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

In the matter of an appeal made in terms of Section 5 of the High Court of the Provinces (Amendment) Act No. 54 of 2006 and Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC / APPEAL / 34 / 2022

SC / HCCA / LA / 287 / 2020

UVA / HCCA / BDL / 43 / 2017 / F

DC Badulla: 1599 / 11 / L

Chintha Kumari Egodawela,

16, Mahadowa Division,

Madolsima.

PLAINTIFF

-Vs-

Kapilan Ananda Rajapakshe,

Karamatiya,

Meegahaqla.

DEFENDANT

AND THEN BETWEEN

Kapilan Ananda Rajapakshe,

Karamatiya,

Meegahaqla.

DEFENDANT - APPELLANT

-Vs-

Chintha Kumari Egodawela,

16, Mahadowa Division,

Madolsima.

PLAINTIFF - RESPONDENT

AND NOW BETWEEN

Chintha Kumari Egodawela,

16, Mahadowa Division,

Madolsima.

PLAINTIFF - RESPONDENT – APPELLANT

-Vs-

Kapilan Ananda Rajapakshe,

Karamatiya,

Meegahaqla.

DEFENDANT – APPELLANT – RESPONDENT

Before: S. Thurairaja, PC, J.
A.H.M.D. Nawaz, J. &
Achala Wengappuli, J.

Counsel: Jagath Wickramanayake, PC with Pujanee de Alwis for the Plaintiff – Respondent – Appellant.

Wijaya Neranjan Perera, PC with Nilusha Dissanayake for the Defendant – Appellant – Respondent.

Argued on: 13.11.2023

Decided on: 19.03.2026

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

1. The applicability of the Roman-Dutch law principle of *exceptio rei venditae et traditae* to settlement orders made under the Land Settlement Ordinance No. 20 of 1931 has engaged the attention of this court since the enactment of the legislation and this

court encounters such a legal conundrum in the case before us. I venture to hazard a classification of the two strands of opinion that straddles this question.

2. One strand of cases which seem to outweigh or outnumber the other line of cases take the view that the title of the vendor before the putative sale was unclear or there was no evidence that he had title. In other words, it cannot be presumed that a vendor did not have title. The scope and ambit of the Land Settlement Ordinance is such that it cannot be presumed that a vendor as we find in this case that Samarakoon Mudiyanselage Jayathileke Bandara Egodawela the original vendor in the case and in whose favour the settlement order was published later did not have title.

3. The Roman-Dutch law doctrine of *exceptio rei venditae et traditae* applies only when it could be said that the vendor did not have title at the time of transfer. But these strands of cases take the view that the ambit of the Land Settlement Ordinance is such that one cannot presume that the person in whose favour the land is settled after an inquiry did not have title at the time of transfer. Consequently, these cases hold that the doctrine of *exceptio rei venditae et traditae* would not apply in land settlement cases.

4. As such, the title that is bestowed conclusively upon the publication of the settlement order cannot be invoked by the vendee so as to clothe him with title. According to these numerically larger cases, *exceptio rei venditae et traditae* cannot be used to confer title on a vendee when his vendor is conclusively conferred with title by the statute itself.

5. The second, and numerically smaller, line of authority adopts a contrary approach. These decisions proceed on the footing that although the transferor may have had only a defeasible title or none at all at the time of the conveyance, his subsequent acquisition of an indefeasible statutory title upon the making of the settlement order "feeds the estoppel" and enures to the benefit of the transferee. On this view, the later

acquired title is deemed to relate back to the date of the original transfer and thus perfects, in retrospect, the vendee's title under the doctrine of *exceptio rei venditae et traditae*. It is within this jurisprudential bifurcation that the present appeal must now be located and resolved.

6. Before I deal with this question let me give a conspectus of the relevant provisions of the Land Settlement Ordinance No. 20 of 1931.

7. The Land Settlement Ordinance No. 20 of 1931 implemented the recommendations of the Land Commission. In Section 4, provision is made enabling the settlement officers to deal not only with unplanted land, but also with planted land. The ordinance has also made provision for claimants dissatisfied with decisions on their claims to appeal to the Board established under Section 11.

