# 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 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: 188/14**

SC/HCCA/LA No: 220/2014

NWP/HCCA/KUR/Appeal No:93/2007 (F)

D.C. Kurunegala Case No: 6014/L

Ratnayake Maudiyanselage
Herath Banda,
Thiththawella,
Kubukgete.

**Plaintiff**

**Vs.**

1. Ihala Welgamage Abeysinghe,
   Kalawellandawatta,
   Kumbukgete.

2. G.G. Sanjeewa Karunaratne,
   No. 15, Jayawardane Place,
   Hill Street, Dehiwala.

3. Pushpa Karunaratne,
   No.15, Jayawardane Place,
   Hill Street, Dehiwala.

**Defendants**

**AND**

1. Ihala Welgamage Abeysinghe,
   Kalawellandawatta,
   Kumbukgete.

2. G.G. Sanjeewa Karunaratne,
   No. 15, Jayawardane Place,
   Hill Street, Dehiwala.

3. Pushpa Karunaratne,
   No.15, Jayawardane Place,
   Hill Street, Dehiwala.

**Defendants- Appellants**

**Vs.**

Ratnayake Maudiyanselage Herath Banda,
Thiththawella,
Kubukgete.

**Plaintiff- Respondent**

**AND NOW**

Ratnayake Maudiyanselage Herath Banda,
Thiththawella,
Kubukgete.

**Plaintiff- Respondent-Appellant**

**Vs.**

1. Ihala Welgamage Abeysinghe,
   Kalawellandawatta,
   Kumbukgete.

2. G.G. Sanjeewa Karunaratne,
   No. 15, Jayawardane Place,
   Hill Street, Dehiwala.

3. Pushpa Karunaratne,
   No.15, Jayawardane Place,
   Hill Street, Dehiwala.

**Defendants- Appellants-Respondents**

| | |
|---|---|
| **BEFORE:** | **MURDU N.B.FERNANDO, PC, J.**<br>**YASANTHA KODAGODA, PC, J.**<br>**K.KUMUDINI WICKREMASINGHE, J.** |
| COUNSEL: | Jacob Joseph for the<br>Plaintiff-Respondent-Appellant<br><br>Roshan Dayaratne instructed by R.Gamage<br>for the Defendant-Appellant-Respondents. |
| WRITTEN SUBMISSIONS: | By the Plaintiff-Respondent-Appellant on 28th of November, 2014 and 8th of April 2022.<br><br>By the Defendant-Appellant-Respondent on 6th of January, 2015 and 15th of March 2022. |
| ARGUED ON: | 21.02.2022. |
| DECIDED ON: | 12.06.2023. |

**K. KUMUDINI WICKREMASINGHE, J.**

This is an appeal from a judgment of the High Court of the North Western Province, Kurunegala dated 27.03.2014 which set aside the judgment of the District Court of Kurunegala, case bearing No: 6014/L dated 30.04.2007.

The Plaintiff-Respondent-Appellant (hereinafter referred to as the "Appellant") instituted the initial action before the District Court of Kurunegala against the Defendants-Appellants-Respondents (hereinafter referred to as the "Respondents") seeking a declaration that the Appellant is entitled to the land described in the schedule to the Plaint, ejectment of the Defendants from the subject land and claiming damages. The Respondents sought the dismissal of the Appellants' action and claimed prescriptive title to the property.

After the conclusion of the trial, the District Court delivered the Judgment in favour of the Appellant and ordered damages to be paid till vacant possession is given to the Appellant. Aggrieved by the said decision, the Respondents appealed to the High Court of the Northwestern Province, Kurunegala. In the Judgment of the High Court, it was held that the Appellant's action being a Rei Vindicatio action, the Appellant had to prove the title to the land in the suit and the Deed marked "P2" produced by the Appellant does not refer to the crown grant given to the vendor, the father of the vendees in "P2". The Learned High Court Judges presumed that the land has been granted under the Land Development Ordinance and questioned whether the correct legal procedure under the said act was followed by the vendor of the Deed marked P2 when alienating the land to the Appellant. Since the crown grant was not produced, their Lordships applied the presumption in Section 114(F) of the Evidence Ordinance and held that no title was passed to the Appellant.

The Appellant is before this Court challenging the said Judgment. This Court by Order dated 17.10.2014, granted Leave to Appeal on the questions of law stated in paragraph 24 (i) to (vi) of the Petition dated 07.05.2014, as set out below.

1. Did the High Court of the Northwestern Province Kurunegala err in law in holding that the Petitioner has not proved the title to the land in the suit?

2. Did the High Court act on assumptions and presumptions which were not warranted and against the issues raised and the weight of evidence in the above case?

3. Did the High Court fail to consider that the Respondents were only relying on the alleged prescriptive right of their Father Karunaratne who was not a party to the case?

4. Did the High Court fail to consider the substance of the defence put forward by the Respondents namely *Jus tertii*?

5. Whether the said Judgment of the High Court is against the evidence led in the case by the Appellant and the Respondents?

6. Did the High Court err in law in holding that the trial Judge has failed to investigate the title properly and holding in favour of the Appellant?

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted.

The first matter for consideration by this court is whether the High Court erred in law in holding that the Appellant has not proved the title to the land in suit. This action indubitably being a rei vindication action, the onus clearly lies on the Appellant to establish his title to the land in question.

In ***Abeykoon Hamine v. Appuhamy,*** **(1950) 52 N.L.R. 49**, at page 49-55, Dias, SPJ. quoted with approval, the decision of ***de Silva v. Goonetileke*** **(1931) 32 N.L.R. 27**, where Macdonell, C.J., had stated that,

> *"There is abundant authority that a party claiming a declaration of title must have title himself. —To bring the action rei vindication plaintiff must have ownership actually vested In him‖- 1 Nathan p.362, s. 593……..This action arises from the right of dominium…….The authorities unite in holding that plaintiff must show title to the corpus in dispute, and that if he cannot, the action will not lie."*

This position was affirmed in ***Peeris v. Savunhamy*** **(1951) 54 N.L.R. 207**, at page 208 where Dias SPJ. With Gratiaen J. agreeing stated that,

> *"This being an action for declaration of title, and the defendants being in possession, the burden lay on the plaintiff to prove that she had dominium to the land in dispute".*

Further, in commenting on the standard according to which the plaintiff in a vindication action is required to establish, H.N.G. Fernando J, in ***Pathirana v. Jayasundara*** **(1955) 58 N.L.R 169**, at page 171 stated that,

> *"I have no doubt that it is open to a lessor in an action for ejectment to ask for a declaration of title, but the question of difficulty which arises is whether the action thereby becomes a rei vindicatio for which strict proof of the Plaintiff's title would be required, or else is merely ono for a declaration (without strict proof) of a title which the tenant is by law precluded from denying."*

Accordingly, the Appellant has to narrate and prove his title fully in strict sense. The Respondent has raised two main issues under the first question of law during the arguments. Firstly, the Appellant has failed to produce the crown grant mentioned in the Deed marked P2 which the Appellant has primarily relied on in proving documentary title before both District Court and Civil Appellate High Court. Secondly, that the Appellant has failed to prove the identity of the subject matter in the present action.

With regard to the first issue, the Deed marked P2 which the Appellant has relied upon is a Deed of Transfer No. 117 dated 05.01.1960 attested by Anton Wilson Amirthanayagam Emmanuel, Notary Public. The vendor in the said Deed is one Kalukumara Mudiyanselage Banda and it refers to three allotments of lands namely,

1. Land called Kadurugahamulahene, Dalupothebogahamulahena, and Dalupothevewaismaththeva depicted as Lots 96, 211 and 215 in Title Plan No. S 20383 dated 23.02.1948 consisting of 3 Acres 2 Roods 23 Perches (3A-2R-23P) held and possessed by the said Vendor under and by virtue of Settlement Order No.993 dated 07.12.1948,
2. Land called Kurundungollahena and Bulugahamulahenayaya depicted as Lot 156 in Title Plan No.9169 dated 28.03.1951 consisting of 2 Acres 1 Rood 20 Perches (2A-1R-20P), and

3. Land called Konmadehena and Konmadegala depicted as Lots 57 and 58 in the Plan No. 9168 dated 28.03.1951 consisting of 1 Acre 3 Roods 34 Perches (1A-3R-34P) held and possessed by the said Vendor under and by virtue of Crown Grant dated 19.07.1951.

The subject matter to this action is the third allotment of land which is the land called Konmadehena and Konmadegala situated at Thittawella village.

As per the position of the Appellant, the said Kalukumara Banda by the abovementioned Deed marked P2 has transferred the title to the land in question to H.M.Dingiri Banda, H.M.Bandara Menike, H.M.Mudiyanse and H.M.Appuhamy.
The said H.M Dingiri Banda, H.M. Bandara Menike, the successors of other vendees, namely, H.M. Wasantha Piyathilaka Herath, H.M, Seneviratne Banda, H.M Jayawardhana Banda and H.M Amarasooriya Banda have amicably divided the land among themselves by Deed No.15911 dated 29.09.1997 attested by Padma Kumari Wanigasooriya, Notary Public according to Plan No.96213 dated 31.12.1996 made by H.Wijetunge, Licensed Surveyor.
By the abovementioned Deed No.15911, H.M. Bandara Menike and H.M. Wasantha Piyathilaka Herath became entitled to the land marked Lot 1 in Plan No.96213 consisting of 3 Roods 37 Perches (A0-R3-P37) and they have transferred their portion of land to the Appellant of the present case by Deed No.15420 dated 26.02.1997 attested by Padma Kumari Wanigasooriya, Notary Public.

The issue raised by the Respondents is that the Appellant had failed to correctly establish the chain of title by not producing the Crown Grant mentioned in the Deed marked P2.

With regard to establishing the chain of title in rei vindicatio action, in ***Kanapadian v. Pieters*** **9 S.C.C Vol. ix No. 47-185** Clarence J. stated that,

> *"where title to land is a circumstance upon which the plaintiff bases his claim to relief, the intention of the Code is that title should be disclosed in the plaint so that the defendant may have notice of the case which he has to meet."*

Nevertheless, in the same case it was further stated that,

> *"The defendant might have asked to have the plaint taken off the file, as not disclosing the title set up.* ***The Defendant however took no such course, but answered traversing plaintiff's averments as to ownership and possession and setting up a specific title in himself****".[emphasis added]*

In the abovementioned case, the plaintiff failed to disclose how he obtained title. Even in the absence of such, the court decided to allow the plaintiff to amend the plaint on the sole basis of the defendant's failure to raise objections at the right time.

In the present case, the Appellant has established the chain of title to the land in question from 1960 by presenting the relevant deeds and thereby, has fully disclosed how he lawfully became entitled to the land in question.

Thus, it is noteworthy that none of the documents produced by the Appellant was objected by the Respondents. Henceforth, the Respondents answered the averments of the Appellant by setting up a specific title to himself. As stated by Samarakoon, C.J., in ***Sri Lanka Ports Authrity and another v. Jugoilnija – Boat east*** **(1981) 1 Sri L.R 18**, at page 24,

> *"if no objection to any particular marked document is taken when at the close of a case documents are read in evidence, they are evidence for all purposes of law".*

The above decision was followed by the Supreme Court in the case of ***Balapitiye Gunananda Thero Vs. Thalalle Methananda Thero*** **[1997] 2 Sri L.R 101** which stated at page 101 that,

> *"When a document is admitted subject to proof but when tendered and read in evidence at the close of the case is accepted without objection, it becomes evidence in the case. This is the cursus curiae."*

Therefore, it is evident that the Respondents have neither questioned the documentary title of the Appellant to the land in question nor have they objected to any of the documents the Appellant produced as evidence. Hence, this constitutes an acceptance of the Appellant's documentary title by the Respondents.

Moreover, the Deed marked P2 contains details of the Crown Grant and the Appellant has also produced the said Crown Grant before this court.

While considering the possibility of accepting fresh document at the appeal stage, ***Beatrice Dep v. Lalani Meemaduwa*** **[1997] 3 Sri L.R** Ismail J. at page 379 stated that,

> *"In order to justify the reception of fresh evidence or a new trial three conditions must be fulfilled:*
>
> *i) It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial.*
>
> *ii) Evidence must be such that if given it would probably have an important influence on the result of the case, although it need not be decisive.*
>
> *iii) The evidence must be such as is presumable to be believed or in other words it must be apparently credible although it need not be incontrovertible."*

Further, in ***Endiris de Silva v Arnolis*** **33 – C.L.W 39,** Dias J. stated at page 39 that,

> *"It is, of course, obvious that this right is one which must be very cautiously exercised but the court would have less hesitation in*

*admitting such evidence when it consist of a judicial record, or* ***a deed or a similar evidence which came into existence long before the dispute arose and the chances of fabrication are extremely remote****" [emphasis added]*

In the present case, as per the page 5 of the decision of the High Court the Appellant has stated that he does not possess the said Crown Grant and it is in the possession of H.M. Wasantha Piyathilake. However, the Appellant has presented all the deeds in his possession and the Deed marked P2 contains all the material details of the Crown Grant.

In light of these circumstances, this court is of the opinion that the Crown Grant presented by the Appellant which the argument of the Respondent is vehemently based upon must be accepted on the following grounds,

i. this Crown Grant bears an important influence on the result of the case,
ii. it is apparently credible,
iii. the Crown Grant was executed in 1951 long before the dispute arose,
iv. the Deed marked P2 produced by the Appellant mentions the material details of the Crown Grant. Therefore, there is no room for fabrication of such,
v. the rejection of such would lead to a miscarriage of justice.

The Respondent has further contended that the Partition Deed No. 15911 which the transferors of Deed No.15420 acquired their title has been executed on 29.09.1997 which is subsequent to the Appellant's title Deed (Deed No.15420 dated 26.02.1997).

Nonetheless, the Privy Council in ***The Colombo Apothecaries Company Limited v. M.A.Peiris and Others*** **Appeal 58 N.L.R 361** at page 361 stated that,

*"when a deed of transfer of immovable property is executed at a time - when the grantor has no title to the property, the subsequent acquisition*

*of title by the grantor would not only give the benefit of such title to the instrument already executed but would also give the granter the benefit of priority by the registration of that instrument."*

In ***Rajapkse v. Fernando*** **20 N.L.R 30,** Lord Moulton at page 495 has stated that,

*"Where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires,, the benefit of his subsequent acquisition goes automatically to the benefit of the earlier grantee."*

In light of these circumstances, it is evident that the subsequent acquisition of title by the grantors by the Partition Deed No.15911 gave the title to the Appellant and the exception *rei venditae et traditae* applies to this situation.

The second main issue raised by the learned Counsel for the Respondent is that the Appellant had failed to correctly identify the land in question, and this must be considered as a fatal weakness in the Appellant's action.

In ***Jamaldeen Abdul Latheef and v. Abdul Majeed Mohamed Mansoor and another*** **[2010] 2 Sri L.R** at page 377-378, Saleem Marsoof J. quoted with approval, a passage from **Wille's Principles of South African Laws (9th Edition -2007)** at pages 539-540 which stated that,

*".. to succeed with an action rei vindication, which this case clearly is, the owner must prove on a balance of probabilities, not only his or her ownership in the property, but also that the property exists and is* ***clearly identifiable****" [emphasis added]*

In the above case neither the Surveyors of the Plan referred to in the Plaint nor other witnesses who testified at the trial placed any evidence in identifying the northern and southern boundaries in the land in dispute. Hence, it was held at page 384 that,

*“In the absence of such evidence, there is no justification to conclude that the boundaries of the land surveyed by these surveyors as the land in dispute, tally with the land described in the schedule to the petition of the Respondents.”*

In the present case, the land described in the schedule to the plaint according to the Plan No. 96213 made by H.Wijetunga, Licensed Surveyor on 31.12.1996 is as follows,

"බලයලත් මිනින්දෝරු එච්. විජේතුංග විසින් සාදන ලද අංක 96213 දරණ පිඹුරේ කැබලි අංක 1ට මායිම්:

උතුරට: පී.පී.ආර් කරුණාරත්නට අයිති ඉඩම,

දකුණට: මමෙ පිඹුරේ 2ඒ් සහ 2බී් ද,

නැගෙනහිර: එම්.පී වික්‍රමසිංහට අයිති ඉඩම,

බස්නාහිරට: කොන්මඩේ වැව ද යන මායිම් තුල රූඩ් තුනයි පර්චස් තිස් හතක් විශාල ඉඩම”

The identification of the subject matter was in dispute at the trial and on a Commission issued by Court, E.G.A. Edirisinghe, Licensed Surveyor prepared the Plan No.202106 dated 16.08.2002. The boundaries of the disputed land is described in the above plan as follows,

බලයලත් මිනින්දෝරු ඒ.ඒ.ජී එදිරිසිංහ විසින් සාදන ලද අංක 202106 දරණ පිඹුරේ කැබලි අංක 1ට මායිම්:

උතුරට: වැව ,

දකුණට: මමෙ පිඹුරේ 2ඒ් සහ 2බී් ද,

නැගෙනහිර: එම්.පී වික්‍රමසිංහට අයිති ඉඩම,

බස්නාහිරට: කොන්මඩේ වැව ද යන මායිම් තුල අක්කර එකයි රූඩ් එකයි පර්චස් දකෙයි දශම අනුවක් විශාල ඉඩම

Doubts in regard to the identity of the land sought to be vindicated arises from the inconsistencies in the northern boundary of the above two survey plans. However, it is important to emphasize that the H.Wijetunga, Licensed

Surveyor who prepared the Plan No.96213 testified at the trial and admitted that the alleged discrepancy in the copies of the Plan No.96213 marked P (1) by the Appellant and V (1) by the Respondent was a mistake on his part (page 273 of the brief). Mr. Wijetunga was also shown the plan prepared by Mr.Edirisinghe and as per page 284 of the brief he admitted that Lot 5 in Plan No.202106 is the Tank and beyond that is the land possessed by the Respondents (පී.පී.ආර් කරුණාරත්නට අයිති ඉඩම). The Respondent presented another plan prepared by Rohan Rathnayake, Licensed Surveyor bearing No.66/2003 which also shows the Tank beyond the Northern boundary of Lot 1.

As the Licensed Surveyor who prepared the plan referred to in the Plaint has testified at the court and clearly stated the boundaries of the land, it is evident that the identity of the land has been properly proved by the Appellant.

Moreover, the Respondents have argued that according to the Appellant's title deed (Deed No.96213) his total entitlement is only a land of three Roods and thirty seven Perches (A0-R3-P37) but the land already possessed by the Appellant as per Plan No.202106 is one Acre one Rood and two decimal nine zero Perches (A1-R1-P2.90) which is very much more than his entitlement.

However, it must be noted that the land possessed by the Appellant as per the Plan No.202106 includes his wife's share as well which was admitted in the court. (page 150 of the brief) Therefore, I am of the view that the Appellant has correctly proved the identity of the land and his title to the same.

Hence, in relation to the first question of law, I conclude that the Appellant has correctly proved his title to the land in question.

The second question of law that must be determined is whether the High Court acted on assumptions and presumptions which were not warranted and against the issues raised and the weight of evidence in the above case.

The Learned Judge of the High Court has stated in page 5 of his Judgment that the Deed marked P2 does not refer to the crown grant given to the vendor, the father of the vendees in "P2" and the said crown grant was not produced in evidence.

In the absence of such, the High Court applied the presumption in Section 114(F) of the Evidence Ordinance in arriving at the conclusion that the father of the Appellant, the vendor in Deed marked P2 had failed to follow the correct procedure under the Land Development Ordinance No.19 of 1935. Thereby, no title has been passed to the Appellant, the vendee of the said deed.

In ***Hemathilake v Allina and Others*** **[2003] 2 Sri L.R,** Somawasa,J at page 147 stated that,

> *"What section 114 of the Evidence Ordinance provides for is the common sense advice that court may from a proved fact infer another fact which it thinks is likely to be true regard being had to human conduct and the common course of natural events. The particular facts of each case must be carefully considered before any inference is drawn under section 114 of the Evidence Ordinance."*

In ***Walimunige John v. State*** **76 N.L.R 488,** G.P.A Silva J. stated that,

> *"But where one witness's evidence is cumulative of the other and would be a mere repetition of the narrative, it would be wrong to direct a jury that the failure to call such witness gives rise to a presumption under section 114 (f) of the Evidence Ordinance."*

Further, **Dr.U.L.Abdul Majeed** at page 721 of his book called **"Applicability of the Evidence Ordinance in Civil Action"** has stated that,

> *"This illustration deals with the presumption which arises from withholding evidence and from the spoliation or fabrication or suppression of evidence. The conduct of the person withholding the evidence may be attributed to a supposed consciousness that the evidence if produced would operate against him. An adverse inference can be drawn against a party if there is withholding of evidence* ***and not merely on account of the failure of the party to obtain evidence****". [emphasis added]*

These authorities elucidates that the court must first be satisfied that the evidence was available and was withheld before applying the presumption under Section 114 (f) of the Evidence Ordinance. Accordingly, there is no presumption if the evidence is not within the control of the party failing to produce it and if it is cumulative of the other.

In the present case, the Appellant has clearly mentioned at the trial that he does not possess the said Crown Grant and it is in the possession of one, Wasantha Piyathilake. (page 122 of the brief) This elucidates that the Appellant never tried to withhold the evidence but rather failed to obtain it as it was not within the control of the Appellant. Further, it must be noted that the material details of the said Crown Grant are mentioned at the schedule of the Deed marked P2. Thenceforth, this document must be considered as cumulative of the other evidence already produced by the Appellant.

Hence, I am of the opinion that the presumption that the High Court Judge acted upon is unwarranted and is against the weight of the evidence of this case.

The third and fourth matters for consideration by this court can be examined together as both of these questions of law are on the defence of *jus tertii* and the alleged prescriptive title of the father of the 2nd and 3rd Respondents who is not a party to the case.

The Respondent in answering the Plaint of the Appellant in the District Court has claimed prescriptive title to the land in question. The Respondent has taken the position that one, R.Karunarathne, the father of the Respondents had prescribed the said portion of land. Nevertheless, there are two main lacunas in their claim. First, the Respondent has failed to give any definite period with regard to the commencement of their prescriptive possession. Second, the said R.Karunaratne has not been made a party to the present action.

With regard to the first lacuna, in ***S.K. Chelliah v. Wijerathan et al.*** **54 N.L.R 337,** Gratiaen J, at page 342 has stated that,

> *"Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests fairly and squarely on him to establish a starting point for his or her acquisition of prescriptive rights."*

This position was affirmed in ***Sirajudeen and Two Others v. Abbas*** **[1994] 2 Sri L.R 365**.

Therefore, it is evident that in the present case, the Respondents cannot succeed on the prescriptive title to the land in question as they have failed to provide any definite time period with regard to the commencement of their prescriptive possession.

When analyzing the second lacuna pointed out, the defence of *jus tertii* has been considered as a valid defense in several Sri Lankan Judgments. In ***Allis Appu v. Endris Hamy*** **(1894) 3 S.C.R 87**, and ***Dharmalankara Thero v. Ahamadulebbe Marikkar*** **(1952) 54 N.L.R. 181**, the applicability of this defence under our law was conceded.

Nevertheless, in ***Dharmasena v. Alles*** **[1985] 2 Sri L.R 35, G.P.S. De Silva J**, by citing ***Timothy David v Ibrahim*** **(1910) 13 N.L.R. 318** with approval, observed that a party to a suit cannot under **Section 3 of the Prescription Ordinance** set up a title of a third party who has not been joined in the action.

Similarly, in ***Luwis Singho and Others v. Ponnamperuma*** **1996 2 Sri L.R 320** Wigneswaran J. at page. 321 has stated that,

> *"While refusing to accept the submission that jus tertii as a defence in vindicatory actions is not available under our law, it must be admitted that jus tertii as a defence in cases filed for Declaration of Title and ejectment based on the provisions of section 3 of the Prescription Ordinance* ***would not be available if the third party is not a predecessor in Title or has not been joined in the action****." [emphasis added]*

In light of these circumstances, I am of the view that the Respondents cannot rely on the defence of *jus tertii* as the third party; R. Karunaratne has not been joined in the action.

The fifth question of law that needs to be examined is whether the said Judgment of the High Court is against the evidence led in the case by the Appellant and the Respondents.

The decision of the Learned High Court Judge is solely based on the Appellant's failure to produce the said Crown Grant before the court. At page 5 of the High Court Judgment, it is stated that the Appellant has failed to substantiate that the said land was granted to the original owner by the crown and has also failed to reveal when it was granted.

However, it is to be noted that at the schedule of the Deed marked P2 it is clearly mentioned that the said land was *"held and possessed by the said vendor under and by virtue of Crown Grant dated 19.07.1951"*. It is unfortunate that the Learned High Court Judge has failed observe this

material detail in the evidence adduced by the Appellant and has thereby, unwarrantedly presumed that said grant was made after 1951. (page 6 of the Judgment of the High Court of Kurunegala)

To further prove his title to the land in question, the Appellant in this case has presented all the relevant deeds as evidence and also has answered the issues raised by the Respondents with regard to the alleged discrepancies in the Plans through the oral evidence. (pages 266-279 of the brief)

Nevertheless, none of these evidence were considered by the Learned High Court Judge in arriving at his conclusion. Further, the High Court Judge disregarded that the Respondents in the present case has not produced any evidence whatsoever to substantiate their claim of prescriptive title to the land in question. Therefore, I am of the opinion that the Judgment of the High Court is against the evidence led in the case by the Appellant and the Respondents.

The sixth and the last question of law to be examined is whether the High Court erred in law in holding that the trial Judge has failed to investigate the title properly and holding in favour of the Appellant.

As correctly pointed out by the trial judge, the plaintiff in a *rei vindicatio* action need not prove anything other than his documentary title to the corpus. The appellant has produced two deeds, Deed No. 117, where the original owner transferred the title to the vendees, and Deed No. 15911, where two of the said vendees transferred their title to the appellant, to prove his title to the land. It must be noted that none of these documents were disputed by the Respondents at the trial. To further substantiate his claim, the Appellant called several witnesses including the Licensed Surveyor who prepared the plans he presented to the court. The trial judge before arriving at his conclusion has comprehensively analyzed all of such oral and documentary evidence adduced by the Appellant in proving his title to the land in question.

When considering all the above discussed circumstances, it is evident that the Appellant in the present case has correctly proved his title to the subject matter and his claim has met all the requirements in a rei vindicatio action. On the other hand, the Respondents have failed to bring conclusive evidence to defend his prescriptive title to the land in question.

Having examined the facts of the case, and the material placed before this court, I allow the appeal of the Appellant and hold that the Appellant is entitled to the subject matter of this action. The judgment of the High Court of Kurunegala dated 27.03.2014 is set aside and the judgment of the District Court of Kurunegala dated 30.04.2007 is affirmed.

**JUDGE OF THE SUPREME COURT**

**MURDU N. B. FERNANDO, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**YASANTHA KODAGODA, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**