correctness of this plan and it also appears that it was used in preparing the plan marked V3 by the Defendant-Appellant, this observation of the Court of Appeal is correct. Further, it is the position of the Plaintiff-Respondent in his amended Plaint that this Plan No.913 indicates the subdivision made to Lot A in the Plan No. 408B referred to in the Plaint (Vide paragraph 5 and 2nd schedule of the plaint) which belonged to Chettinad Ltd., as part of the original extent of 5 Acres and 26.8 Perches that also belonged to Chettinad Ltd. It can be observed that the outer boundaries of the Plan No.913 which has to be the same as the boundaries of Lot A in Plan No. 408B referred to in the 2nd Schedule to the Plaint tally with boundaries of the land contemplated in the vesting order. Hence, there cannot be any dispute as to the land vested in the Defendant-Appellant by the vesting order as the one shown in Plan No.913 as lots A1, A2 and A3.

However, it must be noted that the action was filed by the Plaintiff-Respondent to get a declaration that it is entitled to the land described in the 4th schedule to the Plaint and to evict the Defendant-Appellant from the said land. In fact, this action is in essence a *rei vindicatio* action as there is no contractual relationship between the parties as to the land in dispute such as lease or license. Whether it is a *rei vindicatio* action or not, for the success of the case of the Plaintiff-Respondent, it had to prove the title to the land in the 4th Schedule to the Plaint. As said before, the deed No.668 which purportedly has conveyed title to the Plaintiff-Respondent was not marked during the leading of evidence at the trial. It appears that P3 referred to at the close of the Plaintiff-Respondent's case is this Deed No.668. As said before, P1, P3, P4 and P5 did not come through the evidence led at the trial. As said before, what was mentioned as P1-P5 at the close of the Plaintiff-Respondent's case appears to be the documents tendered through an affidavit submitted even prior to the amendment of the Plaint for an aborted injunction application. The learned Court of Appeal Judges has relied on the practice of Court that was approved by the Superior Courts in **Sri Lanka Ports**

Authority v Jugolinija Boal East (1981) 1 Sri L R 18 , **Balapitiya Gunananda Thero v Talalle Methananda Thero** (1997) 2 Sri L R 101 and **Faiz Vs. Sitti** B.A.S.L. news July 2001 and had found that learned District Judge was in grave error for not considering the documents tendered by the Plaintiff-Respondent and came to the conclusion that the Plaintiff Respondent had established its title to the land in dispute. The learned Court of Appeal Judges in several places in their judgment has referred to a Plan No.3065 which was never marked or mentioned at the close of the Plaintiff-Respondent's case. What had been referred to in the said affidavit was a sketch marked X and that too had not been referred to in at the close of the Plaintiff-Respondent's case. Thus, the genuineness of the said Plan No.3065 was never tested. However, it is important to see whether the learned Court of Appeal Judges correctly followed the Court Practice (*Cursus Curiae*) as identified by the aforesaid **Sri Lanka Ports Authority v Jugalinija Boal East** and other cases referred to in the Court of Appeal Judgment. It appears that the learned Court of Appeal judges have only applied what is stated in the head note of the **Sri Lanka Ports Authority Case** without considering the contents of the body of the decision. It was an incident where the objection was raised to a marking of the document and not reiterated the said objection at the close of the case. Even in the **Balapitiya Gunananda Thero** and **Faiz v Sitti** cases, the facts were similar. The learned Counsel for the Defendant-Appellant has cited **Jamaldeen Abdul Latheef v Abdul Majeed Mohamed Mansoor** (2010) 2 Sri L R 333 which also refers to the said practice and it appears that the said practice was not followed as the Counsel did not read the documents at the close of the case. The learned Counsel for the Defendant-Appellant has cited the case of **Dadallage Mervin Silva v Mohamed Rosaid Misthihar** SC Appeal 45/2010 S C minutes 11.06.2019 which held that the said practice does not apply to a document which has to be proved in accordance with the procedure laid down in Section 68 of the Evidence Ordinance. However, in **Kadireshan Kugabalan v Sooriya Mudiyanselage Ranaweera** SC Appeal 36/2014 S C minutes 12.02.2021 also, the majority decision was similar to the aforesaid **Dadallage Mervin Silva** case, but being a member of the said bench, I expressed my separate view accepting said *cursus curiae* as valid law even with regard to document that is required by law to be attested but stood in agreement with final conclusion of the majority as the document was impeached through issues itself which has to be answered at the end of trial. It must be said that there was no provision in law that requires a party to read the marked documents at the close of its case. As I have explained in the said case **Kadireshan Kugabalan Vs Sooriya Mudiyanselage Ranaweera,** this practice appears to be a result of the tentative nature of the objection that may have to take place when a

document is first produced in evidence due to the need of further instructions from the client. I am not hesitant admit that the said practice is good law when the relevant document is not impeached through issues, but to apply the said practice, there must be an objection to the document when it was presented through evidence in terms of section 154 of the Civil procedure Code and the same objection should be reiterated at the close of the case when the relevant party reads it in evidence. Since the said documents, namely P1, P3, P4 and P5 were not tendered to the Court through evidence led and there was no admission recorded as to the genuineness and/or admissibility of each of those documents, no opportunity was available for the Defendant-Appellant to raise its objections in terms of section 154 of the Civil Procedure Code. Thus, a reiteration of the objections raised previously at the close of the case could not have been arisen as they were not marked through evidence at the trial.

Thus, it is clear that the learned Judges of the Court of Appeal made a grave error in applying *cursus curiae* of courts without a necessary component to apply that practice. Aforesaid P1. P3, P4 and P5 may be part of the case record as part of the affidavit tendered for the aborted injunction application but they are definitely not part of the evidence led at the trial. The case has to be decided on the issues raised and the facts and law placed before court on those issues. In fact, it is also not clear whether those documents, even though referred to in the body of the affidavit, were tendered with the said affidavit even as copies.

When one cannot apply the said *cursus curae* to the case at hand, the purported title Deed No 668 (P3) does not form part of the evidence led at the trial. Then, there cannot be any proof of title of the Plaintiff-Respondent. Thus, the case of the Plaintiff must fail.

Further, it is necessary to refer to the Civil Procedure Code (Amendment) Act No. 17 of 2022 which was passed after the said decision in **Kadireshan Kugabalan v Sooriya Mudiyanselage Ranaweera**. In fact, it appears to have codified the said practice of Court and Section 3(a)(ii) is relevant to the matter in issue as the said Section 3 applies to pending appeals. It reads as follows;

" 3(a)(ii) *if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence,*

the court shall admit such deed or document as evidence without requiring further proof;"

This section applies to this case now, even though it was not in force when the Court of Appeal heard this matter in appeal. As per the section quoted above, it is necessary to object to the document or deed when it was tendered in evidence. If the objection is not reiterated at the close of the case, the document or the deed becomes evidence. In the matter at hand, the documents P1, P3, P4, and P5 were not tendered in evidence to make the first objection. Thus, reiteration of objection does not arise to apply the section and consider the documents as evidence.

On the other hand, one may assume that these documents were not objected at the close of the Plaintiff-Respondent's case as well as at the time of adopting the evidence which took place after 7 years of the conclusion of the recording of evidence as parties were in agreement to consider those documents as evidence. Therefore, this Court prefers to see whether Court of Appeal erred even after considering the said documents as evidence. Without prejudice to what has been said above that those documents, namely P1, P3, P4 and P5, were not part of the evidence led at the trial, even when those documents are considered as evidence, as explained below, it is clear that the Plaintiff-Respondent cannot prove his title to the land in dispute.

What is claimed by the Plaintiff-Respondent is the land described in the 4th Schedule to the amended Plaint which is described as Lot A2A of Plan No.3065. The aforesaid Plan No. 3065 had not been tendered in evidence even at the close of the Plaintiff-Respondent's case as indicated above. Hence, there is an issue as to the true identification of the said land as described in the said 4th Schedule. Whatever it is, as per the averments in the amended Plaint, the land described in the 4th schedule to the amended Plaint is a part of Lot A2 in Plan No.913- vide paragraph 10 of the amended Plaint. Lot A1 and A2 of Plan No.913 is described in the 3rd Schedule to the amended Plaint. Plan No. 913 is a subdivision of the land in the 2nd Schedule to the Plaint, which is Lot A in Plan No. 408B -vide paragraph 6 of the amended Plaint. What is important to note is that the boundaries and the extent of the land in the Vesting Order, Requisitioning Order and the notice of claim (V1, V1a, V1b, and P6) tally with the boundaries and extent of the land in the 2nd Schedule to the Plaint as well as with the those of Lot A in Plan No. 408B (marked P1 with the said affidavit). Thus, it is clear that what was vested with the Defendant-Appellant by the said Vesting Order includes the portion now claimed by the Plaintiff-Respondent. Hence, as long as V1 Vesting Order

remains valid, the Plaintiff-Respondent's claim for title to the land in the 4th Schedule to the amended Plaint has to be unsuccessful.