8. Section 8 of the Land Settlement Ordinance deals with final orders. In **Hetuhamy v Boteju**[1] it was held that;

> *"Under Section 8 of the Land Settlement Ordinance the effect of a settlement order under this Section is to declare the Crown or any person to be entitled to a land or such share or interest in the land free from all encumbrances and to the exclusion of all unspecified interests. The words "unspecified interests" refer to unspecified interests in the title and they do not deprive the right of a bona fide possessor of the land to compensation for improvements."*

9. The language of the Ordinance is fully satisfied by interpreting it to mean, what indeed is the plain and natural meaning of the words used, that the title to the lands

[1] 43 NLR 83. See also 46 NLR 348.

is finally decided and that the land becomes vested in the persons mentioned in the order.

10. Under Section 4 (4) of the Ordinance;

> *"If the Settlement Officer has reason to think that any person has a claim to the land to which the settlement notice relates or to any share of or interest in the land, he shall, in addition to publishing the notice as herein before prescribed, cause a copy thereof to be served upon such person or to be sent by post addressed to him at his last-known place of abode".*

11. Sections 5 (2) and (3) are important to bear in mind;

> *(2) If in pursuance of the settlement notice a claim is made to any land specified therein or to any share of or interest in any such land, either within the aforesaid period of three months or, in any case in which within the said period of three months it is brought to the knowledge of the Settlement Officer that some person who is absent from Sri Lanka has a claim to any such land or to any such share or interest, within the further period prescribed by the proviso to subsection (1), the Settlement Officer shall proceed to hold an inquiry into such claim and for that purpose may with such assistants as may be required enter upon any land to which the claim relates and make such inspection as may be necessary.*
>
> *(3) For the purpose of the inquiry the Settlement Officer shall call upon every claimant, by summons in writing served upon him either personally or by being left at his last-known place of abode, to appear before the Settlement Officer upon a day and at a time and place within the administrative district in which the land is situated to be specified in*

such summons and to produce the evidence upon which such claimant relies in proof of his claim; and if after due service of the summons such claimant, upon the day and at the place and time specified as aforesaid or upon any subsequent day to which the inquiry or any proceeding under subsection (4) has been adjourned and at the place and time to which such inquiry or proceeding has been so adjourned or upon the day and at the place and time specified in any further summons duly served upon him as provided by this subsection, does not appear or does not produce such evidence, or if he withdraws his claim, then in any of such cases his claim shall be deemed to be null and void and the Settlement Officer may thereupon deal with the land to which the claim relates as though no such claim had been made:

12. The aforesaid sections and the allied provisions in the Act thus mandate claims to be made and entitlement to the land could be made to the settlement officer such as when a claimant has succeeded to the land through inheritance. All these rights of entitlement could be brought forward before the settlement officer as the provisions clearly provide for it. If the claimant is successful in finally establishing his entitlement, Section 8 of the Ordinance comes into operation.

Section 8;

Subject to the provisions of section 5 (6), every settlement order shall be published in the Gazette, and every settlement order so published shall be judicially noticed and shall be conclusive proof, so far as the State or any person is thereby declared to be entitled to any land or to any share of or interest in any land, that the State or such person is entitled to such land or to such share of or interest in the land free of all encumbrances whatsoever other than those specified in such order and that subject to the encumbrances specified in such order such land or share or interest

vests absolutely in the State or in such person to the exclusion of all unspecified interests of whatsoever nature and, so far as it is thereby declared that any land is not claimed by the State or that some person unascertained is entitled to a particular share of or interest in any land, that the State has no title to such land or that some person unascertained is entitled to such share of the land or that such interest in the land exists and that some person unascertained is entitled thereto, as the case may be:

Provided *that nothing in this section contained shall affect the right of any person prejudiced by fraud or the willful suppression of facts of any claimant under the notice from proceeding against such claimant either for the recovery of damages or for the recovery of the land awarded to such claimant by the order.*

13. In terms of the aforesaid provision once the settlement order is published the settlement order shall be conclusive proof of the title of the claimant who is declared to be having the title free from all encumbrances. The use of the word *"conclusive proof"* establishes that no evidence could be brought to rebut the title that has already been vested in the claimant. In this instant case it is one Samarakoon Mudiyanselage Bandara Egodawela – the Plaintiff's grandfather, who was bestowed with a settlement order published in his favour in Gazette Notification No.495/12 dated 1 March 1988.

