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

SC Appeal No. 111/2013

S.C. HCCA LA Application No. 282/2012

WP/HCCA/AVI/317/2008(F)

D.C. Homagama Case No. 117/L

1. Weliwattage Upali Indrasiri Perera,
2. Weliwattage Yasawardane Nandasiri Perera
3. Weliwattage Yasawardane Chandrasiri Perera

All of

No. 327, High Level Road,

Pannipitiya

PLAINTIFFS

Vs.

1. Colomage Celestina Jayawardane,
2. Satharasinghage Amaratunga,
3. Satharasinghage Don Abeywardane,
4. Satharasinghage Dharmasena,
5. Satharasinghage Don Gunawardane

All of

Maththegoda, Polgasowita.

DEFENDANTS

AND BETWEEN

4. Satharasinhage Dharmasena,

Maththegoda, Polgasowita.

4th DEFENDANT-APPELLANT

Vs.

1. Weliwattage Seeman Perera
   (Deceased)

1A. Weliwattage Upali Indrasiri Perera,

2. Weliwattage Yasawardane Nandasiri Perera

3. Weliwattage Yasawardane Chandrasiri
   Perera
   All of
   No. 327, High Level Road,
   Pannipitiya

PLAINTIFF-RESPONDENTS

1. Colomage Celestina Jayawardane,
   (Deceased)

1අ Satharasinghage Amaratunga,

1ආ Satharasinghage Don Abeywardane,

1ඇ Satharasinghage Dharmasena,

2. Satharasinghage Amaratunga,
   (Deceased)

2අ Jayasinghe Arachchige Kamalawathi,

2ආ Satharasinghage Don Nalani,

2ඇ Satharasinghage Don Sarathchandra,

3. Satharasinghage Don Abeywardane,

5. Satharasinghage Don Gunawardane,
   (Deceased)

5අ Satharasinghage Amaratunga,

5ඵ Satharasinghage Don Abeywardane,

5ඵ Satharasinghage Dharmasena

All of

Maththegoda, Polgasowita.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Satharasinhage Dharmasena,

Maththegoda, Polgasowita.

(Deceased)

4th DEFENDANT-APPELLANT-PETITIONER

Kodikkarage Ewline Sumanawathie of

Maththegoda, Polgasowita

SUBSTITUTED 4th DEFENDANT-APPELLANT-APPELLANT

Vs.

1. Weliwattage Seeman Perera

   (Deceased)

1A. Weliwattage Upali Indrasiri Perera,

2. Weliwattage Yasawardane Nandasiri Perera

3. Weliwattage Yasawardane Chandrasiri Perera

All of

No. 327, High Level Road,

Pannipitiya

PLAINTIFF-RESPONDENT-RESPONDENTS

1. Colomage Celestina Jayawardane,

(Deceased)

1ඒ Satharasinghage Amaratunga,

1ඓ Satharasinghage Don Abeywardane,

1ඖ Satharasinghage Dharmasena,

2. Satharasinghage Amaratunga,

(Deceased)

2ඒ Jayasinghe Arachchige Kamalawathi,

2ඓ Satharasinghage Don Nalani,

2ඖ Satharasinghage Don Sarathchandra,

3. Satharasinghage Don Abeywardane,

5. Satharasinghage Don Gunawardane,

(Deceased)

5ඒ Satharasinghage Amaratunga,

5ඓ Satharasinghage Don Abeywardane,

5ඖ Satharasinghage Dharmasena

All of

Maththegoda, Polgasowita.

DEFENDANT-RESPONDENT-RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
A.L. SHIRAN GOONERATNE, J. AND
ACHALA WENGAPPULI, J

COUNSEL: Harsha Soza, PC with R. Perera instructed by Srihan Samaranayake for the Petitioners

Ranjan Suwandaratne, PC with Anil Rajakaruna for the Plaintiff-Respondent-Respondent

WRITTEN SUBMISSIONS: 04th Defendant-Appellant-Petitioner-Appellant on 23rd October 2013
Plaintiff-Respondent-Respondent on 14th November 2013

ARGUED ON: 25th March 2024

DECIDED ON: 20th May 2025

THURAIRAJA, PC, J.

1. Plaintiff-Respondent-Respondents (hereinafter sometimes referred to as the 'Plaintiffs' or 'Plaintiff-Respondents') instituted this action before the District Court of Homagama seeking, *inter alia,*

    i. Interim injunction and enjoining order to restrain the Defendant from tapping the rubber trees on the land described in 2nd Schedule to the Plaint.

    ii. Declaration that the Plaintiff-Respondent-Respondents are entitled to the property described in the 2nd Schedule to the Plaint.

2. After trial, on 27th March 2005, the District Court of Homagama had entered judgment in favour of the Plaintiffs. Aggrieved by the said judgment dated 27th March 2005, the 4th

Defendant to the said action preferred an appeal against the same to the Provincial High Court of the Western Province holden in Avissawella, exercising civil appellate jurisdiction (hereinafter the 'High Court of Civil Appeal'). By judgment dated 11th June 2012, the High Court of Civil Appeal had dismissed the appeal, affirming the District Court decision subject to variations—specifically the answers to issues Nos. 19 and 20 as to whether the corpus is an undivided portion of a larger land.

3. Aggrieved by the judgment of the High Court of Civil Appeal, the 4th Defendant-Appellant-Appellant (who was substituted pending this appeal and shall hereinafter be referred to as the 'Appellant') appeals to this Court. Leave has been granted on the following questions of law:

    i. *Has the High Court of Civil Appeals erred in holding that the Plaintiffs-Respondents have established the title to the property in suit?*

    ii. *Has the High Court of Civil Appeals erred in not considering that the said Plan No. 4190 (P5) referred to in the 2nd Schedule to the Plaint has not effected a valid division of the land in suit?*

    iii. *Has the High Court of Civil Appeals erred in not considering that on the material before it the Plaintiffs-Respondents have neither paper title nor prescriptive titled to the land in suit?*

    iv. *Has the High Court of Civil Appeals erred in failing to appreciate that inter family transfers can be impeached on the basis that the transferor had no title?*

4. The fact that the subject of the District Court action is described in the 2nd Schedule to the Plaint has not been disputed. It is a portion of a larger land called *Mattegoda Mukalana,* five acres in extent, and was described in the 1st Schedule to the Plaint.

5. It is apparent from the questions of law aforementioned that all questions before this Court are concerned with the title to the property in suit. As the Appellant correctly contended, it was incumbent upon the Plaintiffs to prove title.

6. The Plaintiffs' chain of title, as claimed by the Plaint of the Plaintiffs before the District Court, begins with one Satharasinhage Don Manis, who was the owner of the larger land *Mattegoda Mukalana* (5A:0R:0P) and happens to be the husband of the 1st Defendant-Respondent-Respondent. Said Don Manis had then conveyed an undivided extent of two acres to one Imbuldeniyage Don Davith by Deed No. 749 of 23rd February 1935, attested by W. Sathasivam, Notary Public (marked 'P2'). These facts have not been disputed.

7. Thereafter, by Deed No. 1043 of 18th July 1941 (marked 'P3'), Don Davith had conveyed the said undivided extent of two acres, which was granted to him by Deed marked 'P2', to Colombage Celestina Jayawardane (the 1st Defendant-Respondent-Respondent).

8. According to the Plaint of the Plaintiffs, Celestina Jayawardane and her predecessors in title had long been in undisturbed and uninterrupted possession and control of a distinct and separate two-acre portion of the land in lieu of their undivided rights, acquiring prescriptive rights over the said distinct two-acre portion. Thereafter, the Plaintiffs state, by Deed No. 8289 of 17th January 1948 (marked 'P4'), said Celestina Jayawardane together with her husband, Don Manis, had conveyed an undivided one acre two roods out of the said 'divided two acres' to Charles Silva. However, the Deed No. 8289 clearly indicates that what has been conveyed is an undivided extent of one acre and two roods towards the southern boundary out of the five-acre land.