Even though the learned Court of Appeal Judges have referred to a stance taken up by the Plaintiff-Respondent that the Defendant-Appellant, at the compensation inquiry, had admitted that the land in dispute was not vested in the Defendant-Appellant and therefore, its predecessors declined to claim compensation for the land in dispute, there appears to be no evidence to establish that stance. On the other hand, any such statement made during a compensation inquiry cannot amend the Vesting Order. It is up to the parties who are affected by the Vesting Order to make their claims for compensation. It appears that the learned Court of Appeal judges had placed much reliance on the words "presently occupied by Messers. Chettinad Corporation (private) Ltd." in the description of the land in the Vesting Order. Occupation is a fact that may vary easily. It may not be the same when the information was collected to prepare the schedule for the Requisitioning Order and Vesting Order and at the time of their publication. A land has to be identified by the boundaries describing it and extent of the land may also be helpful. As said before, boundaries and extent of the land in Vesting Order agree with the boundaries of the land in the 2nd Schedule of the Plaint. Thus, the Plaintiff cannot claim any title to the land in the 4th Schedule to the Plaint as it should fall within the boundaries of the land in the 2nd Schedule to the Plaint.

The learned Counsel for the Plaintiff-Respondent has attempted to challenge the Requisitioning Order and Vesting Order indicating that said orders are ultra vires for the reasons set out in his submission. Anyhow, it must be stated that no one challenged the validity of those orders before the District Court based on such grounds. No issue was raised there on these grounds. Case has to be decided on the issues raised. The Plaintiff-Respondent cannot be allowed to take up new position in appeal. If the Plaintiff-Respondent wanted to challenge the Requisitioning Order and Vesting Order on the ground of vires of the authorities who issued them, the Plaintiff-Respondent had sufficient time to invoke the writ jurisdiction of the proper forum. If such steps were not taken up by the Plaintiff-Respondent to challenge the said orders on the grounds of the vires of the relevant authority, the learned District Judge or any other forum has to consider that all official acts have been regularly performed.

What was discussed above is sufficient to show that the learned Court of Appeal Judges erred in setting aside the judgment of the learned District Judge and granting relief to the

Plaintiff-Respondent on the premise that the Plaintiff-Respondent proved its title to the land in dispute.

When the leave to appeal was granted, this Court allowed the questions of law outlined under paragraphs 15 (a) – (e) in the Petition which are quoted and answered below:

Q. a) Has the Court of Appeal erred in law in arriving at the conclusion that the documents marked P1, P2, P3, P4 and P5 have been led in evidence by the Respondent? (in view of the fact that these documents were in fact produced at the trial)

A. Answered in the affirmative, but in fact, except P2, other documents were not tendered or referred to through evidence at the trial. P2, plan No.913 had been shown to witnesses.

Q. b) Has the Court of Appeal erred in law and misdirected itself in arriving at the conclusion that the Respondent had proven its title to the land in dispute?

A. Answered in the affirmative.

Q. c) Has the Court of Appeal erred in law in arriving at the conclusion that the Respondent had identified the corpus?

A. Answered in the affirmative.

Q. d) Has the Court of Appeal erred in proceeding to give judgement in favour of the Respondent on the basis that the Respondent has proved its title to the corpus and identified same?

A. Answered in the affirmative.

Q. e) Has the Court of Appeal erred in coming to the conclusion that the disputed land has not been vested in the Appellant?

A. Answered in the affirmative.

For the reasons discussed above, this appeal is allowed and the judgment of the Court of Appeal dated 20.04.2004 is set aside. The Judgment of the District Court dated 26.01.1984 is restored. The Defendant-Appellant is entitled to the Costs of all three courts.

Appeal allowed with costs.

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Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

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Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

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Judge of the Supreme Court