

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

In the matter of an application for Appeal from the Judgment dated 26/10/2018 in Appeal No. CP/HCCA/KANDY/110A/2015 (F) in terms of Section 5C (1) of the Act No. 54 of 2006.

1. Karapperu Wijethunga Rajapaksha
Mudiyanselage Dhammadika Kumara
Wijethunga

Appearing by his Power of Attorney,
Kapilasena Wijethunga of
Dorakumbura,
Dunkolawatta.

2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura,
Dunkolawatta.

Plaintiffs

**SC Appeal No: 135/2019
SC/HC(CA)/LA No. 422/2018
CP/HCCA/Kandy Case No.
110/2015 (FA)
DC Matale No. L/5714/2003**

Vs.

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyarathna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant

AND BETWEEN

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyarathna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant-Appellant

Vs.

1. Karapperu Wijethunga Rajapaksha
Mudiyanselage Dhammadika Kumara
Wijethunga
Appearing by his Power of Attorney,
Kapilasena Wijethunga of
Dorakumbura, Dunkolawatta.

2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura, Dunkolawatta.

Plaintiff-Respondents

AND NOW BETWEEN

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyarathna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant-Appellant-
Petitioner-Appellant

Vs.

1. Karapperu Wijethunga Rajapaksha
Mudiyanselage Dhammadika Kumara
Wijethunga of
Dorakumbura, Dunkolawatta.

2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura, Dunkolawatta.

Plaintiff-Respondent-
Respondent-Respondents

In the matter of an application for Appeal
from the Judgment dated 26/10/2018 in
Appeal No. CP/HCCA/KANDY/110A/2015
(F) in terms of Section 5C (1) of the Act No.
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1. Karapperu Wijethunga Rajapaksha
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2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura, Dunkolawatta.

Plaintiffs

SC Appeal No: 149/2019
SC/HC(CA)/LA No. 425/2018
CP/HCCA/Kandy Case No.
110A/2015 (FA)
DC Matale No. L/5714/2003

Vs.

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyarathna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant

AND BETWEEN

1. Karapperu Wijethunga Rajapaksha
Mudiyanselage Dhammadika Kumara
Wijethunga of
Dorakumbura,
Dunkolawatta.
2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura, Dunkolawatta.

Plaintiff-Appellants

Vs.

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyarathna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant-Respondent

AND NOW BETWEEN

Gamadikari Mudiyanselage
Undiyagedera Ranjith Ariyaratna of
No. 91, Viduhala Mawatha,
Aluvihara, Matale.

Defendant-Respondent-Petitioner

Vs.

1. Karapperu Wijethunga Rajapaksha
Mudiyanselage Dhammadika Kumara
Wijethunga of
Dorakumbura, Dunkolawatta.
2. Dugganna Wijeratna Wasala Mudiyanse
Ralahammilage Madewatta Wallawewe
Dammantha Kumari Dehigama of
Dorakumbura, Dunkolawatta.

Plaintiff-Appellant-Respondents

Before: **Justice A.H.M.D. Nawaz**
Justice A.L. Shiran Gooneratne
Justice Mahinda Samayawardhena

Counsel: Hemasiri Withanachchi for the **Defendant-Respondent-Appellant** in SC. Appeal No. 149/2019 and **Appellant-Petitioner-Appellant** in SC. Appeal No. 135/2019.

Samantha Ratwatte, PC with Madhurya Bandara and U.H.K. Amunugama for the **Plaintiff-Appellant-Respondent** in SC. Appeal No. 149/2019 and **Plaintiff-Respondent-Respondent-Respondents** in SC. Appeal No. 135/2019.

Argued on: 13/09/2024

Decided on: 04/04/2025

A.L. Shiran Gooneratne J.

- [1] The Plaintiff and the Defendant in D.C. Matale Case No. L/5714/03 filed separate appeals to the Civil Appellate High Court of Kandy. The appeal filed by the Plaintiff-Appellant was allowed, while the appeal filed by the Defendant-Appellant was dismissed. Dissatisfied with the Judgment of the Civil Appellate High Court, the Defendant filed two separate appeals to this Court, bearing Case Nos. SC Appeal 149/2019 and SC Appeal 135/2019. When the said appeals were taken up for hearing, the parties consented to consolidate both appeals. The Defendant will be referred to as the ‘Defendant-Appellant’ and the Plaintiffs as the ‘Plaintiffs-Respondents’ for the purpose of determining both applications. The parties have agreed to abide by a single Judgment of this Court.
- [2] By Plaintiff dated 26/02/2003, the Plaintiffs-Respondents filed D.C. Matale Case No. L/5714/03 against the Defendant-Appellant and sought *inter alia*, a declaration of title to the property more fully described in the schedule to the Plaintiff, to evict the Defendant-Appellant from the said property and for the recovery of continuous damages until delivery of vacant possession thereof.
- [3] In their Plaintiff, the Plaintiffs-Respondents contended that the original owners of the land in the schedule to the Plaintiff, by Deed of Transfer No. 7200 dated 24/07/1978 had transferred their rights to one Rajapakse Mudiyanselage Dharmakerthi and to

the 2nd Plaintiff. The said Dharmakeerthi by Deed No. 10850 dated 28/09/1983 had transferred his ½ share to the 1st Plaintiff thus, the Plaintiffs-Respondents became entitled to the four lands namely, Seeniyagahamulawatta, Anumathigedarawatta, Rattewatta, and Sattyawatta, described as separate lands in the schedule to the Plaintiff, amalgamated and used as one land, commonly known as ‘Rattewatte’. The extent of Seeniyagahamulawatta is described in ‘neli’ and Anumathigedarawatta, Rattewatta, and Sattyawatta, are described in ‘seers’ in the customary surface measure.

- [4] To buttress their paper title, the Plaintiffs-Respondents, in paragraph 07 of the Plaintiff, contend that they are in undisturbed and uninterrupted possession of the lands for over 10 years and have acquired prescriptive title to the exclusion of others.
- [5] In paragraph 8 of the Plaintiff, the Plaintiffs-Respondents stated that on or about 15/11/2001, the Defendant-Appellant unlawfully entered the said land and having erected a fence, had commenced possession thereof.
- [6] In the Answer filed dated 07/11/2003, the Defendant-Appellant claimed that the said Deed Nos. 7200 and 10850 were fraudulent documents, and the Plaintiffs-Respondents had no right or interest in the land described as ‘Rattewatta’ in the schedule to the Answer.
- [7] In paragraphs 9 and 10 of the Answer, the Defendant-Appellant claimed that one Mudiyanse was the original owner of the said land and upon his death, his daughter Dingiri Amma succeeded to his rights. Dingiri Amma’s rights devolved on her husband Mutubanda and her child Heenbanda Dharmakeerthi and together, by Deed No. 6271 dated 19/03/1977 transferred their rights to one Karunaratne. By Deed No. 6864 dated 15/11/2001, Karunaratne transferred his rights to the land known as ‘Rattewatte’ in extent 0A. 03R. 10P., to the Defendant-Appellant, that is described in the schedule to the Answer. In paragraph 11 of the Answer, the Defendant-Appellant claims undisturbed and uninterrupted possession of the said land, for over 10 years.

- [8] In paragraph 13 of the Answer, the Defendant-Appellant by way of a claim in reconvention, prayed that he be granted a declaration of entitlement to the property described in the schedule to the Answer, delivery of vacant possession, and for damages thereof. The Defendant-Appellant also prayed for a dismissal of the action of the Plaintiff-Respondent.
- [9] At the conclusion of the trial, the learned District Judge by Judgment dated 13/03/2015, dismissed the action of the Plaintiffs and the Defendant's claim in reconvention on the basis that, both parties failed to identify the subject matter. In consideration of the claim in reconvention of the Defendant, the learned District Judge was of the view *inter alia*, that the boundaries of Plan Marked 'V9C', which the Defendant relied upon, and the boundaries disclosed in the schedule to the Answer did not correspond to each other. The Court was of the view that the boundaries which the Defendant relied upon cannot be ascertained due to the superimposed Plan No. 808 dated 14/11/2001, prepared by Licensed Surveyor Angammana was not led in evidence.
- [10] Being aggrieved by the said Judgment, the Plaintiffs and the Defendant by Petitions of Appeal dated 08/05/2015 and 08/05/2015 respectively, filed separate actions in the Civil Appeal High Court of the Central Province exercising civil appellate jurisdiction holden in Kandy ("the Appellate Court"). At that hearing too, both parties consented to consolidate the two Appeals and to abide by one Judgment.
- [11] The Civil Appellate High Court, after hearing and considering the submissions tendered by both parties, by Judgment dated 26/10/2018, set aside the Judgment of the District Court dated 13/03/2015, declaring that the Plaintiffs-Respondents had established title to the property more fully described in the schedule to the Plaintiff and were co-owners of the land depicted in Plan 'X'. The Appeal of the Defendant-Appellant was dismissed.
- [12] By Order dated 31/05/2019, this Court granted leave to appeal on the following questions of law;

1. Did the Civil Appellate High Court err in law in reversing the findings against the Plaintiff when on fact the Plaintiff referred to four distinct lands which could not be identified by the Commissioner in the preparation of the Plan ‘X’.
2. Did the learned Civil Appellate High Court Judge err by holding that the land depicted as Lot No.1 in Plan No.8026 (X) was the land claimed by the Plaintiff, without appreciating the variance with the boundaries and the extent of the land depicted in the said plan when compared the same with the land described in the schedule to the plaint.
3. Have the learned Civil Appellate High Court Judge misdirected themselves by not appreciating the Plaintiff’ failure to prove in terms of the Section 68 of the Evidence Ordinance the due execution of the Deeds No. 7200 (P2) and No. 10859 (P3) produced and marked by the Plaintiffs subject to proof of the said deeds at the trial and repetition of the said comment made by the Defendant at the closure of the case of the Plaintiffs.
4. Had the learned Civil Appellate High Court Judge erred in law by holding that the Defendant had not raised any issue challenging the execution of the said Deeds without taking cognizance that an issue had been raised under Issue No. 10 on behalf of the Defendant challenging the said purported Deeds No. 7200 and No. 10850?
5. Did the High Court err in law by granting the Prayers (a) and (b) to the Plaintiff which embraced the rights in four distinct lands?
6. Did the High Court err in law by the grant of Prayer (b) when in fact the court held that the Plaintiffs are co-owners?
7. Has the High Court erred in law by not taking into account that the Deeds ‘D3’, ‘D4’, ‘D5’, and ‘D6’ deal with a fractional share of the land “Rattewatta” thereby making the Defendant a co-owner of the said land?

As reflected in journal entry dated 16/07/2020, in addition to the above, the following consequential questions of law were also permitted to be raised.

8. (i) Is it not possible to put a deed subject to proof of its execution without there being a specific issue on its due execution based on a position taken up in the pleadings.
(ii) was there no position taken up by the Defence in the pleadings or issues, which required the Plaintiff to prove execution strictly in terms of Section 68 of the Evidence Ordinance.
9. (i) if a Defendant to an action claims title to a particular land giving the boundaries of a land claimed by the Plaintiff. Can such a Defendant dispute the corpus?
(ii) Does the Defendant claim the 3rd land described in the schedule to the Plaintiff by describing the same boundaries in the schedule to his answer in addition to referring to a plan?
10. Does the Judgment of the High Court of Civil Appeal cause no failure of justice not affect the substantial rights of the Defendant-Respondent-Appellant (Petitioner) in view of all the circumstances of the case?

Identification of the corpus.

[13] As noted earlier, the learned District Judge dismissed the action brought by the Plaintiffs and the claim in reconvention of the Defendant on the basis that the subject land was not identified.

[14] The Plaintiffs-Respondents relied on Plan No. 8026, prepared by W.D. Dassanayake Licensed Surveyor, marked 'X', to assert their claim to four separate lands described in the schedule to the Plaintiff. The four lands as described earlier in this Judgment were referred to as contiguous and consolidated lands. In the said Plaintiff or in the issues raised at the trial court, the Plaintiffs did not refer to the land

described in the Plaintiff, commonly known as 'Rattewatta', the name specifically used to describe the 3rd land to the schedule. The Plaintiffs-Respondents relied on title Deeds marked 'P2', 'P3', 'P4', 'P5', 'P6', 'P10', and 'P14' to prove title.

- [15] Surveyor Dassanayake in his report dated 27/01/2004 marked 'X1', observed no existing demarcations on the ground to identify four separate lands. The Plaintiff's action was confined to the land shown as Lot 1 in Plan 'X' in extent 0A 02R 19.06P, sometimes commonly known as 'Rattewatta'. It is also revealed that by superimposition of Defendants' Plan No. 808 on Plan No. 802, a separate portion of land was identified in the southern boundary, which the Defendant claimed rightful ownership since 24/07/1978.
- [16] Defendants Plan No. 808 marked 'V1', surveyed on 14/11/2001, was prepared by Licensed Surveyor Angammana. V1 was superimposed on Plan 'X', and the portion of land identified by the Plaintiffs was marked as Lot 1. The portion of land identified to the south of Lot 1, Hunupaindakarayagewatta and Welewatta, is not described in any of the four lands in the schedule to the Plaintiff.
- [17] Plan No. 10658 made by Licensed Surveyor J.M. Jayasekara marked 'D9A', was superimposed on Plan No. 808 and has identified the said portion of land to the south as Lot 2 in extent 0A 0R 31.0P. Lots 1 and 2 in total is in extent 0A 3R 12P. Surveyor Jayasekara states that, the Defendant claimed he was in possession of Lots 1 and 2, which the Defendant referred to as 'Rattewatta', and that on 15/11/2001, the Plaintiff erected a fence demarcating the said Lots. The boundaries of the land described as 'Rattewatta' set out in the schedule to the Answer is in extent 0A 3R 10P.
- [18] The learned Counsel for the Defendant-Appellant citing the case of *Ratnayake vs. Kumarihamy*¹ contended that, according to the schedule to the Plaintiff, the total extent of all four lands given in the customary surface measure consisting of 5

¹ [2002] 1 SLR 65

‘seers’ and 2 ‘neli’ is equivalent to 1A and 3R, (This position has not been refuted by the Defendant). It was also pointed out that Lot 1 in Plan ‘X’, which is claimed by the Plaintiffs is only 02R and 19.6P and there is also no evidence of an amalgamation of the other three lands.

- [19] The land the Defendant refers to as ‘Rattewatta’ includes Lots 1 and 2 (Lot 2 includes two lands) in extent 0A 03R 12.0P, which is around 3 perches less than the land described as ‘Rattewatta’ in the schedule to the Answer. In the said premise it is argued that the schedule to the Answer describes the exact boundaries as described in the 3rd land to the schedule, therefore contends that it is an admission by the Defendant of the corpus and no further proof of the identity of the land is required. However, going by the extent of the customary surface measure of the 3rd land to the schedule described as Rattewatta, the extent of it is far less than the land described in the schedule to the Answer.
- [20] As noted above, the land described as ‘Rattewatta’ in the 3rd schedule to the Plaintiff in extent, 2 ‘seers’ of Kurakkan, is one of four lands claimed by the Plaintiffs. The Plaintiffs instituted this action and raised issues No. 1 and 2, concerning the identity of the land. The Plaintiff led evidence on the basis that the lands in the schedule to the Plaintiff were contiguous and amalgamated and sought a declaration of title to the four lands described in the schedule.
- [21] The Plaintiffs-Respondent’s position was that Lot 2, described as Hunupaindakarayagewatta and Welewatta to the southern boundary of Lot 1 is not the land in question to this action meaning, that it is not a part of the land commonly known as ‘Rattewatta’ in extent 0A 02R 19.6P. The 1st Plaintiff under cross examination has admitted that ‘Wellewatta’ is situated in the southern boundary of the land described as ‘Hunupaindakarayagewatta’. In re-examination the 1st Plaintiff stated;

එක්ස් පිළිරේ රතු යාට ඉරි වලින් පෙන්වා තියෙන වෙල්ල වන්ත ලග තියෙන ඉඩම ඇනුමැතිගෙදර වන්ත කොටසක් තමයි තියෙන්නේ ඒ රටිවැවන්ත වෙල්ල වන්ත යාට

නැහැග පොදු ව්‍යවහාරයේ රටිටුවන්ත කියන්නේ වෙලෙළුවන්ත කියන තවත් නමක් ඩුණුගෙදරවන්ත තිවිධ නම සඳහන් කරලා නියෙනවා, (Vide pages 192,193)

Also stated that;

“ඩුණුගෙදරවන්ත කියන්නේ වෙලෙළුවන්තටමයි. එය අනුමැති ගෙදර වන්නේ දකුණු මායිම ලෙස සඳහන් කරලා ඩුණුපයින්විකාරයාගේවන්ත හෙවත් වෙලේ වන්ත කියලා නියෙනවා.” (Vide pages 194)

- [22] The evidence given by witness Hearth Banda and Suppiah Jayakumar, the husband of the Plaintiff's predecessor in title Ganeshwara Ramanada, referred to the land 'Rattewatta' as a consolidation of several lots of land and commonly known as 'Rattewatta' which consists of one undivided block.
- [23] However, the Surveyor was unable to say whether the land shown in Plan 'X' consisted of four lands.

ප්‍රථම මිනින්දෝරු මහත්තයාගේ දැනුම උපයෝගී කරගෙන මෙම සැලැස්මේ නිබෙන ඉඩම පැමිණිල්ල උපලේඛනයේ නිබෙන කැබලී හතරම ද කියා කියන්න ප්‍රථමන්කමක් නෑ නේදර

සෑම දන්නේ නැග

නැවත ප්‍රස්තා

ප්‍ර: මහත්මයා ගෙන් ප්‍රස්තා කළා දකුණු මායිම වෙළ කියලා නිනන්න ප්‍රථමන්ද කියා?

ස්: ඩුණුපයින්විකාරයාගේ වන්ත හෙවත් වෙලේ වන්ත කියන දකුණු පැත්තේ වෙළ හැටියට පිළිගන්නවා මිස මේකේ දකුණු පැත්ත නොවේයි.”

- [24] Having taken into consideration the available evidence to establish the identity of the subject matter, the Appellate Court held, thus'

“The extent given in the 3rd schedule to the Plaintiff and the extent of the land in Plan 'X' when considered, point to a fact that the land in dispute is more likely to be Rattewatta than the four lands described in the schedules to the Plaintiff”

[25] To strengthen this position the Court was of the view that “*the Defendant whilst giving evidence has admitted that the land in dispute is Lot 1 in Plan ‘X’, which further confirms that there is no uncertainty as to the identity of the land*”, whereas the Defendant’s claim was not based only on Lot 1 but also included the land to the southern boundary in Plan ‘X’. When the land was surveyed, the Defendant claimed his rights beyond the southern boundary of Lot 1 however, due to the Plaintiffs’ insistence, the Surveyor limited the scope of the Commission only to the land claimed by the Plaintiffs.

[26] The Appellate Court further held that;

“The extent of the land in dispute according to Plan ‘X’ is 2 Roods 19.6 Perches. The extent of the land described in the 3rd schedule to the Plaintiff is two Seers of Kurakkan sowing, which is approximately 2 Roods. Boundaries described in Plan ‘X’ are as same as the boundaries of Rattewatta. Therefore, it can be safely concluded that the land depicted in Plan ‘X’ is Rattewatta described in the 3rd schedule to the Plaintiff as well as the schedule to the answer”.

[27] It is observed that in arriving at the above finding, the Appellate Court failed to appreciate the evidence of the Defendant in consideration of Plan No. 10658, where the extent of the land described as ‘Rattewatta’ was 3 Roods 12.0 Perches.

[28] The Plaintiffs sought a declaration of title and for ejectment of the Defendant from the land claimed therein. Therefore, the land sought to be declared must be identifiable, and clearly sets out the subject matter to be vindicated. In this action, as so far as it could be ascertained by deeds, landmarks or witness evidence, no new boundaries were created or an existing common boundary identified by the trial Court. When an ambiguity or uncertainty in identifying correct boundaries or limits between claimants of contiguous or amalgamated lands exists, the trial Judge was correct to refrain from assigning the subject land to either party.

[29] In a *rei vindicatio* action, identifying the corpus is crucial. Without precise identification, courts cannot determine whether the claim of the parties aligns with the land in dispute. As established in ***Jamaldeen Abdul Latheef vs. Abdul Majeed Mohamed Mansoor***², a Plaintiff must prove both ownership and the existence of the property in question. As held in the above case;

"To succeed with the rei vindicatio, the owner must prove on a balance of probabilities, first, his or her ownership in the property. Secondly, the property must exist, be clearly identifiable and must not have been destroyed or consumed..."

It was further stated that;

"The identity of the subject matter is of paramount importance in a rei vindicatio action because the object of such an action is to determine ownership of the property, which objective cannot be achieved without the property being clearly identified. Where the property sought to be vindicated consists of land, the land sought to be vindicated must be identified by reference to a survey plan or other equally expeditious method."

[30] If the land's boundaries, extent, or location remain uncertain, the claim must fail, regardless of the strength of the title. Courts rely on survey plans, deeds, and witness testimony to establish identity. If the court fails to identify the land in dispute with certainty, it may lead to complications in enforcement of the final judgment, as an unclear decree may be impossible to execute. Therefore, in a *rei vindicatio* action, proving title alone is insufficient, the evidence should precisely define the land being claimed.

"It is obvious that ownership cannot be ascribed without clear identification of the property that is subjected to such ownership, and furthermore, the ultimate objective of a person seeking to vindicate immovable property by obtaining a writ

² [2010] 2 SLR 333

*of execution in terms of Section 323 of the Civil Procedure Code will be frustrated if the fiscal to whom the writ is addressed, cannot clearly identify the property by reference to the decree for the purpose of giving effect to it. It is therefore essential in a vindictory action, as much as in a partition action, for the corpus to be identified with precision. (**Jamaldeen Abdul Latheef vs. Abdul Majeed Mohamed Mansoor³**)*

[31] *In Iluppengamu Appuhamylage Martin Appuhamy and others vs. Iluppengamu Appuhamylage Milrad Chandrawathie and others⁴, it was held that;*

“... If the land to be partitioned as described in the schedule to the plaint has not been properly identified, the Plaintiff’s action shall fail. In such a situation the necessity to investigate title does not arise. Title shall be investigated on a properly identified parcel of land. The Court shall not first investigate title and then look for the land to be partitioned. It shall happen vice versa.”

[32] With little or no appreciation of the evidence led by the Defendant in its totality, on Plan No. 10658 and the disparity created on the metes and bounds disclosed therein, the Court concluded that the; *“Identity of the land is not in dispute. Both the Plaintiff and the Defendant admitted that the land in dispute is shown as Lot 1 of Plan No. 8026 marked X”*. To the contrary, there was no agreement between the parties regarding the identity of the subject land.

[33] Therefore, I am of the view that when there was a stark variance in the extent of the land to be declared, the Appellate Court erred in allowing the Appeal.

[34] Accordingly, I answer the questions of law No.1 and No. 2 on which leave to appeal has been granted in the affirmative.

[35] It is noted that by Order dated 31/05/2019, this Court granted leave to appeal on seven questions of law. Subsequently, as reflected in the journal entry dated

³ (n2)

⁴ SC Appeal 172/2015, decided on 21.05.2021

16/07/2020, three additional questions of law were also permitted to be raised, in response to concerns expressed by the parties that certain consequential questions had not been recorded. These additional questions were duly recorded at the instance of Court, and it appears that this step was not taken before the same bench. In any event, having considered the totality of the pleadings and the evidence, and in light of the view taken regarding the identification of the corpus, I find that in deciding on the rest of the questions quoted earlier in this judgment need not be considered and I answer the said questions accordingly.

[36] For these reasons, the Judgment dated 13/03/2015 of the District Court is hereby affirmed and the Judgment dated 26/10/2018 of the Civil Appeal High Court is set aside and accordingly relief “c” in the prayer of the petitions of appeal is granted. reliefs “d,” “e” and “f” are denied. Therefore, the appeal is partially allowed. No order for costs.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree

Judge of the Supreme Court