IN THE SUPREME COURT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for leave to appeal under Section 5C (i) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC/Appeal No. 101/ 2018

SC (HC) CALA Application No. 33/2018

WP/HCCA/KAL/70/14/F

DC Panadura Case No. 2224/L

Waduge Sumanasiri Fernando,
No. 7/1, D.S. Senanayake Mawatha,
Panadura.

Plaintiff.

Vs.

K. Dayananda Perera
No. 315, Suduwella Road,
Wekada, Panadura.

Defendant.

AND

K. Dayananda Perera
No. 315, Suduwella Road,

Wekada, Panadura.

Defendant – Appellant.

Vs.

Waduge Sumanasiri Fernando,

No. 7/1, D.S. Senanayake Mawatha,

Panadura.

Plaintiff – Respondent.

AND NOW BETWEEN

K. Dayananda Perera

No. 315, Suduwella Road,

Wekada, Panadura.

Defendant – Appellant – Petitioner.

Vs.

Waduge Sumanasiri Fernando,

No. 7/1, D.S. Senanayake Mawatha,

Panadura.

Plaintiff – Respondent – Respondent.

Before: Vijith K. Malalgoda, PC, J

P. Padman Surasena, J

E. A. G. R. Amarasekara J

Counsel: Ranjan Gunaratne for the Defendant – Appellant – Petitioner

Thishya Weragoda for the Plaintiff – Respondent – Respondent

Argued on: 04.10.2019

Decided on: 21.10.2021

E. A. G. R. Amarasekara J

The Plaintiff – Respondent – Respondent (hereinafter referred to as the Plaintiff – Respondent or the Plaintiff) instituted an action in the District Court of Panadura against the Defendant – Appellant – Petitioner (hereinafter referred to as the Defendant – Petitioner or the Defendant) by his plaint dated 21.04.2009, praying inter alia for a declaration that he be entitled to the land described in the 5th schedule to the plaint, and for the eviction of the Defendant, his agents and servants from the said land described in the 5th schedule to the plaint and for damages. The same reliefs were prayed in the amended plaint dated 17.01.2011 where the 5th schedule has been described as per the plan No.1778 made by T.D K.R.P. Pathegama, Licensed Surveyor. The Plaintiff – Respondent in his amended plaint inter alia averred that;

- Ismail Marikkar Mohamadu became the owner of the land described in the 1st schedule to the plaint by deed No. 1451 dated 24.11.1944 attested by M.M.A. Raheem Notary Public.
- Said Ismail Marikkar Mohamadu transferred his rights acquired by the aforesaid deed to Waduge Pedrick Premachandra Fernando by deed No. 4374 dated 14.02.1947 attested by W.P. Senevirathne, Notary Public.
- Said Premachandra Fernando transferred a part of the said land described in the 1st schedule to the amended plaint which is described in the 2nd schedule to the amended plaint by deed No. 11483 dated 12.09.1969 attested by Arthur Wijesuriya, Notary Public to the Plaintiff, Waduge Sumanasiri Fernando and the Plaintiff also acquired prescriptive title.
- The common access road (පොදු ප්‍රවේශ මාර්ගය) to the lands described in the 1st and 2nd schedules to the amended plaint was the land described in the 3rd schedule to the amended plaint.

- The Plaintiff's father purchased the soil rights (පොළවේ අයිතිවාසිකම්) of the road described in the 3rd schedule to the amended plaint from the original owner, Ismail Lebbe Marikkar Mohamadu by deed No. 3408 dated 29.11.1969 attested by Ranjith Weerasekara, Notary Public subject to the right of way to access only the land described as lot C in the plan No. 3812.
- At the demise of the plaintiff's father, Waduge Premachandra Fernando, his rights devolved on the plaintiff and his siblings and the said siblings of the Plaintiff conveyed all the rights of the said roadway to the plaintiff by deed of gift No. 773 dated 23.02.2008 attested by Upul Kumara Munasinghe, Notary Public. Thereby, the plaintiff became entitled to the soil rights of the road described in the 3rd schedule to the amended plaint.
- The Plaintiff alienated a portion of the land described in the 2nd schedule to the amended plaint, which is the 4th schedule to the amended plaint by deed No. 12145 dated 20.04.1998 attested by A.P. Fernando, Notary Public.
- The subject matter of this action is the remaining portion of the land described in the 2nd schedule to the amended plaint (subsequent to the said alienation), which is described in the 5th schedule to the amended plaint.
- On or about 16.12.2000, the defendant informed the plaintiff that a portion of the land described in the 5th schedule to the amended plaint forms a part of the roadway described in the 3rd schedule to the amended plaint.
- The Defendant prepared a plan without informing the plaintiff and by the said plan the defendant unlawfully seized a portion of the land described in the 5th schedule to the amended plaint which is described in the 6th schedule to the amended plaint.
- Accordingly, a cause of action arose for a declaration that the plaintiff is the owner of land described in the 5th schedule to the amended plaint and to eject the defendants and all under him from the said land and for damages. (The correct dates of deeds No.773 and 12145 mentioned above should be 23.12.2008 and 20.04.1988 respectively)

The Defendant –Petitioner filed his answer dated 16th May 2011 and by the said answer stated inter alia that;

- The right of way shown in plan No. 3812 as lot B was widened to 10 feet around 30 years ago.

- Defendant and his predecessors in title have used this road for over 20 years. Therefore, the defendant and his predecessors acquired a prescriptive right to the said 10 feet wide road as per the provisions of the Prescription Ordinance.
- Said 10 feet wide road is depicted in the plan No. 25/63 dated 14.12.2006 prepared by the licensed surveyor, D.R. Kumarage.
- In the Eastern Boundary of the said road there was a line of bricks and that was destroyed and removed by the plaintiff.
- As per the schedule of the deed No. 3408, plaintiff's father was not given the soil rights of Lot C. Therefore, there is no legal right for the plaintiff to proceed with this action.

Accordingly, the Defendant – Petitioner stated that there is no cause of action accrued against the Defendant - Petitioner and thereby prayed for the dismissal of the action with costs. However, it must be noted here that the Plaintiff has never claimed soil rights to Lot C of Plan no.3812, but as per paragraphs no.7,8,9 and 10 of the amended plaint he claims soil rights to the lot B of plan no. 3812 subject to the right of way to lot C. Nevertheless, it appears, when framing issues, the Defendant Petitioner has framed issues querying whether the Plaintiff's father had soil rights to said Lot B in Plan no. 3812.

The plaintiff has taken out a commission and accordingly A D K R P Pathegama, licensed surveyor has prepared plan no.1778 to depict the alleged encroachment by the defendant and this plan has been later marked as P 6 at the trial.

At the commencement of the trial, it was admitted that the right of way to the lands described in the 1st and 2nd schedules to the amended plaint was the roadway described in the 3rd schedule to the amended plaint. Thereafter, issues No. 1 to 5 were raised on behalf of the Plaintiff – Respondent and issues No. 6 to 11 were raised on behalf of the Defendant – Petitioner.

Issues raised for the Plaintiff – Respondent basically put in question whether the Plaintiff is the owner of the land described in the 5th schedule to the amended plaint and whether the said land is depicted in the aforesaid plan made by Mr. Pathegama, Licensed Surveyor as lot 1 and 2 and further, whether the Defendant has unlawfully encroached aforesaid Lot 1 on or around 16.11.2000. When considering aforesaid issues along with the prayers in the plaint which is to be

granted in case if the aforesaid issues are answered in favour of the Plaintiff, it is clear that the Plaintiff's case takes the form of a *Rei Vindicatio* action.

The Defendant – Petitioner framed issues and mainly queried;

- Whether the defendants became the owners of the road described in the Plan No. 3812 of John R. A. Rodrigo, licensed surveyor around 30 years ago?
- Whether this 10-feet wide road is depicted in the plan No. 25/63 dated 17.12.2006 prepared by D.R. Kumarage, Licensed Surveyor. (The correct date of the said plan should be 14.02.2006)
- Whether the defendant and his predecessors in title used this roadway and accordingly, whether the defendant and his predecessors acquired prescriptive title to the said 10 feet wide roadway as per the provisions of the Prescription Ordinance?
- Whether the plaintiff's father became entitled to the soil rights of the roadway as described in the paragraph 7 of the plaint?
    - If not, whether the plaintiff became entitled to the soil rights of this roadway subsequent to the demise of his father?
    - If not, whether the plaintiff can maintain this action?

As per the proceedings dated 05.10.2011 and order dated 16.02.2012 of the district court proceedings, there had been another 3 counter issues numbered as 12,13 and 14 raised by the Plaintiff and the Defendant respectively, but not answered in the judgment of the district court. However, no party has expressed their concern over not answering those three issues in their submissions in this appeal. On the other hand, I am also of the view that those three issues were not materially relevant to the matter that was in dispute before the learned district judge as the dispute was limited to the fact whether the Defendant has encroached a portion from the land described in the 5th schedule to the amended plaint by adding it to the right of way he already had over the land described in the 3rd schedule to the amended plaint.

Both the District Court and the Civil Appellate High Court held in favour of the Plaintiff and being aggrieved by the judgment of the learned High Court judges, the Defendant filed a leave to appeal application to this court and this court granted leave only on one question of law which is quoted below.

"*Did the learned Judges of the High Court of Civil Appeals err in law in failing to appreciate that the defendant and his predecessor-in-title had prescribed to a 10 ft wide road*?"- vide journal entry dated 10.07.2018.

Answer to this question of law will mainly depend on whether there were sufficient facts before the learned district judge to establish that the Defendant and his predecessor have prescribed to a 10 feet wide Road and whether the Learned High Court Judges failed to realize that the learned District Court Judge was erred in evaluating evidence in that regard.

The Plaintiff has marked P1 to P8 at the trial which includes some deeds and plans to prove his case. It must be noted that none of these documents were impeached through issues and only P2, P2A and P6 and P6A were marked subject to proof when they were tendered in evidence for the first time. P2 is the plan made by J R A Rodrigo, licensed surveyor and P2 A appears to be the field notes relevant to the said plan P2. P6 and P6A are the plan No.1778 and its report made by T D K R P Pathegama, Licensed Surveyor. T D K R P Pathegama, Licensed Surveyor has given evidence to prove the plan and the report he made. Since J R A Rodrigo, Licensed Surveyor is dead, it appears one Ajith Prassanna Silva, Licensed Surveyor, who has previously used plans made by said J R A Rodrigo and who has seen the signature of said J R A Rodrigo, has been summoned to prove the said plan marked P2. Furthermore, at the close of the plaintiff's case, the Defendant has not reiterated the objections made to those documents. Thus, when the decision of **Sri Lanka Ports Authority V Jugolinija Bold East (1981) 1 Sri L R 18** is considered together with section 154 of the Civil Procedure Code, all the documents marked by the plaintiff as P1 to P8 can be considered as evidence for all the purposes of the case filed before the District Judge. By tendering deed no. 11483 marked as P1, the Plaintiff has established how he became entitled to the land described in the second schedule to the plaint which is Lot A of the said plan marked P2 as stated in paragraph 4 of the amended plaint. As per the portion marked as P1A in the schedule of the said deed, the transferor of the said deed had acquired title through the deed No. 4373 dated 14.02.1947 attested by W.P. Senaviratne, Notary Public which supports the averments in the paragraph 3 of the amended plaint. Through P1 plaintiff has also acquired the right of way over the land described in the 3rd schedule to the plaint which is Lot B of the said Plan

marked P2. Further the Plaintiff had acquired title to Lot 3 and 4 of Gulugahawatte in plan no.1868 through the same deed marked as P1.

Facts stated in paragraph 6 of the amended plaint was admitted at the beginning of the trial. Thus, it is common ground that the land described in the third schedule to the plaint, which is lot B of the plan marked P2, was used as a common access road to the land described in the first schedule as well as to the land described in the second schedule to the plaint. To prove that the Plaintiff has later acquired soil rights of the said common access road subject to the right of way attached to Lot C in plan no.3812 as averred in paragraphs 7, 8,9 and 10 of the amended plaint, the Plaintiff has marked the deeds No. 3408 marked as P3, and 773 marked as P4 respectively. P3 and P4 establish the fact that the father of the Plaintiff bought the soil rights of the Lot B in P2 and after his demise the siblings of the Plaintiff transferred their rights to the Plaintiff. By tendering the documents marked P1, P2, P3 and P4 in evidence which were not challenged as aforesaid, the Plaintiff by a preponderance of evidence has shown that one time he was the owner of the land in the second schedule to the plaint and he gained soil rights to the land in the third schedule to the plaint subject to the right of way attached to lot C of P2 over the land in the third schedule to the plaint which is lot B of P2.

By deed no. 12145 marked as P5, the Plaintiff has transferred part of the land in the second schedule to the plaint while amalgamating that part with aforementioned Lot 3 and lot 4 of the plan no 1868 for which he acquired title through P1. The said amalgamation is depicted in the plan no.6575 made by Licensed surveyor L W L de Silva marked as P7. Lot B in P7 which is the land depicted in the 4th schedule to the plaint contains the said part of the land the plaintiff parted with by executing P5.

The Plaintiff has produced in evidence the plan no. 1778 made by T D K R P Pathegama, Licensed Surveyor which depicts the superimpositions of the lots A2 and B of plan no.3812 (marked as P2) and superimposition of Lot B in plan no.6575. Surveyor Pathegama has given evidence in support of the plan he made which has been marked as P6 at the trial along with its report marked as P6A. In his report marked P6A he states that his superimposition is correct due to the reason that 4 points identified as P Q R S coincides with the corresponding points

in plan no. 3812(P2). Nothing is at least suggested in cross examination of surveyor Pathegama to challenge the said preciseness of the plan made by the said surveyor. No evidence has been led by the defendant to challenge the accuracy of P6 and P6A. Thus, the deeds and the plans marked by the Plaintiff along with the evidence given by the surveyor Pathegama establish on balance of probability that the Plaintiff has the paper title to lot 1 and 2 of the plan marked P6 which is the remaining portion of the land in the 2nd schedule to the plaint after the execution of P 5 by the Plaintiff. Said Lot 1 and 2 of plan marked as P6 is the land in the 5th schedule to the plaint. Further, it was established that the plaintiff has soil rights to lot B of plan no.3812(P2) subject to the right of way attached to Lot C of the same plan. It is also proved that lot 1 of P6 is not a part of said Lot B of P2 (Common Access Road for which the Plaintiff has soil rights) and it is an encroached portion for which the Plaintiff has paper title as part of land described in the 5th schedule to the plaint. Since the Defendant's position is that he has prescriptive rights to it, it is more probable that he has the possession of that lot 1 of plan marked P6.

In this backdrop, to defeat the Plaintiff's claims, the Defendant must show that he has a legal right to this encroached portion shown as lot 1 in P6. The position of the Defendant in his answer was that the road access shown as B in plan no. 3812 (P2) was widened to a road of 10 feet width 30 years ago and he and his predecessors used this road way for more than 20 years. Thus, the Defendant states that he has gained prescriptive rights as per the provisions of Prescription Ordinance. Further, it appears that the Defendant has taken up the position that the soil rights of the said road way was not with the plaintiff's father and as such he cannot maintain this action indicating indirectly that as the Plaintiff is not the owner of soil rights of the disputed roadway, he cannot maintain this action. Even the issues raised at the trial by the Defendant were based on the same stances taken up in the answer. However, as shown above, the Plaintiff has proved paper title to the said lot B in P2 as well as to the disputed lot 1 which is the alleged encroached portion in the plan no.1778 made by Pathegama, Licensed surveyor marked P6. Furthermore, this is not an action to declare that the Defendant has no right of way over lot B in P2 but to evict the Defendant from the encroached portion of the land described in the 5th schedule.

Mr. Pathegama, licensed surveyor in his report marked P6A at paragraph 4:11 as well as in his evidence states that the Defendant is using a roadway one and half feet wider than the road way shown in plan marked P2 as Lot B. Thus, it is clear that the Defendant is now using the encroached portion shown as lot 1 in Plan marked P6 which is part of the land in schedule no 5 of the amended plaint as part attached to his roadway. Nevertheless, to prove prescriptive rights to this encroached portion or lot 1 in P6, the Defendant must show 10 years or more adverse possession or adverse user of this encroached portion as a right of way. The first witness called by the Defendant, one Premasiri Fernando has given evidence to prove the photographs (V1 to V3) and he has not given any evidence with regard to the user or possession of the encroached portion which is lot 1 of P6. Other than the said witness, only the Defendant and a Notary Public have given evidence in support of the version of the Defendant. Said notary public has given evidence with regard to the execution of deed No 2466 marked V4 and he was not a witness to establish the fact that the Defendant had adverse possession or user of the encroached portion which is lot 1 in P6 as part of a road access for more than 10 years. The Defendant in his evidence in chief has stated that he bought his land by aforesaid V4 and it was bought along with the right of way mentioned in that deed, and further that the said right of way is the matter in dispute. He has further testified that his predecessors in title said to him that the said right of way has been used by his predecessors in title for more than 15 years and even that the Plaintiff had admitted in evidence that the said road in V1 (though V1 has been referred to as a plan, in fact V1 is one of the photos tendered by the Defendant) was used for more than 60 years. However, it must be noted that the Plaintiff does not dispute the right of way given by deed marked V 4 which is lot B in P2 containing 3.20 perches. What is in dispute is part of the land described in the 5th schedule to the amended plaint which is shown as lot 1 in P6 and said lot 1 is found adjacent to aforesaid right of way, namely lot B of P2, on its west boundary as per the plan marked P6. The deed marked V4 has not given any soil right or right of way to this portion of land found outside along the west boundary of the said Lot B. Even if one assumes for the sake of argument that predecessors in title of the defendant acquired prescriptive rights to the said lot 1 in P6 or had commenced adverse possession or user of Lot 1 in P6, that area of land has not been conveyed to the Defendant by the said deed. The said deed conveyed only Lot C of P2 and the right of way over Lot B which does not contain

the area that falls within Lot 1 of P6 as established by the evidence of T. D. K. R. P. Pathegama. Therefore, the Defendant cannot get the benefit of the possession or adverse user of his predecessors in title, if there was any such possession or user by them with regard to lot 1 of P6, which is situated outside the boundaries of Lot B of P2. On the other hand, no predecessor in title to the Defendant was summoned to give evidence to state that they had prescriptive rights, or had adverse possession or user of the Lot 1 in P6 and conveyed those rights to the Defendant. The deeds marked as P9 and P10 during the cross examination shows that even the predecessors in title of the Defendant had their right of way only over Lot B of P2 which Lot B does not include Lot 1 of P6. It can be observed that in V4 which was executed in 2008, east boundary of lot C in P2 which is Lot B of P2 has been described as a 10 feet wide road but when it described the right of way which is Lot B in P2 in its second schedule has not indicated it is a 10 feet wide road way but the extent has been given as 3.2 perches. However, in P9 which was executed in 2007 by the Defendant's predecessors in title, the east boundary of lot C has not been described as a 10 feet wide roadway. Even in P10 which was executed in 1968, east boundary of lot C has not been described as a 10 feet wide road. Both these P9 and P10 deeds described Lot B in their second schedule as a right of way of 3.2 perches but not as a 10 feet wide roadway. Mr. Pathegama, Licensed Surveyor through his plan and report marked as P6 and P6A and his oral evidence has established that in fact Lot B in P2 is a right of way of 3.2 perches with a width of eight and half feet and with the encroachment of the portion shown as lot 1 in his plan marked p6, it has become 10 feet wide. Since this right of way has not been described as a10 feet roadway in marked deeds written up to 2007 and such description is only found in the deed V4 which was written in 2008 in describing the east boundary of Lot C in P2, it is more probable that the encroachment could have taken place close to the date of V4. However, the Defendant has not led any evidence of a predecessor in title to show that one of them encroached lot 1 in P6 or had adverse possession or user of that portion.

The Defendant has acquired title to Lot C and the right of way over lot B of P2 only in January 2008. He has admitted in evidence that he did not use this right of way for 10 years. The Plaint in this case was filed in April 2009. Hence, the Defendant has not placed sufficient material before the learned District Judge to prove on balance of probability that he has prescriptive rights to the said

encroached portion shown as lot 1 in P6. Therefore, this court cannot be satisfied that there were sufficient materials before the learned District Judge to hold that the Defendant and his predecessor have prescribed to a 10 feet wide Road and/or that the Learned High Court Judges failed to realize that the learned District Court Judge was erred in evaluating evidence in that regard.

For the foregoing reasons, the question of law allowed by this court has to be answered in the Negative.

However, this court observes that both the parties have made certain legal submissions in their written submissions that do not directly fall within the ambit of the aforesaid question of law allowed by this court and they are discussed below.

The Defendant in his written submissions quoting the following paragraph from **Kathirathamby V Arumagam 39 C L W 27** try to argue that the Plaintiff failed in proving that he was ousted from possession and, as such, his action filed as a *rei vindicatio* action must fail.

(quote)

"*When a person institutes an action asking to be restored to the possession of the land from which he has been forcibly ousted, the onus of proving ouster is on him. As the plaintiff has failed to prove ouster in this case, it must be necessarily be assumed that the possession of the defendant is lawful*." (unquote)

The above quoted paragraph indicates an alleged cause of action based on an ouster from possession of the plaintiff and the failure of the plaintiff since he failed to prove his cause of action but it does not indicate that proof of ouster as a necessary ingredient of a *rei vindicatio* action.

The Plaintiff in his written submissions has quoted **Wille's Principles of South African laws (9th edition-2007) at pages 539-540** as follows;

"*To succeed with the rei vindicatio, the owner must prove on balance of probabilities, first, his or her ownership in the property. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed. Thirdly, the defendant must be in possession or detention of the thing at the*

moment the action is instituted. The rationale is to ensure that the defendant is in a possession to comply with an order for restoration."

A *rei vindicatio* action was described by Voet as follows;

"*From the right of ownership springs the vindication of a thing, that is to say, an action in rem by which we sue for a thing which is ours but in the possession of another"* [1]

It is well established in our law that what is necessary to be successful in a *rei vindicatio* action is the proof of title to the property and that the defendant is in the possession of it. [2] Even an owner with no more than a bare paper title (nuda Proprietas) who has never enjoyed possession could lawfully vindicate his property subject to any lawful defense such as prescription.[3]

On the other hand, the Defendant admits that he unlawfully seized a portion of the Plaintiff's property during his cross examination at page 191 of the brief. The Plaintiff's case as elicited by the issues is that whether the Defendant has grabbed a portion of his land which is described in the 5th schedule to the plaint. In this context, the argument of the Defendant that ouster is not proved and the case of the Plaintiff must fail holds no water.

In the written submissions filed on behalf of the Defendant, there is an attempt to indicate that the action that should have been filed by the Plaintiff was an actio negotoria to get a declaration that the property is free from a servitude. As indicated above, this also does not fall within the scope of the question of law allowed by this court. It must be noted that the Plaintiff does not dispute the right of way of the Defendant over lot B of plan marked P2. Same incident may give rise to different causes of action. The Plaintiff's position in the plaint was that there is a right of way given to Lot C in P2, the Defendant has encroached and seized a portion of his land and prepared a plan accordingly. Whether the intention of such encroachment was to expand the right of way or to claim soil rights to the

---

[1] Voet 6.1.2.

[2] Leisa and another Vs Simon and another (2002) 1 Sri L R 148, Pathirana V Jayasundera 58 NLR 169, Luwis Singho Vs Ponnamperuma (1996) 2 Sri L R 320, De Silva V Goonetileke 32 NLR 217, Abeykoon Hamine V Appuhamy 52 NLR 49

[3] Jamaldeen Abdul Latheef and another V Abdul Majeed Mohamed Mansoor and another, S.C Appeal No. 104/05 decided on 27.10.2010, Punchi Hamy Vs Arnolis (1883) 5 S.C.C160, Allis Appu Vs Endiris Hamy (1894) 3SCR 87, Appuhamy Vs Appuhamy 3 S.C.C 61

encroached portion is not within the knowledge of the Plaintiff. What the Plaintiff knew was that a portion of his land has been grabbed by the Defendant. As mentioned before, even the Defendant in his evidence has admitted that he illegally seized a portion of the Plaintiff's land. In that backdrop, this court cannot find fault with the nature of the action filed by the Plaintiff. On the other hand, even if the said encroachment is not a total dispossession of the Plaintiff, it is clear that it affects the ownership rights of the Plaintiff as it deprives the Plaintiff of peaceful possession of the encroached portion. Such deprivation of a right falls within the interpretation of cause of action in terms of the section 5 of the Civil Procedure Code. Thus, he is entitled to file an action and get redress of the wrong done and ask for a decree to declare his right and to yield up the peaceful possession of the relevant immovable property in terms of section 217 of the Civil Procedure Code. Hence, it is the view of this court that the action filed by the Plaintiff is lawful.

As stated above, the question of law allowed by this court has to be answered in the negative, this appeal is dismissed with costs.

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J

I agree

Judge of the Supreme Court

P. Padman Surasena J

I agree

Judge of the Supreme Court