

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

In the matter of an application for Leave to  
Appeal under Section 5C of the High Court of the  
Provinces (Special Provisions) Act No. 54 of 2006.

**SC / APPEAL / 149 / 2014**

**SC / HCCA / LA / 61 / 2012**

**NWP / HCCA / KUR / 133 / 2004 (F)**

**DC Kuliyaipitiya: 11980 / P**

**Warnakulasuriya Nicholas Peter**

**Kurera,**

Kabalewa,

Deegalla.

**PLAINTIFF**

-Vs-

**1. Anthony Raymond Leopold Peiris,**

His Worship the Bishop of the Roman

Catholic Church of Kurunegala,

Bishop's House,

Kurunegala.

**2. Adikari Mudiyanseelage Saman**

**Sanjeewa,**

Bandara,

Kabalewa,

Deegalla.

**3. Warnakulasuriya Mahamala Arachchige**

**Harold Kingsley,**

Kabalewa,  
Deegalla.

**4. Warnakulasuriya Mary Kurera,**

Kabalewa,  
Deegalla.

**5. Subasinghe Aarachchige Don Padmini**

**Srikanthi,**  
Kabalewa,  
Deegalla.

**6. Subasinghe Aarachchige Don Newton  
Stanley,**

Kabalewa,  
Deegalla.

**7. Subasinghe Aarachchige Don**

**Priyadharshana Kumara,**  
Kabalewa,  
Deegalla.

**DEFENDANTS**

**AND BETWEEN**

**3. Warnakulasuriya Mahamala Arachchige**

**Harold Kingsley,**  
Kabalewa,  
Deegalla.

**4. Warnakulasuriya Mary Kurera,**  
Kabalewa,  
Deegalla.

**5. Subasinghe Aarachchige Don Padmini  
Srikanthi,**  
Kabalewa,  
Deegalla.

**6. Subasinghe Aarachchige Don Newton  
Stanley,**  
Kabalewa,  
Deegalla.

**7. Subasinghe Aarachchige Don  
Priyadharshana Kumara,**  
Kabalewa,  
Deegalla.

**3<sup>RD</sup> TO 7<sup>TH</sup> DEFENDANTS-  
APPELLANTS**

**-Vs-**

Warnakulasuriya Nicholas Peter Kurera,  
Kabalewa,  
Deegalla.

**PLAINTIFF-RESPONDENT**

**1. Anthony Raymond Leopold Peiris,**  
His Worship the Bishop of the Roman

Catholic Church of Kurunegala,  
Bishop's House,  
Kurunegala.

- 2. Adikari Mudiyansele Saman Sanjeewa  
Bandara,  
Kabalewa,  
Deegalla.**

**1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS-  
RESPONDENTS**

**AND NOW BETWEEN**

- 1. Warnakulasuriya Mahamala Arachchige  
Harold Kingsley,  
Kabalewa,  
Deegalle.**
- 2. Warnakulasuriya Mary Kurera,  
Kabalewa,  
Deegalle.**
- 3. Subasinghe Aarachchige Don Padmini  
Srikanthi,  
Kabalewa,  
Deegalle.**
- 4. Subasinghe Aarachchige Don Newton  
Stanley,  
Kabalewa,  
Deegalle.**

**5. Subasinghe Aarachchige Don  
Priyadharshana Kumara,  
Kabalewa,  
Deegalle.**

**3<sup>RD</sup> TO 7<sup>TH</sup> DEFENDANTS-  
APPELLANTS-PETITIONERS**

**-Vs-**

**Warnakulasuriya Nicholas Peter Kurera,  
Kabalewa,  
Deegalle.**

**PLAINTIFF-RESPONDENT-  
RESPONDENT**

- 1. Anthony Raymond Leopold Peiris,  
His Worship the Bishop of the Roman  
Catholic Church of Kurunegala,  
Bishop's House,  
Kurunegala.**
- 2. Adikari Mudiyanseelage Saman Sanjeewa  
Bandara,  
Kabalewa,  
Deegalle.**

**1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS-  
RESPONDENTS-RESPONDENTS**

**Before:** S. Thurairaja, PC, J.  
A.H.M.D. Nawaz, J. &  
Janak De Silva, J.

**Counsel:** Manohara de Silva PC with Harithriya Kumarage for the 3<sup>rd</sup>  
to 7<sup>th</sup> Defendants-Appellants-Appellants.

Rohan Sahabandu PC for the Plaintiff-Respondent-  
Respondent.

**Argued on:** 30.11.2021

**Decided on:** 19.03.2026

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

1. In this appeal against the judgments of the District Court of Kuliyaipitiya and the Civil Appellate High Court, a pivotal issue falls for determination. That issue has been advanced before this Court by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants–Appellants (hereinafter sometimes referred to as “the 3<sup>rd</sup> to 7<sup>th</sup> Defendants”).

*In any event, have Jeremius Appuhamy and upon his death, the 3<sup>rd</sup> to 7<sup>th</sup> Defendants, possessed Lot 1A of Preliminary Plan No. 2509 which is a divided portion of Lot 1 of Plan No. 3509 and have obtained prescriptive title thereto?*

2. As regards a second issue that relates to Lot 3 of the corpus and the aforesaid main issue, the learned District Judge of Kuliyaipitiya answered both issues as “not proved” by his judgment dated 28 October 2004.
3. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants-Appellants-Appellants (hereinafter sometimes referred to as the 3<sup>rd</sup> to 7<sup>th</sup> Defendants) preferred an appeal initially to the Court of Appeal

but in its final adjudication when the appeal was transferred to the Civil Appellate High Court, the Civil Appellate High Court pronounced judgment dismissing the appeal of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants by way of its judgment dated 28 December 2011.

4. In the dismissal of the appeal of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants in both fora, it has to be borne in mind that it is the 3<sup>rd</sup> to 7<sup>th</sup> Defendants who contested the case of the Plaintiff-Respondent-Respondent (hereinafter sometimes referred to as the Plaintiff) as regards Lot 1A depicted in the Preliminary Plan of the case.
5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the case had no demurrer to the case of the Plaintiff which was to the effect that the Plaintiff prayed for a declaration that he was entitled to 728/937 share of the land as stated in paragraph 24 of the plaint.
6. The Plaintiff had instituted this action seeking the partition of the land in suit and the allotment of defined shares to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, as set out in the plaint. The corpus of the action was described as the land known as “Neriyayewatta,” situated in the village of Kabalewa within the District of Kurunegala. In the course of the trial, the Preliminary Plan bearing No. 2509 was duly produced and marked in evidence.
7. As I observed earlier, the contest advanced by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants is confined to Lot 1A delineated in Preliminary Plan No. 2509. Their challenge is mounted against the Plaintiff’s asserted entitlement to Lot 1A, on the premise that the Plaintiff, Nicholas Peter Kurera, could not have acquired absolute title thereto. This contention proceeds on the assertion that the land stood impressed with a constructive trust in favour of Jeremius Appuhamy, from whom the 3<sup>rd</sup> to 7<sup>th</sup> Defendants purport to trace their entitlement to the said Lot 1A.
8. The question then arises as to whether the assertion of a constructive trust on the part of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants can be upheld by this Court. It has to be recalled that both the District Court and the Civil Appellate High Court have rejected this assertion.

9. It was the assertion of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants that the land stood impressed with a constructive trust in favour of Jeremius Appuhamy, from which, they contended by a parity of reasoning, a beneficial interest devolved upon them by inheritance.
10. A closer examination of the relationship between the *pater familias*, Jeremius Appuhamy, and the 3<sup>rd</sup> to 7<sup>th</sup> Defendants discloses that the 4<sup>th</sup> Defendant, Mary Kurera, had lived in cohabitation with Jeremius Appuhamy. Consequent upon that relationship, the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Defendants, claiming to be the issue of such union, have put forward a claim to heirship in respect of Jeremius Appuhamy.
11. A careful perusal of both documentary and oral evidence in the case proves that while Jeremius Appuhamy had a lawful wife named Medagoda Aratchige Alice Fernando elsewhere, he had begun to live in cohabitation with Mary Kurera - the 4<sup>th</sup> Defendant in the case. She was the mother of the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants who staked this claim to be the intestate heirs of Jeremius Appuhamy by virtue of their birth through Jeremius Appuhamy and their mother.
12. I must deal at the outset with the claim of the 3<sup>rd</sup> Defendant that he is a son of the deceased, Jeremius Appuhamy. The birth certificate produced in respect of the 3<sup>rd</sup> Defendant admits of no ambiguity. Jeremius Appuhamy does not figure therein as the father. Instead, the document unequivocally records the father to be one Warnakulasuriya Mahamala Arachchige Atman Perera. In the face of this unimpeachable public record, the assertion of the 3<sup>rd</sup> Defendant that he is an heir of Jeremius Appuhamy is wholly unsustainable in law.
13. As for the mother Mary Kurera – the 4<sup>th</sup> Defendant, she herself could not inherit the intestate property of Jeremius Appuhamy as she was not his lawful wife.
14. It is undeniable that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants had been born out of the illegal wedlock of Jeremius Appuhamy with Mary Bridgette Kurera (the 4<sup>th</sup> Defendant). The corollary is that it was incompetent for the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants

themselves to claim to be the legal heirs to succeed to the intestate property of Jeremias Appuhamy, as they were his illegitimate issues.

15. Section 33 of the Matrimonial Rights and Inheritance Ordinance No. 15 of 1876 states;

*“Illegitimate children inherit the property of their intestate mother, but not that of their father or that of the relatives of their mother. Where an illegitimate person leaves no surviving spouse or descendants, his or her property will go to the heirs of the mother, so as to exclude the State.”*

16. Grotius states that by blood relations in the matter of succession *ab intestato* were meant as well those born in and out of wedlock, excepting that natural children or their descendants succeeded *ab intestato* to property of deceased only so far as they were related to the deceased through being the illegitimate children of a female but not of a male; for, in reference to the mother, illegitimate children were in the same position as legitimate children unless indeed they were sprung *ex prohibito concubitu*, in which case they and their descendants could not inherit *ab intestato*.<sup>1</sup>

17. Van der Keessel also lays down broadly that natural or spurious children may succeed *ab intestato* not only to their mother but to their maternal cognates.<sup>2</sup>

18. From the foregoing, it is abundantly clear that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants were rendered legally incompetent to succeed to the intestate property of Jeremias Appuhamy namely Lot 1A on which they had been living with Jeremias Appuhamy provided Jeremias Appuhamy had his entitlement to Lot 1A.

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<sup>1</sup> Grot. 2. 27. 28 See the Laws of Ceylon by Walter Pereira second edition at pg. 481.

<sup>2</sup> V. d. K. 341-345.

19. There was no dispositive instrument of title in their favour from Jeremius Appuhamy who had been in an illegal wedlock with the 4th Defendant. At the most, it would appear, their occupation of the land was *precarious*.

20. In the case of *Tillekeratne et al. v. Bastian et al.*<sup>3</sup> Bertram C.J. states;

*“With regard to possession by permission or license, a person who so possesses is said to possess precario. This form of possession will be found discussed in Voet XLIII., 26. A person who is in possession of property precario cannot prescribe against the owner, however long his possession may be. A restitutory action in such a case can never be extinguished.”*

21. In the case of *Sinno Appu v. Silla Umma*<sup>4</sup> it was held that although by the Roman Dutch Law possession *precario*, however long, gave no prescriptive right, yet on the local Ordinance which wholly governed the matter such possession would be sufficient for purposes of prescription, if there was no acknowledgement of title within the meaning of the Ordinance.

22. It is as clear as a pikestaff that if Jeremius Appuhamy had been in possession of Lot 1A, and the 3<sup>rd</sup> to 7<sup>th</sup> Defendants had been occupying the land along with him, that precarious possession would not give rise to an adverse possession which was by sufferance or the express or implied permission of Jeremius Appuhamy. As the evidence indicates, he had simply been providing accommodation to his consort (the 4<sup>th</sup> Defendant) through whom he had fathered the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

23. However, an interesting event took place in 1980 when Jeremius Appuhamy purchased Lot 1A from a person called Gamini Senaratne but in the name of his legitimate son Camillus Appuhamy.

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<sup>3</sup> 21 NLR 12.

<sup>4</sup> Ram. Rep., 1872-76, 318.

24. At the instance of the father Jeremius Appuhamy, Gamini Senarathne effected the transfer on 07 August 1980 in the name of Camillus Appuhamy – his legitimate son.
25. It has to be noted in passing that Camillus Appuhamy was himself procreated in the course of a cohabitation that the polygynous Jeremius Appuhamy had been having with the mother of Camillus Appuhamy - one Medagoda Aratchige Alice Fernando. I must hasten to add that Alice Fernando became his lawful wife by his subsequent legitimation of the union and hence my reference to a lawful wife elsewhere in this judgment.
26. As a marriage between Jeremius Appuhamy and Alice Fernando was solemnized in 1959 and the illegal union became a holy wedlock, the son Camillus consequently became legitimate and as is commonplace, legitimacy bestowed on Camillus Appuhamy was a legal consequence brought about by law. Illegitimate children can be legitimated by the subsequent marriage of their parents.
27. In Sri Lanka, a legal marriage between any parties has the effect of rendering legitimate the birth of any children who may have been procreated between the same parties before the marriage, unless such children have been procreated in adultery.<sup>5</sup>
28. In fact, the status of legitimacy or illegitimacy or the capacity to become legitimate *per subsequens matrimonium* is governed by the law of domicil of origin and thus, Legitimacy Act No. 3 of 1970 settled the issue of legitimacy of Camillus Appuhamy.
29. As the narrative unfolded, Jeremius Appuhamy caused one and a half acres of Lot 1A to be conveyed in the name of his legitimate son, Camillus Appuhamy, the consideration for that transfer having been furnished by Jeremius himself to Gamini Senaratne under a deed dated 07<sup>th</sup> August 1980.

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<sup>5</sup> Ordinance No. 2 of 1895, Section 22; also see Section 3 of Legitimacy Act No. 3 of 1970 (Legitimization of illegitimate children).

30. Jeremius Appuhamy passed away twelve years later, in September 1992. Thereafter, on 01 June 1994, the Plaintiff in the present partition action purchased the said property from Camillus Appuhamy. It is against this factual backdrop that the 3<sup>rd</sup> to 7<sup>th</sup> Defendants impugn the Plaintiff's title and resist his claim to entitlement over Lot 1A.
31. The statement of claim of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants was founded on two distinct bases, namely, in the first instance, an alleged constructive trust, and secondly, a claim of entitlement to the property by way of prescription. I propose to address these contentions *seriatim*.
32. Both causes of action, on which the 3<sup>rd</sup> to 7<sup>th</sup> Defendants assert an interest in the land, were rejected by the District Court as well as by the Civil Appellate High Court. It is against those concurrent findings that the present challenge is mounted.

### **Constructive Trust**

33. The plea of a constructive trust was advanced on the footing that when Jeremius Appuhamy caused Lot 1A to be purchased from Gamini Senaratne by deed dated 07 August 1980 in the name of his son, Camillus Appuhamy, the entirety of the consideration was furnished by Jeremius himself, with the result, it was contended, that Camillus Appuhamy held the property in trust for his father.
34. In support of this contention, the 3<sup>rd</sup> to 7<sup>th</sup> Defendants invoked Section 84 of the Trusts Ordinance. It is unnecessary to restate the provision *in extenso*. Its essence lies in the principle that where consideration for a transfer is provided by one person, but the property is conveyed in the name of another, and it appears that the person providing the consideration did not intend the transfer to operate for the benefit of the transferee, the latter is bound to hold the property for the benefit of the former.

35. However, the operation of this principle is not without qualification. Within the rubric of resulting or constructive trusts arising from the provision of consideration, it is well settled that such a trust will not ordinarily arise where the person providing the consideration stands in a relationship of *loco parentis* to the transferee. In such circumstances, a rebuttable presumption arises that the transfer was intended as a gift or advancement in favour of the child, and not as a trust for the benefit of the transferor.

36. In the case of *Perera v. Scholastica Perera*<sup>6</sup> Gratiaen J. adverted to a presumption of advancement which will preclude a resulting trust arising under Section 84 of the Trusts Ordinance, if the transferor stands in a relationship of *loco parentis* to the transferee – see *Fernando v. Fernando*<sup>7</sup>, *Mutalibu v. Hameed*.<sup>8</sup>

37. The learned judge Gratiaen J. observed that Sections 83 and 84 of our Trusts Ordinance have introduced the English law on this subject.<sup>9</sup>

38. The presumption of advancement, however, is not irrebuttable, and it is upon this footing that the 3<sup>rd</sup> to 7<sup>th</sup> Defendants seek to contend that, notwithstanding the filial relationship, the conveyance of Lot 1A was not intended as an advancement but gave rise to a constructive trust in favour of the father.

39. What kind of evidence can be used to support or rebut the presumptions of resulting trust or advancement? The answer can be found in the leading case of *Shephard v Cartwright*,<sup>10</sup> where the House of Lords examined the question in the context of the presumption of advancement.

40. In this case, the issue was whether a father, in registering shares in his companies in the names of his three children, had transferred the beneficial interest in those

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<sup>6</sup> 57 NLR 265.

<sup>7</sup> 20 NLR 244.

<sup>8</sup> (1950) 52 NLR 97.

<sup>9</sup> See SC Appeal 169/15 decided on 28.02.2025.

<sup>10</sup> (1955) A.C. 431.

shares to them. Subsequent to the transfers, the father treated the shares as his own. After the father's death, two of the three children brought an action against the executors claiming proceeds of sale of the shares previously allotted to them.

41. The question arose as to whether the subsequent actions of the father had rebutted the presumption of advancement to his children. The House of Lords held, *inter alia*, that the executors could not rely on such subsequent conduct to rebut the presumption of advancement. On this question, Viscount Simonds had this to say;

*"It must then be asked by what evidence can the presumption be rebutted, and it would, I think, be very unfortunate if any doubt were cast (as I think it has been by certain passages in the judgments under review) upon the well-settled law on this subject. It is, I think, correctly stated in substantially the same terms in every textbook that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from Snell's Equity (24th edn.), p.153, which is as follows:*

*The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration ... But subsequent declarations are admissible only against the party who made them, and not in his favour.'*

*I do not think it necessary to review the numerous cases of high authority upon which this statement is founded. It is possible to find in some earlier judgments references to "subsequent" events without the qualifications contained in the textbook statement: it may even be possible to wonder in some cases how in the narration of facts certain events were admitted into consideration. But the burden of the authority in favour of the broad proposition as stated in the passage I*

*have cited is overwhelming and should not be disturbed.”<sup>11</sup>*

42. Thus, if A buys property, and has it conveyed into the name of his son B, the effect of the rule in ***Shephard v Cartwright*** appears to be as follows;

*The acts or declarations of A before or at the time of the purchase are admissible as evidence to support or rebut the presumptions of resulting trust or advancement; and*

*The acts or declarations of A subsequent to the purchase are admissible as evidence to rebut the presumption of resulting trust or to support the presumption of advancement; but*

*The acts or declarations of A subsequent to the purchase are not admissible as evidence to support the presumption of resulting trust or to rebut the presumption of advancement.*

43. This has generally been accepted as the scope of the rule in ***Shephard v Cartwright*** since the House of Lords' decision in December 1954.<sup>12</sup>

44. Both the District Court and the Civil Appellate High Court observe that the 3rd to 7th Defendants adduced no evidence or insufficient evidence to rebut the presumption of advancement.

45. If at all, when the Plaintiff purchased the property from Camillus Appuhamy in 1994, Jeremius Appuhamy had passed away in 1992. The partition action was instituted by the Plaintiff in 1998 and in fact, Jeremius Appuhamy was an unavailable witness having passed away in 1992.

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<sup>11</sup> Ibid.,445-446.

<sup>12</sup> See, e.g. Snell's Equity (31st edn.,2005), para.23-10;Lewin on Trusts (17th edn.,2000), para.9-36;Underhill and Hayton:Law of Trusts and Trustees (16th edn.,2003), pp.362-364.

46. Jeremius Appuhamy was not available in 1998 to give evidence of his intention at the time of transfer in 1980 and indeed, there was the act of the father staying on the land till he died, despite his transfer of the land to the son in 1980.

47. He had passed the legal title to the son in 1980 but for 12 long years thereafter till he crossed the great divide, he had been in possession of the land. In fact, this evidence was led.

**Was this evidence of possession sufficient to rebut the presumption of advancement?**

48. The learned High Court Judges held that it was the burden of the 3rd to 7th Defendants to assert and prove the existence of a constructive trust and the Defendants failed to rebut the presumption of advancement.

49. I have perused the evidence led in the case and I would observe that when the trial came about, Jeremius was long dead and as a result, it was well-nigh impossible to adduce evidence of the transferor's intention without running the risk of offending the rule against hearsay. Except the evidence of possession that was led, there were no statements adduced of Jeremius Appuhamy that evinced a continuing intention to rebut the presumption of advancement.

50. A judge in a civil case is equipped to determine the weight to be attributed to hearsay evidence and pay the appropriate amount of regard to it in assessing the totality of the evidence. The following pertinent suggestion made by Lord Phillips M.R. in a very recent case in *Lavelle v Lavelle*<sup>13</sup> ought to be followed by the modern civil courts;

*"In these cases equity searches for the subjective intention of the transferor. It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a*

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<sup>13</sup> [2004] 2 F.C.R.418 at 424 c-e.

*transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. But words or conduct more proximate to the transaction itself should be given the significance that they naturally bear as part of the overall picture. Where the transferee is an adult, the words or conduct of the transferor will carry more weight if the transferee is aware of them and makes no protest or challenge to them."*

51. In the premises, I take the view that the conclusions of both the District Court and the Civil Appellate High Court that the presumption of advancement was not rebutted is not inconsistent with the evidence that has been led.

52. In such circumstances, Camillus Appuhamy took the conveyance absolutely and what the father transferred to him became his property. When he subsequently transferred his share to the Plaintiff, the Plaintiff did not take it subject to a constructive trust.

53. Assuming without conceding that there was a constructive trust in favor of the purchaser Jeremius Appuhamy as alleged by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants, Camillus Appuhamy became the owner of his share when his father passed away in 1992. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants could not claim to be co-owners with Camillus as they were not heirs of Jeremius Appuhamy. In the circumstances, the cause of action founded upon a constructive trust should fail.

### **Prescriptive Title as claimed by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants**

54. I now turn to the prescriptive title claimed by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants against Camillus Appuhamy, and, in consequence, against the Plaintiff.

55. As I observed before, Jeremius Appuhamy had been in possession of the land since 1980 – the year in which he purchased Lot 1A from Gamini Senaratne in the name of Camillus Appuhmay. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants had also been there on the land together with Jeremius Appuhamy who passed away in 1992.

56. Camillus Appuhamy transferred the property to the Plaintiff in 1994. He was the only legal heir of Jeremius Appuhamy in 1994 and I have shown that even if he had held the property subject to constructive trust from 1980, he became the only heir to succeed to the intestate property of Jeremius Appuhamy in 1992 - the year in which the father passed away. So, when he transferred his share to the Plaintiff in 1994, he enjoyed absolute title to transfer the property.
57. Since the Plaintiff filed the partition action in 1998 having bought the property from Camillus Appuhamy in 1994, the 3<sup>rd</sup> to 7<sup>th</sup> Defendants had only 6 years of possession against Camillus Appuhamy. Absent Jeremius Appuhamy, they possessed the land as against Camillus for 2 years and 4 years against the Plaintiff – Camillus’s privy.
58. The said Defendants sought to fill in the deficiency by seeking to tack on to the possession of Jeremius, which may have begun in 1980 and admittedly he had begun to possess it from 1980 till he died in 1992.
59. This argument of tacking on to Jeremius’s possession cannot be sustained, as possession of Jeremius will not inure to the benefit of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants.
60. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants were not lawful privies to the title of Jeremius Appuhamy, either by inheritance or any dispositive instrument. Since there was no inheritance or instrument of transfer in their favor, they could not tack on to a possession of someone who was not their predecessor in title. One who enjoys precarious possession by the sufferance of another cannot tack on to the possession of the latter.
61. Since, an independent possession, if any, the 3<sup>rd</sup> to 7<sup>th</sup> Defendants had against Camillus and his privy the Plaintiff falls short of the requisite 10 years, a case founded upon prescriptive possession also fails. The first question of law raised before this court which I would call quintessential has to be answered in the negative against the 3<sup>rd</sup> to 7<sup>th</sup> Defendant-Appellant Appellants.

62. What remains a second question of law namely;

*Upon the rights mentioned in paragraphs 13 to 16 of the statement of claim of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants, has the 3<sup>rd</sup> Defendant obtained title to Lot 2 of Plan No. 2509?*

63. I have examined the evidence pertaining to the question of law which has also got to be answered in the negative as I find no evidence to support any finding that the 3<sup>rd</sup> Defendant has prescribed to Lot 2.

64. Thus, all causes of action pleaded by the 3<sup>rd</sup> to 7<sup>th</sup> Defendants having failed, I would affirm the judgments pronounced by both Courts and dismiss the appeal.

**Judge of the Supreme Court**

**S. Thurai Raja, PC, J.**

I agree

**Judge of the Supreme Court**

**Janak De Silva, J.**

I agree

**Judge of the Supreme Court**