9. The Defendants have contested the validity of this conveyance on the basis that aforementioned Don Davith, who conveyed undivided two acres to Celestina Jayawardane in 1941, had conveyed the same undivided two acres in 1955 to the 3rd Defendant for valuable consideration by Deed No. 4551 of 12th June 1955 (marked 'V3'). Although the

former Deed was executed 14 years prior to the latter, the latter was duly registered on 17th June 1955, while the former was not registered until 24th June 1995.

10. Both the learned District Judge as well as the learned High Court Judge have correctly come to the conclusion that the latter Deed, i.e., Deed No. 4551 of 12th June 1955 (marked 'V3'), is entitled to the benefit of prior registration in terms of Section 7 of the *Registration of Documents Ordinance*. However, this in itself does not defeat the Plaintiffs' title. Deed No. 8289 was jointly executed by Celestina Jayawardane and her husband, Don Manis. As the Appellant conceded in the written submissions, Don Manis conveyed to Don Davith, undivided two acres from the five acres he owned, by Deed marked 'P2'. Subsequent to this conveyance, he had left with him undivided rights over three acres of the said land. As such, the title of Celestina Jayawardane, by virtue of Deed No. 1043 of 18th July 1941 (marked 'P3') *per se* does not prove or disprove the Plaintiffs' title, as title could devolve to Charles Silva from that of Don Manis.

11. Howbeit, after the aforesaid conveyance to Charles Silva, he had had the land surveyed and seen to the preparation of Plan No. 4190 of 17th February 1951 by M.D.A. Goonetilleke, Licensed Surveyor (marked 'P5'). The said Plan No. 4190 on the face of it carries the following: "*Lot B in the extent 1.2.00 is claimed by Gamage Charles Silva under and by virtue of Deed 8289 dated 17.1.1948 by D.V. Ranasinghe.*"

12. It is these rights claimed by Charles Silva that had then been conveyed to the Plaintiffs' father, Seeman Perera, by Deed No. 1769 of 04th August 1951 (marked 'P14'). It is very clear from this Deed marked 'P14' that Carles Silva had intended to convey an extent of one acre and two roods as divided by Plan No. 4190 to said Seeman Perera. Seeman Perera had thereafter leased the property to various parties on several instances.

13. The question as to whether Plaintiffs can claim prescriptive rights over the property in suit has been considered by the learned District Judge in detail. As the learned Judge has

observed, there had been various disputes concerning the land in suit at least since 1951, with some of the parties seeking legal remedies with respect to the same. Owing to these disputes, the learned Judge has found that the Plaintiffs or their predecessors in title had not had undisturbed or uninterrupted possession over any portion of the land *Mattegoda Mukalana,* leading to the rejection of the Plaintiffs' claim of prescriptive rights. learned High Court Judge has correctly left these findings undisturbed.

14. The *Land Reform Law, No. 1 of 1972* (hereinafter the 'Law') came into effect in August 1972 while Seeman Perera still had rights over the land in suit. According to the Plaintiffs, by operation of this Law, the corpus was deemed to be vested in the Land Reforms Commission as Seeman Perera held land in excess of the ceiling imposed thereunder.

15. However, upon his request and a subsequent appeal,[1] the Land Reforms Commission had permitted Seeman Perera to effect what is known as an inter-family transfer in terms of Section 14 of the Law with respect to the land in suit among other properties.[2] Accordingly, Seeman Perera had gifted to the Plaintiffs an extent of one acre, one rood and thirty-five perches, depicted in Lot 1 in Plan No. 1013 of 11th November 1974 (marked 'P14') by virtue of Deed No. 474 of 22nd February 1976 (marked 'P15').

