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

S.C. Appeal No. 93/2022

SC/HCCA/LA/134/2020

WP/HCCA/COL/85/2017(F)

DLM/180/14-DC COLOMBO

In the matter of an application for leave to appeal under and in terms of section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended, read together with Article 127 of the Constitution.

1. Shirani Champika Ranbahu
2. Mallikage Dinusha Ranabahu
3. Mallikage Kusum Susrutha Ranabahu
4. Mallikage Komathi Tivanka Ranabahu

All of

No.102/1,6/1,

Rosmead Avenue,

Colombo 07.

(1st and 2nd Plaintiff's appearing through the 3rd plaintiff as their attorney)

PLAINTIFFS

Vs.

1. Arlet Charmen Fernando nee Thomas

   No.105,

   (Previously 107/97)

   Pranshawaththa,

   Mattakkuliya,

   Colombo 15.

2. Sonali Rushika De Silva
   No.105,
   (Previously 107/97)
   Pranshawaththa,
   Mattakkuliya,
   Colombo 15.

DEFENDANTS

AND BETWEEN

1. Shirani Champika Ranbahu
2. Mallikage Dinusha Ranabahu
3. Mallikage Kusum Susrutha Ranabahu
4. Mallikage Komathi Tivanka Ranabahu
   All of
   No. 102/1,6/1,
   Rosmead Avenue,
   Colombo 07.
   (1st and 2nd Plaintiff's appearing
   through the 3rd plaintiff as their attorney)

PLAINTIFFS - APPELLANTS

Vs.

1. Arlet Charmen Fernando nee
   Thomes
   No.105,
   (Previously 107/97)
   Pranshawaththa,
   Mattakkuliya, Colombo 15.

2. Sonali Rushika De Silva
   No.105,
   (Previously 107/97)
   Pranshawaththa,
   Mattakkuliya,
   Colombo 15.

DEFENDANTS - RESPONDENTS

AND NOW BETWEEN

1. Arlet Charmen Fernando nee
   Thomes
   No.105,
   (Previously 107/97)
   Pranshawaththa,
   Mattakkuliya,
   Colombo 15.

2. Sonali Rushika De Silva
   No.105,
   (Previously 107/97)
   Pranshawaththa,
   Mattakkuliya,
   Colombo 15.

DEFENDANTS-RESPONDENTS-

PETITIONERS

Vs.

1. Shirani Champika Ranbahu
2. Mallikage Dinusha Ranabahu
3. Mallikage Kusum Susrutha Ranabahu
4. Mallikage Komathi Tivanka Ranabahu

   All of

   No. 102/1,6/1,

   Rosmead Avenue,

   Colombo 07.

   (1st and 2nd Plaintiff's appearing

   through the 3rd plaintiff as their attorney)

PLAINTIFFS - APPELLANTS-

RESPONDENTS

Before: **Hon. Janak De Silva, J.**

Hon. Menaka Wijesundera, J.

Hon. Sampath K.B. Wijeratne, J.

Counsel: Eraj De Silva, PC for the Defendants-Respondents-Petitioners

Dilan Perera for the Plaintiff-Appellant-Respondents

Written Submissions: 06.02.2023 and 26.11.2025 by the Defendant-Respondent-Petitioners

25.01.2023 and 16.10.2025 by the Plaintiff-Appellant-Respondents

Argued on: 25.09.2025

Decided on: 04.06.2026

Janak De Silva, J.

This is a *rei vindicatio* action. The learned trial judge dismissed the action by holding that the Plaintiffs-Appellants-Respondents (Plaintiffs) failed to prove their title. The claim-in-reconvention was dismissed on the basis that the Defendants-Respondents-Petitioners (Defendants) had failed to establish prescriptive title.

Aggrieved, the Plaintiffs appealed to the Civil Appellate High Court of the Western Province holden in Colombo (High Court) which allowed the appeal and entered judgment as prayed for in the plaint. The claim-in-reconvention was dismissed.

Leave to appeal has been granted on the following question of law:

> *"Did the Plaintiffs-Appellants-Respondents prove the title to the property as pleaded in the issues raised before the District Court?"*

Parties have admitted that the corpus is depicted as Lot 1 in plan No. 301/98 dated 21.08.1998 prepared by licensed surveyor P. Vethasalam containing 22 perches in extent. Lot 1 therein consists of Lots 6A, 6B and 6C depicted in plan No. 898/2003 dated 10.11.2003 prepared by licensed surveyor P. Vethasalam.

Position of the Plaintiffs

The Plaintiffs instituted this action seeking *inter alia*, a declaration of title to the corpus called "Meehaga Watta", ejectment of the Defendants, invalidating the Deed of Gift bearing No. 7618 (පැ.8), cancellation of its registration at the Colombo Land Registry in Volume A 954 Folio No.55 and damages.

The original owner of the corpus was one Ranjith Gomes, who conveyed Lot 6A to Edward Ranabahu by Deed of Transfer No. 407 dated 30.01.2004 (පැ.1) attested by N. Warusawitharana, Notary Public containing 7.61 perches in extent.

Thereafter, Edward Ranabahu brought Lot 6B along with the road reservation marked Lot 6C from Ranjith Gomes under the name of Kapugama Ranasighe Arachchige Premawathi (mother-in-law of Ranabahu) for his benefit by Deed of Transfer No. 408 (පැ.3) dated 10.02.2004 attested by said N. Warusawitharana containing 13.41 perches in extent.

However, despite these conveyances by පැ.1 and පැ.3, the 1st Defendant remained in possession. The Plaintiffs later discovered that the 1st Defendant had executed a Deed of Declaration No. 2639 dated 27.08.1998 (පැ.5) attested by V. Thevasenathipathy, Notary Public, claiming prescriptive title to the corpus based on uninterrupted and adverse possession for more than 40 years.

Edward Ranabahu subsequently purchased the entire land from the 1st Defendant by Deed of Transfer No. 4367 (පැ.6) attested by V. Thevasenathipathy, Notary Public, dated 29.09.2004 for valuable consideration of Rs. 1,000,000/= of which Rs. 500,000/= was paid upfront. On the same date, Edward Ranabahu mortgaged the said land to the 1st Defendant by Mortgage Bond No. 4368 (පැ.7) to secure the remaining Rs. 500,000/=.

Subsequently in 2014, the Plaintiffs found that the 1st Defendant had executed a Deed of Gift bearing No. 7618 (පැ.8) dated 26.08.2011 attested by P.N.B. Perera, Notary Public, in favour of the 2nd Defendant (her daughter), which was registered at the Colombo Land Registry in Volume A 954 Folio No. 55.

This finding led to the initiation of the present action. The Plaintiffs claim to be entitled to institute this action on the basis of the rights that devolved upon them as the widow and children of Edward Ranabahu, who died intestate in October 2013, thereby vesting his interests on them by operation of law.

Position of the Defendants

The Defendants contend that they had formalized their prescriptive rights through Deed of Declaration No. 2639 dated 27.08.1998 (පැ.5). The rights arising from this were later

transferred to the 2nd Defendant, who is the daughter of the 1st Defendant, through Deed of Gift bearing No. 7618 (පැ.8) dated 26.08.2011, which they claimed took priority as a registered instrument over the unregistered deeds Nos. 4367 and 4368.

They also sought to assail the Plaintiff's title by seeking to nullify Deed of Transfer No. 4367 (පැ.6) and Mortgage Bond No. 4368 (පැ.7) contending that the 1st Defendant signed those without any intention to be bound by them. Furthermore, they contend that the element of "*Traditio*" was not established since there was no delivery of the property to the Plaintiffs.

Analysis

Voet (6.1.2), defines the scope of a *rei vindicatio action* as follows:

> *" From the right of ownership springs the vindication of a thing, that is to say, an action in rem by which we sue for a thing which is ours but in the possession of another."*

The burden is on the Plaintiffs to prove their title. This they have to do on a balance of probability **[*Kuruwitage Don Preethi Anura and others v. Makalandage William Silva* and *another* (S.C. Appeal No. SC/LA/116/2014, S.C.M.05.06.2017; *Bank of Ceylon v. A.C. Rajasingham* (S.C. Appeal No.40/2014, S.C.M.04.07.2023)].**

The Plaintiffs tendered documents marked පැ.1 to පැ.8 to prove their title. None of these documents were marked subject to proof. Consequently, none of these were objected to at the close of the case for the Plaintiffs.

The Deed of Declaration No. 2639 (පැ.5) is dated 27.08.1998. The Deed of Transfer No. 4367 (පැ.6) is dated 29.09.2004 and it explicitly refers not only to the paper title of the 1st Defendant from Deed of Declaration No. 2639 (පැ.5), but also to prescriptive rights. The explicit reference to both the paper title and prescriptive rights in Deed of Transfer No.

4367 (පැ.6) unequivocally reflects the 1st Defendant's intention to divest herself of the entirety of her rights in the corpus.

This was further supported by the admission made by the 1st Defendant during the trial on 06.09.2016, where she expressly admitted the transfer of all her rights to Edward Ranabahu through Deed No. 4367 (පැ.6).

> *ප්‍ර: මම තමාට යෝජනා කරනවා කුමන හෝ අයිතියක් තිබුනා නම් ඒ සියලු අයිතිවාසිකම් තමා අංක පැ.6 ඔප්පුවෙන් රනබාහුට පවරලා තියෙනවා කියලා?*
>
> *උ : ඔව්. මම මේකට කැමැත්ත දුන්නේ මුදල් දෙන්නේ මට ට්‍රාන්සර් කළොත් පමණයි කියලා කිව්වා*

The Plaintiffs' position is supported by the principle laid down in ***Fernando v. Podi Sinno*** **[6 C.L.R. 73]**, ***P. M. Dingirimahatmaya v. D. A. Ratnasekera*** **[63 N.L.R. 405]**, ***H. Winnie Fernando v. Wijaya Prasanna Malalasekera and others*** **[C. A. 769(A)/96(F) and C. A. 769(B)/96(F), C.A.M.29.10.2019]** and ***Mayandi Suhumaran v. Mookan Sathiyaseelan*** **[S.C. Appeal No. 28/2017, S.C.M. 04.10.2021].**

The principle in simple terms is that *a transferee can only claim the rights that were actually transferred to him*; he cannot rely on the transferor's prior possession of land that was not included in the conveyance to establish prescriptive title.

Thus, it is clear that the 1st Defendant, by executing Deed of Transfer No. 4367 (පැ.6) on 29.09.2004, intended to *transfer all rights she possessed over the corpus to Edward Ranabahu*, including both the paper title and any prescriptive rights declared in Deed of Declaration No. 2639 (පැ.5).

Moreover, there is no dispute as to the devolution of Edward Ranabahu's acquired rights upon his death to his widow and children, the present Plaintiffs, since the 1st Defendant has admitted Edward Ranabahu as the father of the Plaintiffs, and acknowledged

Ranabahu as the purchaser under the Deed of Transfer No. 4367 (පැ.6) while admitting herself as the signatory to said transaction.

Hence, the only question that arises in this appeal is whether the Deed of Gift bearing No. 7618 (පැ.8) dated 26.08.2011 takes priority as a registered instrument over the unregistered deeds of 4367 (පැ.6) and 4368 (පැ.7) executed in 2004.

Registration of Deeds

Roman Law did not appear to have any evidence of a system of registration of deeds. Registration of deeds developed under Roman-Dutch Law. Wessels, J. in ***Houtpoort Syndicate v. Jacobs*** **[(1904) T.S. 105]** explained the development as follows:

> *"In the Roman Law we find nothing about registration in the transfer of land. In Western Europe, however, a custom sprang up in many places which required the seller and the purchaser to appear before some official and state I the presence of witnesses that a sale of land had taken place. The transaction then was noted in a book kept specially for the purpose. This custom prevailed throughout the greater part of the Netherlands, and was in the time of Grotius regarded as an inveterate custom. In many parts of the Netherlands, in addition to the registration, the sale had to be publicly proclaimed on three Saturdays or on three church days (Recht., Obs. part III, Obs. 32). There can therefore be but little doubt, that the registration coram judice loci rei sitae, was for the purpose of publicity, partly that land should not be sold twice over to different purchasers, and partly so that persons who had any claims upon the land might assert these claims before the purchaser took possession."*

The Dutch introduced two modes of ascertaining titles to land to Ceylon (as it was then). One was the *thombo,* where entries were made under the head of the presumptive

proprietor who was generally the Chief of a family. The other was by the authentication of two members of a Court of Justice.

The British introduced three legislative instruments dealing with the registration of deeds. They are the Land Registration Ordinance No. 8 of 1863 (1863 Ordinance), Land Registration Ordinance No. 14 of 1891 (1891 Ordinance) and Registration of Documents Ordinance No. 23 of 1927 as amended (1927 Ordinance).

1863 Ordinance

Section 38 of the 1863 Ordinance required every deed or other instrument dealing with any interest in land or immovable property, probate of every will, letters of administration, and every judgment, or order of court, affecting land, executed, granted, or pronounced after coming into operation of the 1863 Ordinance, to be registered in the books provided for the purpose.

Section 39 provided that every deed, judgment or order which was required to be registered, unless registered as provided for by the 1863 Ordinance, was deemed void as against all persons claiming an adverse interest on valuable consideration by virtue of any subsequent deed, judgment, or order.

In an anonymous case reported in 2 Grenier's Reports 6, Sir Edward Creasy, C.J., summed up the object of this legislation as follows:

> *"The clear object of the Legislature was to protect honest purchasers and creditors. A man when asked to advance money to another, looks naturally to ascertain what are the borrower's means of payment. If he finds the borrower is the ostensible owner of any landed property, he naturally searches the register to see what, if any, encumbrances, there are on it. If the register shows no encumbrances, he advances his money on a deed which he carefully registers and thinks himself safe, as he ought to be, and as he will be, according to the construction which I put on the*

Ordinance. But if some other man has got a stale old deed of encumbrances in his pocket, which the register does not reveal, and this stale old encumbrance is only suddenly registered when the debtor is about to be sold up, and if this stale deed were then to be allowed to override the deed registered before it, the whole system of Registration would be turned from a security into a mockery and a snare; and encouragement would be given to frauds which the law specially desired to prevent."

1891 Ordinance

Section 16 made it mandatory for the registration of the instruments specified therein. Section 17 stated that every deed, judgment, order, or other instrument as aforesaid, unless so registered, shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration, by virtue of any subsequent deed, judgment, or order, or other instrument, which shall have been duly registered as aforesaid. Provided, however, that fraud or collusion in obtaining such last-mentioned deed, judgment, order, or other instrument, or in securing such prior registration, shall defeat the priority of the person claiming thereunder; and that nothing herein contained shall be deemed to give any greater effect or different construction to any deed, judgment, order, or other instrument registered in pursuance hereof, save the priority hereby conferred on it.

In ***Salgado v. Salgado*** **[(1907) 1 A.C.R. 137]** Wendt, J., held that the object of registration is to protect persons who in good faith and for valuable consideration enter into transactions in regard to land, from being prejudiced by already existing deed which purport to affect such land, but which it is impossible for them to discover by any search.

Undoubtedly, compelling registration in this manner allows a person, who has once divested himself of his title, by the execution of a second deed clothe the subsequent grantee with title if the first grantee has neglected to register his deed in time.

Nevertheless, as Clarence, J. held in ***Silva v. Sarah Hamy*** **[(1883) Wendt's Reports 383 at 384]**:

> *"When an owner of land conveys it to A for value, and subsequently executes another conveyance of the same land in favour of B also for value, it is true at the date of the second conveyance the owner has nothing left in him to convey, but by the operation of the Ordinance B's conveyance overrides A's, if registered before it. Unless the Ordinance has this effect it has none at all, and this seems the actual construction of the enactment."*

It is a fundamental principle of our law that the non-registration of a deed does not, by itself, invalidate the deed or nullify the transfer of ownership it seeks to effect. Registration is merely a statutory requirement that determines priority among competing instruments, not the intrinsic validity of the conveyance. Thus, while non-registration may affect priority when confronted with a subsequent registered instrument for valuable consideration, it does not diminish the legal rights or title vested in the grantee under a properly executed deed. The earlier deed is not affected in any way, save that it has to take second place. **[*Massilamany v. Santiago* (14 N.L.R. 292), *Mutturamen Vs. Massilamany* (16 N.L.R. 289), *James v. Carolis* (17 N.L.R. 76), *Mohomad Ali v. Weerasuriya* (17 N.L.R. 417), *A. M. Lairis Appu v. E. N. Tennakoon Kumarihamy* (61 N.L.R. 97)].**

1927 Ordinance

Section 7 of the Ordinance as produced in the Legislative Enactments 1956 Revised Edition reads as follows:

> *"7. (1) An instrument executed or made on or after the 1st day of January, 1864, whether before or after the commencement of this Ordinance shall, unless it is duly registered under this Chapter, or, if the land has come within the operation of the*

Land Registration Ordinance, 1877,+[+ Omitted from this edition,] in the books mentioned in section 26 of that Ordinance, be void as against all parties claiming an adverse interest thereto on ***valuable consideration*** *by virtue of any subsequent instrument which is duly registered under this Chapter, or, if the land has come within the operation 'of the Land Registration Ordinance, 1877+,[+ Omitted from this edition,] in the books mentioned in section 26 of that Ordinance."* (emphasis added)

Three main prerequisites need to be satisfied for the doctrine of priority by registration to operate:

(1) Both deeds shall proceed from the same source.

(2) The interests sought to be conferred shall be adverse, creating a clash of interests.

(3) The conveyance shall be for valuable consideration.

There is no doubt that the first two requirements are satisfied in the present case. The first requirement is unequivocally satisfied, since both the prior Deed of Transfer No. 4367 (පැ.6) and the subsequent Deed of Gift No. 7618 (පැ.8) were executed by the same grantor, the 1st Defendant. She is the common source from which all competing claims to the corpus originate.

The second requirement is also clearly met since these two deeds create a direct and irreconcilable clash of interests, as they purport to transfer absolute ownership of the corpus to two different parties: Edward Ranabahu and the 2nd Defendant. These claims are mutually exclusive and legally incompatible.

The third requirement is the need for there to be valuable consideration. The term "valuable consideration" was not part of Roman-Dutch law and is derived from English contractual law principles.

In ***Fernando v. Fonseka*** **[(1889) 1 C.L.R. 82]** it was held that under Section 39 of the 1863 Ordinance, a deed of gift, not being a deed for valuable consideration, does not, by reasons of prior registration, obtain priority over a deed previously executed. Dias, J. held that *valuable consideration is a well-known term with a well-defined meaning - it is such as money, marriage, or the like which the law esteems as an equivalent given for a grant.*

Three years later in ***Mohamadu Hamidu v. Rahimuttu Natchia*** **[(1892) 2 C.L.R. 32]** it was held that the operation of Section 39 of the 1863 Ordinance, in favour of deeds registered before deeds earlier in date, is confined to deeds made for valuable consideration. Therefore, it was held that a deed of gift does not, by reason of prior registration, prevail over another deed of gift prior in date.

In ***Salmon v. Obilias*** **[(1918) 6 C.W.R. 1]**, Bertram, C.J., held that the words "valuable consideration" in Section 17 of Land Registration Ordinance 1891 must be interpreted according to English Law which does not recognize past consideration as valuable consideration. Hence the registration of a deed of conveyance for which the consideration was a past consideration does not give it priority over an earlier unregistered deed.

Whether there is valuable consideration or not will depend on the facts and circumstances of each case. A dowry deed or settlement in consideration of marriage is for valuable consideration, if the marriage takes place subsequently **[*Jayasekere v. Wanigaratne* (12 N.L.R. 364), *Valupillay v. Kathiravaloe* (1892) 5 Thamb. 94]**.

It is an established rule of interpretation that the legislature is presumed to know the law, judicial decisions and general principles of law. Bindra [*Bindra's Interpretation of Statutes*, 10th ed., page 235] states as follows:

> *"The legislature must be presumed to know the course of the legislation, as well as the course of judicial decisions in the country, a fortiori of the superior courts of the country. It is a well-settled rule of construction that when a statute is repealed and*

re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the legislature is presumed to be acquainted with the construction which courts have put upon the words, when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the legislative mind."

In ***M. J. M. Nilamdeen v. Nanayakkara*** **[76 N.L.R. 169]** it was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted.

There is also another rule of construction that where the words of an earlier Act are made part of a new Act, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new Act.

Therefore, although the decisions in ***Fernando*** **[supra],** ***Mohamadu Hamidu*** **[supra]** and **Salmon [supra]** examined the meaning of "valuable consideration" under different Ordinances, the meaning given therein to "valuable consideration" is applicable in examining the meaning of the same term in Section 7 of the 1927 Ordinance.

The subsequent instrument, Deed of Gift No. 7618 (පැ.8), is a voluntary transfer without valuable consideration. In contrast, the prior Deed of Transfer No. 4367 (පැ.6) was executed for valuable consideration of Rs. 1,000,000/=. The 1st Defendant admitted at the trial dated 06.09.2016, that she received Rs. 500,000/= on the execution of both පැ.6 and පැ.7, and it is admitted that the Plaintiffs are ready to pay the remaining Rs. 500,000/=.

For all the foregoing reasons, I have no hesitation in holding that the registered Deed of Gift No. 7618 (පැ.8), cannot claim priority over Deed of Transfer No. 4367 (පැ.6) executed for valuable consideration.

The Defendants sought to contend that as full consideration for Deed of Transfer No. 4367 (පැ.6) was not paid, no title passed to the Plaintiffs. However, this is misconceived in law.

In ***Jayawardene v. Amarasekera*** **[15 N.L.R. 280]** it was held that on the execution of a notarial conveyance, the sale is complete, and the mere fact that the whole of the consideration has not been paid cannot, in the absence of fraud or misrepresentation, afford ground for the rescission of the sale and the cancellation of the sale.

In ***Mohamadu v. Hussim*** **[16 N.L.R. 368]** it was held that where a person obtains a conveyance of property without fraud, but afterwards fraudulently refuses to pay the consideration stipulated for, the grantor is not entitled to claim a cancellation of the conveyance, but his remedy is an action for the recovery of the consideration.

In ***T. M. Sabaratnam v. Kandiah*** **[52 C.L.W. 80]** it was held that the non-payment of consideration, if true, would entitle a claim for recovery, not nullification of the sale.

More recently in ***Weerasinghe v. Heiling and Another*** **[(2020) 3 Sri.L.R. 136]**, the Supreme Court held that a deed of transfer executed without fraud by a Notary Public in accordance with the provisions of the Notaries Ordinance does not become invalid if the consideration stated in the deed was not paid to the transferor. The transferor in such a situation may file a separate action for recovery of the consideration.

Accordingly, even though the full consideration for Deed of Transfer No. 4367 (පැ.6) has not been paid, that does not negate the title that was passed thereby. The only remedy for the seller is to sue for the balance consideration.

The final point that needs to be examined is the contention of the Defendants that *Traditio* was not established in respect of Deed of Transfer No. 4367 (පැ.6) and therefore no title passed to the Plaintiffs.

I am not convinced that this is a matter that can be urged in appeal given that no issue was raised thereon. Nevertheless, I shall examine it.

Traditio (Delivery)

This was one of the five (5) modes of acquisition by natural law recognized in Roman Law. It meant the transfer of possession with the consequences that the ownership of the thing transferred vests in the transferee.

The essential conditions of this mode of acquisition are:

(i) The thing must be capable of delivery and of acquisition by delivery.

(ii) The transferor must be competent to give and the transferee to acquire ownership by this method.

(iii) The transferor must intend to convey ownership (*ex justa causa*).

(iv) The transferor cannot give what he has not got.

(v) There must be a physical transfer of possession or something which in law is an equivalent. Overtime the delivery of a written deed of conveyance took the place of delivery of the land (*traditio per cartam*).

In ***W. D. Baiya v. K. D. A. Karunasekera*** **[56 N.L.R. 265 at 268]**, Gratiaen, J., held that:

> *"Under our law, the affixing of the vendor's signature to the conveyance does not automatically operate to pass title. Delivery of the deed is the minimum pre-requisite (as constituting constructive delivery of the land itself) to the creation of a title which is sufficient even to enable the purchaser to maintain an action to recover the property from " a third party in possession without, or under a weaker, title "-Appuhamy v. Appuhamy [1 (1880) 3 S. C. C. 61 F. B.]. Berwick J. explained at p. 67 that in Ceylon "the notarial execution and the registration of the deed-'formerly in Court and now with the Registrar of Lands-with delivery of the deed takes the place of the old Dutch symbolical delivery before the judge and registration of the proceedings among the acts of court; with the same result as in*

Holland, the principles being the same- viz., contract of sale plus symbolic delivery, equal to dominium, with the consequent right to sue in ejectment."

In this action, it is not disputed that the 1st Defendant executed Deed of Transfer No. 4367 (පැ.6) and handed it over to Edward Ranabahu. At that time, she was the owner of the corpus. The circumstances also establish that she intended to transfer all her rights over the corpus to Edward Ranabahu. *Traditio* is thus completed.

Accordingly, I am of the view that the Plaintiffs have on a balance of probability established their title to the corpus.

I answer the question of law in the affirmative.

Appeal dismissed.

On the question of costs, I am not at all impressed by the conduct of the 1st Defendant. She tried to undermine the title of the Plaintiffs and their predecessor in title on two occasions which lead to this prolong litigation.

Accordingly, I award the Plaintiffs costs fixed at Rs. 2,00,000/=.

JUDGE OF THE SUPREME COURT

Menaka Wijesundara, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K.B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT