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

In the matter of an Application for Leave to Appeal from the Judgment of the Civil Appellate High Court of Sabaragamuwa holden in Ratnapura dated 9.11.2011.

SC APPEAL NO. 145/2013

SC/HCCA/LA No.527/2011

SP/HCCA/RAT/ No. 201/2009(FA)

DC Ratnapura Case No.2744/L

1. T.M. Dingiri Mahathmaya (Deceased)
1 (a). Piyaseeli Podimenike Tennakoon.

2. B.W. Jayawardena,
Both of Sannasgama, Lellopitiya.

Plaintiffs

VS

1. H. Don Brampi Singho (deceased)
1(a). H. Dona Kamalawathie,
Sannasgama, Lellopitiya.

Defendant

AND BETWEEN

1. T.M. Dingiri Mahathmaya (Deceased)
1 (a). Piyaseeli Podimenike Tennakoon.

2. B.W. Jayawardena,
Both of Sannasgama, Lellopitiya.

Plaintiffs-Appellants

VS

2. H. Don Brampi Singho (deceased)
1(a). H. Dona Kamalawathie,
Sannasgama, Lellopitiya.
1 (a) Substituted Defendant- Respondent

AND NOW BETWEEN

1. H. Don Brampi Singho (deceased)
1(a). H. Dona Kamalawathie,
Sannasgama, Lellopitiya.
1 (a) Substituted Defendant- Respondent-Appellant

VS

1. T.M. Dingiri Mahathmaya (Deceased)
1 (a). Piyaseeli Podimenike Tennakoon.

2. B.W. Jayawardena,
Both of Sannasgama, Lellopitiya.
Plaintiffs-Appellants- Respondents

BEFORE : **SISIRA J. DE ABREW, J.**
MURDU N.B. FERNANDO, PC, J. AND
S. THURAIRAJA, PC, J.

COUNSEL : Navin Marapana, PC with Saumya Hettiarachchi for the 1 (a) Substituted Defendant- Respondent- Appellant.
Ikram Mohamed, PC with Anuradha Dharmawardena and Vinura Jayawardena for the Plaintiffs-Appellants- Respondents.

ARGUED ON : 20th January 2021.

WRITTEN SUBMISSIONS : 1 (a) Substituted Defendant- Respondent- Appellant on 12th December 2013.

Plaintiffs-Appellants- Respondents on 20th May 2014.

DECIDED ON : 15th March 2021.

S. THURAIRAJA, PC, J.

Introduction

Hettige Don Brampi Singho the Defendant-Respondent-Appellant (hereinafter referred to as the Appellant) preferred an appeal to this Court against the judgment of the Civil Appellate High Court of Rathnapura which issued a Judgment in favour of Tennakoon Mudiyanselage Dingiri Mahathmaya the Plaintiff-Appellant-Respondent (hereinafter referred to as the Respondent) and this court granted leave to appeal on the question of law set out in paragraph 14 (a) of the Petition dated 5th December 2011.

The relevant question of law is reproduced for ease of reference

"*14(a) Have the Learned High Court Judges erred in holding that the respondents have identified the subject land?*"

Learned President's Counsel who appeared for the Appellant reiterated that his appeal is solely on non-identification of the corpus. Both learned Counsel made comprehensive submissions and this Judgment has taken into consideration the Petition, Affidavit, Written Submissions and all annexed materials.

It will be prudent to set out the facts of this case and in the process, it will be mandatory to refer to the history (which is available in the brief) of this litigation.

Brief Facts

The deceased Respondent, Tennakone Mudiyansalage Dingiri Mahathmaya of Sannasgama filed a plaint at the Court of Request of Ratnapura under the case number C.R No. Class RET/20 No. 20256 to eject the deceased Appellant, Hettige Don Brampi Singho and Dhanapala Arachchilage Carolis Appu. The case was settled and the terms of settlement were duly filed on the 21st December 1927. The terms of settlement were as follows:

1. *Plaintiff be declared entitled to the land called "Medawatta" and the partly tiled and thatched house standing there all.*
2. *The defendants to remain in the said house paying an annual rent of Rs. 3 to the plaintiff for a period of 50 years.*
3. *Parties to bear their own costs.*

Following this on the 10th February 1928 the Commissioner of Request entered the Decree.

Further, a lease agreement was entered on the 30th November 1927 between Tennakone Mudiyansalage Dingiri Mahathmaya (Deceased Respondent) and Hettige Don Brampi Singho (Deceased Appellant) for a lease amount of Rs. 150/= covering a period of 50 years. A Deed of Lease No. 12525 (hereinafter referred to as "*Deed of Lease No. 12525*") dated 30th November 1927 attested by D.P.S. Rajapakse was signed by all parties and duly registered to effect this understanding.

Since Hettige Don Brampi Singho (Deceased Appellant) did not vacate the said land and premises upon the expiration of the Deed of Lease No. 12525 in or around

30th November 1977, the deceased Respondent filed this present action to evict him from the said property at the District Court of Ratnapura on the 8th March 1978.

Tennakone Mudiyansalage Dingiri Mahathmaya who was the original 1st Plaintiff-Appellant-Respondent died during the pendency of the action and was substituted by Piyaseeli Podimenike Tennakoon who is the Substituted Plaintiff-Appellant-Respondent. Further Hettige Don Brampi Singho who was the original Defendant-Respondent-Appellant died during the pendency of the action and was substituted by H. Dona Kamalawathie who is the Substituted Defendant-Respondent-Appellant. It is also noteworthy that the Plaint was amended on the 12th May 1994. The Appellant filed their answer on the 13th February 1980. The Learned District Court Judge dismissed the plaint on the basis that the land is not properly identified.

The Respondents appealed against the said Order to the Civil Appellate High Court. The Learned Judges decided that the District Judge has misunderstood the nature of the case and therefore had misdirected himself in dismissing the case for non-identification of the property. The Civil Appellate Judges entered a judgment in favour of the Respondent.

The Appellant has invoked the jurisdiction of this court by way of a Petition dated 5th December 2011 and this Court has granted leave to appeal on the above-mentioned question of law. Since both Counsels made submissions on both judgments, I have carefully perused the same.

Identity of the Corpus

In **Mary Beatrice et al. v Seneviratne (1997) 1 SLR 197** Senanayake J took the opportunity to quote the following passage from Maasdorp, Institutes of Cape Law 4th Edition Volume 3 page 248;

> *"A lessee as already stated is not entitled to dispute his landlord's title and consequently he cannot refuse to give up possession of the property at the*

termination of his lease on the ground that he is himself the rightful owner of the said property. His duty in such a case is first to restore the property to the lessor and then litigate with him as to the ownership."

The above passage was accepted by the Supreme Court in the case of **Bandara v Piyasena 77 NLR 102**.

Taking into consideration the above passage and the judgments in **Bandara v Piyasena (supra)** and **Mary Beatrice (supra)** it could be seen that this is an action in relation to the fulfilment or non-fulfilment of contractual obligations arsing between a lessor and lessee. Therefore, this is an action filed against a tenant holding over. Hence a distinction can be made between a *rei vindicatio action* and an action *against a tenant holding over*. [Vide **Pathirana v Jayasundera 58 NLR 169 @ 173**]

As per the sole question of law raised, it is pertinent to peruse the judgments of the District Court and the Civil Appellate High Court. I find the observations made by the Judges of the Civil Appellate Court acceptable as the learned District Judge had misidentified this case as a case of *actio rei vindicatio*. It could also be seen that the learned District Judge had relied on the case of **Peeris et al v Savunhamy 54 NLR 207** in arriving at his decision. Due to the importance placed by the District Court judge on the case of **Peeris v Savunhamy**, it is essential that I take into consideration the dictum of that judgement and its applicability to the present case.

The case of **Peeris v Savunhamy** dealt with two issues in its appeal. Firstly, it dealt with the burden of proof upon the plaintiff to prove that he has a dominium and secondly, the court dealt with the issue of whether the court could reverse the findings of a trial judge if it was demonstrated that he had misjudged the facts. In that case the plaintiff sought to vindicate title to an undivided share of a land. However, the plaintiff had no title deeds for her share and based her entire claim on prescriptive possession. The court held that in an action for declaration of title to land, where the defendant is in possession of the land in dispute, the burden is on the plaintiff to prove that he has

dominium and further the courts went on to state that a finding of fact may be reversed on appeal if the trial Judge has demonstrably misjudged the position.

In my view this case is not relevant to the facts in issue, as in the present case the establishment of the dominium is not the issue but the identity of the corpus. It is appropriate to take into consideration the observation made by Lord Halsbury in the case **Queen v Leathern (H.L.) 1901 at 495** with regard to the application of case laws;

> *"…that every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found they are not intended to the expositions of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always, logical at all."*

Following the decision in **Peeris v Savunhamy** many cases elaborated the position with regard to the establishment of the identity of the corpus. In the case of **Seyed Mohamed et al. v Perera 58 NLR 246**, Sinnetamby J in not following the decision in the case of **Peeris v Savunhamy** was of the view that to identify the premises in dispute in an action for declaration of title to immovable property, the Court may take into consideration statements of boundaries in title deeds of adjoining lands belonging to persons who are strangers to the action and who have not been called to give evidence. The evidence of such title deeds may become inadmissible only if objection to their production is taken in the court of first instance; they cannot be objected to for the first time in appeal.

The Supreme Court in **Ratnayake et al. v Kumarihamy et al. (2005) 1 SLR 303**, in deciding whether the trial court had correctly identified the extent of the corpus

was of the opinion that both oral and documentary evidence could be considered to identify a corpus on a balance of probability.

This shows that the established law or procedure in identifying the extent of a corpus in a dispute takes into consideration statement of boundaries in title deeds of not only the land in dispute but the adjoining lands even though they are strangers to the action and both oral and documentary evidence is considered on a balance of probabilities. As found in any *rei vindicatio* action, the burden of proof in an action against a tenant holding over is on the plaintiff and they need to prove such an onus on a balance of probability. [Vide **Loku Menike et al. v Gunasekare (1997) 2 SLR 281**]

Now I consider the judgment of the High Court, where the learned judges had identified the issues, briefly set out their reasons and had come to their conclusions stating that the said corpus is adequately identified.

In order to identify the corpus "Medawatte" we need to trace the point at which both parties agree to the extent and identity of the corpus. This could be seen with regard to the settlement agreement entered into at the Court of Requests of Ratnapura on the 21st December 1927. Accordingly, the Commissioner of Request entered the Decree on the 10th February 1928.

It is pertinent to reproduce the relevant portion of the decree where the corpus is identified and explained.

Decree

"This action coming on for final disposal before W. Samsons esqur Commissioner of Requests, Ratnapura on the 10th Day of February 1928, in the presence of Messrs Attygala, Muttettuwegama, on the part of the Plaintiff, and of Messrs Wijetilaka and Peeris, on the part of the Defendants, it is ordered and decreed, that the Plaintiff be and the same is hereby declared entitled to ***the land called Medawatta***

situate at Sannasgama bounded on the North by Digarolleidama, East by Palegampolagewatta, South by High Road and West by Landewatta, containing in extent, 3 Seru Kurakkan sowing and the part by titled and thatched house thereon."

(Emphasis added)

It is also important to take into consideration the description of the corpus provided in the Deed of Lease No. 12525 for clarity as all parties have signed that agreement thereby agreeing on the identity of the corpus.

"ඉහත කී බදු දීමනාකාර යාට අයිතිව තිබූ සබරගමු පළාතේ රත්නපුර දිස්ත්‍රික්කුවේ නවදුන් කෝරළේ උඩපත්තුවේ **සන්නස්ගම තිබෙන මැදවත්තට මායිම් උතුරට දිග රොලෙල් ඉඩමද නැගෙනහිරට කරෝලිස් අප්පුගේ වත්තද දකුණට මහපාරද බස්නා ඉරට ලන්දෙ වත්තද මෙහි තුළ කුරක්කන් සේරු තුනක පමණ වපසරිය ඇති ඉඩම** තුළ මෙහි බදු ගැණුම්කාරයා විසින් ගොඩ නඟා පදින්විව සිටින දැනට උළු සහ වල් සෙවිලි ගෙය පිළිබඳ බිම් බද්දද..."

(Emphasis added)

English translation of the description mentioned above:

The said Lessor owned an allotment of Land with the land lease called **Medawaththa** together with the tile and weed roofed house built by the lessee standing thereon situated at the village of Sannasgama in the Uda Pattu of Nawadun Korale in the District of Rathnapura Sabaragamuwa Province and is bounded on the **NORTH by Digarolel Land on the EAST by Land claimed by Karolis Appu on the SOUTH by Main Road and on the WEST by Landewaththa containing in extent of three (3) Seru of Kurakkan...**

(Emphasis added)

This brings us to the present action filed in 1978 by the Respondent to evict the Appellant upon the expiration of the Deed of Lease No. 12525 on the 30th November 1977. The schedule in the original plaint filed in 1978 described the property as follow:

"සබරගමු පළාතේ රත්නපුර දිසාවේ නවදුන් කෝරළේ උඩපත්තුවේ සන්නස්ගම **තිබෙන මැදවත්තට මායිම්: උතුරට දිගරොල්ලේ ඉඩමද, නැගෙනහිරට කරෝලිස් අප්පුගේ වත්තද, දකුණට මහපාරද, හා බස්නාහිරට ලන්දෙ වත්තද යන මෙකී මායිම් තුළ කුරක්කන් සේරු තුනක් පමණ වපසරිය ඇති ඉඩම** හා එහි තුල පිහිටි ගොඩනැගිල්ලන් සමඟ."

(Emphasis added)

English Translation of the above schedule in the original plaint filed in 1978:

"Allotment of Land called **Medawaththa** together with the building and everything standing thereon situated at the village of Sannasgama in the Uda Pattu of Nawadun Korale in the District of Rathnapura Sabaragamuwa Province and is bounded on the **NORTH by Digarolle Land on the EAST by Land claimed by Karolis Appu on the SOUTH by Main Road and on the WEST by Landewaththa containing in extent of three (3) Seru of Kurakkan…"**

(Emphasis added)

According to the amended plaint dated 12th May 1994 the schedule described the property as follows.

"සබරගමු පළාතේ රත්නපුර දිසාවේ නවදුන් කෝරළේ උඩ පත්තුවේ සන්නස්ගම තිබෙන මැදවත්ත නැමති ඉඩමට මායිම්: උතුරට දිගරොල්ලේ ඉඩමද, නැගෙනහිරට කරෝලිස් අප්පුගේ වත්තද,

දකුණට මහ පාරද, හා බස්නාහිරට ලන්දෙ වත්තද යන මෙකී මායිම් තුළ කුරක්කන් සේරු තුන (3) ක් පමණ වපසරිය ඇති ඉඩම හා එහි තුල පිහිටි ගොඩනැගිල්ලත් සමඟ වේ.

දැනට මෙම දේපල අවසර අත් මිනින්දෝරු එම්. එස්. දියගම මහතා විසින් මැනසාදන ලද අxක 1004 සහ 12/07/1983 දිනැති සැලැස්මේ දක්වා ඇති උතුරට - දිගරොල්ල සහ පහල ලියැද්ද ද, නැගෙනහිරට- ආටිගලගේ වත්ත ද, දකුණට- කරෝලිස් අප්පුගේ වත්ත ද, පාලුගම්පල ගම ද, බස්නාහිරට- රත්නපුර සිට පැල්මඩුල්ල දක්වා ඇති මහා මාර්ගයද, ලන්දෙ වත්තද යන මෙකී මායිම් තුළ අක්කර එකයි රූඩ් දෙකයි පර්චස් දහ තුන (අක්.1 රූ.2 පර්.13) (හෙක්ටයාර් 0.6399) ක් විශාල ඉඩම සහ එය තුල පිහිටි ගොඩනැගිල්ල ද වේ."

English Translation of the above schedule in the amended plaint filed in 1994:

Allotment of Land called Medawaththa together with the buildings and everything standing thereon situated at the village of Sannasgama in the Uda Pattu of Nawadun Korale in the District of Rathnapura Sabaragamuwa Province and is bounded on the **NORTH** by Digarolle Land on the **EAST** by Land claimed by Karolis Appu on the **SOUTH** by Main Road and on the **WEST** by Landewaththa containing in extent of three (3) Seru of Kurakkan.

Presently, said land is depicted in Plan No. 1004 dated 12/07/1983 made by M.S. Diyagama Licensed Surveyor together with the buildings standing thereon and is bounded on the **NORTH** by Digarolla and Pahala Liyedda on the **EAST** by Land claimed by Attygalle on the **SOUTH** by Land claimed by Karolis Appu and Palugampala Village and on the **WEST** by Rathnapura- Pelmadulla Main Road and Landewaththa containing in extent of **One Acre Two Roods Thirteen Perches (A1-R2-P13) (0.6399 Hectares)**.

The appellant filed his answer dated 13th February 1980 and described the property as follows:

> "සබරගමු පළාතේ රත්නපුර දිසාවේ නවදුන් කෝරළේ උඩ පත්තුවේ සන්නස්ගම පිහිටි උතුරට පහල ලියැද්ද, සහ පිටකුඛුර ද, නැගෙනහිරට හෙන්ද්‍රික් අප්පුගේ ඉඩම සහ පාලුගම්පල දෙනිය ද, දකුණට මහ පාර සහ බස්නාහිරට ලන්දෙ වත්තද, මායිම් වූ කුරක්කන් සේරු 10 ක් පමණ වපසරිය වූ මැදවත්ත, ආටිගලවත්ත, සහ නවගමුවගේ පහලවත්ත නොහොත් දිගරොල්ල සහ ඒකාබද්ධ ඉඩම වේ."

English Translation of the above schedule in the Answer filed in 1980:

> Allotment of Land called Medawaththa, Attygallewaththa and Nawagamuwage Pahalawaththa alias Digarolla and an amalgamated land together with the buildings and everything standing thereon situated at Sannasgama Village in the Uda Pattu of Nawadun Korale in the District of Rathnapura Sabaragamuwa Province and is bounded on the **NORTH** by Pahala Liyedda and Pitakubura on the **EAST** by Land claimed by Hendrik Appu and Paalugampala Deniya on the **SOUTH** by Main Road and on the **WEST** by Landewaththa containing in extent of Ten (10) Seru of Kurakkan…
>
> In the original answer the appellant took the position that the property is a combined property and Weerasingha Haramanis Da Silva Goonathilaka was entitled to 5/16 shares. Further the said Haramanis da Silva Goonathilaka had sold this property and subsequently he is entitled for undivided 5/192 shares.

It could be seen that from 1927 up until 1978 there has been no different description of the corpus in issue. The description of the corpus is said to have been changed after this case was filed.

It comes to my attention that there is a court proceeding at the District Court of Ratnapura marked by the Appellant uner **V4**. The Appellant had instituted a land & damage case against Dhanapala Arachchillage Joslin Nona and Walliwala Gamage Gunasena. The case number was 8091 and the date of the plaint was 7th November 1968. In paragraph 2 of the plaint, it states as follows:

> "The person called Tennakone Mudiyansalage Dingiri Mahathmaya the original owner of the land called and known as "Madawatta" situated at Sannasgama within the jurisdiction of this court and more fully described in the schedule hereto."

The schedule referred there is identical to the first case filed in 1927, and the plaint in the present case. It is observed that one Mr. B.L. Abeyratne proctor had appeared for the said Brampi Singho the Deceased Appellant who was a plaintiff in a different case No. 8091 dated 7th November 1968 at the District Court of Ratnapura. In the present case the answer and the amended answer states that one Mr. B.L. Abeyratne had appeared for them (appellant). It is also observed that in the Civil Appellate High Court in Ratnapura one Mr. B.L. Abeyratne appeared. This shows that the Appellant themselves acknowledge the fact that the Respondents are the owners of the corpus in dispute and they are in agreement with the identity of the corpus – Medawatte.

The above evidence the fact that the owner is the Respondent and the property in dispute was the property stated in the schedule. Considering all, I find that the findings of the learned High Court Judge is reasonable and supported by evidence as envisaged in the judgment of **Ratnayake v Kumarihamy**. (supra) Therefore, I hold that the corpus is properly identified.

Bona Fide Conduct

In the amended answer filed in the District Court dated 29th July 1994, in paragraph 12 the appellant takes up a position that he was forced to sign the said deed of lease No. 12525 (Which was executed on the 30th November 1927). This is the first time that the appellant takes up a position that he was forced to sign the said deed.

The circumstances of entering a lease agreement are sufficiently explained at the beginning and it could be seen that from 1927 there has been no complaint made to any relevant authorities of being forced to sign a deed.

Further the Appellant filed a case against Dhanapala Arachchilage Joslin Nona and another at the District Court of Ratnapura under case number 8091, in the plaint at paragraph 3 states as follows;

> *"3. The plaintiff built a tiled house on the land and the said Dingirimahatmaya by and upon deed of lease No. 12525 dated 30th November 1927 gave a lease of the said land to the said plaintiff for a period of fifty years form 30th November 1927. "*
>
> (sic)

This shows that such a position was raised by the Appellant to mislead the courts and to get a favourable decision. Such a position taken by the Appellant and later not pursued is disrespectable to the judicial system and it is supported by two Maxims of Equity.

Firstly, we can consider this issue under the maxim of "*he who comes in to equity must come with clean hands.*"

It is an established fact that if a person who approaches the court must come with clean hands and put forward all the material facts otherwise, he shall be guilty of misleading the court and his application or petition may be dismissed at the threshold.

If an applicant makes false statement and/or suppresses material facts or attempts to mislead the court, the court may dismiss action on that ground alone.

In **Har Narain v Badri Das [1964] 2 S.C.R. 203**, Gajendragadkar J. speaking for the Court observed:

> *"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading."*

In that case the Court revoked the leave granted because the appellant had made certain inaccurate and misleading statements in his petition for leave to appeal to the Indian Supreme Court.

He who comes into equity must come with clean hands. A court of equity will refuse relief to a plaintiff whose conduct in regard to the subject matter of the litigation has been improper. [Vide **Arunima Baruah v Union of India [2007] 6 SCC 120**]

As discussed earlier it is observed that the appellants had not acted in good faith. Further they tried to mislead the court through their amended answers stating that the said lease was signed by force. This court will not tolerate any person who is misleading the judicial system and it should be seriously noted and dealt with. As such this court is empowered to dismiss this application *in limine* and order cost as way of penalty.

Secondly, we can consider this issue under the maxim of *suppressio veri et suggestio falsi* (suppression of truth and suggestion of falsehood).

This is a fairly new maxim of equity. It has developed to form as a rule of law. *Suppressio veri* and/or *suggestio falsi* means that when with respect to a material fact of the case, either suppression of truth or suggestion of a false statement is proven, then the injured party can seek relief. Both of these are considered to be equally wrong. In this situation it is important to consider the case of **Regina v Lucas (1981) 2 All ER**

1008 which advances the proposition that a lie, if established, would corroborate the story of the opponents. Following this decision Atukorale, J in **Karunanayake v Karunasiri Perera (1986) 2 Sri L.R 27** (with Sharvananda, C.J and Colin-Thome, J agreeing) expressed the view that principle envisaged in the ***Lucas*** case applies equally to civil cases as it would to criminal cases.

In this situation it could be seen that the Appellants have suggested a false position thereby falling within the maxim of *suggestio falsi*. The courts in similar jurisdictions such as India, in the case of **K.K. Anathan Pillai v State of Kerala (1968) AIR Ker 234**, during an *ex parte* proceeding, the party that had appeared, did not disclose the complete material facts in order to get a stay order in their favour. Later, when the Court discovered this, it was held that such a stay order issued on untrue facts would be deemed invalid. In another Indian case **Nand Lal v State of Jammu & Kashmir (1960) AIR JK 19**, it was held that when the relevant facts of the case are not correctly and precisely mentioned in the petition, then by application of this maxim, the writ petition will be dismissed, without going into the merits of the case.

As stated earlier it is the view of this court not to tolerate any person who is misleading the judicial system and it should be seriously noted and dealt with. Through the application of such a maxim a false suggestion such as in this case could lead to dismissal of this petition of the Appellant.

In applying both these maxims of equity in the present scenario it could be seen that the Appellant by making a false statement has invited the courts to dismiss this application and order costs. I am of the view that a cost should be imposed upon the Appellant for disrespecting the judicial system and damages must be awarded to the Respondent.

Summary

Considering all the above matters, I dismiss this appeal with costs. Respondents are also entitled to recover the costs in both the District Court and the High Courts. In view of the conclusions reached, I answer the above questions of law in the negative.

Appeal dismissed with costs.

JUDGE OF THE SUPREME COURT

SISIRA J. DE ABREW, J

I Agree.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, J.

I Agree.

JUDGE OF THE SUPREME COURT