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

In the matter of an 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: 145/2010
SC/HCCA/LA No: 10/2010
CP/HCCA/Kandy/16/2001(F)
DC Matale Case No: 4459/L

Ummu Jesseema Samsudeen,
Wife of Sahurdeen,
No. 14, Tharalanda Road, Matale.

PLAINTIFF

Vs.

1. Matale Municipal Council,
   Matale.

2. Yasabandu Samaraweera,
   Municipal Commissioner,
   Municipal Council, Matale.

DEFENDANTS

And between

1. Matale Municipal Council,
   Matale.

2. Yasabandu Samaraweera,
   Municipal Commissioner,
   Municipal Council, Matale.

DEFENDANTS – APPELLANTS

Vs.

Ummu Jesseema Samsudeen,
Wife of Sahurdeen,
No. 14, Tharalanda Road, Matale.

PLAINTIFF – RESPONDENT

And now between

Ummu Jesseema Samsudeen,
Wife of Sahurdeen,
No. 14, Tharalanda Road, Matale.

PLAINTIFF – RESPONDENT – APPELLANT

1. Abdul Hameed Sahurdeen,
   No. 14, Tharalanda Road, Matale.

2. Mohammed Anas Shafee,
   No. 7A, Tharalanda Road, Matale.

SUBSTITUTED – PLAINTIFF – RESPONDENT – APPELLANTS

Vs

1. Matale Municipal Council,
   Matale.

2. Yasabandu Samaraweera,
   Municipal Commissioner,
   Municipal Council, Matale.

2A. B.C.R. Baba Pajohn,
   Municipal Commissioner,
   Municipal Council, Matale.

2B. Yuresh Nishantha Maduwage,
   Municipal Commissioner,
   Municipal Council, Matale.

DEFENDANTS – APPELLANTS – RESPONDENTS

Before: **Murdu N.B. Fernando, PC, CJ**
Arjuna Obeyesekere, J
K. Priyantha Fernando, J

Counsel: W. Dayaratne, PC with Ranjika Jayawardena for the Substituted Plaintiff – Respondent –Appellants

Harsha Soza, PC with Srihan Samaranayake for the Defendants – Appellants – Respondents

Argued on: 11th December 2024

Written Submissions: Tendered by the Substituted Plaintiff – Respondent – Appellants on 15th March 2011 and 23rd January 2025

Tendered by the Defendants – Appellants – Respondents on 7th March 2011, 28th November 2022 and 15th January 2025

Decided on: 20th March 2025

Obeyesekere, J

Introduction

The Plaintiff – Respondent – Appellant [**the Plaintiff**] filed action in the District Court of Matale on 25th August 1992 seeking a declaration of title to the land morefully referred to in the schedule to the plaint containing an extent of 6P, and the ejection from the said land of the 1st Defendant – Appellant – Respondent, the Municipal Council, Matale, the 2nd Defendant – Appellant – Respondent, the Municipal Commissioner of the 1st Defendant [collectively the **Defendants**], and everyone else holding and/or occupying the said land through the 1st Defendant. A subsequent commission that was issued revealed that the extent of land that the Defendants were said to have encroached in October 1991 is situated on the southern boundary of the land referred to in the plaint, and was approximately 1.1P in extent.

The Defendants denied that it had encroached on to a land belonging to the Plaintiff and claimed that the disputed land formed part of a larger land that had been vested in the 1st Defendant by the State in 1923. The land claimed by the 1st Defendant was (a) said to

be part of Lot No. 172 depicted in the Matale Town Survey Plan No. 1 15/60B East [**V3**] having an extent of 1R 22.7P, (b) morefully referred to in the schedule to the answer, and (c) depicted in survey plan No. 3912 dated 26th July 1991 [**V5**] drawn by K.S. Samarasinghe. The Defendants accordingly prayed for a declaration that the said land is owned by the 1st Defendant. According to Plan No. 3644 dated 23rd September 1996 prepared by S. Ranchagoda [**V2**] and the Surveyor's Report attached thereto [**V2a**], the extent of land that the Defendants claim the Plaintiff had encroached was determined as 1.3P.

Thus, the primary issue between the parties was whether the impugned extent of land was situated on the southern boundary of the Plaintiff's land to which the Plaintiff claimed title, or whether such land was situated on the northern boundary of the land that the Defendants claimed had been vested by the State in the 1st Defendant.

The trial proceeded before the District Court with both the Plaintiff and the 1st Defendant claiming paper title to the impugned property. The Plaintiff led the evidence of three witnesses and relied on two deeds, Deed of Gift No. 767 dated 4th April 1963 [**P1**] and Deed of Gift No. 1614 dated 22nd July 1931 [**P12**] to establish her title to the premises referred to in the schedule to the plaint, bearing assessment No. 75. The Plaintiff also claimed that the land referred to in P1 has been correctly set out as Lot No. 5 in Plan No. 2832 dated 30th March 1963 [**P2**]. In terms of P2, the extent of Lot No. 5 was 6P, which was the extent given in P1, as well. In addition to such paper title, the Plaintiff claimed that in any event, she had been in possession of the entire extent of land including the disputed extent of land since 1963 and that she has prescribed to the disputed extent of land. The Defendants led the evidence of four witnesses and produced several documents but failed to produce any document to establish that the said land had been vested by the State in the 1st Defendant.

By its judgment delivered on 10th May 2001, the District Court held that P1 and P12 establishes the title of the Plaintiff to the land referred to in the plaint and that in any event, the Plaintiff has prescribed to the disputed extent of land. The cross claim of the Defendants had accordingly been dismissed.

On an appeal filed by the Defendants, the Civil Appellate High Court of the Central Province [the High Court] held that the Plaintiff had failed to establish her title to the

impugned land. The High Court however did not consider whether the Plaintiff had prescriptive title to the impugned extent of land. The High Court also held that the Defendants had not placed sufficient evidence in support of its claim that the land referred to in the schedule to the answer had been vested in the 1st Defendant by the State. Thus, the position of the High Court was that neither party had established title. The resultant position was that the Defendants were permitted to occupy the impugned extent of land which admittedly the Defendants had encroached upon only in October 1991, disregarding the fact that the Plaintiff had been in possession of such land since 1963.

Questions of law

Aggrieved by the judgment of the High Court, the Plaintiff sought and obtained leave to appeal on the following questions of law:

(1) Did the High Court seriously misdirect itself when it held that the Plaintiff has failed to prove her title to the corpus taking into consideration the Deed P1 when there is sufficient material before the High Court to show that the Plaintiff has clear and cogent paper title to the corpus?

(2) Did the High Court fail to consider the findings of the District Court that the Plaintiff has acquired prescriptive title to the corpus by being in possession for well over 28 years and in the absence of any issue by the Defendants regarding the title of the Plaintiff?

(3) Did the High Court come to an erroneous conclusion that since the Plan P2 has not been referred to in the Deed P1 and also the mortgage bond V1, the Plaintiff cannot claim Lot No. 5 in P2 when the District Court has very clearly compared P1 and P2 and has come to a correct conclusion that the boundaries in Lot No. 5 in P2 and also the assessment No. 75 tallies with the boundaries described in P1?

Although its prayer for a declaration of title to the land referred to in the schedule to the answer had been rejected by the High Court, the Defendants did not seek leave to appeal against the judgment of the High Court nor did the Defendants raise any question of law in that regard before this Court.

The *Rei Vindicatio* action

This being a *rei vindicatio* action, I shall first identify the matters that a plaintiff in a *rei vindicatio* action must prove in order to succeed.

In **Mihindukulasuriya Sudath Harrison Pinto and Others v Weerappulige Piyaseeli Fernando and Others** [SC Appeal No. 57/2016; SC minutes of 11th September 2023], Samayawardhena, J had carried out an extensive examination of the law relating to a *rei vindicatio* action and stated that, *"In order to succeed in a rei vindicatio action, first and foremost, the plaintiff shall prove his ownership to the property. If he fails to prove it, his action shall fail. This principle is based on the Latin maxim "onus probandi incumbit ei qui agit", which means, the burden of proof lies with the person who brings the action."*

In arriving at the above conclusion, Samayawardhena, J cited with approval three judgments of this Court. The first is the judgment in **De Silva v Goonetilleke** [32 NLR 217] where Chief Justice Macdonell stated [at page 219] that, "*There is abundant authority that a party claiming a declaration of title must have title himself: 'To bring the action rei vindicatio plaintiff must have ownership actually vested in him'. (1 Nathan p. 362, s. 593.) ....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."*

The second is the judgment in **R.W. Pathirana v R.E. De S. Jayasundara** [58 NLR 169] where, Gratiaen J. declared [at page 172] that, *"In a rei vindicatio action proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. "The plaintiff's ownership of the thing is of the very essence of the action". Maasdorp's Institutes (7th Ed.) Vol. 2, 96."*

The third is the judgment delivered by G.P.S. De Silva, J (as he then was) in **Mansil v Devaya** [(1985) 2 Sri LR 46] where he stated [at page 51] that, "*In a rei vindicatio action, on the other hand, ownership is of the essence of the action; the action is founded on ownership.*"

In the South African case of **De Vos v Adams and Others** [(2016) ZAWCHC 202] referred to in **Mihindukulasuriya** [supra], Davis, J stated as follows:

"*Turning specifically to the rei vindicatio it is clear that there are three requirements which the owner must prove on a balance of probabilities, in order to succeed with the particular action. Firstly, the applicant must show his or her ownership in the property. In the case of immovable property it is sufficient as a result to show the title in the land is registered in his or her name. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed. Thirdly, the defendant must be in possession or detention of the property at the time that the action is instituted.*"

Thus, in order to succeed, a plaintiff in a *rei vindicatio* action must identify the land, establish title thereto and demonstrate that the defendant is in possession of such land.

Burden of proof in a *rei vindicatio* action

Referring to the obligation of a plaintiff in a *rei vindicatio* action to establish the title to the land, Chief Justice Dep stated in **Kuruwitage Don Preethi Anura and others v Makalandage William Silva and another** (SC Appeal No. 116/2014; SC Minutes of 5th June 2017), that the, "*Plaintiff need not establish the title with mathematical precision nor to prove the case beyond reasonable doubt as in a criminal case. The plaintiff's task is to establish the case on a balance of probability.*"

This position was echoed in **Mihindukulasuriya** [supra] where this Court referred with approval to the following paragraph in **Wille's Principles of South African Law** [9th Edition (2007); at page 539]:

"*To succeed with the rei vindicatio, the owner must prove **on a balance of probabilities**, first, his or her ownership in the property. If a movable is sought to be recovered, the owner must rebut the presumption that the possessor of the movable is the owner thereof. In the case of immovables, it is sufficient as a rule to show that title in the land is registered in his or her name. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed. Money, in the form of coins and banknotes, is not easily identifiable and thus not easily vindicable. Thirdly, the defendant must be in possession or detention of the thing at the moment the action is instituted. The rationale is to ensure that the defendant is in a position to comply with an order for restoration.*" [emphasis added]

In **Theivandran v Ramanathan Chettiar** [(1986)] 2 Sri LR 219; at page 222], Chief Justice Sharvananda stated as follows:

> *"In a vindicatory action the claimant need merely prove two facts; namely, that he is the owner of the thing and that the thing to which he is entitled to possession by virtue of his ownership is in the possession of the defendant. Basing his claim on his ownership, which entitles him to possession, he may sue for the ejectment of any person in possession of it without his consent.* ***Hence when the legal title to the premises is admitted or proved to be in the plaintiff, the burden of proof is on the defendant to show that he is in lawful possession****."* [emphasis added]

A similar view was expressed in **Mihindukulasuriya** [supra] where it was held that, "*When the paper title to the property is admitted or proved to be in the plaintiff, the burden shifts to the defendant to prove on what right he is in possession of the property.*"

Title of each party

Chief Justice G.P.S. de Silva referring to the criterion to be adopted in a *rei vindicatio* action in respect of the burden of proof stated in **Banda v Soyza** [(1998) 1 Sri LR 255; at page 259] that, "*In a case such as this, the true question that a court has to consider on the question of title is, who has the superior title? The answer has to be reached upon a consideration of the totality of the evidence led in the case*."

In **Ballantuda Achchige Don Wasantha v Morawakage Premawathie and others** (SC Appeal No. 176/2014; SC Minutes of 17th May 2021), it was held that, "*Notwithstanding that in a rei vindicatio action the burden is on the plaintiff to prove title to the land no matter how fragile the case of the defendant is, the Court is not debarred from taking into consideration the evidence of the defendant in deciding whether or not the plaintiff has proved his title. Not only is the Court not debarred from doing so, it is in fact the duty of the Court to give due regard to the defendant's case, for otherwise there is no purpose in a rei vindicatio action in allowing the defendant to lead evidence when all he seeks is for the dismissal of the plaintiff's action.*"

The above position has been summarised in **Mihindukulasuriya** [supra] in the following manner:

> "*Whilst emphasising that (a) the initial burden in a rei vindicatio action is on the plaintiff to prove ownership of the property in suit and (b) the standard of proof in a rei vindicatio action is proof on a balance of probabilities, if the plaintiff in such an action has "sufficient title" or "superior title" or "better title" than that of the defendant, the plaintiff shall succeed. No rule of thumb can be laid down in what circumstances the Court shall hold that the plaintiff has discharged his burden. Whether or not the plaintiff proved his title shall be decided upon a consideration of the totality of the evidence led in the case.*"

The case for the Plaintiff

This being the legal position, I shall now proceed to consider the evidence presented by the parties before the District Court and the findings of the District Court and the High Court in order to answer the questions of law and arrive at a decision in this case.

I must at the outset refer to the following two matters:

(1) The claim of the 1st Defendant that it has paper title to the impugned land has been rejected by the District Court as well as by the High Court and is no longer a live issue.

(2) The Plaintiff states that in October 1991, she made an application to the 1st Defendant to construct a building on the southern boundary of her land which the Plaintiff claims is part of Lot No. 5 on P2 and which had been occupied by the Plaintiff since 1963 in terms of P1. She states further that instead of considering her application, the 1st Defendant had claimed that the impugned extent of land belongs to the 1st Defendant and that the Plaintiff had encroached on to the Defendant's land identified as Lot No. 172 of V5, which Lot No. 172 is situated on the southern boundary of the Plaintiffs land. The 1st Defendant had thereafter forcibly commenced the construction of shops on the impugned land. The Defendants and those acting under the Defendants who came into occupation of the said land on or around 18th October 1991 are currently in occupation of the disputed extent of land.

Thus, the third matter that a plaintiff in a *rei vindicatio* action must prove, that being whether the Defendants are in possession of the land has been established.

The issue that needs to be determined therefore is whether the Plaintiff has established on a balance of probability that she has sufficient title to the land referred to in the plaint.

By Deed of Gift No. 1614 dated 22nd July 1931 [**P12**], Mohammadu Cassim had transferred to his son, Mohammed Samsudeen a divided 1/7th share from and out of a land called *Kelawendathotam* also known as *Nakiyagewatta* situated within the limits of the Urban Council of Matale. According to P12, the entire extent of the land was ten nellies kurakkan sowing which meant that the divided share was 1 3/7 nellies kurakkan sowing [i.e. 10 x 1/7].

The boundaries of the land as given in P12 were as follows:

North – the remaining portion of the land owned by Samsudeen

East – the High Road presently known as Gongawela Road

West – the portion of the land owned by Andrew Wijesinghe

South – the limit of the land belonging to the Matale Urban Council

The Plaintiff states that the said land was surveyed by B.S.A. Kroon on 30th March 1963, and that Plan No. 2832 [P2] was prepared. In its legend, **P2 refers to the survey being of assessment Nos. 75**, 77, 79, 81 and 83 of Gongawela Road and confirms that assessment No. 75 depicted as Lot No. 5 in P2 is 6P in extent.

By Deed of Gift No. 767 dated 4th April 1963 [**P1**], Mohammed Samsudeen had transferred to his daughter, the Plaintiff in this case, **a land bearing assessment No. 75**, Gongawela Road, which has been referred to as follows in the schedule to P1:

"*All that divided 1/7th share from and out of the land called Kelawendathotam alias Nakiyagewatte situated at Gongawela … presently within the Urban Council limits of*

Matale … in extent ten nellies kurakkan sowing and which said divided share of the extent of one and three seventh nellies kurakkan sowing or ***six perches****…*"

The boundaries of the land transferred to the Plaintiff by P1 have been described in P1 as follows:

North – the remaining portion of this land and the wall of premises bearing assessment No. 77, Gongawela Road

East – Gongawela Road

West – the land owned by Andrew Wijesinghe currently owned by S.I.M. Mohideen

South - the limit of the land belonging to the Matale Urban Council

It must be noted that P1 does not refer to P2 (or to any other survey plan), although P2 had been prepared five days prior to the execution of P1. Be that as it may, it is the position of the Plaintiff that:

(a) the land referred to in P12 is the same land in P1;

(b) the extent of the land given in P12 as being "*1 3/7 nellies kurakkan sowing*" was equivalent to 6P, as morefully referred to in P1;

(c) Lot No. 5 in P2 in extent of 6P is the same land referred to in P1; and

(d) the land referred to in P1 and Lot No. 5 in P2 bears the same assessment number (75).

The Plaintiff therefore relied upon P1 to support her title to premises bearing assessment No. 75 in extent of 6P.

It is clear from P1 and P12 that the Eastern boundary of both lands is the Gongawela Road. It is admitted that the land referred to as the Southern boundary of the land in P1 and P12 is Lot No. 172 depicted in V3 in extent of 1R 22.7P. According to V3, Lot No. 172 is bounded on the East by Gongawela Road, as well, and on the North by Lot No. 152. It is seen from

V3 that Lot Nos. 152 and 172 are contiguous lots of land. The Plaintiff states that the land claimed by her is situated on the southern boundary of Lot No. 152, with the Defendants position being that the Plaintiff has gone beyond the southern boundary of Lot No. 152 and encroached onto the northern boundary of Lot No. 172. Thus, neither party disputed the identity of the land during the trial before the District Court.

The learned President's Counsel for the Defendants however submitted that the Plaintiff has failed to establish the identity of her land for the reason that even though P2 was in existence at the time P1 was executed, P1 does not refer to any survey plan. While it is true that P1 does not refer to P2, the boundaries given in P1 and P12 are identical while three of the boundaries tally with those in P2. What is critical is that (a) the eastern boundary referred to in all three documents is the Gongawela Road, (b) the southern boundary as at April 1963 is Lot No. 172, and (c) both these boundaries are fixed boundaries. Furthermore, P2 specifically refers to the land set out therein as being assessment No. 75, which assessment No. 75 is also referred to in P1. Thus, there is no issue with regard to the identity of the land of the Plaintiff and it is clear that the land in P1 is the land that has been set out in P2.

While the Northern, Eastern and Western boundaries of P2 are identical to the boundaries in P1, it is noted that the Southern boundary of assessment No. 75, that being the land claimed by the Plaintiff in terms of P1, has a wire fence, followed by a path way/road, a drain and finally the grain stores of the 1st Defendant which is situated on Lot No. 172. The presence of a road at the northern boundary of Lot No. 172 is confirmed by Plan No. 3644 dated 23rd September 1996 [**V2**]. Thus, compared with the boundaries given in P1 and P2 in 1963, there has been a change to the Southern boundary in that there is now a road way separating Lot No. 152 from Lot No. 172.

The case for the Plaintiff therefore is that her grandfather, Mohammadu Cassim gifted the said land to her father Mohammed Samsudeen by P12 and that Samsudeen in turn gifted it to the Plaintiff by P1. The Plaintiff states that she contracted a marriage soon after the execution of P1 and that she has been in occupation of the said land now depicted as Lot No. 5 in P2 bearing assessment No. 75 and in extent of 6P since 1963. While P12 had been executed in 1931, by the time P1 came to be marked in 1998, a period of over 30 years had lapsed since its execution. With no objection having been raised to P1 and P12, on

the face of it, the Plaintiff has discharged the evidentiary burden cast on her that she has title to the entirety of the land referred to in P1 and P12, the extent of which is 6P.

Has the Plaintiff encroached on to Lot No. 172

The learned President's Counsel for the Defendants submitted that the total extent of the land owned by the Plaintiff is only 4.7P and that the Plaintiff has encroached on to the adjoining land of the 1st Defendant, that being Lot No. 172 of V3. This submission was based on Plan No. 3644 [**V2**] prepared by S. Ranchagoda who has surveyed Lot No. 172 on 23rd September 1996. According to V2, the total extent of the land claimed by the 1st Defendant is 1R 24.2P which is 1.5P more than the extent of 1R 22.7P shown in V3 and referred to in the schedule to the answer. Even though it is claimed in the surveyor's report [**V2a**] that the Plaintiff has encroached on the northern part of the land claimed by the 1st Defendant with the extent of such encroachment being 1.3P, that cannot be for the reason that according to V2, the extent of Lot No. 172 has increased by 1.5P. This increase is almost identical to the disputed extent claimed by the Plaintiff.

Prior to V2, Lot No. 172 was surveyed on 26th July 1991 – vide V5. While V5 sets out 4 lots, the extent of all four lots is given as 1R 22.7P which is identical to the extent of Lot No. 172 given in the schedule to the answer. V5 shows three encroachments on the western boundary the total extent of which is 3.25P. What is critical is that while the northern boundary is shown as Lot No. 152, no encroachments have been shown on the disputed northern boundary nor does the surveyor claim that the extent of the land is less than what it was in 1923. In other words, in terms of V5 produced by the Defendants, the Plaintiff has not encroached on to the land claimed by the 1st Defendant.

The land of the Plaintiff was surveyed on 11th September 1995 by M. Rajasekeran pursuant to a Commission issued by Court - vide Plan No. 3516 [**X**]. According to the Surveyor's Report [**Y**] attached to 'X', Lot No. 5 in P2 has been super imposed on 'X'. While the total extent of the land of the Plaintiff has remained at 6P, 'X' shows the encroachment by the Defendants as being 1.1P in extent, leaving the Plaintiff with only 4.9P. What is important is that the said encroachment is within the southern boundary of the Plaintiff's land. With the extent of the Plaintiff's land remaining static, it is clear that the Defendants have encroached on to the Plaintiff's land.

This is confirmed by the Surveyor who states in 'X' that, "ගරු අධිකරණයේ නියෝගය පරිදි බලයලත් මිනින්දෝරු බී.එස්. කෘෂ්ණ් මයාගේ අංක 2832 දරණ පිඹුරේ කැබලි අංක 5 ලෙස පෙන්වා ඇති කොටස මා විසින් මනින ලද අංක 3516 දරණ පිඹුර මත අධිස්ථාපනය කළෙමි. මෙසේ අධිස්ථාපණය කර බලන විට මාගේ ඉහත සඳහන් පිඹුරේ ඇති පරිදි X.R.P.O ලෙස පෙන්වා ඇති කොටස තුල එනම් පැමිණිලිකරුගේ ඉඩමේ (මෙම කොටස තුල) මහ නගරසභාව විසින් අළුතින් සාදා ඇති ගොඩනැගිල්ලේ කොටසක් තිබෙන බව පෙනි යයි. මෙම කොටසේ X.R.P.O.C. දරණ කොටසේ ප්‍රමාණය පර්චස් 1.10 වේ."

The learned President's Counsel for the Defendants also sought to argue that in any event, the extent of land that the Plaintiff is entitled to in terms of P1 is only 3.58P and that the rest is through an encroachment of the land of the 1st Defendant. His position was that even though P1 gives the extent of land as 6P, the actual extent of the land as given in P12 is *"one and three seventh nellies kurakkan sowing"*. The learned President's Counsel for the Defendant submitted that 4 nellies is 1 laha, 1 laha is 10P, therefore 1 nelli is approximately 2.5P and that 1 3/7 nellies is 3.58P. He therefore submitted that 3.58P is the maximum extent of land that the Plaintiff can have in terms of P1 and P12 and that anything in excess is an encroachment of Lot No. 172.

Annexed to the judgment of the Court of Appeal in **Ratnayake and others v Kumarihamy and others** [(2002) 1 Sri LR 65] as 'Annexure 1' was the 'Ancient measures of capacity and surface' which states [at page 74] that, "*The 'Laha' was also a measure of varying size. Within the same district and sometimes in the same Chief Headman's division, in different parts, a different size of Laha was in use. In the North-Western Province alone, in different parts, these are in use even today, four sizes of 'Lahas' containing in capacity, 4, 5, 6 and 7 'Neliyas', respectively. The largest size of 'Laha' according to my investigations is one in use in the Inamaluwa Korale of Matale North, and contains twelve 'Nelis'.* "

Annexure 2 is the 'Sinhalese Land Measures' in terms of which 1 laha is 10P. However, Annexure 2 goes on to state [at page 81] that, "*The above table giving the English equivalents refers to paddy sowing. In the case of kurakkan sowing 1 laha is equivalent to 1 acre … Generally high land is measured in kurakkan and low lands (fields) in paddy.*"

It will thus be seen that it is not possible to determine the extent of P1, which incidentally is '*kurakkan sowing*' and not '*paddy sowing*' by referring to the ancient measures of capacity and surface. This was in fact pointed out by Weerasuriya, J, P/CA (as he then was)

in **Ratnayake and others v Kumarihamy and others** [supra] when he stated [at page 68] that, "*The extent given in the deed by which the plaintiff-respondent got rights (P5) is 4 lahas of Kurakkan sowing extent. Learned Counsel for the defendant-appellants contended that the English equivalent to the customary Sinhala measure of sowing of one laha is one acre. However, it is to be noted that this system of land measure computed according to the extent of land required to sow with paddy or Kurakkan vary due to the interaction of several factors. The amount of seed required could vary according to the varying degress of fertility of the soil, the size and quality of the grain, and the peculiar qualities of the sower. In the circumstances, it is difficult to correlate sowing extent accurately by reference to surface areas (vide Ceylon Law Recorder, vol. XXII, page XLVI)*."

Thus, not only has the 1st Defendant failed to show that it is in lawful possession of the impugned land, both arguments of the Defendants that the Plaintiff has less than 6P of land and that the Plaintiff has encroached on to the land claimed by the 1st Defendant must fail.

Findings of the District Court

With the Plaintiff having established that she has sufficient title to the land referred to in the schedule to the plaint, the District Court arrived at the following finding:

> "පැ. 1 දරණ ඔප්පුවෙන් ලැබුනු දේපල පැ. 2 දරණ පිඹුරේ සඳහන් දේපලද, යන ප්‍රශ්ණය අධිකරණය තීරණය කලයුතු වේ. පැමිණිලිකාරිය වෙනුවෙන් සාක්ෂි දි ඇති ඇයගේ ස්වාමිපුරුෂයාද පැහැදිලි ලෙසම පවසා ඇත්තේ, පැ.1 දරණ ඔප්පුවෙහි සඳහන් බිම් කොටස පැ.2 දරණ පිඹුරේ අංක 5 වශයෙන් දන්වා ඇති බිම් කොටස බවයි. එහි වරිපනම් අංකය 75 වේ. මිනින්දෝරු රාජසේකරන් විසින් එකි පැ.2 දරණ පිඹුර මත අංක 5 දරණ කොටස අධිෂ්ඨාපනය කරමින් අධිකරණයේ කොමිසමක් මත සැලැස්මක් සකස් කර ඇත. මිනින්දෝරු රාජසේකරන් පැමිණිල්ල වෙනුවෙන් අධිකරණය ඉදිරියේ සාක්ෂි දෙමින්, එකි සැලැස්ම වන අංක 3516 සහ 1995.09.11 වන දින දරණ සැලැස්ම එක්ස් වශයෙන් ලකුණු කර ඉදිරිපත් කර ඇත. ඔහුගේ සාක්ෂිය අනුව පැ.2 දරණ සැලැස්මේ අංක 5 දරණ කොටස මත අධිෂ්ඨාපනය කල බවත්, ඒ අනුව එක්ස් දරණ පිඹුරේ රතු ඉරි මගින් අධිෂ්ඨාපිත මායිම් පෙන්වා ඇති බවත් පවසයි.
>
> එකි පිඹුරෙහි X R P O වශයෙන් දක්වා ඇති පර්චස් 1.10 විශාල ප්‍රමාණය මහ නගර සභාව විසින් තනන ලද ගොඩනැගිල්ලේ කොටස ලෙස සඳහන් කරයි. ඉතිරි ඉඩම් කොටස B F R X O M Q සහ ලොට් එක්ස් වශයෙන් සඳහන් කර ඇත. මිනින්දෝරුවරයා පවසන්නේ ඔහුගේ අධිෂ්ඨාපනය අනුව පැ.2 දරණ පිඹුර අනුව සලකා බැලීමේදි පැමිණිලිකාරියගේ ඉඩමේ කොටසක් විත්තිකාර මහනගර සභාව විසින් ප්‍රසර්පනය කර ඇති බවයි. එහි තුල අලුතින් ගොඩනැගිලිද තනා ඇති බව තවදුරටත් මිනින්දෝරුවරයා පවසයි. මෙම සක්ෂිය පැමිණිලිකාරියගේ ස්වාමිපුරුෂයාගේ සාක්ෂිය හා ඥාති

සහෝදරයාගේ සාක්ෂිය හා සංසන්දනය කිරීමේදි පැමිණිලිකාරියගේ ඉඩම් කොටසෙහි අනන්‍යතාවය පිළිබඳ කරුණු මැනවින් ඔප්පු කරයි.

පැ.2 දරණ පිඹුර සාදා දින 04 කට පසු ලියා සහතික කර ඇති පැ.1 ඔප්පුවෙහි, පැ.2 දරණ පිඹුර සඳහන් නොවීමේ හේතුව මතම, පැමිණිලිකාරියගේ නඩුව ව්‍යාර්ථ නොවේ. ඉදිරිපත්වී ඇති අනෙකුත් සක්ෂි සියල්ල සලකා බැලීමේදි පැ.1 දරණ ඔප්පුවේහි විස්තර කර ඇත්තේ පැ.2 දරණ පිඹුරේ අංක 5 ලෙස සඳහන් කර ඇති ඉඩම් කොටස බවට මැනවින් කරුණු ඔප්පුවේ

ඉහත සඳහන් කරුනු අනුව පැ2 දරණ පිඹුරෙහි අංක 5 ලෙස දක්වා ඇති ඉඩම් කොටස පැ.1 දරණ ඔප්පුවෙන් පැමිණිලිකාරියට අයිති වූ ඉඩම් කොටස බවටත්, එම ඉඩම් කොටසට පැමිණිලිකාරියට නිත්‍යානුකූල අයිතියක් ඇති බවටත් අධිකරණය තීරණය කරයි."

The District Court was thus satisfied that while the 1st Defendant had no title at all to the impugned land, the Plaintiff had title to the entire extent of 6P referred to in P1. This conclusion is supported by both the oral and documentary evidence that was before the District Court to which I have already adverted to. In these circumstances, I am satisfied that the Plaintiff has established on a balance of probability that she had sufficient title to the impugned land.

Judgment of the High Court

The High Court did not examine the title that the Plaintiff had established and which had been relied upon by the District Court. Instead, the High Court proceeded on a voyage of its own when it held that P1 and P12 have not been proved. The relevant parts from the judgment of the High Court are set out below:

"ඒ අනුව පැමිණිලිකාර වගඋත්තරකාරියගේ පැ.1 ඔප්පුවෙන් තමන්ට අයිතිවාසිකම් හිමිකර දුන් තම පියා වන මොහොමඩ් සම්සුදින් යන අයහට අංක 1614 දරණ ඔප්පුව මත සහ අංක 1678 දරණ ඔප්පුව මත මෙම ඉඩම සම්බන්ධයෙන් අයිතිවාසිකම් හිමිව තිබු බව සාක්ෂි මගින් තහවුරු කර සිටීමට ක්‍රියා කර නොමැති බව මෙම අධිකරණයට පෙනි යයි.

ඒ අනුව සළකා බැලීමේදි පැමිණිලිකාර වගඋත්තරකාරියට තමන්ව පැ.1 දරණ ඔප්පුවෙන් අයිතිවාසිකම් හිමිකර දුන් තමාගේ පියාට නාකියාකේ වත්ත ඉඩම සම්බන්ධයෙන් අංක 1678 දරණ ඔප්පුවෙන් අයිතිවාසිකම් හිමිව තිබීම පිළිබඳව සාක්ෂි මගින් තහවුරු කිරීමට ක්‍රියා කර නොමැති බව පෙනියයි. ඒ අනුව සළකා බැලීමේදි විත්තිකාර අභියාචක පාර්ශවය වෙනුවෙන් තර්ක කර සිටින පරිදි පැමිණිලිකාර වගඋත්තරකාර පාර්ශවයට පැ.1 ඔප්පුවේ උපලේඛනයේ විස්තර කර ඇති ඉඩමේ අයිතියවාසිකම් තම පියාට හිමිවුවා යයි කියනු ලබන ඔප්පු දෙක ඉදිරිපත් කර පැමිණිලිකාර වගඋත්තරකාරියගේ මෙම ඉඩමට ඇති අයිතිය තහවුරු කිරීමට ක්‍රියා කර නොමැති බව පෙනියයි. ඒ අනුව සලකා බැලීමේදි පැමිණලිකාර වගඋත්තරකරිය පැ1 ඔප්පුවේ උපලේඛනයේ විස්තර කර ඇති ඉඩමේ අයිතිය තහවුරු කිරීමට අපොහොසත් වී ඇති බවත් ඒ අනුව මුලිකව

පැමිණිල්ල එම කරුණ මත නිශ්ප්‍රභා කළයුතු බවට චිත්තිකාර අභියාචක පාර්ශ්වය වෙනුවෙන් ඉදිරිපත් කරන ලද තර්කය හා මෙම අධිකරණයට එකඟ වීමට සිදුවන බවත් පෙනියයි."

The High Court came to the above conclusion in spite of P12 having been executed in 1931 and P1 in 1963, and in spite of P1 and P12 having been marked without any objection during the trial. In arriving at such conclusion, the High Court has clearly disregarded the provisions of Section 90 of the Evidence Ordinance. I am therefore of the view that the High Court clearly erred when it held that P1 and P12 have not been proved. In any event, the High Court has completely disregarded the prescriptive title of the Plaintiff, on which the Plaintiff was entitled to succeed.

Conclusion

In the above circumstances, I answer the three questions of law in the affirmative. The judgment of the High Court is accordingly set aside, the judgment of the District Court is affirmed, and the appeal is allowed. The Plaintiff shall be entitled to costs before all three Courts.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando, PC, CJ

I agree.

CHIEF JUSTICE

K. Priyantha Fernando, J

I agree.

JUDGE OF THE SUPREME COURT