

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

SC APPEAL 15/2015

SC/HC/CALA/539/2012

HCCA AVISSAWELLA:  
WP/HCCA/AV/484/2008/F

D.C. AVISSAWELLA: 817/L

Enapatti Kumara Gorok Kumburage  
Premaratne,  
No.1A, Gonagala,  
Ruwanwela.

**PLAINTIFF**

Wickramarachchi Appuhamilage Dayawathie,  
No.1A, Gonagala,  
Ruwanwella.

**SUBSTITUTED PLAINTIFF**

**-VS-**

Galvita Kumara Bopatteage Ariyaratne,  
Gonagala.

**DEFENDANT**

**AND BETWEEN**

Enapatti Kumara Gorok Kumburage  
Premaratne, (deceased)  
No1.A, Gonagala,  
Ruwanwela.

Wickramarachchi Appuhamilage  
Dayawathie,  
No1.A, Gonagala,  
Ruwanwella.

**SUBSTITUTED PLAINTIFF -  
APPELLANT**

**-VS-**

Galvita Kumara Bopatteage Ariyaratne,  
Gonagala.

**DEFENDANT – RESPONDENT**

**AND NOW BETWEEN**

Galvita Kumara Bopatteage Ariyaratne,  
Gonagala.

**DEFENDANT - RESPONDENT  
APPELLANT**

**-VS-**

Enapatti Kumara Gorok Kumburage  
Premaratne, (deceased)  
No.1A, Gonagala, Ruwanwella.

Wickramarachchi Appuhamilage  
Dayawathie,  
No.1A, Gonagala,  
Ruwanwella.

**SUBSTITUTED PLAINTIFF -  
APPELLANT – RESPONDENT**

**Before** : P. Padman Surasena, J  
E.A.G.R. Amarasekara, J  
Mahinda Samayawardhena, J

**Counsel** : Lakshman Perera, PC with Randeena Gunawardena for the Defendant-  
Respondent-Appellant.

Gamini Hettiarachchi for the Substituted Plaintiff-Appellant-  
Respondent.

**Argued on** : 19.02.2021

**Delivered on** : 19.02.2025

**E A G R Amarasekara, J**

This is an appeal by the Defendant–Respondent–Appellant (hereinafter sometimes referred to as the Defendant or Appellant) against the Judgement of the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) holden at Avissawella, dated 01.11.2012 allowing the appeal of the Substituted Plaintiff–Appellant–Respondent (hereinafter sometimes referred to as the Substituted Plaintiff or the Respondent) by which the said Provincial High Court set aside the Judgement of the District Court of Avissawella dated 25.07.2006. The Appellant prays that the said Judgment of the said Provincial High Court be set aside and vacated and the said Judgment of the District Court be affirmed by this Court – vide the Petition dated 12.12.2012.

As per the Plaint filed on 04.03.1991 in the District Court of Avissawella, the original Plaintiff (hereinafter referred to as the Plaintiff) averred that he was the owner of the land called ‘Ihala Yatipil Owita’ (ඉහල යටපිල් ඔවිට) more fully described in the Schedule to the Plaint as per the chain of title shown in the body of the Plaint. He alleged that the Appellant entered the land on 01.03.1991 and started gem mining. Hence, the said Plaintiff sought, inter alia:

- A Declaration that the Plaintiff is the owner of the entire land called "Ihala Yatipil Owita" more fully described in the Schedule to the Plaintiff.
- An Order ejecting the Defendant and his servants and agents from the said land.

The boundaries of the land, "Ihala Yatipil Owita" have been described in the Schedule to the Plaintiff, as follows; (Vide Page 98)

- North: Gonagal Oya, Ditch- more correctly Ditch separating Pahala Yatipil Owita (ගොනගල් ඔයද, අගල යයි කියා වී තිබුණේ නමුත් වඩා නිවැරදි පරිදි පහල යටිපල් ඕවිට වෙන්වන අගලද)
- East: Ditch (අගලද)
- South: Ditch separating KongahaWatta and PahalaWatta [(කෝන්ගහවත්ත සහ පහලවත්ත වෙන්වන) අගලද]
- West: Ditch separating Aramba (අරඹ වෙන්වන අගල ද)

As per the said Schedule, the said land is about 3 acres in extent. However, the learned District Judge had correctly observed that the deeds marked by the Plaintiff do not describe the boundaries with uniformity- vide deeds marked P3, P4 and P5. Moreover, it is to be noted that in those deeds the boundary to the West has been described as a ditch and, P5 specifically states that it is the ditch that separates "Aramba".

The Appellant further states in his Petition that the interim injunction sought by the Plaintiff preventing the Appellant from gem mining was refused by the learned District Judge on the basis that *prima facie* a portion of land called "Aramba" had been included in the cause of action by the Plaintiff in relation to the land called "Ihala Yatipil Owita".

The Appellant states that the Plaintiff obtained a Commission from Court to survey the land and Mr. D. M. Gamage, Licensed Surveyor (hereinafter sometimes referred to as L.S.) submitted the Plan No. 533/අවි (hereinafter Plan No.533) and, at the instance of the Appellant the same Licensed Surveyor provided Plan No. 548/අවි (hereinafter Plan No.548) [both Plans were marked during the trial as "X" (Page 464) and "Y" (Page 470) respectively]. In Plan No. 533 the Corpus has been shown as one land with two parts separated by a dotted line (representing a ditch) with a vinculum (clitch) drawn over the dotted line connecting those two parts named A and B. Hereinafter those two parts will be referred as Lot A and B for easy reference. In Plan No.548, the Corpus has been shown as three separate Lots marked as 1අ, 1ආ and 2 where Lots 1අ and 1ආ are separated by a clear ditch along with a line of trees (ගස් වැටිය). This ditch replaces the dotted line with the vinculum (clitch) found in the Plan No.533. However, 'Pahala Yatipil Owita' which is described as a part of the boundary to the North in the Schedule to the Plaintiff is found more towards to the South or South East in aforesaid plans.

As per the stance of the Plaintiff, the land "Ihala Yatipil Owita" that he claimed is consisted of Lots A and B of Plan No.533 which is very much the same to Lot 1අ and 1ආ in Plan No.548.

The Defendant (Appellant) filed his Answer dated 11.12.1992 and stated that Lots 1අ and 2 of Plan No.548 are part of the land called "Aramba" and not part of the land called "Yatipil Owita." The Appellant claimed co-ownership to the said land called "Aramba" along with few others and accordingly prayed for a declaration of title and eviction of the Plaintiff and all his servants and agents from that land called "Aramba". Boundaries of "Aramba" as described in the Answer is as follows;

North: Paddy field,

East: Ditch separating Yatipil Owita

South: Fence ( ඉනි වැට ) separating Pahala Watta:

West: Wetiya ( වැටිය ) separating Paranawatta

(Wetiya may mean a ridge/ line of trees or stones)

The learned District Judge had correctly observed that the documents marked by the Appellant also do not describe the said boundaries with uniformity. However, it must be noted that in some of the documents marked by the Appellant, boundary to the North is also described as Gonagal Ela, sometimes in addition to the ‘Paddy Field’. The said paddy field is sometimes described as ‘Paddy Field separating Aramba’. The land Yatipil Owita mentioned above as the boundary to the East is sometimes described as ‘Ihala Yatipil Owita’. In some documents, the said boundary to the East has been described as Gonagal Ela. Instead of Paranawatta which is to the West as described above, boundary to the West has been described as Lokgamage Wattavide deeds marked V4, V5, V6, V7, land registry folios marked as V3 and V3a etc. It is to be noted that some of the deeds marked by the Defendant describe the boundary to the East as “Ihala Yatipil Owita” or the ditch separating “Ihala Yatipil Owita” which corresponds to the description of the boundary to the West by the Plaintiff for the land he claimed as Ihala Yatipil Owita. Thus, on balance of probability, there should have been a ditch separating “Aramba” and “Ihala Yatipil Owita”. It appears that in some of the documents of the Appellant, this ditch has been described as Gonagal Ela. However, in comprehending the boundaries, it must be noted that generally an Ela means a man-made water way while Oya means a natural water way.

As per the brief, it is clear that there is no dispute between the Parties that Lot B in Plan No.533 or Lot 1අ in Plan No.548 belongs to the land claimed by the Plaintiff which is “Ihala Yatipil Owita”. The cause of action of the Plaintiff and claim of the Defendant (Appellant) centered on the fact whether the Lot A in Plan No.533 or the Lot 1අ in Plan No.548 belongs to the land claimed by the Plaintiff or to the land claimed by the Appellant. Success of the Plaintiff’s case was dependent on the fact whether the Plaintiff was successful in proving that said Lot A or 1අ in respective plans was part of “Ihala Yatipil Owita” while the success of the Appellant’s counter claim was dependent on proving that the said Lot was part of “Aramba”. As per the reports made to the above plans, gem mining had been taken place in said Lot A or 1අ in the respective plans. The Plan No.533 was made in 1991 which is close to the date of the cause of action described in the Plaintiff, namely 1991, March. Anyhow, the report of the said Plan marked X1 states that there are several old gem pits other than the new one.

It must be noted that, as per the description of boundaries in both lands, namely “Ihala Yatipil Owita” and “Aramba”, the boundary to the west in “Ihala Yatipil Owita” is the ditch separating “Aramba” and the boundary to the East in “Aramba” is the Ditch separating “Yatipil Owita” or “Ihala Yatipil Owita”. Thus, by identifying the place where the said ditch situates is the best way to decide whether the Appellant (Defendant) had encroached the rights of the Plaintiff or not. Furthermore, it is observed that no paddy field or Ela is described as the boundary to the North of the land claimed by the Plaintiff, namely “Ihala Yatipil Owita” where boundary to the North of “Aramba” for which the Appellant had claimed co-ownership had been described

using such descriptions – vide the Schedule to the Answer and land registry folios marked V3 and V3a and deeds marked V4, V5 and V7 etc.

Issues were raised on 07.02.1997 and the wife of the Plaintiff, Dayawathie (the Respondent), Mr. D.M. Gamage, L.S. and an officer from the Agrarian Services office had given evidence for the Plaintiff's case while the Appellant (Defendant), aforesaid D.M. Gamage, L.S. and an officer from the National Gem and Jewelry Authority had given evidence for the Appellant at the said trial. Officers from the Agrarian Services Office and the National Gem Authority were not called to establish the identity of the Corpus but only with regard to some acreage tax receipts and issuance of gem mining license and related matters.

D. M. Gamage, L.S. had been called to give evidence by both Parties, namely the Plaintiff as well as the Appellant. Plan No.533 was prepared by him on the commission issued to him at the request of the Plaintiff. The aforesaid Plan and report had been marked as X and X1 at the trial. As per the Plaintiff's position, the land he claims, namely "Ihala Yatipil Owita" consists of Lot A and B of that Plan. However, there is no ditch found at the boundary to the West separating a land named "Aramba Watta" in that Plan. Aramba Watta shown on the Southern part of the boundary on the West is separated by a line of trees (ගස් වැව්). The surveyor in his report at the latter part of item 11 had stated that there appears to be signs of a ditch that existed in the past on the South and West boundaries which have become obliterated due to the lapse of time and gem mining. However, the only ditch that is visible is the one found in the middle of the land shown by the Plaintiff separating Lot A and B, which is indicated by a dotted line. This dotted line is the boundary, as per the position of the Appellant, that separates "Ihala Yatipil Owita" the land claimed by the Plaintiff and "Aramba", the land claimed by the Appellant as a co-owner. Above statement made by the surveyor in his report has to be considered in light of the statement he had made under item 10 of his report where he has clearly stated that he cannot opine whether the Lot A and B form the Corpus of "Ihala Yatipil Owita" or not. This clearly shows that the surveyor was not satisfied as to the identification of "Ihala Yatipil Owita" by the Plaintiff. On the other hand, if Lot A is considered as part of "Ihala Yatipil Owita", Ela separating Arambagawa Kumbura (Arambagawa paddy field) becomes part of the boundary to the West, North West and North of the said land, when nowhere in the Schedule to the Plaintiff or in any document such description is given to describe the boundaries of the said "Ihala Yatipil Owita". It is true that the extent of said "Ihala Yatipil Owita" had been described as 'about 3 Acres' in the Schedule and other deeds. Lots A and B both together is less than 3 Acres. Hence, one may be able to argue that Lot B has to be a part of the Plaintiff's land but the extent of Aramba has been described as 2 Acres in the relevant documents. If it is considered that Lot A in said Plan is not part of "Aramba", Aramba which has to be on the West to "Ihala Yatipil Owita" has to be limited to Lot 2 in Plan No. 548 (marked V1 at the trial), which is less than ½ an Acre. Lot 2 and Lot 1 (which is almost similar to aforesaid Lot A in Plan No.533) taken together will not make it 2 Acres. Thus, extents referred to in old deeds and documents without reference to a Plan cannot be considered as decisive in identifying the lands.

The Substituted Plaintiff, Dayawathie (the Respondent), who gave evidence to support the position of the Plaintiff appeared to have not said that the Plaintiff or his predecessors in title had engaged in gem mining in the past. Further, as per the evidence of the said Respondent, she came to know the aforesaid land only after her marriage that took place 32 years prior to the date of giving evidence, thus from 1970. Thus, her knowledge regarding the boundaries may have been gained mainly through what others have said to her and not by observing the way it was possessed prior to that. Hence, her evidence does not explain the existence of old

gem pits in the disputed portion creating a doubt as to the genuineness of the cause of action that occurred in 1991.

Another argument taken up to support the stance of the Plaintiff is that the ages of the plantations in both Lots A and B in Plan marked X (Plan No.533) appears to be very much same or close to each other. For example, ages of the coconut plantations have been described as 40 to 50 years old. This does not indicate that coconut plantations in both Lots were done by one and the same person as the owner of one land. It only indicates that plantations of each Lot had been done during a period which was between 40 to 50 years prior to the survey. It might have been done by different owners of two different lands during that 10 year-gap. Thus, it cannot be considered as a fact proving the stance of the Plaintiff without clear evidence to show that both Lots A and B belong to the land claimed by the Plaintiff.

The substituted Plaintiff has stated that tomb marked 'C' in Lot A in Plan marked X (No.533) is the tomb of the 3<sup>rd</sup> wife of the Plaintiff's father. However, the Appellant's position is that it is the tomb of his maternal Aunt (ලොකු අම්මගෙ). No marriage certificate or any other document had been marked to prove said relationships. However, the above is not sufficient to prove that the said tomb was made in Lot A because the Plaintiff's predecessor in title had title to the said Lot. It must be noted that the Appellant's position was Lot A is "Aramba" and it is a co-owned land. Thus, the tomb could have been made there due to the entitlement the deceased herself had or due to the fact that someone related to her had an entitlement to that land. Hence, the existence of the said tomb is not sufficient to establish that Lot A in Plan marked X (No.533) is part of the land claimed by the Plaintiff.

On the other hand, the dotted line in Plan marked X (No.533) that separates Lot A and B is the only ditch found in the said Plan. This ditch has been explicitly shown in the Plan No.548 made in accordance with the commission taken by the Defendant (Appellant). When the said dotted line in Plan marked X or ditch shown in Plan marked Y is taken as the ditch separating "Ihala Yatipil Owita" (land claim by the Plaintiff) from "Aramba" (land claimed by the Appellant as a co-owner), four boundaries give to "Ihala Yatipil Owita" in the Plaintiff considerably tally with the boundaries of Lot B in Plan marked X except for the fact that "Pahala Yatipil Owita" which is also described as part of the boundary to the North of the land "Ihala Yatipil Owita" is found towards South East or East of the said land. The plans made for this case clearly show that 'Pahala Yatipil Owita' is not a boundary on North to the land claimed by the Plaintiff. Thus, there is an error in that description of boundaries. Furthermore, boundaries to Lot A (which is almost the same as Lot 1 in Plan No.548 marked Y) along with Lot 2 in Plan marked Y tally with the boundaries given to "Aramba", land claimed by the Defendant (Appellant) as a co-owner. It is true that the land by the boundary to the West of Lot 2 in Plan marked Y is described as "Lokgamage Watta" in the said Plan when the land to the West of "Aramba" has been described as "Paranawatta" in the Schedule to the Answer, but some of the documents and deeds filed by the Appellant at the trial, as mentioned before, described the boundary to the West as "Lokgamage Watta". Thus, "Lokgamage Watta" should be another name for "Paranawatta". Thus, on balance of probability, Plaintiff's case should have been dismissed as the Plaintiff failed to prove that Lot A in Plan marked X is part of the land he claimed against the stance taken up by the Appellant. Hence, the Learned District Judge was correct in dismissing the Plaintiff's case.

The Plaintiff has not made any claim to "Aramba", the land claimed by the Appellant as a Co-owner in his Replication. By disputing the Appellant's rights to Lot A, it is proved that there is a threat to Appellant's entitlement in 'Aramba' by the Plaintiff. Thus, the Defendant (Appellant)

is entitled to assert his rights against the Plaintiff as a co-owner to “Aramba” and ask for the reliefs he prayed in the Answer. It must be noted that the Plaintiff originally obtained an enjoining order at the beginning which was later dissolved with the refusal to grant an interim injunction. In **Hevawitarana Vs Dangan Rubber Co.Ltd. 17 N L R 49**, our Courts accepted the right of a co-owner to sue a trespasser. Even in the recent case, **Gallage Saumhammy alias Somawathie Vs I. A. Dharmapala** SC App. 184/14, SC minutes dated 08.09.2022, this Court referring to previous decisions has again decided that a Co-owner can maintain an action against a trespasser without joining the other Co-owners, and it is also held that even when the claim is made as the owner to the entire land, a lesser relief can be given declaring him only as a Co-owner. Here, the circumstances established that there were disturbances from the Plaintiff for the Appellant when the Appellant exercised his rights relating to the land called “Aramba”. Thus, the learned District Judge cannot be faulted with, in granting the reliefs prayed by the Defendant (Appellant) as he has shown his entitlement as a Co-owner.

After the trial, the Learned Additional District Court Judge delivered the Judgement, dated 25.07.2006, in favour of the Appellant. The learned District Judge in his Judgment, among other things, had stated as follows:

- That boundary description in the documents tendered by both parties relating to the lands they claimed do not have uniformity in describing the boundaries.
- However, it is common ground that lands named “Ihala Yatipil Owita” and “Aramba” are separated by a ditch.
- Even though, the deeds refer to the extent of the Plaintiff’s land as a land of about 3 acres, they do not indicate the exact extent of the Plaintiff’s land.
- Even though the Plaintiff stated that the tomb in Lot A in Plan marked X is the tomb of his father’s 3<sup>rd</sup> wife, it cannot refute the evidence of the Appellant which says that it is the tomb of his Maternal Aunt (ලොකු අම්මා).
- The root cause for the dispute is the gem mining by the Appellant and nowhere it is said that the Plaintiff engaged in gem mining. Thus, the mines reported in X1 report should be the mines of the Appellant.
- The western boundary of Deed marked P5 is the ditch separating Aramba (අරඹ වෙන් වන අගල).
- The Plaintiff in his original Plaint dated 04.03.1991 has referred to the western boundary as the ditch separating Aramba (අරඹ වෙන් වන අගල) and by amended Plaint dated 25.07.1994 had taken a substantially different position as to the western boundary as the ditch separating Arambawata (අරඹවත්ත වෙන් වන අගල). (However, it must be noted here that this amended Plaint has not been accepted by the District Court)
- The surveyor clearly says that there is a ditch and line of trees shown in Plan marked Y, which is shown as a dotted line in Plan marked X which can be considered as definite boundary. Even though the Plaintiff took up the position that it was a ditch made to protect the land from soil erosions, it cannot be accepted as, other than the ditch, there is line of trees with barbed wire fence.
- Thus, the Plaintiff is not entitled to the whole land he showed as “Ihala Yatipil Owita”, but only to Lot B in Plan marked X. The Defendant is entitled to Lots 1 and 2 in the Plan marked Y as the land he claimed as “Aramba”. (This Court observes that, as per the reasons given, there is a typographical error here. It should be corrected as Lots 1 and 2 in Plan marked Y. And as per his stance this entitlement is claimed as a Co-owner to that land and not as the sole owner.).

Being aggrieved by the District Court Judgement, the Respondents appealed in terms of Section 754(1) of the Civil Procedure Code to the Court of Appeal, and thereafter, by operation of law, namely due to the provisions in the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, the said Appeal was heard before the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) holden at Avissawella.

By the Judgement dated 01.11.2012 of the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) at Avissawella, the Learned Provincial High Court Judges held in favour of the Respondents *inter alia* on the following grounds:

- The main issue of the said appeal was the identification of Corpus.
- Lots A and B of Plan marked X (No.533) taken together is 2 Acres 3 Roods and 16 Perches in extent and it is similar to the extent indicated in the Schedule to the Plaint and in title deeds of the Plaintiff.
- Observations contained in the surveyor's report to the said Plan (X1) is relevant and it says that there are signs that a ditch existed on the southern and western boundaries of the whole land which had become obliterated due to the lapse of time and gem mining. Therefore, it cannot be assumed that the ditch shown between Lot 1අ and 1ආ in Plan No.548 is the western boundary of the Plaintiff's land as contended by the Appellant. Thus, Lots A and B in Plan No.533 cannot be considered as separate lots as contended by the Appellant.
- The western boundary in the Schedule to the Plaint is described as "Ditch (අඟල) separating Aramba" (අරඹ).
- In the deeds marked P3, P4, and P5, the western boundary of the Plaintiff's land called 'Ihala Yatipil Owita' is Agala separating Aramba (අරඹ).
- The finding of the surveyor's report (may be referring to the aforementioned observations) tally with the boundaries of the schedule to the plaint.
- The entire land includes Lots No. "A" and "B" of Plan No. 533 (marked as "X" at the trial).
- Issues No. 5 and 10 raised by the Defendant (Appellant) are completely contradictory to each other and Issue No. 10 is contradictory to the averments in Paragraph 3 of the Answer.
- The answers of the learned District Judge for the aforesaid issues No. 5 and 10 are completely contradictory to each other.
- The answers given to issues No. 5 and 10 by the learned District Judge are contradictory since the learned District Judge had taken two contradictory views with regard to the land in suit.
- Western Boundary as per the Defendant's (Appellant's) deed V3 is Lokgamage Watta, but as per deeds marked V5, V6, and V7 it is live fence of Paranawatta (පරණවත්තේ පැල ඉනි වැට) and as per the schedule to the Answer it is Bandara Paranawatta wenwana wetiya (බණ්ඩාර පරණවත්ත වෙන්වන වැටිය) while, as per the Plan marked Y (No. 548), it is Lokgamage Watta (ලොක්ගමගෙ වත්ත). Such descriptions contradict with each other and, the Defendant (Appellant) had failed to give any explanation in that regard.
- The southern boundary of the Plaintiff's land is described as "Pahala Watta" and "Kongahawatta". It is only when Lots A and B are considered as one land, those two lands become the southern boundary.



- The Defendant (Appellant) has rights only as a co-owner and the learned District Judge has failed to consider that the Defendant is claiming relief in respect of a co-owned land. Further, the learned District Judge has declared that the Defendant (Appellant) is entitled to the co-owned land in the absence of the other co-owners.
- Defendant (Appellant) failed to prove that the disputed land is “Aramba.”

Other than the above, it appears that the learned High Court Judges accepted the view that the ditch shown between Lot A and Lot B of Plan marked X is made for preservation of the land and to separate a portion which had a school. Thus, the learned High Court Judges have decided that Defendant (Appellant) is not entitled to relief and held in favour of the Plaintiff. It appears that the learned High Court Judges were more concerned about whether the Defendant (Appellant) proved his case than whether the Plaintiff proved his case. There is no clear indication as to why they do not accept the dotted line between Lot A and Lot B in Plan No.533, which in fact is a ditch with a line of trees with barbed wire marks, as the boundary between two lands.

However, it is observed that even though the learned High Court Judges considered that, as per the schedules in deeds and the Plaintiff's land is 3 acres and to satisfy that extent Lots A and B of the of Plan X has to be one land, they failed to observe that the land claimed by the Defendant (Appellant) is 2 acre land as per their documents and not considering Lot A as part of it, said land will be limited to Lot 2 in Plan marked Y which is less than ½ an acre. The learned High Court Judges have failed to comprehend that these extents have been referred in the deeds or in the pleadings without reference to any previous plan and therefore, cannot be considered as the exact extents of the relevant lands.

It is also observed that even though the learned High Court Judges relied on a certain observation made by the surveyor where he assumes certain signs of an existed ditch has been obliterated due to lapse of time and gem mining, the said judges failed to appreciate that no such remaining signs have been shown in the relevant plans or described in giving evidence for judges to come to a finding. On the other hand, the learned High Court Judges failed to observe that the surveyor had clearly stated in his report that he cannot express an opinion whether the Plaintiff's land is consisted of aforesaid Lot A and B of Plan marked X or whether it is limited to Lot B of that Plan. The learned High Court Judges also failed appreciate the following facts and law in coming to their conclusions;

- The ditch which was identified as a dotted line in Plan marked X and clearly depicted in Plan marked Y which separates aforesaid Lot A and B in Plan marked X or Lot 1 and 1 in Plan marked Y is not a mere ditch that was made to preserve the land from soil erosion or purpose similar to that, but, as per the surveyor's report, there was a line of trees with barbed wire marks along with it indicating that it was to separate the other part ( Lot A or Lot 1 as the case may be ).
- Even though the evidence of the witness of the Plaintiff refers to a school and separating that from the rest of the land, no such school or the place that it existed had been shown in the Plan and even if it existed in the past, there is no evidence to show that it was situated on the land claimed by the Plaintiff.
- No paddy field or Ela separating a paddy field has been described as a boundary to the land claimed by the Plaintiff, and if Lot A or Lot 1 in the aforesaid plans are taken as parts of the Plaintiff's land such description of a boundary should be there as the West, North West or part of the northern boundary of the Plaintiff's land.

- The issues are framed on the facts and law to be decided between the parties and an issue can be raised to get an answer in the affirmative or in the negative. If the issues No. 5 and 10 referred to in the Judgment are answered in the affirmative and in the negative respectively, it supports the stance taken up by the Appellant at the trial. Thus, there was no contradictory situation reflected with regard to the stance taken up by Defendant (Appellant) in framing those issues or in answering them. There is no rule that one should frame issues to get answers only in the affirmative. What is necessary is that the answer must support the stance taken by that party.
- The learned District Judge had correctly observed that, not only in the documents relied upon by the Defendant (Appellant), even in the documents relied by the Plaintiff as well, there was no uniformity in describing the boundaries of the lands claimed by the respective parties. (The learned High Court Judges have only looked at the discrepancies in the Appellant's documents when the learned District Judge had looked at discrepancies in documents tendered by both sides)
- As mentioned before, Lokgamage Watta could be another name for Paranawatta as both names have been used to describe the boundary to the West of the land claimed by the Defendant (Appellant).
- There is minute line drawn on the Plan to indicate the place where the boundary between Phalawatta and Kongaha Watta situates and thus, even without considering Lot A or 1අ in respective plans as part of the Plaintiff's land, boundaries of Lot B or 1ආ in respective plans tally with the boundaries given for the Plaintiff's land.
- In our law, a co-owner can file an action against a trespasser or imminent trespasser to protect his rights and a Court can grant a lesser relief even where a bigger relief has been prayed for.

If the learned High Court Judges were able to appreciate the aforementioned facts and law, it is my view that they could not have held in favour of the Plaintiff completely setting aside the judgment delivered by the learned District Judge. It is true that in his judgment the learned District Judge had referred to the amended Plaintiff which was not accepted by court. What the learned District Judge has attempted was to show that the Plaintiff by tendering an amended plaintiff has attempted to mislead courts by indicating that there is no land named "Aramba" to the West of his land when it is contradictory to his own Deed marked P5.

Being aggrieved by the above Provincial High Court Judgment, the Appellant appealed to this Court seeking to have the Provincial High Court Judgement set aside and vacated. When the leave to appeal application was supported, this Court granted leave on 08/12/2014 in respect of the Questions of Law set out in Paragraph 18 c, e, f, h and i of the Petition dated 12/12/2012. Those Questions of Law are as follows:

*c. Has the learned Provincial High Court Judge erred in law by coming to the conclusion that the Plaintiff has proved the corpus in the light of the finding that on the pleadings of the Plaintiff and the Deeds marked "P3", "P4" and "P5", the western boundary of "Thala Yatapil Owita" is the "Agala seperating Aramba (අරම වෙනවන අංශු)"?*

*e. Has the learned Provincial High Court Judge erred in law by failing to consider the fact that the learned District Judge has clearly held that the **Plaintiff has attempted to mislead Court** on the question that there is no land called "**Aramba**" to the west of "Thala Yatapil Owita"?*

f. *Has the learned Provincial High Court Judge erred in law by failing to give due weight to the Plaintiff's pleadings and the Deeds marked "P3", "P4", and "P5"?*

h. *Has the learned Provincial High Court Judge erred in law by reversing a finding of fact by the learned District Judge based on the credibility of the Witnesses before the said District Court?*

i. *Has the learned Provincial High Court Judge, upon holding that it is very clear that the western boundary in the schedule to the Plaint is described as "Agala seperating Aramba (අරම් වෙන්වන අගල)" and as shown in the deeds marked P3, P4, and P5 the western boundary of the Plaintiff's land called 'Ihala Yatapil Owita' is Agala seperating Aramba (අරම් වෙන්වන අගල), erred gravely in law in holding that;*

*i. it is abundantly clear that the entire land includes lots no. "A" and "B" of Plan 533/AV (marked as "X" at the trial)? and*

*ii. it cannot be assumed that the ditch shown between lot "lඅ" and "lආ" in Plan 546/AV (marked as "Y" at the trial), is the western boundary of the Plaintiff's land? and*

*iii. lots "A" and "B" of Plan No. 533 (marked as "X" at the trial) cannot be considered as separate lots as stated by the Defendant - Respondent?*

An additional question of law was also framed by the Court on 08/12/2014, which is as follows,

*"Can the Petitioner (Appellant) claim the relief sought for if he is "co-owner?"*

As per the discussion of relevant facts and reasons adumbrated above, the above questions of law including the additional question of law can be answered in the affirmative in favour of the Appellant. Hence, the Judgment of the learned High Court Judges dated 01.11.2012 is set aside and the Judgment of the learned District Judge dated 25.07.2006 is restored subject to the condition that the typographical error observed above should stand amended in accordance with this Judgment.

.....

Judge of the Supreme Court.

P. Padman Surasena, J.

I agree.

.....

Judge of the Supreme Court.

Mahinda Samayawardhena, J

I agree.

.....

Judge of the Supreme Court.