14. Applying the aforesaid provisions, I make the assertion that it is as lucid and lucent that the said grandfather of the Plaintiff was bestowed with the conclusive title to the land in 1988. It simply shows that he had satisfied the settlement officer that he had his lawful entitlement to the land. If the Plaintiff's grandfather did not have lawful entitlement to the land, the land would have been settled in favour of the Crown in the first instance. His title which he already had was proved before the settlement officer was confirmed by the settlement order. In these types of inquiries

only when a claimant satisfies the settlement officer as to his title, it gets crystallized in a settlement order. This is the import and purpose of the Land Settlement Ordinance. There was thus a mode of acquisition of this land that the grandfather of the Plaintiff had established before the settlement officer. It may have been inheritance or any other recognized mode of acquisition of land. Before the settlement officer there was no other rival claimant and it was only the Plaintiff's grandfather who successfully established his title. In such a situation the question arises whether one could apply *exceptio rei venditae et traditae*. I bear in mind that the doctrine applies only when the claimant before the settlement officer did not have title. It is for this reason I observed at the outset that in land settlement inquiries, it cannot be presumed that the claimant did not have title. If the claimant-the Plaintiff's grandfather did not prove his title, the settlement officer could not have clothed him with title by way of a settlement order.

15. It is on that basis the following case becomes apposite. In the case of ***Periacaruppen Chettiar v. Messrs. Proprietors & Agents Limited***[2], the claimant sold to the defendant a land the title to which he expected to obtain subsequently by virtue of a settlement order under the Waste Lands Ordinance. By an order under Section 8 of the Land Settlement Ordinance the claimant was declared entitled to the property. The plaintiff became the successor in title to the claimant by *bona fide* purchase for value. The defendant's deed was not registered whereas the Settlement Order and the deeds of the plaintiff were duly registered. It was held that the plea of *exceptio rei venditae et traditae* was not available to the first defendant as against the plaintiff and the Settlement Order did not inure to the benefit of the Defendants. But that the defendants are entitled to *jus retentionis* until compensation was paid for the improvements made by them during the time when they had good title to, and were owners of the land.

[2] (1946) 47 NLR 121. See also ***Karunadasa v. Abdul Hamid*** 60 NLR 352

16. The issue in this case is whether long before the conclusive title was bestowed in 1988, in the year 1964 the Plaintiff's grandfather had transferred a land called *"Ruppeyaya"* to the Defendant's predecessors. It is argued that the conclusive title that accrued in 1988 must now relate back to the transfer in 1964. In other words, it is contended on behalf of the Defendant that the conclusive title would feed into the absence of title in 1964 and supply the deficiency thus clothing the Defendant with title.

17. The learned District Judge held against the Defendant by his judgement dated 30 March 2017 and the reasoning of the learned District Judge was on the basis that the deed of transfer in favour of the Defendant's predecessor in 1964 was in respect of the land called *"Ruppeyaya"* and not the subject matter of the act*ion which was according to the learned District Judge "Karamatiyahena"*. But the learned Judges of the Civil Appellate High Court took the view that the transfer in 1964 and the settlement order in 1988 related to the same subject matter and on the question of the applicability of *exceptio rei venditae et traditae,* the learned Civil Appellate High Court Judges held that the doctrine applied because the vendor - the grandfather of the Plaintiff did not have title in 1964 and the accrual of title in 1988 would feed the *estoppel* and clothe the Defendant's predecessor with title and consequently, the property would devolve on the Defendant.

18. As I said before, only when it can be said without any iota of doubt that the Plaintiff's grandfather did not have title, the Roman-Dutch law principle would apply. From the facts I have recited, the Plaintiff's grandfather went before the settlement officer and successfully established his title to the property. In other words, I once again make clear that it cannot be presumed that he did not have a title. If he did not have title, the settlement officer would not have cleared him for an official bestowal of title. Therefore, it cannot be argued that the doctrine would apply in favour of the Defendant's predecessors.

19. I have to point out that if the Defendant's predecessors had indeed acquired a title to the land, they could have easily made a claim before the land settlement officer. If there was a lawful claim that was available to the Defendant's predecessors, it could have been brought to the notice of the settlement officer. If indeed there was fraud on the part of the Plaintiff's grandfather in the sale transaction, there is provision in the Land Settlement Ordinance to make claims for compensation. Neither the Defendant nor his predecessors has resorted to this course of action. In other words, there was a grievous omission on the part of the Defendant's predecessors to make use of this statutory remedy. That inaction would estop them from disproving the conclusive title that had accrued to the Plaintiff's grandfather and subsequently to his heirs.

20. I thus hold *exceptio rei venditae et traditae* would not apply to the case of the Defendant and as such, the conclusive proof that was invested in the title of the Plaintiff's grandfather would now inure to the benefit of the Plaintiff.

21. In the circumstances, I proceed to set aside the judgement of the learned Judges of the Civil Appellate Court 28 August 2020 and affirm the judgement of the learned District Judge of Badulla dated 30 March 2017.

22. Leave had been granted in this case on questions of law in namely,

1. *Have the learned judges of the Civil Appellate High Court misconceived themselves in law in applying the concept of "exceptio rei vindiate er traditae" to this instant case, disregarding the statutory provisions set out in the Land Settlement Ordinance?*

2. *Have the learned judges of the Civil Appellate High Court misconceived in law in applying a certain portion of the case of* ***"Mudalihamy v.***

Dingiri Menika[3]*, to interpret the concept of "Exceptio Rei Vindiate Er Traditae" and erred in their failure to assess the said judgment fully in concluding the judgement of this case?*

23. Both questions of law are answered in the affirmative. As regards the case of ***Mudalihamy v. Dingiri Menika*** (supra), it is to the effect that a partition decree which usually frees the final decree from encumbrances could not be relied upon by a person who is estopped by that decree to support and confirm the very title which it bars. The import of this case has certainly been misunderstood by the learned Civil Appellate judges.

24. Accordingly, I allow the appeal of the Plaintiff – Respondent – Appellant.

Judge of the Supreme Court

S. Thurairaja, PC, J.

1. I have had the privilege of reading through the draft opinions of my learned brothers. With the greatest respect, I am unable to agree with the conclusion reached by my learned brother Nawaz J that this appeal should be allowed. Upon a careful consideration of the evidence placed before Court and the legal principles governing the matter, I am inclined instead to agree with the reasoning and conclusion reached by my learned Brother Wengappuli J that the appeal ought to be dismissed.

[3] 28 NLR 412

2. The central legal difficulty in this appeal arises from the interaction between the Roman-Dutch law principles governing transfers of immovable property and the statutory finality attached to settlement orders issued under the *Land Settlement Ordinance*. My brother Nawaz J proceeds on the basis that, because Section 8 of the Ordinance declares that the publication of a settlement order in the Gazette shall constitute conclusive proof that the person named therein is entitled to the land free of all encumbrances, it would be impermissible to presume that the vendor lacked title at the time of the earlier transfer. To do so, it is said, would contradict the statutory declaration of title effected by the settlement order.

3. My brother Wengappuli J, however, adopts a different approach. While recognising the conclusiveness of the statutory title created by the settlement order, His Lordship takes the view that, where a person who later becomes clothed with such statutory title had previously executed a conveyance of the same land for valuable consideration, the earlier defect in title cannot in equity be used to defeat the rights of the earlier transferee. In such circumstances, the later-acquired title enures to the benefit of the purchaser to whom the vendor had already purported to convey the property.

4. In my view, the aforesaid approach is more consistent both with the equitable principles embedded within our Roman-Dutch legal tradition and with the practical realities disclosed by the evidence in this case.

5. The doctrine of *exceptio rei venditae et traditae*, rooted in Roman-Dutch law, operates to protect a purchaser who has paid the price and received possession of the property from attempts by the vendor, or those claiming through him, to assert a title inconsistent with the earlier transfer. The principle reflects the broader equitable maxim that a person should not be permitted to approbate and reprobate in respect of the same transaction. Where a vendor has represented that he transfers land and has delivered possession in pursuance of that representation, neither he nor those

claiming under him can later rely upon technical defects in his original title in order to defeat the purchaser's interest.

6. Where the vendor subsequently cures the defect in his title, whether through inheritance, prescription, or statutory vesting, the law has long recognised that such antecedent defect in title, which has later been perfecred, cannot be invoked to defeat the purchaser to whom the vendor had earlier conveyed the land. Rather, the perfected title enures to the benefit of the earlier transferee. Authorities such as ***Rajapakse v. Fernando [1920]***[4] illustrate the manner in which courts have recognised the equitable consequences that flow from such transactions.

7. Viewed in that light, the factual circumstances of the present case assume considerable significance. The vendor executed the Deed of Transfer in 1964, thereby purporting to convey the property in dispute to the Defendant. It is common ground that the relevant Settlement Order was not gazetted until 1988. At the time of the transfer, therefore, the vendor's legal title may well have been imperfect or incomplete. Yet the evidence indicates that the Defendant entered into possession pursuant to that deed and continued in possession for a considerable period thereafter.

8. In fact, the Defendant placed before Court documentary evidence demonstrating possession dating back to 1964, including acreage tax receipts issued from 1975 onwards. In contrast, the Plaintiff was unable to produce documentary evidence establishing possession by her predecessors in title after the execution of the 1964 deed. These factual circumstances lend substantial support to the conclusion that the transfer effected in 1964 was not merely a paper transaction but one that was followed by actual possession and enjoyment of the land by the Defendant.

[4] 21 N.L.R. 495

9. It is true that Section 8 of the *Land Settlement Ordinance* provides that the publication of a settlement order shall constitute conclusive proof that the person named therein is entitled to the land described in the order. However, the conclusiveness of the statutory title created by the settlement order does not, in my view, operate in a vacuum. The provision determines the person in whom title is deemed to vest as against the world at large; it does not necessarily extinguish equitable obligations arising from prior voluntary transactions entered into by that person.

10. To hold otherwise would produce consequences that are difficult to reconcile with both equity and common sense. If a vendor who has conveyed land for valuable consideration could subsequently rely upon a statutory declaration of title to reclaim that same land from the purchaser, the *Land Settlement Ordinance* would become an instrument through which prior conveyances could be retrospectively defeated. Such an interpretation would permit the heirs of the vendor to rely upon the settlement process to defeat obligations voluntarily undertaken by their predecessor in title. It would allow the statutory scheme to facilitate an inequitable reclamation of land rather than to confirm and regularize existing proprietary relationships.

11. In my view, the more principled approach is that the settlement order, when gazetted, perfected the title of the person in whose favour it was made; but where that person had already conveyed the land for valuable consideration and placed the purchaser in possession, the fact that the title was perfected only subsequently cannot in equity be used to defeat that prior transfer. Rather, the statutory title must be regarded as feeding and perfecting the earlier conveyance.

12. This approach finds support in decisions such as ***Mudalihamy v. Dingiri Menika [1927]***,[5] which recognise that the subsequent perfection of title cannot be invoked to undermine a prior conveyance executed by the same party. The gazetting of the

[5] 28 N.L.R. 412

settlement order in 1988 therefore operated to cure the earlier defect in the vendor's title and to clothe the Defendant, who had been in possession pursuant to the 1964 deed, with a title capable of being recognised and enforced in law.

13. For these reasons, I am unable to agree with the view that the Plaintiff is entitled to rely upon the settlement order in order to defeat the Defendant's long-standing possession and the rights arising from the earlier deed of transfer. In my respectful view, the learned trial judge was correct in preferring the Defendant's claim.

14. Accordingly, I would dismiss this appeal.

Appeal Dismissed.

Judge of the Supreme Court

Achala Wengappuli, J.

I have had the privilege of reading in draft the judgment of my brother, His Lordship Justice Nawaz. With due respect to his Lordship's views expressed therein, I regret my inability to concur with same as I have taken the view in relation to the applicability of the maxim *Exceptio Rei Vinditae Et Traditae,* in line with, which his Lordship has aptly described as "… *numerically smaller line of authority"* that adopted a contrary approach to the one taken in numerically larger instances. Hence, I state my reasons in separate judgment.

This appeal arises out of a *Rei Vindicatio* action instituted by the Plaintiff in the District Court of *Badulla*. The Plaintiff sought a declaration of her title to the land described in the schedule to the Plaint and also for the eviction of the Defendant therefrom. The case presented by the Plaintiff before the trial Court was to the effect that the title to the land in dispute was settled in favour of her grandfather *Samarakoon Mudiyanselage Jayatillake*

Bandara Egodawela by a Settlement Order published in the Extraordinary Gazette No. 495/12 of 01.03.1988 [P1]. Upon the demise of the said *S.M.J.B Egodawela,* it was the Plaintiff's father, *Dayaratne Bandara Egodwela,* who inherited title to the land. The siblings of *Dayaratne Bandara Egodwela* have formally renounced their rights of inheritance over the land. With the execution of the Deed of Gift No. 355 on 22.10.2008 by her father, the Plaintiff became the sole owner of the land in dispute. The Plaintiff also claimed that on 28.02.2009, she visited the land for the purpose of preparing a plan, but was obstructed by the Defendant.

The Defendant's case is that the Plaintiff's grandfather *S.M.J.B Egodawela* executed the Deed of Transfer No. 9244, on 27.08.1964 [V7] by which he had transferred all his right, title and interest over the land in dispute in favour of one *Konara Mudiyanselage Punchibandara,* for valuable consideration. It is from the said Punchibandara that the predecessors in title to the Defendant's land derived their rights. The Defendant, whilst claiming that they were in possession of the land in dispute since 1964, sought the dismissal of the Plaint.

The District Court, by its judgment held in favour of the Plaintiff. The original Court simply acted on the Settlement Order and accepted the devolution of title pleaded by the Plaintiff. The Defendant preferred an appeal to the Provincial High Court of Civil Appeal to set aside the said judgment. The appellate Court, by its judgment dated 28.08.2020 held that the Defendant "*can have the benefit of the legal concept Exceptio Rei Vinditae et Traditae"* against the Plaintiff and allowed the appeal. The Court also proceeded to dismiss the Plaint. The Plaintiff sought leave from this Court to appeal against the said judgement.

This Court proceeded to hear the instant appeal on the following two questions of law;

a. Have the learned Judges of the Civil Appellate High Court misconceived themselves in law in applying the concept of *Exceptio Rei Vinditae Et Traditae* to this instant case, disregarding the statutory provisions set out in the Land Settlement Ordinance?

b. Have the learned Judges of the Civil Appellate High Court misconceived in law, in applying a certain portion of the case of ***Mudalihamy v Dingiri Menika*** (1927) 28 NLR 412 to interpret the concept of *Exceptio Rei Vinditae Et Traditae* and erred in their failure to assess the said judgment fully in concluding the judgment of this case?

The evidence indicated that *S.M.J.B Egodawela* made a claim before the Settlement Officer on 01.08.1960 after the Government published in the Gazette No. 12149 of 24.06.1960 (p. 306 of appeal brief) calling for such claims. The Settlement Notice in respect of Lot No. 36 (285) of B.S.V. Plan No. 604 was issued to him on 18.05.1961 after payment of Rs. 67.50 to the Government. The said *S.M.J.B Egodawela* thereupon executed the Deed of Transfer No. 9244 on 27.08.1964, in favour of *Konara Mudiyanselage Punchibandara.*

The schedule to the said deed reads as follows;

"ඉහත කී උප ලේඛනය

විකුණුම් කාර මට මුඩුබිම් පණත යටතේ ඉඩම් නිරවුල් කිරීමේදි රජය මගින් නිරවුල් කරදි තිබෙන, ඌව පලාතේ බදුල්ල දිස්ත්‍රික්කයේ වියලුව ඔයපලාත කෝරළේ බලගොල්ලේගම තිබෙන, වී.පී. අංක 604 දරණ ප්ලැනයේ කොටස් අංක 285 දරන,

රුප්පෙයාය කියන ඉඩමේ කොටස අක්කර තුනකුත් රූඩ් දෙකක් (අ.3 රූ.2 පා.0) විශාලත්වයට මායිම්, උතුරට අංක 284 දරණ කොටසද, නැගෙනහිරට පාරට වෙන්කළ බිම්තීරය සහ අංක 288 දරන කොටසද දකුණට අංක 286 දරණ කොටසද බස්නාහිරට කදුරේ රිසවේසමද යන මෙහි තුළ ඉඩම සහ ඊට අයිති ගසකොල පලතුරු ආදි සියලු දේද,

2 එකී බලගොල්ලේගම තිබෙන, වී. පි. 604 දරණ ප්ලැනයේ කොටස් අංක 294 දරන කොටටගස් යාය කියන ඉඩමේ කොටස අක්කර දහයක් පමණ විශාලත්වයට මායිම්, උතුරට පාරට වෙන්කළ බිම්තීරයද නැගෙනහිරට පි.බි. එගොඩවෙලට අයිති අංක 295ද දකුණට රජය සතු ඉඩමද බස්නාහිරට අංක 293 දරණ කොටස්ද යන මෙහි තුළ ඉඩම සහ ඊට අයිති ගසකොල පලතුරු ආදි සියලු දේද,යන මෙහි දේපලය."

The parties have admitted the identity of the *corpus* at the commencement of the trial. During cross-examination, the Plaintiff had no answer to offer when it was suggested to her

that she was unable to produce any documentary evidence to establish that any of her predecessors in title had the possession of the *corpus* after 1964, when Deed No. 9244 was executed. The evidence indicates that, except for the unlikely claim of picking mango fruits occasionally, the Plaintiff or her predecessors in title had not possessed the land any time after 1964. On the other hand, the Defendant produced receipt for acreage taxes paid in 1975 for a land in extent of 3 Acres and 2 Roods. The Commission Plan No. 186 (X3 in appeal brief) indicates that the extent of the *corpus* is 3 Acres 2 Roods and 3 Perches, inclusive of Lot No. 1, held by a third party, giving some credence to the Defendant's claim. When the Court Commissioner surveyed the *corpus,* he found that the Defendant had leased out Lot No. 3 of Plan No. 186 to a Government Agency, which involved with a road development project it has undertaken in the same area.

The Provincial High Court of Civil Appeal, in arriving at the conclusion that the Plaint should be dismissed, had relied on the underlying rationale of the maxim *Exceptio Rei Vinditae Et Traditae* as stated in the judgment of ***Mudalihamy v Dingiri Menika*** (supra) by *Garvin* J. The relevant part of the judgment of *Garvin* J. was reproduced by that Court in its judgment. This quotation included the section where his Lordship stated *"[U]nder the Roman-Dutch law a purchaser who has got possession from the vendor who at the time of the sale had no title or a defective title could rely upon a title subsequently acquired by his vendor and resist any attempt on the part of the vendor or any person claiming under the vendor to eject him; …"* The Provincial High Court of Civil Appeal was of the view that " … *by the time V7 was executed, the title of the vendor was defective for the reason that settlement order had not been gazetted. When it was gazetted, the defect was cured and the absolute title of the land could be considered to have passed over to the vendee in view of the maxim Exceptio Rei Vinditae Et Traditae".* Then the appellate Court ruled out that after execution of V7 and the settlement order, no rights over the land remained with S.M.J.B *Egodawela* to pass on to his son

It is clear from the above, the appellate Court merely applied the principle of law encapsulated in the maxim *Exceptio Rei Vinditae et Traditae* as stated by *Garvin* J. This

principle was already acted upon by the Privy Council in ***Rajapakse v Fernando*** (1920) 21 NLR 495, where a grantor has purported to grant an interest in land, which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the benefit of the earlier grantee.

Having considered the submissions of the parties, I am of the view that the two questions of law on which the instant appeal was argued on should be answered in the negative.
I therefore affirm the judgment of the Provincial High Court of Civil Appeal and proceed to dismiss the appeal of the Plaintiff. I make no order as to costs.

Judge of the Supreme Court