

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

*In the matter of an Appeal in terms of Section 5(C) of the
High Court of the Provinces (Special Provisions) Act No. 19 of
1990 as amended by Act No. 54 of 2006 read with Article 128
of the Constitution of the Democratic Socialist Republic of Sri
Lanka*

SC Appeal 243/16
SC/HC/CALA/289/14
WP/HCCA/Kal/37/2006 (f)
D.C. Matugama Case No.2401/P

3. Dona Sara Sirimathie Munasinghe
- 3A. Jayanetti Koralalage Veera Varuna
Jayawardena
No.21, Pasqual Mawatha,
Matuagama.
7. Jayanetti Koralalage Veera Varuna

3A (SUBSTITUTED) & 7TH
DEFENDANTS - RESPONDENT-
APPELLANT

Vs.

1. Jayanetti Koralage Don Percy Valentine
Jayawardena, (Deceased)
- 1A. Grace Ratnowalie Wijesinghe
Kopiwatta, Welipenna.
- 1AA. Jayanetti Koralalage Dona Lanka Nilanthi
Jayawardena
No. 51B, Sawsiri Mawatha, Nagoda,
Dodangoda, Kalutara.
- 1BB. Gama Athige Lalitha Jayawardena
Kopiwatte Walawwa,
Welipenna.

SUBSTITUTED-PLAINTIFF-
RESPONDENT-
RESPONDENT

1. Jayanetti Koralalage Don Arthur David
Jayawardena (Deceased)
Retired Director of Education, Ampitiya, Kandy.
- 1A. Jayanetti Koralalage Don Rohana
Jayawardena,
71/65, 2nd Lane, Heerassagala Road, Kandy.
2. Jayanetti Koralalage Dona Simla Muri Jayawardena
(nee Gunasekera)
Walakadawatte, Habaraduwa.
4. Jayanetti Koralalage Anoma Dharshani
Jayawardena
5. Jayanetti Koralalage Thushitha Parakrama
Jayawardena

6. Jayanetti Koralalage Rashimin Jayawardena
All of Polgahawatte, Kalutara Road, Mathugama
8. Uragoda Appuhamilage Wyman
Dippita, Welipenna.
9. Robalge Palitha Lenora
"Sanda Kelum", Nallagoda, Welipenna.
10. Kaluarachchige Gunadasa
Kopiwatte, Welipenna.
11. Palanappan Murugiah
Eastern Geekiyana Kanda, State Plantation
Corporation, Neboda.
12. Velu Kadiragaman
Thallagoda, Welipenna.
13. Kaluarachchige Gunadasa
Thallagoda, Welipenna.
14. Goonatilleke Baddevitana
Thallagoda, Welipenna.
15. Robolge Palitha Lenora
Thallagoda, Welipenna.
16. Mohathadura Susantha
Thallagoda, Welipenna.
17. Mutukaruppen Gunaselvi
Kopowatte, Thallagoda, Welipenna.
18. Aurnashalam Sarogini,
Kopiwatte, Welipenna.
19. Baddavitanage Deelip Sampath
Pitawatte, Pareigama.

1A, 2ND, 4TH TO 6TH & 8TH TO 19TH

DEFENDANTS-RESPONDENTS-RESPONDENTS

AND

Jayanetti Koralalage Thushitha Parakrama
Jayawardena
Polgahawatte, Kalutara Road, Mathugama

5TH DEFENDANT- APPELLANT-APPELLANT

Vs.

1. Jayanetti Koralage Don Percy Valentine
Jayawardena (Deceased)
- 1A. Grace Ratnowalie Wijesinghe
Kopiwatta, Welipenna.

**SC Appeal 244/16
SC/LA/291/14
WP/HCCA/Kal/37/2006 (f)
D.C. Matugama Case No.2401/P**

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Jayawardena
No. 51B, Sawsiri Mawatha, Nagoda,
Dodangoda,
Kalutara.
- 1BB. Gama Athige Lalitha Jayawardena
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3. Dona Sara Sirimathie Munasinghe
(Deceased)
- 3A. Jayanetti Koralalage Veera Varuna Jayawardena
4. Jayanetti Koralalage Anoma Dharshani Jayawardena
6. Jayanetti Koralalage Rashimin Jayawardena
7. Jayanetti Koralalage Veera Varuna Jayawardena

All of Polgahawatte, Kalutara Road, Mathugama

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Kopowatte, Thallagoda, Welipenna.
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Kopiwatte, Welipenna.
19. Baddavitanage Deelip Sampath
Pitawatte, Pareigama.

**1A TO 4TH AND 6TH TO 19TH DEFENDANTS-
RESPONDENTS-RESPONDENTS**

***Jayanetti Koralalage Veera Varuna v Jayanetti Koralage Don Percy Valentine Jayawardena and
Others***

Case No. SC/Appeal/243/ 2016 (together with SC/Appeal/244/ 2016)

Before: Achala Wengappuli, J.,
Dr Sobhitha Rajakaruna, J.,
Menaka Wijesundera, J.,

Counsel:

- Saliya Pieris, PC with Anjana Rathnasiri for the 5th Defendant-Appellant-Appellant in SC Appeal No.244/16
- Anuruddha Dharmaratne with Saroja Kumudini for the 3A & 7th Defendant-Respondent-Appellant in SC Appeal 243/16 and 3A & 7th Defendant-Respondent-Respondent in SC Appeal 244/16.
- Pathum Bandara with Madhushika Kalpani for the 2nd Defendant-Respondent-Respondent.
- Irish Seneviratne for the 8th Defendant-Respondent-Respondent.
- Dr Sunil Coorey with Sudharshani Coorey for the 1BB Substituted-Plaintiff-Respondent-Respondent

Written Submissions:

- 3A & 7th Defendants-Respondent-Appellant in Case No. SC/Appeal/243/2016 - 16 May 2017, 30 Jan 2026
- 3A & 7th Defendants-Respondent-Respondent in Case No. SC/Appeal/244/2016 - 13 June 2017
- 2nd Defendant-Respondent-Respondent in Case No. SC/Appeal/243/2016 together with Case No. SC/Appeal/244/2016 - 06 June 2017, 10 March 2023
- 5th Defendant-Appellant-Appellant in Case No. SC/Appeal/244/2016 - 17 February 2017

- 8th Defendant-Respondent-Respondent in Case No. SC/Appeal/243/2016 - 19 August 2025
- Substituted Plaintiff-Respondent-Respondent in Case No. SC/Appeal/244/2016 - 23 July 2018
- Substituted Plaintiff-Respondent-Respondent in Case No. SC/Appeal/243/2016 - 18 February 2026
- Substituted Plaintiff-Respondent-Respondent in Case No. SC/Appeal/243/2016 - 23 July 2018

Argued on: 19 November 2025

Decided on: 24 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

The 3A and 7th Defendants–Respondents–Appellants in SC/Appeal/243/2016, together with the 5th Defendant–Appellant–Appellant in SC/Appeal/244/2016 (hereinafter collectively referred to as the ‘Appellants’), submitted that the dispute concerns the partition of the land known as ‘Udugamalandewatta’, originally owned by Dolpi Nona Jayawardena and depicted in Preliminary Plan No. 174, marked ‘X1’, made by S. P. Wickramage on 08 August 1994. The said partition action (case No.2401/P) was filed in the District Court of *Matugama* (‘District Court’). They contended that by Deed No. 2294 marked ‘X7VI’ (or ‘P6’ or ‘X3’), attested (on 24 April 1969) by W. M. Dayaratne, Notary Public, Dolpi Nona gifted to her son, Tiddy Quintus Jayawardena, not merely the buildings and plantations but the entirety of the land together with all appurtenances, including the land described as ‘Ketakerallagahawatta’. They maintained that the operative words of the deed, read together with its recitals, clearly demonstrated the donor's intention to transfer full ownership of the land.

The Appellants submitted that, following the death of Dolpi Nona, the Plaintiff-Respondent-Respondent (hereinafter referred to as the ‘Plaintiff’) instituted the aforesaid partition action in 1992, asserting that Deed No. 2294 conveyed only the buildings and plantations, with the land itself devolving upon the intestate heirs. They pointed out that, in their statement of claim, the Appellants consistently maintained that the entirety of the land had vested in their father, Tiddy Quintus Jayawardena. In essence, the Appellants

contend that, upon a proper construction of Deed No. 2294, the donor conveyed her entire proprietary interest, including the soil rights, to the said Quintus Jayawardena.

The Appellants further submitted that the Plaintiff's interpretation of Deed No. 2294 is artificial and contrary to both the language of the deed and the surrounding circumstances. It is contended that it is implausible that the donor, having already gifted the Plaintiff a separate half-acre allotment on which he had constructed his residence, intended thereafter to grant Quintus Jayawardena only the buildings and plantations while retaining ownership of the underlying soil. According to the Appellants, such an interpretation is commercially and practically untenable and amounts to an attempt by the Plaintiff to secure an additional share of property that was intended exclusively for Quintus Jayawardena. The Appellants further relies on the subsequent conduct of Quintus Jayawardena, asserting that he exercised complete ownership over the property by executing several deeds leasing the land together with the buildings and plantations. It is submitted that these transactions, carried out openly and without objection from the Plaintiff, demonstrate that Quintus Jayawardena was recognised as the absolute owner and remained in exclusive possession of the property. The Plaintiff's prolonged silence in the face of these dealings is said to be inconsistent with his present claim to an interest in the land.

They further noted that the trial commenced on 28 January 1998, after which the learned District Judge, by judgment dated 30 March 2006, held that the Deed No.2294 did not convey title to the land, rejected their plea of prescription, and ordered partition among the intestate heirs. The subsequent appeal to the Provincial High Court of Western Province holden in *Kaluara* ('High Court') was dismissed by judgment dated 22 May 2014.

The Appellants contended that both the District Court and the High Court erred in law and on the facts by failing to recognise that Quintus Jayawardena and his successors had acquired title to the entire corpus by prescription. In support of this contention, they relied on the fact that between 1969 and 1984, Quintus Jayawardena had executed several lease agreements dealing with the land, buildings and plantations as owner, and that by Bond No. 450, marked as 4V18 executed in 1991, he and his partners mortgaged the property to the Development Finance Corporation, thereby exercising unequivocal acts of ownership over the entirety of the land. They argued that such uninterrupted and adverse

possession was inconsistent with any recognition of co-ownership and established prescriptive title.

Additionally, they contended that the Plaintiff was guilty of laches, having instituted the partition action only after the death of Tiddy Quintus Jayawardena and approximately fourteen years after the death of Dolpi Nona.

Accordingly, the Appellants invited this Court to determine, inter alia, whether the said Deed No. 2294 conveyed the land itself to Tiddy Quintus Jayawardena, whether the Appellants had acquired title to the entirety of the land by prescription through long, uninterrupted and adverse possession. This Court granted Leave to Appeal on the following Question of Law set out in paragraph 10(b) of the Petition dated 01 July 2014:

“Whether on a true and correct interpretation of the Deed No.2294, the Donor Dolpi Nona intended to transfer the land along with the buildings and the plantations to her son Tiddy Quintus Jayawardena.”

Impugned Judgement of the High Court

The High Court was of the view that, although the recital of the said Deed No. 2294 referred to the donor's intention to donate the "land and premises" to Tiddy Quintus Jayawardena, the operative part of the deed was determinative. Relying on the decisions in *Kumarihamy v Maithripala* [1942] 44 NLR 153 and *Fernando v Jossie*, [1956] 58 NLR 114, the High Court held that where there is an inconsistency between the recital and the operative clauses of a deed, the operative part prevails, and the intention of the parties must be gathered from the words actually employed in the instrument. Accordingly, the Court concluded that the operative clause of the deed conveyed only the buildings and plantations standing on the corpus and not the soil rights.

The High Court further observed that, under section 94 of the Evidence Ordinance, extrinsic evidence was inadmissible to contradict or vary the plain language of the deed, as its terms were clear and unambiguous. The Court also attached significance to the fact that Deed No. 2294 dealt with two separate properties. While the second schedule expressly transferred "all right, title and interest" together with the plantations, no such words appeared in relation to the first schedule, which contained the corpus in dispute. This distinction led the High Court to conclude that the donor intentionally refrained from

transferring the soil rights of the corpus, and that the reference to "land" in the recital related to the property described in the second schedule rather than the corpus in dispute.

The High Court also rejected the evidential value of the affidavit dated 08 May 2001 allegedly made by the attesting Notary Public W. M. Dayaratne, shortly before his death, which asserted that the omission to transfer the soil rights had been inadvertent. The Court held that the said affidavit was unreliable, noting the notary's serious illness, the use of a thumb impression instead of his usual signature, the absence of leave to adduce affidavit evidence under the Civil Procedure Code, and the inability of the opposing party to cross-examine the deponent. The Court further observed that the relevant Land Registry entry recorded that only the buildings and plantations had been conveyed under the deed, and that the subsequent lease agreements executed by the 5th Defendant-Appellant-Appellant were consistent with his having acquired rights only to the buildings and plantations.

With regard to prescription, the High Court held that the 5th Defendant-Appellant-Appellant had failed to establish prescriptive title to the entirety of the corpus. Relying on the decision in *Maria v Anthony* [1997] 2 Sri LR 356 (CA), the Court observed that acts such as long possession, payment of rates and taxes, enjoyment of the produce, leasing the property, or treating it as one's own are insufficient, as between co-owners, to establish prescription in the absence of clear evidence of ouster and adverse possession. Having examined the evidence, the High Court concluded that the essential elements of ouster and adverse possession had not been proved by cogent evidence and, accordingly, rejected the claim that the 5th Defendant-Appellant-Appellant had acquired prescriptive title to the entirety of the land.

Arguments advanced by the Appellants

The Appellants argued that the deed must be interpreted as a whole and not by reading the schedule in isolation. They relied particularly on the recital appearing on the first page of the deed, which states that the donor was "desirous of donating the said land and premises" to her son, Tiddy Quintus Jayawardena. According to the Appellants, this recital unequivocally reflected the donor's true intention and should prevail in construing the deed. They maintained that the omission of express words conveying the soil rights in the schedule was merely an inadvertent drafting error or oversight by the notary, and that such an omission should not defeat the donor's clearly expressed intention.

The Appellants further relied on the aforesaid affidavit dated 08 May 2001 made by W. M. Dayaratne, the attesting Notary Public, wherein he affirmed that the donor intended to gift the entirety of the property and that the omission in the schedule had occurred inadvertently. Although the notary died before giving oral evidence, the Appellants emphasised that the affidavit had been attested before Viraj Dayaratne, then a State Counsel acting as Commissioner for Oaths, who subsequently testified that his father was mentally sound, though physically weak, when he gave instructions for the preparation of the affidavit. They therefore contended that both the affidavit and the testimony of Viraj Dayaratne deserved significant evidential weight in determining the donor's true intention.

The Appellants also relied on the conduct of the parties following the execution of Deed No. 2294. They submitted that the Plaintiff himself admitted in evidence that he became aware of the wording in the schedule only about three years prior to the institution of the action in 1992, by which time Quintus Jayawardena had already passed away. According to the Appellants, until then, all the siblings, including the Plaintiff, had acted on the basis that Quintus Jayawardena had become the absolute owner of the property under the deed. They argued that the Plaintiff instituted the partition action only after discovering the alleged drafting omission and sought to exploit that mistake to obtain a partition decree.

The Appellants further submitted that the subsequent conduct of Quintus Jayawardena corroborated the donor's intention to transfer the entirety of the property. In particular, they relied upon Mortgage Bond No. 450 dated 16 January 1991, marked 4V18, under which Quintus Jayawardena dealt with the property as its absolute owner. This, they argued, demonstrated that he consistently exercised rights over the entire corpus and not merely over the buildings and plantations.

In support of their submissions, the Appellants relied on the decisions in *Jayasingham v De Almeida* [1952] 54 NLR 416, *Francis Assais v Thampoe* [1959] 61 NLR 73, *Saminathan Pillai v Dingiramma* 39 NLR 325 and *Coven Truifitt Limited* [1892] 2 Chancery 5510, contending that where different parts of a deed appear inconsistent, effect should be given to the part which best reflects the true intention of the parties, and that any misdescription or deficiency in the schedule cannot override the operative intention disclosed by the deed as a whole.

The 2nd Defendant's Position

The 2nd Defendant–Respondent–Respondent submitted that Deed No. 2294 is a deed of gift *inter vivos* and that, where the language of such a deed is clear and unambiguous, the Court is not entitled to enquire into the donor's subjective intention. Relying on *Tyagarajah v Tyagarajah* [1921] 22 NLR. 433, it was contended that the deed contains no ambiguity and no inconsistency between its recital and operative clauses. The Respondent further argued that the two schedules to the deed demonstrate a deliberate distinction: while the first schedule conveys only the buildings and plantations, the second schedule expressly transfers "all right, title and interest," thereby indicating that the donor intentionally omitted the transfer of the soil rights relating to the corpus in dispute.

This Respondent further submitted that, even assuming a conflict existed between the recital and the operative part of the deed, the operative clause must prevail, as established in the said case *Kumarihamy v Maitripala*. It was also argued that the affidavit of the attesting Notary Public, executed more than three decades after the deed, was unreliable, having been made when the notary was gravely ill and incapable of signing his name, making it improbable that he could accurately recollect the donor's intention after such a lapse of time.

Finally, the 2nd Defendant-Respondent-Respondent rejected the Appellants' contention that the re-transfer of the property by the 1st and 2nd Respondents to their mother evidenced a family arrangement to vest the entirety of the property in Quintus Jayawardena, arguing that, had such been the intention, they could simply have transferred the property directly to him.

The Contention of the Plaintiff

The Plaintiff supported the judgments of the District Court and the High Court, submitting that Deed No. 2294 unambiguously conveyed only the buildings, plantations and everything standing thereon, and not the land itself. It was contended that the wording of the schedule was plain, clear and fully applicable to the existing facts, as the land known as 'Udugamalandewatte' belonged to Dolpi Nona Jayawardena, while the buildings and plantations standing thereon constituted the subject matter of the gift.

The Plaintiff further submitted that the law requires the intention of the parties to be gathered from the language actually used in the deed and not from any alleged subjective intention. In support, reliance was placed on the above-mentioned case *Fernando v Jossie*, where it was allegedly held that the meaning of a deed depends upon the words employed rather than the parties' presumed intentions. The Plaintiff also pointed out that Deeds Nos. 2290 and 2291, executed by the same Notary shortly before Deed No. 2294, expressly conveyed undivided shares in the corpus, thereby demonstrating that, had the donor intended to transfer the soil rights under Deed No. 2294, appropriate language could readily have been used. This, it was argued, negated the Appellants' assertion that the omission resulted from a drafting mistake.

Analysis and Conclusion

The principal issue arising for determination in these Appeals is whether Deed No. 2294 attested on 24 April 1969 conveyed to Quintus Jayawardena merely the buildings and plantations standing on the land in dispute or whether it transferred the entirety of the donor's proprietary interest, including the soil rights. The resolution of this issue necessarily depends upon the proper construction of the deed, viewed not in isolation but in the context of the surrounding circumstances and the established principles governing the interpretation of conveyancing instruments.

It is well settled that the primary object in construing a deed is to ascertain the intention of the parties as expressed in the instrument itself. The intention is not to be gathered by isolating a single clause or expression but by reading the deed as a whole so as to give harmonious effect to all its provisions. The Plaintiff drew the attention of this Court to the interpretation of deeds in E.R.S.R. Coomaraswamy's '*The Conveyancer and Property Lawyer*'. As Coomaraswamy observed, the intention rule and the context rule, as explained in that work, require the Court to construe the words of a document in a manner consistent with the general intention disclosed by the instrument as a whole. Equally important is the validity rule, namely that where a deed is reasonably capable of two constructions, the Court should prefer the interpretation that gives efficacy to the transaction rather than one that renders it commercially or legally improbable.

The recital to Deed No. 2294 assumes considerable significance. It expressly records that Dolpi Nona Jayawardena was "desirous of donating the said land and premises" to her

son, Tiddy Quintus Jayawardena. The operative clause thereafter refers to the premises more particularly described in the schedule. Although the first schedule refers to the buildings and plantations without expressly repeating the words "land and premises", I am unable to instantly agree that this omission is necessarily determinative of the donor's intention. Based on the circumstances of this Case, the recital and the operative clause form part of one and the same transaction and must be read together. Where the operative part is capable of more than one interpretation, the recital may legitimately assist the Court in identifying the true intention underlying the transaction.

The surrounding circumstances reinforce this view. The evidence establishes that prior to executing Deed No. 2294, Dolpi Nona Jayawardena had gifted undivided one-fourth shares of the land to the 1st and 2nd Defendants-Respondents-Respondents. Shortly thereafter, by Deeds Nos. 2290 and 2291 dated 18 April 1969, those shares were re-conveyed to her only a few days before the execution of Deed No. 2294. These transactions cannot be viewed as isolated events. Rather, it can be assumed that they demonstrate a coherent family arrangement whereby the entirety of the land was first re-vested in the donor before being conveyed to the said Quintus Jayawardena. Had the donor intended to transfer only the buildings and plantations while retaining the soil rights, there would have been little practical necessity for the earlier re-transfers. The sequence of transactions strongly supports the inference that the donor intended to convey the entire corpus to Quintus Jayawardena.

Moreover, the Plaintiff's own evidence further weakens the case advanced on his behalf. He admitted that he had previously received a separate allotment of land from his mother upon which he had constructed his residence, whereas Quintus Jayawardena had received no other land. He also admitted that he became aware of the alleged omission regarding the soil rights only in 1991, after the death of Quintus Jayawardena, notwithstanding that the deed had been executed more than twenty years earlier. This evidence demonstrates that throughout the said Quintus Jayawardena's lifetime the Plaintiff never asserted any claim to the soil rights or challenged Quintus' ownership of the land. Such prolonged acquiescence is wholly inconsistent with the contention that the donor had intended to reserve the ownership of the land while gifting only the superstructures. I am unable to accept the Plaintiff's contention that where a deed transfers the buildings and plantation, while reserving the soil rights to the donor or another party, the person acquiring rights

only to the building and plantation is thereby entitled to compensation or consideration for the value.

Equally significant is the subsequent conduct of Quintus Jayawardena. The evidence establishes that on several occasions between 1970 and 1991 he leased and mortgaged the property, dealing with it openly and unequivocally as its absolute owner. Following his death, his heirs proceeded to subdivide the land and convey separate allotments. These are not isolated acts but constitute a consistent course of conduct extending over many years. While subsequent conduct cannot vary the terms of a written instrument, it may properly be considered in resolving ambiguity and in determining whether the parties themselves consistently understood the deed as transferring ownership of the entire property. The Plaintiff remained silent throughout these transactions, a circumstance which lends further support to the Appellants' construction of the deed.

The High Court placed considerable reliance on the decisions in the said cases *Kumarihamy v Maithripala* and *Fernando v Jossie* in holding that the operative part of the deed necessarily prevailed over the recital. I agree with the principle that where the operative clause is clear, complete and incapable of any other interpretation, effect must ordinarily be given to its language. However, that principle cannot be applied mechanically without first determining whether the instrument, when read as a whole, is free from ambiguity. In the present Case, the recital expressly refers to the donor's intention to gift the "land and premises", while the operative clause refers generally to the premises described in the schedule. Read together with the antecedent transactions and the surrounding circumstances, the deed is capable of a construction that gives effect to the donor's manifest intention of conveying the entirety of the property. In those circumstances, the respective recital is not inconsistent with the operative clause but rather assists in explaining it.

Furthermore, the affidavit made by the attesting Notary Public shortly before his death cannot, by itself, determine the legal effect of the deed. Nevertheless, the evidence of Viraj Dayaratne establishes that the affidavit was prepared upon the Notary's own instructions while he remained mentally alert. Although the affidavit cannot override the terms of the deed, it constitutes a relevant surrounding circumstance which is consistent with the interpretation emerging from the deed itself and the conduct of the parties over the ensuing

decades. I therefore do not consider that it ought to have been rejected without according it any evidential value whatsoever.

In my considered opinion, the construction adopted by the Plaintiff and accepted by the courts below leads to an improbable result. It is difficult to attribute to the donor an intention to gift only the buildings and plantations to one son while leaving ownership of the underlying land to devolve intestate among all her heirs, particularly when another son had already received a separate parcel of land from her. Such a construction is inconsistent not only with the recital to the deed but also with the antecedent transactions, the subsequent conduct of the parties, and the commercial and practical realities of the arrangement. The more natural and reasonable interpretation is that Dolpi Nona Jayawardena intended to convey, and did convey, the entirety of her proprietary interest in the land together with everything standing thereon to Tiddy Quintus Jayawardena.

I take the view that the language employed in the Deed No. 2294, when read as a whole, does not disclose an intention to sever ownership of the buildings and plantations from the ownership of the soil. In view of this conclusion, it is unnecessary to determine the Appellants' alternative claim founded upon prescription. Once it is held that Deed No. 2294 effectively conveyed the soil rights together with the buildings and plantations, the question of acquisition of title by prescription ceases to be decisive for the determination of these Appeals.

It is pertinent to note that one of the definitions assigned to the word “premises” in *Black’s Law Dictionary* (Bryan A. Garner, Chief Editor, 12th Edition, Thomson Reuters, 2024) is: “A house or building, along with its grounds; esp., the buildings and land that a shop, restaurant, company, etc.” The Dictionary further traces the legal evolution of the term in the following manner:

“Premises (= a house or building) has a curious history in legal usage. Originally, in the sense of things mentioned previously, it denoted the part of a deed that sets forth the names of the grantor and grantee, as well as the things granted and the consideration. Then, through hyp-allage in the early 8th century, it was extended to refer to the subject of a conveyance or bequest as specified in the premises of the deed. Finally, it was extended to refer to a house or building along with its grounds. In short, someone who says, ‘No alcohol is allowed on these premises,’ is engaging unconsciously in a popularized legal technicality.’ Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 700 (3d ed. 2011).”

A survey of contemporary legislation in Sri Lanka reveals that the Recovery of Possession of Premises Given on Lease Act, No. 1 of 2023 defines the word “premises” to mean “any building or part of a building together with the land appertaining thereto and includes a bare land without a building or a part of a multi-storied building;”

These definitions are of considerable assistance in appreciating the legal import of the expression "premises" in the present context. They reinforce the proposition that, unless the context otherwise requires, the term "premises" is ordinarily understood as embracing not merely the buildings or structures standing upon land, but also the land appurtenant thereto. I have found these definitions to be of persuasive assistance in arriving at the conclusions reached in this judgment.

For these reasons, I hold that the learned District Judge and the learned High Court Judges erred in construing Deed No. 2294 as transferring only the buildings and plantations while excluding the soil rights. The judgments of both courts cannot therefore be allowed to stand. In the circumstances, I proceed to answer the above Question of Law upon which this Court granted Leave to Appeal in the affirmative.

Accordingly, SC/Appeal/243/2016 and SC/Appeal/244/2016 are allowed. The judgment of the Provincial High Court of the Western Province holden in *Kalutara* dated 22 May 2014, affirming the judgment of the District Court of *Matugama* dated 30 March 2006, is set aside. Consequently, the Plaintiff's action is dismissed. In all the circumstances of this Case, I make no order as to costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court