16. On the face of it, said Lot 1 (1A:1R:35P) in Plan No. 1013 ('P14') appear to be the same as Lot B (1A:2R:0P) in Plan No. 4190 ('P5'). However, very clearly, the two lots refer to two different extents of land. However, the learned High Court Judge has considered this discrepancy of five perches to be insignificant in the instant case as the land can be clearly ascertained, relying on the authority of ***Yapa v. Dissanayake Sedara***.[3] As no questions

[1] This is evidenced by documents marked 'P11' and 'P12'

[2] As evidenced by document marked 'P13'

[3] [1989] 1 Sri L.R. 361

of law has been raised before this Court with respect to this finding, I see no need to consider this in any greater detail.

17. However, when the matter was argued before this Court, the Appellant contended the division purportedly effected by Plan No. 4190 ('P5') to be invalid on the basis that, whereas the said Plan mentioned Lot B (1A:2R:0P) as depicted therein to be a lot claimed by Charlis Silva by virtue of Deed No. 8289, the said Deed No. 8289 only gives him undivided rights over the larger land named *Mattegoda Mukalana* and not over any identified portion of it.

18. The Appellant contended that a mere plan, such as Plan No. 4190 ('P5'), which does not relate to a partition deed or decree and has not been signed or accepted by all co-owners, to be incapable of effecting a division over a co-owned land. I am in agreement with the Appellant on this contention, for that is trite law. As such, the learned High Court Judge's reasoning to the effect that the land described in Schedule 2 to the Plaint became a divided portion upon being surveyed on 17th February 1951 (the date borne on Plan No. 4190) is clearly erroneous.

19. While that may be so, before this Court can reach a conclusion as to the Plaintiffs' title over the corpus, I must necessarily consider the effect of the *Land Reform Law, No. 1 of 1972*, as the corpus was deemed to be vested in the Land Reforms Commission before the inter-family transfer under Section 14 of the Law was effected.

20. The Law itself leaves no ambiguity as to its purpose. As Section 2 of the Law sets out, it seeks to *"…(a) to ensure that no person shall own agricultural land in excess of the ceiling; and (b) to take over agricultural land owned by any person in excess of the ceiling and to utilize such land in a manner which will result in an increase in its productivity and in the employment generated from such land."*

21. Section 3(2) states that any agricultural land owned by a person in excess of the ceiling set out in Section 3(1) on the date of commencement shall be deemed to vest in the Land Reforms Commission. According to Section 6 of the Law, such vesting has the effect of giving the Commission absolute title to such land free from any and all encumbrances.

22. As Parinda Ranasinghe, J (as His Lordship was then) noted in ***Jinawathie and Others v. Emalin Perera***,[4] while this appears rather straightforward where a sole owner hold land in excess of the ceiling, matters become less uncomplicated with respect to the interests of co-owners. In such instances, it is necessary to carefully consider Sections 6 and 7 of the Law.

23. Section 6 of the Law states,

> *"Where any agricultural land is vested in the Commission under this Law, such vesting shall have the effect of giving the land in the Commission absolute title to such land as from the date of such vesting, and free from all encumbrances."*

24. Whereas Section 7 of the Law states,

> *"For the purposes of this Law, where any agricultural land is co-owned, each co-Owner shall be deemed to own his share in such land as a distinct and separate entity."*

25. As held in ***Jinawathie and Others v. Emalin Perera***,[5]

> "*…The provision of this section requires, by the use of a statutory fiction, the interests of a co-owner which would, at the time this Law comes into operation be only an undivided share of a larger land owned in common, to be treated as a distinct and*

[4] [1986] 2 Sri L.R. 121, at 128

[5] ibid at 129-130

separate entity. Such an assumption is only "for the purposes of this Law"… The moment this Law comes into operation the undivided share of a co-owner, whether he be one whose interest are over fifty acres or not, becomes, in the eye of the law, a distinct and separate entity, equal to the undivided extent he was earlier entitled to in the common land. Such entity is, at that time, still not identified or located on the ground, as distinct from the larger land… By the use of this fiction undivided interest are treated as divided, and a co-owner is treated as the sole owner of a distinct entity, in order to ser the provisions of this Law in motion. The effect of the operation of the provisions of sec. 7 is to bring about a separation or partition of the undivided share of a person, who, at the time this Law comes into operation, owns such interests in common with several others, and transform such undivided share into a distinct and separate portion… The combined operation of the provisions of sec. 2 and sec. 7 of this Law would result, in the case of a person, coming within sec. 3(2), but whose interest in agricultural land comprise, either wholly or party, undivided share or share of land, in such undivided shares being converted, albeit notionally, to a distinct and separate entity, and such distinct and separate entity then being treated as vesting in the Commission. The undivided share of a person would thus, in law, be considered as having ceased to exist as an undivided share, and being separated off from the undivided shares of the other co-owners, and bcoming [sic] a distinct and separate entity… The distinct and separate entity brought into being, though at that stage only notionally and confined to paper without any identification of its existence on the ground, will become identified and located on the ground once the provisions of sec. 18, 19 and 21 have run their operational course."

26. Sections 18, 19 and 21 create provisions for the determination of the land that is to be vested in the Land Reforms Commission. These provisions set out the process by which it is decided as to which portion or portions of land a person who comes within Section 3

may be allowed to retain. Although Section 3(1) provides that all such land beyond the ceiling shall be deemed to vest in the Commission, the exact metes and bounds of the lands to be vested remain uncertain until such determination.

27. Where the Commission makes a 'statutory determination' under and in terms of Section 19 as to what portions of land a person may retain with them, such person in whose favour such determination is made becomes an owner of such land with all incidents of ownership. The land does not cease to be a distinct and separate entity and does not once again become an undivided portion of a larger land following such determination, even where such land was co-owned at the time of vesting the same in the Commission.[6]

28. The Appellant sought to distinguish ***Jinawathie and Others v. Emalin Perera (supra)*** from the case at hand, arguing that the dicta of the ***Jinawathie Case*** to be only applicable where the Land Reforms Commission has made a statutory determination. While the Appellant is correct in this assertion that the ***Jinawathie Case*** is not binding with respect to inter-family transfers effected in terms of Section 14 of the Law, it is illuminative as to how the scheme of the Law operates as against co-owned lands.

29. The ***Jinawathie Case*** also makes it amply clear that, where one of several co-owners hold land over the ceiling imposed by the Law and any undivided share of such co-owner is deemed to vest in the Commission, such share is considered, in law, as being separated from the undivided shares of other co-owners, having ceased to exist as an undivided share. The share of such co-owner whose rights overshot the ceiling is then considered a distinct and separate entity for the purpose of the *Land Reform Law*.

30. The Appellant contended, however, that co-ownership with respect to *Mattegoda Muakalana* has not been terminated. The Appellant further contended that, in spite of

[6] *Jinawathie and Others v. Emalin Perera* [1986] 2 Sri L.R. 121

Plan No. 1013 ('P14') being prepared for the purpose of the Section 14 transfer, rights in *Mattegoda Mukalana* (5A:0R:0P) have to be divided and resolved in a partition case.

31. In light of the ***Jinawathie*** dicta, this contention of the Appellant could only succeed if the effect of a Section 14 approval is to restore the *status quo ante* the vesting of land in the Land Reforms Commission for the limited purpose of effecting an inter-family transfer.

32. Section 14 of the Law provides as follows:

> *"(1) Any person who becomes a statutory lessee of any agricultural land under this Law may within three months from such date make an application to the Commission in the prescribed form for the transfer by way of sale, gift, exchange or otherwise of the entirety or portion of such agricultural land to any child who is eighteen years of age or over or to a parent of such person.*
>
> *(2) The Commission may by order made under its hand grant or refuse to grant approval for such transfer. Such order shall be made within one year of the date of application under subsection (1). Every such order shall be sent by registered post to the applicant under subsection (1). Any such applicant aggrieved by the order may appeal to the Minister within three weeks of the receipt of such order. The receipt of the order shall be deemed to be effected at the time at which letters would be delivered in the ordinary course of post.*
>
> *...*
>
> *(3) Any transfer effected in accordance with the provisions of an order made under subsection (2) or such order as amended, varied or modified on appeal shall have the effect of transferring right, title or interest in property so transferred free of the statutory lease.*
>
> *..."*

33. In ***Susangatha De Fonseka v. Pussewalage Ashokalatha***,[7] Obeyesekere, J, with whom Buwaneka Aluwihare, PC and Janak De Silva, JJ agreed, sheds some light on this process under Section 14 of the Law. As clearly explained therein, an inter-family transfer under Section 14 is made not by the Commission but by the statutory lessee to whom the land belonged before it was deemed vested in the Commission by the enactment of the Law. His Lordship described the application of a statutory lessee to the Commission in terms of Section 14 to be one seeking "*… the return to such statutory lessee [i.e. to the owner], agricultural land that was over and above the ceiling stipulated in Section 3(1) in order that the said land be transferred to such persons children who were over eighteen years of age or such persons parents.*"

34. In the above case, it was further held that,

> "… ***once the approval of the Commission was received, the transfer was to be effected by the applicant in favour of his or her child, and not by the Commission***…
>
> *While I shall elaborate later on in this judgment, I must state at this point that:*
>
> *(a) it is not the Commission that transferred the impugned land to the Plaintiff but her own father; and*
>
> *(b)* ***what was transferred to the Plaintiff was the title that the Plaintiff's father had in the said land at the time the Law came into force****, and therefore free of the statutory lease to which the Plaintiff's father's rights over the land had been reduced to in terms of Section 3 of the Law…"*[8]

[7] SC Appeal No. 107/2015, SC Minutes of 13th November 2023

[8] ibid at p. 11 (Emphasis added)

35. Obeyesekere, J has elaborated on this position further in the said judgment as follows:

> *"The learned President's Counsel for the Plaintiff submitted that with the coming into operation of the Law and with land over and above the ceiling deemed to have been vested in the Commission free of any encumbrance, the Plaintiff's father lost his title to the mortgaged property and was transformed into a statutory lessee. He therefore submitted that when the Plaintiff's father executed Deed No. 2085, he did so not as the owner of Manomani Estate which was subject to a mortgage but as the statutory lessee of a land that was no longer encumbered. He submitted further that with Manomani Estate being deemed vested in the Commission in 1972, the Plaintiff derived her title to 25 acres of Manomani Estate not from her father but from the Commission, and most importantly, free of any encumbrance.*
>
> *I am unable to agree with this argument of the learned President's Counsel for the Plaintiff. Although in terms of Section 3(2), all agricultural lands in excess of the ceiling are deemed to have vested in the Commission on the day the Law came into operation by way of a legal fiction, as I have already stated, for the purposes of this case, that vesting is subject to:*
>
> *(a) a statutory determination of the land area amounting to 50 acres that an owner would be allowed to retain as his entitlement in terms of the Law; and*
>
> *(b) the release to the owner of land in excess of the ceiling in order that the said land be gifted to his children who are over the age of eighteen.*
>
> *What the Commission did in terms of the Order made under Section 14(2) was grant approval to the owner to transfer land to his children, which is a further manifestation of the concept of the land being merely deemed vested in the Commission**. In doing so, the Commission revived the title of the owner to that portion of land for which approval was being granted, while simultaneously removing his status***

as statutory lessee, thereby enabling the land be transferred to his children. *This is reflected in the wording of Section 14(3), as well as by the fact that the Deed of Gift was executed by the Plaintiff's father and not by the Commission. Thus,* ***I am of the view that the Plaintiff in this case derived her title from her father and not from the Commission.***

Having said so, I must reiterate that the benefit of title vesting free of any encumbrances, as provided by Section 6, has only been conferred upon the Commission, and that ***when the Commission grants approval in terms of Section 14(2) for an inter-family transfer, the title that the beneficiaries of such transfer receive is not the unencumbered title of the Commission but the title of the person who owned the land at the time the Law came into force****,* ***including any encumbrance that may have existed at the time*** *in respect of such land…"*[9]

36. The above observations are indorsed by the language of Section 21(3) of the *Land Reform (Special Provisions) Act, No. 39 of 1981*. It provides that,

"*Where it is not practicable for the Commission to grant* ***approval for the transfer by the statutory lessee of any agricultural land under subsection (2) of section 14 of the Land Reform Law****, the Commission shall alienate land to the extent of the land acquired from such statutory lessee under the Land Acquisition Act, to any child or to a parent of such statutory lease."*[10]

37. Although the case of ***Susangatha De Fonseka v. Pussewalage Ashokalatha (supra)*** did not involve a co-owned land, I do not see that as a distinguishing factor insofar as the findings on Section 14 provisions relevant to this instant case are concerned. Under

[9] ibid at pp. 24-25 (Emphasis added)

[10] Emphasis added

Section 7 of the Law, which is concerned with co-owned land, each co-owner of a land shall *be deemed* to own his or her share as a distinct and separate entity. This, too, much like Section 3(2), is a deeming provision.

38. The function of the Land Reforms Commission in terms of Section 14(2) is to grant permission to the applicant (statutory lessee/prior owner) to transfer the title that such applicant himself had over such land to any family member(s) recognised by the Law. The Commission plays no part in the conveyance of title *per se*.

39. Accordingly, under an inter-family transfer in terms of Section 14 of the Law, a person can only transfer such interests he himself had over a particular land before such land was deemed vested in the Commission. As Obeyesekere, J has astutely observed, this is a manifestation of the concept of land being merely *deemed* vested in the Land Reforms Commission.

40. As previously noted, I do not see Section 7 having any effect on these principles where a land is co-owned. This is so, as the effects of both Section 3(2) and Section 7 are to create, for the purpose of the operation of the *Land Reforms Law,* a statutory fiction[11] of (a) land in excess of the ceiling being vested in the Commission and (b) co-owned land being vested in the Commission as a distinct and separate entity reflecting the share such co-owner against whom the Law operates would have had over a land. Where the Commission grants permission to execute an inter-family transfer in terms of an order under Section 14(2), this statutory fiction is extinguished momentarily, and the title a statutory lessee had is revived, for the limited purpose of effecting such transfer.

[11] See *Jinawathie and Others v. Emalin Perera* [1986] 2 Sri L.R. 121, at p. 128-130

41. As such, I am in agreement with the Appellant's contention that co-ownership with respect to *Mattegoda Muakalana* has not been terminated by virtue of any provisions of the *Land Reforms Law*.

42. In the instant case, it was amply clear from the material before us that Charlis Silva (who conveyed his interests over the property in suit to Seeman Perera, Plaintiffs' father) had undivided one acre and two roods over a large land, five acres in extent.

43. Although he had had Plan No. 4190 of 17th February 1951 ('P5') prepared, recognising the corpus of this action as 'Lot B' therein, such a plan could not have duly portioned or divided the land. This remains the same with respect to Plan No. 1013 of 11th November 1974 ('P14'). The latter Plan itself mentions that the survey was done as pointed out by 'the owner'. As the Plaintiffs themselves admitted, the said Plan No. 4190 had been used in the preparation of Plan No. 1013.

44. Clearly, the Plaintiffs' father, Seeman Perera, could only have acquired undivided interests over the land in suit from his predecessor in title. There is no material whatsoever indicating that rights of the co-owner over *Mattegoda Mukalana* (5A:0R:0P) have ever been duly divided in terms of the law. Therefore, said Seeman Perera, who effected the inter-family transfer, could only have conveyed undivided title.

45. Accordingly, the second and fourth questions of law are answered in the affirmative. As to the first and third questions of law, I answer them in the negative, and hold that Plaintiff-Respondent-Respondent have established undivided title over the property in suit.

46. Considering the above answers to the questions of law, and especially the fact that the title of the Plaintiff-Respondent-Respondents over the property in suit is undivided, the appeal is allowed.

47. Judgments of the District Court of Homagama and Provincial High Court of the Western Province holden in Avissawella exercising civil appellate jurisdiction are set aside.

48. The action is dismissed. Parties shall bear their costs.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT