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

In the matter of an Appeal with Leave to Appeal obtained from this Court.

WARNASURIYA PATABANDIGE KAMANI INDUMATHIE RATNAPALA
36/3, "Primrose Uyana", George De Silva Mawatha, Kandy

PLAINTIFF

SC Appeal No. 02/2015
NWP/HCCA/KUR No. 90/2007(F)
D.C. Kurunegala Case No. 5281/L

VS.

1. **POLWATTAGE ANURA LAKSHMAN WEERASURIYA**
   No. 101, Gangoda Road,
   Postal Area of Kurunegala.

2. **POLWATTAGE ANIL WASANTHA WEERASURIYA**
   39/15, Biyagama Road,
   Naranwala Sub Postal Area,
   Gampaha.

DEFENDANTS

AND

1. **POLWATTAGE ANURA LAKSHMAN WEERASURIYA**
   No. 101, Gangoda Road,
   Postal Area of Kurunegala

1st DEFENDANT-APPELLANT

VS.

WARNASURIYA PATABANDIGE KAMANI INDUMATHIE RATNAPALA
36/3, "Primrose Uyana", George De Silva Mawatha, Kandy

PLAINTIFF-RESPONDENT

2. **POLWATTAGE ANIL WASANTHA WEERASURIYA**
   39/15, Biyagama Road,
   Naranwala Sub Postal Area,
   Gampaha.
   2nd DEFENDANT-RESPONDENT

AND NOW BETWEEN

POLWATTAGE ANURA LAKSHMAN WEERASURIYA
No. 101, Gangoda Road, Postal Area of Kurunegala.
Appearing by his Power of Attorney holder Ramani Wijesuriya of
No. 101, Gangoda Road,
Postal Area of Kurunegala.

1st DEFENDANT-APPELLANT-PETITIONER/APPELLANT

VS.

WARNASURIYA PATABANDIGE KAMANI INDUMATHIE RATNAPALA
36/3, "Primrose Uyana", George De Silva Mawatha, Kandy.

PLAINTIFF-RESPONDENT-RESPONDENT

POLWATTAGE ANIL WASANTHA WEERASURIYA
39/15, Biyagama Road, Naranwala Sub Postal Area, Gampaha.

2nd DEFENDANT-RESPONDENT-RESPONDENT ((deceased))

1. **THALANGAMA APPUHAMYLAGE DONA SHRIYALATHA IRANGANIE**
2. **PAVITHRA DIGAASHINI WEERASURIYA**

3. NAVODYA THATHSARANI WEERASURIYA
All of No. 90/B, Naranwala,
Gampaha.

SUBSTITUTED 2ND DEFENDANTS-RESPONDENTS-RESPONDENTS

BEFORE:	Buwaneka Aluwihare, PC, J Priyantha Jayawardena, PC, J Prasanna Jayawardena, PC, J
COUNSEL:	Chandana Wijesooriya with Ms. Wathsala Dulanjani for the 1st Defendant-Appellant-Petitioner/Appellant. Jacob Joseph for the Plaintiff-Respondent-Respondent.
ARGUED ON:	05th November 2018.
WRITTEN SUBMISSIONS FILED:	By the 1st Defendant-Appellant-Petitioner/Appellant on 16th June 2015 and 14th December 2018. By the Plaintiff-Respondent-Respondent on 07th July 2015 and 25th January 2019.
DECIDED ON:	21st May 2019.

Prasanna Jayawardena, PC, J.

The Plaintiff-Respondent-Respondent ["the plaintiff"] instituted this action in the District Court of Kurunegala against the 1st Defendant-Appellant-Petitioner/Appellant ["the 1st defendant"] and the 2nd Defendant-Respondent-Respondent ["the 2nd defendant"]. The plaintiff prayed for a declaration of title to the allotment of land which is the subject matter of the action, the ejectment of the 1st and 2nd defendants from that land and for damages. The District Court delivered judgment in the plaintiff's favour and granted the declaration of title and ejectment of the defendants from the property. The District Court also directed the defendants to execute a deed of transfer conveying the land to the plaintiff and, if they fail to do so, directed the Registrar of the District Court to execute such a deed of transfer.

The 1st defendant appealed to the High Court of Civil Appeal holden in Kurunegala. That appeal was dismissed by the High Court. The 1st defendant made an application to this Court seeking leave to appeal and was granted leave to appeal on six questions of law which are set out later in this judgment.

The parties and the disputed land

The plaintiff is the daughter of one W. P. Punnyadasa De Silva [hereinafter referred to as "De Silva"]. De Silva's sister was married to one G. P. D. Amarapala De Silva Weerasuriya [hereinafter referred to as "Weerasuriya"]. Thus, De Silva [*ie:* the plaintiff's father] and Weerasuriya were brothers-in-law and Weerasuriya's wife was the plaintiff's paternal aunt. Weerasuriya had two sons, who are the 1st and 2nd defendants. They are the plaintiff's cousins.

At the times material to this action, De Silva resided and worked in Batticaloa. His daughter, the plaintiff, was born in the year 1957 and resided with him in Batticaloa. She later moved to Kandy in 1981 and has resided in Kandy since then. At the times material to this action, Weerasuriya resided and worked in Kurunegala. His sons, the 1st and 2nd defendants, have also had residences in Kurunegala.

Having described the *dramatis personae* in this appeal - who are all relatives, I should describe the *corpus* which is the subject matter of this action. It is an allotment of land which is A:0 R:0 P:39 in extent situated in Wilgoda, Kurunegala. Earlier, it was part of an allotment of land depicted as Lot no. 20 in Plan no. 20 dated 24th May 1953 made by S. Gunasekera, Notary Public and containing in extent A:0 R:3 P:35. Lot no. 20 was owned by one E.F. Daniels.

It is common ground that, E.F. Daniels executed deed of transfer no. 2883 dated 06th April 1955 transferring Lot no. 20 to one C.S. Jayawickrama, who, from then on, had title to Lot no. 20. Jayawickrama had Lot no. 20 divided into four allotments of land depicted as Lot no. 1, Lot no.2, Lot no.3 and Lot no. 4 in Plan no. 1705 dated 13th November 1958 prepared by J. Vincent Perera, Licensed Surveyor. That Plan no. 1705 was produced at the trial marked "1ඊ2".

On 16th November 1958, Jayawickrama had these four lots sold by public auction. The plaintiff says that her father [De Silva, who resided in Batticaloa] asked his brother-in-law [Weerasuriya, who resided in Kurunegala] to attend the auction and bid for one of these lots on De Silva's behalf.

It is common ground that Weerasuriya attended that public auction. The plaintiff says Weerasuriya acted on De Silva's behalf and placed a bid of Rs.3,400/- for Lot no. 4 depicted in the aforesaid Plan no. 1705 marked "1වි2". The bid was successful and Jayawickrama agreed to sell and transfer Lot no. 4 for a sale price of Rs.3,400/-. In pursuance of the successful bid, Jayawickrama and Weerasuriya entered into an agreement no. 3334 dated 16th November 1958 attested by D.A.B. Ratnayake, Notary Public, which set out the applicable Conditions of Sale.

Seven months after the public auction, Jayawickrama executed deed of transfer no. 3374 dated 15th May 1959 attested by D.A.B. Ratnayake, Notary Public, which was produced at the trial marked "පැ 11" by the plaintiff and "1 වි3" by the 1st defendant.

This deed of transfer marked "පැ 11" states, by way of a recital, *inter alia*:

"TO ALL TO WHOM THESE PRESENTS SHALL COME I, Choppu Suddrikku Jayawickrama of Assedumma, Kurunegala (hereinafter called and referred to as the ***Vendor****).*

SEND GREETINGS:

Whereas I the said vendor am seised and possessed of or otherwise well and truly entitled to ALL THAT THOSE THE PREMISES IN THIS SCHEDULE more fully described under and by virtue of deed No. 2883 dated 6th April 1955 attested by D.A.B. Ratnayake, Notary Public.

And Whereas the sadi [sic] premises were put up for sale by public auction on the 16th November 1958 by Tennekoon Banda Amunugama of Kurunegala, Licensed Auctioneer in [sic] instructions given by me and at my request and with my authority thereto given.

And Whereas at the said sale by Public auction Gintota Polwattage Don Amarapala de Silva Weerasuriya of C.G.R. Kurunegala was the highest bidder and became the purchaser thereof at or for the price of Rupees Three Thousand Four Hundred (Rs.3400/-) lawful currency of Ceylon.

And Whereas the said ***Gintota Polwattage Don Amarapala de Silva Weerasuriya of C.G.R. Kurunegala stats [sic] that he made the above purchase for and on behalf of WARNASURIYA PATABENDIGE PUNNYADASA DE SILVA*** *No. 20, Gnanasuriyan Square Batticaloa and has paid the sum of Rupees Three Thousand Four Hundred (Rs. 3400/-) in full and has* ***called upon me the said Vendor to execute a deed of Trnasfer [sic] of the said premises conveying and transferring the same unto him the said WARNASURIYA PATABENDIGE PUNNYADASA DE SILVA*** *(hereinafter called and referred to as the* ***Vendee****).* [emphasis added].

And Whereas the [sic] ***in Testimony of his request and of his consent to the conveyance and transfer of the said premises unto him the said Vendee, the said Gintota Polwattage***

Don Amarapala de Silva Weerasuriya C.G.R. Kurunegala has agreed to be a party to this instrument.”. [emphasis added]

Having recited the aforesaid background and facts, the deed of transfer marked “ඇ 11” goes on to state:

“Now Know Ye and These Presents Witness that for and in consideration of the above premises and more particularly for and in consideration of the said sum of Rupees Three Thousand Four Hundred (Rs.3400/-) lawful currency of Ceylon well and truly paid to me the vendor and the receipt whereof I do hereby admit and acknowledge I do hereby sell grant convey transfer set over assure unto him the said ***vendee*** *his heirs executors administrators and assigns all that and those the premises* ***in the schedule hereto fully described*** *….. To have and to hold the said premises hereby sold conveyed or intended so as to be with all the said rights and appurtenances unto him the said vendee and his aforewritten ABSOLUTELY AND FOR EVER.”*. [emphasis added]

The aforesaid schedule to the deed marked “ඇ 11” describes Lot no. 4 depicted in Plan no. 1705 and containing in extent A: 0 R: 0 P 39 - *ie:* the subject matter of this action.

Further, it is stated on the face of “ඇ 11” that Weerasuriya placed a bid for Rs. 3,400/- on De Silva’s behalf to purchase Lot no. 4 *“for and on behalf of”* De Silva and that Weerasuriya later paid the agreed sale price of Rs.3,400/- to Jayawickrama and called on Jayawickrama to convey and transfer Lot no.4 to De Silva. Further, the deed marked “ඇ 11” states that Weerasuriya agreed to be a party to this deed of transfer to manifest his agreement that Lot no. 4 was being conveyed and transferred to De Silva. Thus, “ඇ 11”, states:

“And I the said Gintota Polwattage Don Amarapala De Silva Weerasuriya do hereby ***declare that I have requested the vendor to convey and transfer to the said vendee*** *the said premises and I consent to the said conveyance and transfer and that I absolve the vendor from all obligations arising from the condition of sale executed between me and the said vendor at the sale by public auction and bearing no. 3334 dated 16th November 1958 attested by .D.A.B. Ratnayake, Notary Public.* [emphasis added].

IN WITNESS WHEREOF I the said Vendor and Gintota Polwattage Don Amarapala de Silva Weerasuriya do hereunto and to two others of the same tenor and date as these presents set our hands at Kurnegala [*sic*] *on this Fifteenth day of May One Thousand Nine Hundred and Fifty Nine.”*.

The attestation by the Notary Public states that:

“the consideration was acknowledged to have been received earlier.”.

It is clear from the aforesaid contents of the deed of transfer no. 3374 marked ඇ 11" that it is an instrument by which Jayawickrama [as the ***"vendor"*** named in the deed] **sold and transferred Lot no. 4 depicted in Plan no. 1705 to De Silva** [who is the ***"vendee"*** named in the deed] and, thereby, **De Silva obtained title to Lot no. 4**. It is also clear that Weerasuriya acted on behalf of De Silva at the public auction and attended to the formalities of placing a bid on behalf of De Silva and entering into an agreement recording the Conditions of Sale. Further, Weerasuriya has signed "ඇ 11" to express his acknowledgement of the fact that De Silva obtained title to Lot no. 4 by operation of that instrument. Thus, Weerasuriya's role was that of an agent acting on behalf of De Silva at the public auction and the subsequent formalities.

This deed of transfer no. 3374 marked "ඇ 11" was registered at the Kurunegala Land Registry on 15th June 1959. A certified extract of the folio was produced marked "ඇ 10" by the plaintiff. As set out therein, when "ඇ 11" was first registered, Weerasuriya's name has been entered in column three of the folio which states details of the *"Grantees (Names in full and residence)"*. That has been later corrected by the entry dated 01st September 1995 made by the Registrar of Land in the last column of the same folio, which provides for *"REMARKS"*. That entry states *"The grantee's name in column 3 of this entry is corrected by substitution of the words 'Warnasuriya Patabendige Punnyadasa de Silva of No: 20 Gnanasuriyan Square, Batticaloa' in place of the words 'Gintota Polwattage Don Amarapala de Silva of C.G.R.Kurunegala' with Registrar General's authority after taking action under Section 35 of the Registration of Documents Ordinance."* .

It is common ground that, at the same public auction held on 16th November 1958, Weerasuriya also purchased, in his own name, Lot no. 2 and Lot no. 3 depicted in Plan no. 1705 marked "1 ඒ2".

The dispute and related facts

De Silva transferred Lot no. 4 to his daughter, the plaintiff, by deed of gift no. 1618 dated 01st July 1985 attested by G.P. Patrick, Notary Public of Batticaloa. At that time, the plaintiff would have been 28 years of age. On the face of it, this deed of gift has been executed by De Silva and signed by the plaintiff to signify her acceptance of the donation, before the Notary Public and two witnesses and this Notary Public has attested the deed of gift. Subsequently, this deed of gift has been registered at the Kurunegala Land Registry on 16th August 1985, as set out in the folios marked "ඇ 10".

The plaintiff produced this deed of gift marked "ඇ 3". She testified that both she and her father [De Silva] signed "ඇ 3" before the Notary Public and the two witnesses. She said

that the Notary Public and one of the witnesses had since emigrated and the other witness had since died. An officer of the Batticaloa Land Registry gave evidence and confirmed that the protocol of the deed of gift marked "පැ 3" had been tendered to the Land Registry by the Notary Public. The learned District Judge took the view that the aforesaid evidence was sufficient to prove "පැ 3" and the High Court agreed. I see no reason to differ and will proceed on the basis that "පැ 3" was proved.

About four years after the deed of gift marked "පැ 3" transferring title to Lot no. 4 to the plaintiff was executed and registered at the Land Registry, Weerasuriya has executed a deed of transfer no. 2937 dated 16th May 1989 attested by M.B. Wijekoon, Notary Public. By this deed of transfer no. 2937, Weerasuriya has stated that he possesses and has title to Lot no. 4 and that he is selling and transferring Lot no. 4 to the 1st and 2nd defendants for payment of a consideration of Rs.20,000/-. This deed of transfer no. 2937 was produced by the 1st defendant at the trial, marked "1 වි4".

It should be mentioned that "1 වි4" does not state the manner in which Weerasuriya claims he has title to Lot no. 4. Further, the aforesaid Notary Public who attested "1 වි4" has made a specific endorsement thereon that Weerasuriya gave him instructions to dispense with a search at the Land Registry before the deed of transfer was prepared and attested. Thus, at the time of the execution and attestation of this deed of transfer no. 2937 marked "1 වි4" on 16th May 1989, the Notary Public could have been unaware of the existence of the previous deed of transfer no. 3374 marked "පැ 11" by which title to Lot no. 4 was transferred to De Silva in 1959 and deed of gift no. 1681 marked "පැ 3" by which De Silva transferred title to Lot no. 4 to the plaintiff in 1985.

A little more than three years later, the 1st defendant filed Partition Case no. 3896/P in the District Court of Kurunegala naming only his brother, the 2nd defendant as a defendant. In his plaint, the 1st defendant pleaded that his father - *ie:* Weerasuriya - had sole title to Lot no. 4 under and in terms of deed of transfer no. 3374 marked "පැ 11" and that his father had transferred Lot no. 4 to the 1st and 2nd defendants by deed of transfer no.2937 marked "1 වි4". On that basis, the 1st defendant prayed that Lot no. 4 should be partitioned between the 1st and 2nd defendants, in equal shares.

The Declaration filed in this partition action by the 1st defendant's Registered Attorney-at-Law under and in terms of section 12 of the Partition Act, declares that he inspected the records at the Land Registry on 09th February 1993 and that he ascertained that there were no other persons who should be included as parties to the partition action.

That inspection by the 1st defendant's Registered Attorney-at-Law could not have failed to reveal that the plaintiff had a claim to Lot no. 4 under and in terms of deed of gift no.

1681 marked "ఒ 3" which had been registered in the Land Registry on 16th August 1985; and that the plaintiff had to be made a party to the partition action in terms of section 5 of the Partition Act. However, the 1st defendant's Registered Attorney-at-Law has made a false Declaration and suppressed the fact that the plaintiff had a claim to the *corpus* of the partition action. The inference is that the Attorney-at-Law did so at the behest of the 1st defendant. It follows that the 1st defendant and his Registered Attorney-at-Law have misled the District Court in Partition Case no. 3896/P and have suppressed the fact that the plaintiff was entitled to be made a party to that action. It should also be mentioned here that the plaintiff resided in Kandy and may have been unaware of any public notice affixed on Lot no. 4 or of a survey of Lot no. 4 by the Court Commissioner.

When the trial in this partition action was taken up on 18th May 1994, the 2nd defendant gave evidence stating that he and the 1st defendant had joint title to Lot no. 4 under deed of transfer no. 3374 marked "ఒ 11" and deed of transfer no. 2937 marked "1වි4" and moved that judgment be entered partitioning Lot no. 4 between the 1st and 2nd defendants. The District Court acted on that evidence and entered an interlocutory decree and a final decree, partitioning Lot no. 4 between the 1st and 2nd defendants.

The plaintiff states that she first became aware of this Partition Case no. 3896/P only in the month of May 1995 and that, thereupon, she filed Revision Application no. 535/1995 in the Court of Appeal pleading that the 1st and 2nd defendants had collusively and fraudulently obtained the interlocutory decree and final decree in Partition Case no. 3896/P. The plaintiff prayed that the Court of Appeal act in revision and set aside the interlocutory decree and final decree entered in Partition Case no. 3896/P.

The plaintiff and the 1st and 2nd defendants were represented by learned counsel in the Court of Appeal. On 12th May 1997, the Court of Appeal delivered judgment holding that *"a fraud had been practiced on the Court"* by the 1st and 2nd defendants and observing that *"the Attorney-at-Law who appeared for them appears to have been a party to this."*. The Court of Appeal held that Weerasuriya [the father of the 1st and 2nd defendants] had no title to Lot no. 4 and that, therefore, the 1st and 2nd defendants had no title to Lot no. 4 either. On that basis, the Court of Appeal acted in revision and set aside the interlocutory decree and final decree entered in Partition Case no. 3896/P. I should mention that the record in Court of Appeal Revision Application no. 535/1995 [which included the case record in Partition Case no. 3896/P] was produced at the trial in the present case.

Thereafter, as mentioned at the outset, the plaintiff instituted the present action in the District Court of Kurunegala on 03rd October 1997. The plaintiff's case, as pleaded in the plaint, was that the plaintiff had title to Lot no. 4 under and in terms of deed of

transfer no. 3374 marked "ඇ 11" and deed of gift no. 1681 marked "ඇ 3". Since she resided in Kandy, she relied on her aunt [Weerasuriya's wife and the mother of the 1st and 2nd defendants] to look after Lot no. 4 and the plaintiff's interests in that property. In January 1993, the plaintiff became aware that some person had commenced constructing a building on Lot no.4. She made a complaint to the Police and the construction work stopped. She later became aware that the 1st defendant had commenced construction work on Lot no. 4 in May 1995. When she made further inquiries, she also became aware of the aforesaid Partition Case no. 3896/P. The plaintiff immediately filed the aforesaid Revision Application and the Court of Appeal set aside the interlocutory decree and final decree entered in the Partition Case. On this basis, the plaintiff prayed for the reliefs referred to earlier.

The 1st defendant and 2nd defendant filed separate answers pleading that, although Lot no. 4 had been purchased in De Silva's name as set out in deed of transfer no. 3374 marked "ඇ 11", Weerasuriya [their father] had provided the consideration and De Silva had not repaid Weerasuriya. The defendants pleaded that neither De Silva nor the plaintiff have had possession of Lot no. 4 at any point in time and that, from 1959 onwards, Weerasuriya had exclusive possession of Lot no. 4 together with Lot no. 2 and Lot no. 3 [which two Lots had been purchased by him in his own name]. They pleaded that Weerasuriya had paid the Municipal Rates for Lot no. 4. On that basis, they claimed that Weerasuriya obtained prescriptive title to Lot no. 4 and later transferred his title to the defendants by deed of transfer no. 2937 marked "1 වි4" and that, accordingly, they have prescriptive title to Lot no. 4. Thus, the 1st defendant and 2nd defendant prayed that the plaintiff's action be dismissed and a declaration of title be entered in their favour on the basis of their prescriptive title to Lot no. 4. The defendants also claimed compensation for improvements made to Lot. No. 4.

At the trial, the plaintiff gave evidence and led the evidence of official witnesses from the Batticaloa Land Registry, the Kurunegala Municipal Council, the Registry of the Court of Appeal and the Kurunegala Land Registry. Thereafter, the 1st defendant gave evidence. He also led the evidence of a witness who had worked for his father [Weerasuriya] and the evidence of a witness to deed of transfer no. 2937 marked "1 වි4".

At the commencement of the trial, the parties framed no less than 42 issues based on their pleadings. As evident from the plaint, the plaintiff's case was in the nature of a *rei vindicatio* and her issues were on the basis that: De Silva [her father] obtained title to Lot no. 4 by deed of transfer no. 3374 marked "ඇ 11" and transferred title to her by deed of gift no. 1618 marked "ඇ 3"; the plaintiff requested the defendants [and her aunt, the defendant's mother] to 'look after' Lot no. 4 for the plaintiff; and the 1st and 2nd defendants were in unlawful occupation of Lot no. 4. The defendants relied on their

claim of prescriptive title and their issues were on the basis that Weerasuriya [their father] had possessed Lot No. 4 adverse to and independent of De Silva and all others from 1959 onwards and thereby acquired prescriptive title to Lot no. 4 and had thereafter transferred that title to the defendants by deed of transfer no. 2937 marked "1 වි4". The defendants also framed issues on their claim for compensation.

Thus, no party claimed in their pleadings that a constructive trust existed in relation to Lot no. 4 and no issue was framed by the parties on whether a constructive trust existed.

Nevertheless, in his judgment, the learned trial judge, having first listed the 42 issues framed by the parties, mentioned that Lot no. 4 had been transferred to *Weerasuriya* by deed of transfer no. 3374 marked "ඵ 11". He went on to say that the correct determination of this action rested on the following issues - *ie:* firstly, whether Weerasuriya held Lot no. 4 subject to a constructive trust in favour of De Silva and the plaintiff; and secondly, whether the 1st and 2nd defendants had prescriptive title to Lot no. 4. Thereafter, the trial judge expressed his view that Weerasuriya and later the defendants held Lot no. 4 subject to a constructive trust in favour of De Silva and the plaintiff. He further stated that Weerasuriya and the defendants were aware that the plaintiff had title to Lot no. 4 but, nevertheless, Weerasuriya fraudulently executed deed of transfer no. 2937 marked "1 වි4" in favour of the defendants and that the defendants were parties to that fraud. The learned trial judge also held that Partition Case no. 3896/P was a fraudulent and collusive exercise by the defendants.

With regard to the defendant's claim of prescriptive title, the learned trial judge appears to have accepted the plaintiff's evidence that De Silva [her father] had fenced Lot no. 1 sometime after purchasing that property under and in terms of deed of transfer no. 3374 marked "ඵ 11", and that, since the plaintiff resided in Kandy, she had asked her aunt [Weerasuriya's wife] who lived on the adjoining property, to look after Lot no. 4 for the plaintiff and relied on her aunt to fulfil that duty. The learned trial judge emphatically stated that he believed the plaintiff's testimony that Weerasuriya regularly sent produce from Lot no. 4 [in the form of coconuts sent via the train service] to De Silva, in Batticaloa and, thereby, acknowledged De Silva's title to Lot no. 4. The learned judge rejected the 1st defendant's denial that his father [Weerasuriya] sent produce from Lot no. 4 to De Silva. The trial judge also noted that De Silva and his daughter, the plaintiff on the one hand, and Weerasuriya and his wife and the defendants [the plaintiff's uncle, aunt and cousins] on the other, were all close relatives who had amicable relationships with each other until the litigation commenced.

A perusal of the judgment makes it clear that the learned trial judge was of the view that the defendants had failed to establish that their father [Weerasuriya] or the defendants had possessed Lot no. 4 adverse to and independent of De Silva and the plaintiff. Accordingly, the District Court rejected the claim of prescriptive title relied on by the 1st and 2nd defendants.

Thereafter, the learned trial judge dealt with the 1st defendant's claim that he had constructed a house on Lot No. 4 incurring expenditure of Rs. 1,000,000/- and that he was entitled to compensation for that improvement and a *jus retentionis* until that compensation was paid to him. The learned judge held that the 1st defendant was aware that the plaintiff had title to Lot No. 4 but, nevertheless, constructed the house while knowing that it was being built on the plaintiff's land. The District Court held that, in these circumstances, the 1st defendant could not claim to be a *bona fide* possessor and that he was not entitled to compensation for the cost of the house.

Finally, the learned District Judge held that the plaintiff was entitled to recover damages in a sum of Rs. 10,000/- per month on account of deprivation of the income the plaintiff could have earned from Lot no. 4 during the pendency of the action. However, the learned judge held that these damages should be fully set off against the value of the house which would accrue to the plaintiff and that, therefore, the plaintiff was not entitled to recover any monetary damages from the 1st and 2nd defendants.

In appeal, the learned High Court Judges observed that deed of transfer no. 3374 marked "පැ 11" established a transfer of Lot no. 4 to De Silva and that the trial judge erred when he took the view that Weerasuriya obtained title under "පැ 11" and held Lot no. 4 was subject to a constructive trust in favour of De Silva. The High Court was of the view that De Silva held title to Lot. No. 4 by operation of "පැ 11". The High Court upheld the trial judge's rejection of the defence of prescriptive title claimed by the defendants. The High Court also affirmed the District Court's determination with regard to the compensation for improvements claimed by the 1st defendant and the plaintiff's claim for damages. Accordingly, the appeal was dismissed, as mentioned earlier.

The questions of law

The six questions of law on which the 1st defendant has been granted leave to appeal are reproduced *verbatim*:

(i) Whether the learned High Court Judges erred in law by upholding the finding of the learned trial Judge regarding the existence of a constructive trust, whereas that was not the case for the Plaintiff or

Defendants and the District Court decided this action on matters that were not put in issue in this action and thereby caused a miscarriage of justice ?

(ii) Whether the learned High Court Judges erred in law in holding that the Defendants are not entitled to claim title on the basis of prescriptive possession ?

(iii) Whether the learned High Court Judges erred in law by placing undue weight on the finding of the Court of Appeal in the Revision Application No. 535/95 that the Defendants had acted fraudulently when they instituted the earlier partition action No. 3896/P without making the present Plaintiff a party to such action ?

(iv) Whether learned High Court Judges erred by placing undue weight on the fact that in the earlier partition action the Defendants who instituted it had omitted to plead in the plaint a title by prescriptive possession ?

(v) Whether the learned High Court Judges erred by granting reliefs not prayed by the Plaintiff ?

(vi) Whether the learned High Court Judges erred by setting off compensation for improvements by the Defendants against the damages granted to the Plaintiff ?

With regard to question of law no. (i), as set out earlier, deed of transfer no. 3374 marked "පැ 11" is the instrument by which De Silva obtained sole title to Lot no. 4. In fact, the 1st defendant admitted this in cross examination. Thus, when he was shown "පැ 11" and asked *"මේ ඔප්පුවේ ගැනුම්කරු පුනාදාස ද සිල්වා?"*, he replied *"ඔව්."*.

However, the District Judge misread and misunderstood "පැ 11" and expressed his view that "පැ 11" was a transfer of title to Weerasuriya, who then held Lot no. 1 subject to a constructive trust in favour of De Silva.

The learned High Court Judges have observed in their judgment that the written submissions of the 1st defendant in the High Court admit that the deed of transfer marked "පැ 11" *"has been written in the name of Punyadasa De Silva* [De Silva] *as vendee"* and that the 1st defendant's case is that his father [Weerasuriya] *"continued to be in possession of the property as his own and acquired a prescriptive title."*. The learned High Court Judges have further stated that *"The Appellant's written submissions*

reiterate that the transferee was Punyadasa de Silva [De Silva] *and this is not a case where provisions in section 84 of the Trusts Ordinance applies …..".]*. They have gone on to observe that *"As the Appellant has stated and also seen from the case record neither party has suggested any issue on a constructive trust."*. The judgment of the High Court also states that *"Therefore, it is common ground that P.01* ["පැ 11"] *is in the name of Punyadasa* [De Silva] *and he is the vendee."*.

Thus, a reading of the judgment of the High Court establishes that the learned High Court Judges decided that the District Judge had erred when he held that the deed of transfer marked "පැ 11" was a transfer of title to Weerasuriya, who then held Lot no. 4 subject to a constructive trust in favour of De Silva. The fact that this was the view of the learned High Court Judges can be deduced from several statements and observations in the judgment of the High Court. Regrettably, the judgment of the High Court fails to make a specific statement to that effect. It would have been much better if the learned High Court Judges had set out their determination with more clarity.

Accordingly, question of law no. (i) has to be answered in the negative.

Before moving on to the other questions of law, it should be mentioned that it is evident from the judgment of the District Court that, despite the learned District Judge having erred when he expressed a view that a constructive trust existed, he eventually decided the action by answering the 42 issues framed by the parties based on their pleadings - *ie:* (i) the plaintiff's issues framed on the basis of a *rei vindicatio*; and (ii) the issues framed by the 1st and 2nd defendants based on the defence of prescriptive title.

The question of a constructive trust did not figure in any of these 42 issues framed by the parties and answered by the learned District Judge and based on which the District Court entered its judgment. Thus, the learned District Judge's aforesaid error in expressing a view that Weerasuriya had title to Lot no. 4 and held the property subject to a constructive trust in favour of De Silva, did not play a part in the eventual determination of the action as set out in the judgment of the District Court. For that reason, it is unnecessary to make a determination as to whether the District Judge erred when he framed new issues at the stage of writing the judgment without first giving the parties notice of the proposed new issues - *vide:* HAMEED vs. CASSIM [1996 2 SLR 30] and the more recent judgment in SEYLAN BANK PLC vs. EPASINGHE [SC CHC Appeal no. 36/2006 decided on 01st August 2017].

A perusal of the judgment of the High Court establishes that the learned Judges recognised that the trial Judge's mistaken idea of a constructive trust and the new issues he referred to in his judgment, played no part in the eventual determination of the

action in the District Court. Thus, the High Court Judges have observed in their judgment that *"The parties have presented their respective cases and the court had accepted the points on which they are at variance without any reference to a constructive trust."*. This is undoubtedly a reference to the fact that, although the trial judge was initially distracted by a mistaken idea of the existence of a constructive trust, he eventually 'got back on track' as it were, and decided the case by answering the issues framed by the parties as set out in their pleadings.

Next, questions of law no.s (ii), (iii) and (iv) can be considered together as they all deal with the High Court's decision to uphold the District Court's rejection of the 1st defendant's plea that he and the 2nd defendant had prescriptive title to Lot no. 4.

In this connection, and as mentioned earlier, it is evident on the face of the deed of transfer marked "ළෙ 11" itself that Weerasuriya acted as De Silva's agent and bid on De Silva's behalf to purchase Lot no. 4 at the public auction. Thereafter, Weerasuriya has acted on behalf of De Silva when he entered into the agreement setting out the Conditions of Sale and later delivered payment of the consideration to the seller [Jayawickrama] prior to the execution of the deed of transfer marked "ළෙ 11" by which De Silva obtained title to Lot no. 4. Further, as stated earlier, Weerasuriya has placed his signature on "ළෙ 11" to acknowledge that he acted on behalf of De Silva and as De Silva's agent in this entire transaction.

These circumstances add substance to the plaintiff's assertion that, after her father [De Silva] purchased Lot no. 4, his brother-in-law, Weerasuriya continued to act on behalf of De Silva and 'looked after' Lot no.4 on behalf of De Silva. The existence of such a relationship between De Silva and Weerasuriya with regard to Lot no. 4 is made likely by the fact that both parties admit that there were amicable relations between them as family members, and that Weerasuriya resided in Kurunegala while De Silva resided in Batticaloa and could not `look after' Lot no. 4 on his own. It also has to be kept in mind that Weerasuriya had purchased the neighbouring Lot no. 2 and Lot no. 3 in his own name at the public auction and later constructed his residence on these two Lots which adjoined Lot no. 4. Thus, Weerasuriya was well placed to conveniently `keep an eye' on Lot no. 4 on behalf of his brother-in-law, De Silva.

The plaintiff has testified that, after she obtained title to Lot no. 4, she asked her aunt [Weerasuriya's wife and the defendants' mother] to `look after' that property for the plaintiff. That evidence is plausible since the plaintiff resided in Kandy and it is likely that she would ask her aunt, who resided in the neighbouring Lot no. 2 and Lot no. 3, to `look after' Lot no. 4 for the plaintiff.

In these circumstances, the inference is that Weerasuriya and his sons, the 1st and 2nd defendants, were in a position of agents of De Silva and the plaintiff and in a position of trust *vis-à-vis* Lot no. 4 and the plaintiff's rights to Lot no. 4. In such circumstances, the 1st defendant cannot succeed in a claim that he and his father [Weerasuriya] possessed Lot no. 4 adverse to the rights of the plaintiff and her father [De Silva] unless there is clear evidence of an unmistakeable act of ouster of the rights of the plaintiff and De Silva or there has been exclusive possession of Lot no. 4 by Weerasuriya and the 1st defendant for a long period of time in circumstances which give rise to a presumption of ouster in their favour. Thus, in NAGUDA MARIKAR vs. MOHAMMADU [7 NLR 91] the Privy Council held that, in the absence of any evidence to show that the plaintiff had got rid of his character of agent, he was not entitled to the benefit of section 3 of the Prescription Ordinance. On the same lines, in SIYANERIS vs. JAYASINGHE UDENIS DE SILVA [52 NLR 289 at p.292], the Privy Council emphasised that *"…if a person goes into possession of land in Ceylon as an agent for another* ***time does not begin to run until he has made it manifest that he is holding adversely to his principal****."* [emphasis mine]. Similar views were expressed by Bertram CJ in TILLEKERATNE vs. BASTIAN [21 NLR 12 at p. 19] and by Weeramantry J In JAYANERIS vs. SOMAWATHIE [76 NLR 206 at p. 207-208].

Accordingly, the evidence has to be examined to ascertain whether there has been such an act of ouster committed by Weerasuriya and the 1st defendant or whether the evidence justifies drawing a presumption of ouster in their favour.

The 1st defendant placed great store on the evidence that his father [Weerasuriya] had paid the Municipal Rates for Lot no. 4 for many years. However, it is a well-known principle that the payment of Municipal Rates will not, by itself, establish a claim of prescriptive title since any person, especially persons occupying a property in a subordinate capacity such as an agent, tenant, or licensee, can tender payment of Municipal Rates - *vide:* Basnayake CJ in HASSAN vs. ROMANSIHAMY [66 CLW 112 at p. 112] and De Silva CJ in SIRAJUDDIN vs. ABBAS [1994 2 SLR 365 at p. 370].

Next, the plaintiff testified that sometime after Lot no. 4 was purchased by her father [De Silva], he erected a fence to demarcate Lot no. 4. The 1st defendant made no claim that he or his father [Weerasuriya] had erected a fence to demarcate Lot no. 4.

When the Court Commissioner surveyed Lot no. 4 on 08th July 1993 in pursuance of the Commission issued to him in the aforesaid D.C. Kurunegala Partition Case no. 3896/P, he has reported that the Northern boundary of Lot no. 4 [which adjoined Gangoda Road] was demarcated by a fence; the Eastern boundary [which adjoined the land of a third party] was demarcated by a fence and a wall; the Southern boundary [which

adjoined Lot no. 3 depicted in Plan no. 1705 marked "1 ඒ2" to which Weerasuriya had title] was demarcated by a row of concrete posts which are usually used for fencing; and the Western boundary [which adjoined Lot no. 2 depicted in Plan no. 1705 marked "1 ඒ2" to which Weerasuriya had title and Lot no. 1 on the same Plan which was owned by a third party] was demarcated by a similar row of concrete posts and a wall.

This independent and reliable evidence corroborates the plaintiff's testimony that her father had erected a fence to demarcate the boundaries of Lot no. 4, especially since the 1st defendant made no claim that he or his father had erected a fence. It also comes to mind that, if Weerasuriya and his sons [the 1st and 2nd defendants] had possessed Lot no. 4 in their own right as they claimed, there would have been little reason for them to fence it off from their adjoining Lot no. 2 and Lot no. 3 and, thereby, lose the opportunity of having a contiguous area of land which consisted of Lot no. 2, Lot no. 3 and Lot no. 4 with an aggregate extent of A:0 R:03 P:02. Therefore, the existence of concrete posts demarcating Lot no. 4 suggests that Weerasuriya and his sons [the 1st and 2nd defendants] were not in possession of Lot no. 4.

The Court Commissioner has also reported that when he surveyed Lot no. 4 on 08th July 1993, there were 08 coconut trees which were about 60/70 years old. This tallies closely with the plaintiff's evidence that there were about ten coconut trees on Lot no. 4 when her father purchased it in 1959.

This leads to the plaintiff's evidence that Weerasuriya sent coconuts plucked from Lot no. 4 to De Silva, by train, once in every three months. The plaintiff's position was that Weerasuriya did this in acknowledgment of De Silva's title to Lot no. 4 and De Silva's right to the produce from the land. The 1st defendant denied that his father, Weerasuriya sent coconuts to Weerasuriya. It is to be noted that the 1st defendant did not suggest that Weerasuriya even occasionally sent coconuts to De Silva as gifts out of affection for his brother-in-law who resided Batticaloa.

In these circumstances, the question of whether Weerasuriya regularly sent coconuts plucked from Lot no. 4 to De Silva in acknowledgement that De Silva had title to Lot no. 4 and was entitled to the produce from the land, assumes importance in deciding the defence of prescription claimed by the 1st defendant. In this regard it has to be kept in mind that since the 1st defendant did not offer an explanation that Weerasuriya occasionally sent coconuts to De Silva by way of a gift and, instead, denied that Weerasuriya sent coconuts to De Silva at any time, evidence that Weerasuriya did regularly send coconuts to De Silva can only mean that he did so in acknowledgement that De Silva had title to Lot no. 4 and was entitled to the produce from the land.

The learned trial judge has emphatically stated that he accepted the plaintiff's evidence that Weerasuriya regularly sent coconuts plucked from Lot no. 4 to De Silva, by train. He described the plaintiff's testimony on this matter as clear and unshaken [*"පැහැදිලිව, නොපැකිලිව"*]. He did not accept the 1st defendant's denial that his father sent coconuts to De Silva. The High Court has taken the view that the plaintiff's evidence that Weerasuriya regularly sent coconuts plucked from Lot no. 4 to De Silva, was more probable than the 1st defendant's denial and has stated *"The above, as it appears to this court, show that the evidence of the Respondent that Amarapala* [Weerasuriya] *used to send coconuts from trees in this land to Punyadasa* [De Silva] *who was in Batticaloa by train is more probable and the Appellant or his brother does not have any right or title whatsoever by prescription or otherwise to the land in question."*.

An appellate court will be mindful of the fact that a trial judge has had the benefit of seeing and hearing the witnesses and of assessing their demeanour and credibility. In view of this practical reality, an appellate court is usually loth to set aside findings of fact arrived at by a trial judge, especially findings based upon a trial judge's assessment of the credibility of witnesses, unless the appellate court is convinced the trial judge has made a mistake by overlooking evidence or misinterpreting evidence which led to his determination or has acted unreasonably or perversely.

Thus, in MUNASINGHE vs. VIDANAGE [69 NLR 97 at p.109], Lord Pearson in the Privy Council cited Viscount Simon in THOMAS vs. THOMAS [1947 A. C. 484 at pp. 485-6] who had observed *"If there is no evidence to support a particular conclusion (and this is really a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion been arrived on conflicting testimony by a tribunal which saw and heard the witnesses the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."* Similarly, in COLLETTES vs. BANK OF CEYLON [1984 2 SLR 253 at p.264], Sharvananda J, as he then was, stated *"Thus this court undoubtedly has the jurisdiction to revise the concurrent findings of fact reached by the lower court in appropriate cases. However, ordinarily it will not interfere with findings of fact based upon relevant evidence except in special circumstances, such as, for instance, where the judgment of the lower court shows that the relevant evidence bearing on a fact has not been considered or irrelevant matters have been given undue importance or that the*

conclusion rests mainly on erroneous considerations or is not supported by sufficient evidence. When the judgment of the lower court exhibits such shortcomings, this court not only may, but is under a duty to examine the supporting evidence and reverse the findings" - *vide:* also FALALLOON vs. CASSIM [20 NLR 332 at p.335-336]. In ALWIS vs. FERNANDO [1993 1 SLR 119 at p.122] De Silva CJ observed *"It is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal.".*

There is no reason for us to think that the learned trial judge made a mistake when, after hearing the evidence of both the plaintiff and the 1st defendant and observing their demeanour, he decided to accept the plaintiff's evidence that Weerasuriya regularly sent coconuts plucked from Lot no. 4 to De Silva, and to reject the 1st defendant's denial.

This evidence before the District Court that Weerasuriya acknowledged De Silva had title to Lot no. 4 and that De Silva was entitled to the produce from Lot no. 4 cuts across the 1st defendant's claim that Weerasuriya possessed Lot no. 4 adverse to the rights of De Silva from 1959 onwards and acquired prescriptive title.

Further, the fact that the 1st defendant instructed that a false Declaration under section 12 of the Partition Act be tendered to the District Court in Partition Case No. 3896/P and suppressed from the District Court the fact that the plaintiff was entitled to be made a party to the partition action, establishes a lack of *bona fides* and credibility on the part of the 1st defendant. As correctly observed by the learned High Court Judges, the fact that the 1st and 2nd defendants sought to dishonestly exclude the plaintiff from Partition Case No. 3896/P suggests that the 1st and 2nd defendants knew they had neither paper title nor prescriptive title to Lot no. 4. It hardly needs to be said that, if the 1st and 2nd defendants were confident that they held prescriptive title to Lot no. 4 acquired as a result of undisturbed and uninterrupted possession from 1959 onwards adverse to the rights of De Silva and the plaintiff, they would have no reason to dishonestly suppress the fact that the plaintiff claimed title under the deed of gift marked "ළ 3" and was entitled to be made a party to the partition action. It should also be mentioned that, as correctly observed by the learned High Court Judges, a perusal of the 1st defendant's plaint in Partition Case No. 3896/P, shows that 1st defendant has relied on his claim to paper title under deed of transfer no. 2937 marked "1 වි4" and has not pleaded a substantive claim of prescriptive title on the basis of undisturbed and uninterrupted possession from 1959 onwards adverse to the rights of all other persons. This too suggests that the 1st defendant knew he had no claim to prescriptive title to Lot no. 4.

Thus, for the reasons set out above, it is evident that the District Court and High Court correctly held that that 1st and 2nd defendants failed to establish their claim of

prescriptive title. Therefore, questions of law no.s (ii), (iii), and (iv) are answered in the negative.

With regard to question of law no. (v), consequent to the learned District Judge expressing the mistaken view that the deed of transfer no. 3374 marked "පැ 11" granted *Weerasuriya* title to Lot no. 4 subject to a constructive trust in De Silva's favour, the learned Judge went on to direct the 1st and 2nd defendants execute a deed of transfer conveying Lot no. 4 to the plaintiff and directed the Registrar of the Court to execute a deed of transfer if the 1st and 2nd defendants failed to comply with that Order.

That Order was unnecessary and irrelevant since Weerasuriya has never had title to Lot no. 4, as set out earlier in this judgment. In any event, the learned District Judge himself has held that the plaintiff has title to Lot no. 4 and is entitled to an order for ejectment of the 1st and 2nd defendants from Lot no. 4 [*"ඒ අනුව පමිනිලිකාරිය මෙම නඩුවට අදාල ඉඩමේ අයිතිකාරිය බව තීරණය කරන අතර අදාල 1,2 විත්තිකරුවන් සහ අනිකුත් අය මෙම නඩුවට අදාල ඉඩමෙන් නෙරපීමට නියෝග කරමි."*]. Thereafter, the learned judge has entered judgment as prayed for in the plaint, which would include the issue of a declaration of title in favour of the plaintiff. Thus, the learned trial judge's Order that Lot no. 4 be transferred by the 1st and 2nd defendant to the plaintiff is a *non sequitur* and a nullity. Accordingly, that part of the judgment of the District Court which refers to an Order directing the 1st and 2nd defendants to execute a deed of transfer conveying Lot no. 4 to the plaintiff, should be *pro forma* set aside.

Accordingly, question of law no. (v) is answered as set out above.

Finally, with regard to question of law no. (vi), the District Court held that the plaintiff incurred damages in the sum of Rs. 10,000/- per month as a result of being deprived of earning an income from Lot no. 4 during the pendency of the action. Lot no. 4 is 39 perches in extent and is situated in the heart of the city of Kurunegala. There is no reason to think that the learned trial judge erred when he decided on that quantum of damages. Thereafter, the District Court has held that the 1st defendant is not entitled to be paid compensation for the house he constructed on Lot no. 4 because he did so knowing that the plaintiff had title to Lot no. 4. On that basis, the learned trial judge held that the 1st defendant was not a *bona fide* possessor and was not entitled to compensation for improvements and a *jus retentionis*.

This decision is in accordance with the rule that, in the absence of special circumstances, a *mala fide* possessor who does not have *possessio civilis* and occupies land which he knows belongs to another, cannot recover compensation for useful improvements [*ie:* for *impensae utiles* or, as is sometimes said, *utiles impensae*] and cannot exercise a *jus retentionis*. Thus, in THE GENERAL CEYLON TEA ESTATES COMPANY LTD vs. PULLE [9 NLR 98 at p.103-104], Middleton J held *"My own view is*

that a mala fide possessor being in effect an intentional wrongdoer ought not to complain, if the utiles impensae incurred by him should enrich the real owner of the property at his, the spoliator's, expense. This would appear also to be the views of Moncreiff J. [Endorissa v. Andorissa], and Pereira A.P.J. [D. C, Kandy, 16,147].I would hold therefore that a mala fide possessor is not entitled to utiles impensae except in cases where the owner of the property stood by and allowed the building or planting to proceed without notice of his own claim. In such a case I would put the mala fide possessor in the same position as a bona fide possessor and give him the same rights of retention.". In WANIGARATNE vs. WANIGARATNE [1997 2 SLR 267 at p.275], Senanayake J held that *"…. A mala fide possessor is not entitled to utiles impensa except in cases where the owner of the property stood by and allowed the building or planting to proceed without notice of his claim."*.

The learned trial judge went on to hold that, since the restoration of the plaintiff to possession of Lot no. 4 resulted in her gaining the house constructed by the 1st defendant at a cost of Rs. 1,000,000/- [based on the 1st defendant's evidence of the sum he expended], it was equitable to set off the monetary damages due to the plaintiff [arising from deprivation of possession of Lot no. 4] against the value of the house. Accordingly, the District Court did not direct the payment of monetary damages by the 1st defendant to the plaintiff. This line of reasoning taken by the learned Judge is eminently reasonable and the High Court has, correctly, affirmed the determination of the District Court.

Accordingly, I answer question of law no. (vi) in the negative.

For the reasons set out earlier, I set aside those parts of the judgment of the District Court which refers to the issue of an Order directing the 1st and 2nd defendants to execute a deed of transfer conveying Lot no. 4 to the plaintiff and directing the Registrar of the Court to execute a deed of transfer if the 1st and 2nd defendants failed to comply. Further, I also hold that those parts of the judgment of the District Court which refer to the learned District Judge's view that Weerasuriya obtained title to Lot no. 4 under deed of transfer no. 3374 marked "ඊ 11" and held Lot no. 4 subject to a constructive trust in favour of De Silva, are incorrect. Subject to the aforesaid, the judgments of the District Court and High Court are affirmed.

For purposes of clarity, it is stated that the only reliefs granted in terms of the judgments of the District Court and High Court will be the issuance of a Declaration of Title in favour of the Plaintiff-Respondent-Respondent, an Order for ejectment of the 1st Defendant-Appellant-Petitioner/Appellant and 2nd Defendant-Respondent-Respondent from Lot no. 4 and an Order for recovery of costs by the Plaintiff-Respondent-Respondent, as prayed for in prayers (ඒ), (ඓ) and (ඒඑ) of the plaint. The District Court is directed to accordingly amend the Decree entered in this case. The 1st Defendant-

Appellant-Petitioner/Appellant will also pay the Plaintiff-Respondent-Respondent the costs of this appeal.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J
I agree.

Judge of the Supreme Court

Priyantha Jayawardena, PC, J
I agree.

Judge of the Supreme Court