

31.9.2

8, 1950

No. 20 of 1948.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON.

UNIVERSITY OF LONDON
W.C.1.

-5 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

44343

BETWEEN—

1. PIYARATANA UNNANSE and
 2. AMUNUGAMA RATANAPALA THERO
- (Plaintiffs)
Appellants

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— AND —

1. WAHAREKE SONUTTARA UNNANSE
(deceased)
 2. WAHAREKE GUNARATANA UNNANSE
 3. AKWATTE DEWAMITTA UNNANSE
 4. MADUGALLE SEELAWANSA UNNANSE
- (Defendants)
Respondents

— AND —

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5. WAHAREKE SOBITHA UNNANSE and
 6. WAHAREKE RATANAPALA UNNANSE
(being substituted Defendants in place of the
First Defendant, deceased)
- (Defendants)
Respondents.

CASE FOR THE APPELLANTS.

RECORD.

1. This is an appeal from a Judgment and decree of the Supreme Court of Ceylon dated the 17th May, 1944, reversing an order made by the District Court of Kandy on the 22nd March, 1943, on a petition by the Appellants for the amendment of an earlier decree of the District Court of Kandy dated the 6th February, 1941.

pp. 151-2

p. 144

p. 135

2. The issue involved in the appeal is the true delimitation of certain property in Kandy of which in the original proceedings the Appellants claimed possession. The Appellants contended that the decree in the original proceedings as drawn up and entered did not conform with the Judgment delivered by the District Court and the District Court upheld that contention but was reversed in the Supreme Court. The effect of the Supreme Court decision was that the Appellants were held to be the lawful owners of a few rooms in a building without any means of access to them, the whole of the rest of the property in dispute being left in the air.

pp. 20-2

p. 29, l. 7
p. 38, l. 6

p. 21, l. 10

p. 22, ll. 1-11

pp. 23-6

p. 23, l. 14

p. 23, l. 15

p. 23, l. 34

p. 23, l. 38

p. 26, ll. 4, 12

pp. 27-8

p. 159

p. 159, ll. 8-11

3. The original proceedings were started in the District Court of Kandy on the 4th July, 1934, by Plaint filed by the Appellants. In this they claimed that, by virtue of being the incumbent priest and the trustee respectively of a monastic temple known as Degaldoruwa Vihare, they were the lawful owners of property in Kandy known as the Meda Pansala (a Pansala being a monk's dwellinghouse or resting place) as an appurtenance of the said Vihare. They traced their title by pupillary succession to a famous monk named Moratota. The property in question was not defined by the Plaint by metes and bounds or by reference to a plan, but was described as "the Meda Pansala and the land belonging thereto". It was alleged that the Defendants were wrongfully in possession of this property and the relief claimed was that it be declared that the said property might be declared to be part and parcel of the endowments of the Degaldoruwa Vihare and as such vested in the Appellants, that the First Appellant might be declared entitled to possession thereof, that the Respondents be ejected therefrom and ordered to pay damages and mesne profits, and such further and other relief as to the Court should seem meet.

4. Answers were filed separately on the 28th November, 1934, by the First and Second Respondents and by the Third and Fourth Respondents. In the main these followed the same lines in denying that the property in question was appurtenant to the Degaldoruwa Vihare and in setting up independent title based on one Parusala. There was also an allegation of undisturbed and uninterrupted possession by title adverse for over 75 years and a claim in reconvention to compensation for alleged improvements carried out to the property and, in one of the Answers, a *jus retentionis* until compensation was paid.

5. On these pleadings issues were framed which are set out in full in the record.

6. At the hearing in the District Court of Kandy which began on the 12th November, 1935, the Appellants put in a number of old deeds. One of these, P.3, a Paraveni deed dated the 11th September, 1844, executed by one Mahalle, referred to "every room and the timber and all other substance therein which are in the Pansala of

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- “Moratota Mahanayake Priest in the Malwatta Vihare, Kandy, and
 “the garden with fruit-bearing trees belonging to that Pansala of
 “one amunam paddy sowing in extent”, this area being admittedly
 about 2 acres. A later Paraveni deed, P.2, executed on the 7th May,
 1849, by one Ratanapala referred to “all the rooms of Moratota
 “Nayake Priest in the Malwatta Vihare, Kandy, and all the timber
 “that Pansala and the garden belonging thereto of one amunam
 “paddy sowing in extent including all the plantations, the copy
 “agreement No. 72 dated 27th May, 1848, by which a sum of £4 per
 10 “annum was agreed to be paid for the ground covered by the opening
 “on this garden a road leading to Mr. Karshon’s (sic., a mistake for
 “Kershaw’s) house . . . ”. The Appellants also called as a
 witness an old cultivator named Ukku Banda who said in cross
 examination “I have known Meda Pansala for about 60 years . . .
 “Meda Pansala has a compound. A road to Hillwood College goes
 “from this monastery. I don’t remember the road being opened.
 “I don’t go to Meda Pansala often. I go 4 or 5 times a year. I
 “knew the compound without the road. I first saw the road to
 “Hillwood about 2 or 3 years ago”.
- 20 7. This evidence as to the nature of the property in dispute
 was not really contested by the Respondents: indeed their own
 evidence confirmed it: The Second Respondent said in terms that
 he accepted what was stated in P.1, P.2, and P.3 and he produced a
 deed, D.6., dated the 21st May, 1864, by which Parusala assigned
 “all that piece or parcel of land or ground forming a road of twenty
 “feet in breadth and lying between the Lower Lake Road and the
 “premises of the Cecil William Ferdinands in the town of Kandy”.
 This he amplified by saying “The road in D.6 still exists. The road
 “ran over a portion of Meda Pansala”.
- 30 8. In his judgment delivered on the 10th February, 1936,
 R. F. Dias, the District Judge of Kandy, did not need to go into the
 question of the area covered by the Meda Pansala. He held that
 originally it had been given to Moratota and that it would pass to his
 pupillary successors and that the First Appellant was the existing
 successor. He held further that Parusala was not in the line of
 pupillary but had stepped in as a usurper. He found, however,
 that the Defendants had acquired a prescriptive title.
- 40 9. On appeal to the Supreme Court the last finding of the
 District Judge of Kandy was upset, the Court holding in its Judg-
 ment delivered on the 29th June, 1937, that possession by the pupils of
 Parusala could not be regarded as adverse possession. Accordingly
 the Appellants’ title was upheld and the case was remitted to the
 District Court of Kandy for determination of the issues relating to
 the Respondents claim to compensation for improvements and to a
jus retentionis, with liberty to raise any issue necessary for this

p. 72, l. 17;
 p. 128, l. 41
 p. 163
 p. 163, ll. 10-15

p. 36, l. 18
 p. 36, l. 25

p. 41, l. 7
 p. 168, ll. 30-2

p. 40, l. 29

pp. 12-6

p. 44, l. 14
 p. 42, l. 19
 p. 43, l. 24
 p. 44, l. 26
 p. 45, ll. 17-23

p. 51
 p. 54, l. 17

p. 50, l. 18

p. 50, l. 22

- p. 51, l. 8 purpose. It is significant that Fernando J. in delivering the leading Judgment stated in terms that the action had been filed “to have it “declared that the land and building referred to as Meda Pansala “situated in the premises of the Malwatte Vihare in Kandy be “declared to be a part of the endowments of the Degaldoruwa “Vihare”.
- p. 55, l. 10 10
 p. 26, l. 1
 p. 23, l. 39
 p. 5, l. 24
 p. 55, l. 33
 p. 56, l. 14
 p. 57, ll. 34-9
 p. 66, ll. 25-35
 p. 58, l. 10
 p. 61
 p. 131, l. 41
10. In the further proceedings the first step taken on the 30th August, 1937, at the instance of Counsel for the First and Second Respondents was that by consent a commission was issued to a valuer “to report fully on the alleged improvements and build- ings “claimed to have been put up by the Defendants”. In the Answers it was alleged that the cost of these improvements was Rs.15,000/ , or alternatively Rs.20,000/ . Subsequently it appears that the valuer reported that he could not execute the commission to him till a survey of the Meda Pansala had been made, and accordingly a commission was issued to a Mr. Spencer on the 23rd November, 1937, to prepare a plan which in due course he did. After some discussion arising out of a complaint by an outside party that Mr. Spencer was trying to survey something outside the Meda Pansala, it was agreed on the 22nd March, 1939, that the Court would have to define what the Meda Pansala was and that an issue would have to be framed. This was ultimately done on the 2nd June, 1939, in the following form:—“Do “the buildings marked 1, 2, 3, 4, 5 and 6 and the land shown in the “inset edged green in Mr. Spencer’s plan represent the Meda Pansala “which is the subject matter of this action? Mr. Gratiaen” (Counsel for the Appellants) “also states that the buildings 7, 8, 9 and 10 are “also buildings belonging to the Meda Pansala but that he does not “ask for any relief as the rights of parties who are not parties to the “action are involved”. Subsequently it appeared that outside claimants were also concerned with the buildings numbered 3 and 6 and the issue was modified by substituting in place of the lots referred to in it only lots 1, 2, 4 and 5. 20 30
11. Meanwhile, as appears from the valuer’s report dated the 13th September, 1938, the Respondents had made a startling change of front. Having lost the battle as to title, they sought to abandon their concession that the contents of P.1, P.2 and P.3 were correct and that the Meda Pansala comprised a garden of one amunam paddy sowing in extent: they even cast overboard their own deed D.6 relating to the road which ran over a portion of the Meda Pansala. They now asserted that “only the building marked 2 on the plan is “the Meda Pansala” and sought to set up a new line of title to the buildings marked 1, 4 and 5 on the plan. A formal statement to that effect was, on the order of the District Judge, filed in Court, but in the result the District Judge held in his Judgment dated the 6th February, 1941, that it was not open to the Respondents at that stage to set up an entirely new title quite distinct from that on which they 40

had hitherto relied and on which the Supreme Court had adjudicated.

12. At the resumed hearing before the new District Judge of Kandy, G. C. Thambyah, the Appellants called Mr. Spencer who explained his plan, indicating that he had been able to identify the road referred to in D.6. He was directed to show on his plan the total extents of Lots 1, 2, 3, 4, 5 and 6 and the portion of land tinted green on the inset of the plan. This he proceeded to do and there was no dispute that, as he said, the total area of the portion edged in green on the inset was 1 acre 3 roods and 30 perches. There was also evidence as to the boundaries of the Meda Pansala and the witnesses, including Pahamune Siri Sumangala, aged 89 years, the Mahanayake of the Siamese Sect and the Chief Priest of the Malwatte Chapter, were all unanimous in saying that the Meda Pansala had a garden or grounds appertaining to it. The latter witness was cross-examined on the lines that a Pansala was a residence for a priest and therefore a building, but the witness summed the matter up by saying "The land adjoining the Pansala is not part of the Pansala just as the land which adjoins this Court House does not form part of the Court House; but if a portion of land is separate and reserved for the use of the Pansala it will be regarded as the property of the Pansala."

p. 64, l. 17

p. 65, l. 5

p. 78, l. 11

p. 70, l. 36

p. 81, l. 13

p. 88, l. 31

13. The Defendants' case was that the Meda Pansala consisted solely of the three rooms which had been occupied by Moratota, *i.e.* Lot 2, but the Court surveyor had given the total cost of erecting that as Rs. 3,148/31, a figure which contrasted somewhat strangely with the Respondents' assertion that improvements they had effected to the Meda Pansala had cost Rs. 20,000/-. It was suggested that this was merely a sentimental value fixed by the Respondents themselves but the District Judge plainly did not believe this. When taxed with the deed referring to the land appertaining to the Meda Pansala as being one amunam paddy sowing in extent, the Third Respondent was reduced to saying that he did not believe the deed although it had already been conceded by the Second Respondent that it was true.

p. 59, l. 19

p. 114, l. 10

p. 115, ll. 10-19

14. The District Judge finally delivered Judgment on the 6th February, 1941. He pointed out, quite correctly, that "the Plaintiffs maintained that the buildings marked 1, 2, 3, 4, 5 and 6 and the land shown in the inset edged green in Mr. Spencer's plan represent the Meda Pansala which is the subject matter of this action". He referred to the concession made by the Appellants' Counsel that, as persons not party to the action had claims in respect of the buildings shown as Lots 3, 6, 7, 8, 9 and 10, no relief could be claimed in the present proceedings with regard to them. "Issue 13 therefore was modified so as to include in it only the Lots 1, 2, 4 and 5." He referred in some detail to Mr. Spencer's evidence, saying that "he has

p. 126

p. 126, l. 30

p. 127, ll. 8-14

p. 127, l. 15

p. 128, l. 23

p. 128, l. 35 “shown in his plan the various buildings claimed by the Plaintiffs
“and the lands claimed by them as sketched by him in the inset and
“edged green”. Later he said “After Mr. Spencer had given
“evidence on the first occasion he was directed by the Court to show
“in the plan the extent of Lots 1, 2, 3, 4, 5 and 6 and the portion of
“land tinted green in the inset and also to show the extent of Lot 2
“separately. He has shown it in his computation marked 20B.
p. 60, l. 25 “According to his computation the area of Lot 2 is only .05 of a
“perch. The portion that is edged green, as shown in the inset, is
“found to contain an extent of 1 acre 3 roods and 30 perches. This 10
“is nearly 2 acres which is the extent of one amunam of paddy
“sowing extent which is the extent referred to in the deeds
p. 129, l. 1 “produced”. The Learned Judge then proceeded “on the question
“whether the Meda Pansala consists only of Lot 2 (a rather insigni-
“ficant extent of .05 perches) or whether the corpus is a larger one,
“reference may be had to the description of the Meda Pansala in the
p. 129, ll. 16-21 “deed P.2”, which he cites along with P.3, adding “It will thus be
“seen that there is a great deal of discrepancy between the corpus
“contained in Lot 2 and the description of the Meda Pansala as
“stated in these two deeds. That the Defendants themselves had in 20
“their contemplation a larger extent of buildings than are comprised
“in Lot 2 only is apparent from the amount of compensation for
p. 129, ll. 29-32 “improvements claimed by them in the Answers filed . . . The
“position appears to emerge clearly that the Defendants, when they
“found out that they have lost the title to the Meda Pansala by
“reason of the Judgment of the Supreme Court, have sought there-
“after to reduce within the lowest possible compass the corpus and
“extent of the Pansala”. In the result the Learned Judge rejected
p. 131, ll. 22-5 the Respondents’ contention that the corpus was limited to Lot 2
saying “Upon a consideration of the evidence placed before the 30
“Court by the parties I have come to the conclusion on the issues
“submitted for adjudication that the Meda Pansala is comprised
“of Lots 1, 2, 3, 4 and 5 and not merely of Lot 2 as contended by the
p. 134, ll. 31-7 “Defendants”. And in summarizing his findings on the issues the
Learned Judge said “In the result I would hold on Issue 13 as framed
“by me that the Meda Pansala which is claimed to be an appur-
“tenant of the Degaldoruwa is comprised of Lots 1, 2, 4 and 5 subject
“to the reservation as regards the further claims to the buildings
“which have been made in the course of the trial”. It is somewhat
unfortunate that in these last two passages the Learned Judge 40
mentioned only the specific buildings identified as Lots. No doubt
his mind was concentrated on the essential core of the controversy
being whether one building was covered or all of them. It is,
however, plain that, in rejecting the Respondents’ contention that it
was one building only, the Learned Judge intended to include the
portions of the land edged in green which had not been built over.
Indeed, there was no point in referring to the reservations made in

the course of the trial as regards the buildings numbered 3, 6, 7, 8, 9 and 10 if his intention had been to limit himself to buildings numbered 1, 2, 4 and 5: the reservation was only material on the basis that the whole area was being awarded to the Appellants. subject to the reservation.

15. The Decree of the District Court dated the 6th February, 1941, was drawn up in the same language omitting any reference to the land edged green on Mr. Spencer's plan. p. 143, ll. 27-32

10 16. For reasons which are not now material the Learned Judge in the District Court rejected the Respondents' claims to compensation for improvements and to a *jus retentionis*. p. 135, l. 6

17. All the Respondents appealed to the Supreme Court from this Judgment and Decree of the District Court of Kandy dated the 6th February, 1941, but the appeals were rejected on a preliminary objection on the 1st October, 1942. Both Petitions of Appeal made it clear that all the Respondents realised that the Appellants' claim was not limited to buildings but included land, and that they regarded the District Judge's judgment as having upheld their claim. pp. 136-7
pp. 138-140
p. 141
p. 137, l. 16
p. 139, l. 41

20 18. On the 11th January, 1943, the Appellants filed in the District Court of Kandy the Petition giving rise to the present appeal. In this they prayed for amendment of the Decree of that Court dated the 6th February, 1941, on the ground that it did not conform to the Judgment in that it made no mention of the land edged in green on the inset to Mr. Spencer's plan. This petition came on for hearing on the 12th March, 1943, before C. Nagalingham D.J. who, by Judgment delivered on the 22nd March, 1943, acceded to the Appellants prayer and directed that the Decree dated the 6th February, 1941, be amended by inserting therein after the figure "5" the words "and
30 "the land shown in the inset edged green" The Learned Judge analysed the written Judgment of his predecessor and expressed the view that the passages therein above quoted "demonstrably establish that the Court held against the contention of the Defendants that "the Meda Pansala and premises comprised only the building "marked 2 and that the Court held further that the Meda Pansala and "premises were of the extent of one amunam and were represented "by the buildings and premises shown in the inset in Mr. Spencer's "plan of the extent of acre 1 roods 3 perches 30". He further stated that "reading the Judgment as a whole and bearing in mind that
40 "not only the buildings 1, 2, 4 and 5 but also the land depicted in "the plan were the subject matter of the trial between the parties. . . "it cannot be said that the Learned Judge did not bring his mind to "bear on the question of the soil claimed by the Plaintiffs for he has "discussed it fully. Nor can it be said that the Learned Judge "rejected the claim put forward by the Plaintiffs to the soil, for pp. 142-4
p. 135
p. 144, l. 15
pp. 144-8
p. 117, l. 6
p. 117, l. 29
p. 117, l. 36

“there is not a single sentence in the whole of the Judgment which
“can support that contention”

p. 148
pp. 148-150
p. 148, l. 27

19. From this decision and Order of the District Court of Kandy dated the 22nd March, 1943, only the First and Second Respondents appealed to the Supreme Court. The Appeal was heard on the 17th May, 1944, the Appellants not being present or represented. In allowing the appeal Howard C. J. said in his short Judgment “On “scrutinising the Judgment of the 6th February, 1941, it is clear that “the Learned District Judge answered Issue Number 13 unequi-
“vocally and specifically and awarded on that issue Lots Numbers 1, 10
“2, 4 and 5 subject to the reservation as regards the further claims
“to the buildings which had been made in the course of the trial.
“He gave nothing more. It is obvious that he held that the Plain-
“tiffs were not entitled to the land shown in what is described as the
“inset edged green” De Kretser J. merely agreed, and a Decree of
the Supreme Court dated the 17th May, 1944, was entered accord-
ingly. The Learned Chief Justice did not explain the purport of a
reservation as regards buildings numbered 3, 6, 7, 8, 9 and 10 if all
that was being awarded were buildings entirely separate from these.
nor did he explain the purport of the District Judge’s findings as to 20
the area of the land as a whole or what had happened to the land
not built over which had plainly been in issue in the case. In none
of the Judgments was there any impugment of the Appellants’ title
which extended to the whole area, and as regards the Respondents’
title, that set up in the original proceedings had been destroyed in
the first series of Judgments and their attempt to set up a new line of
title in the second stage of the proceedings had been disallowed.
And if their claim under the alternative title was to the buildings 1,
4 and 5 and to nothing more, what reason or status had they got to
contest the Appellants’ petition, unless indeed they were minded to 30
set up yet a third title to the land? Furthermore, it will be seen
from the plan that Lots 1, 2, 4 and 5 were merely separate disjointed
blocks of a single building and to award title and a right of possession
merely to them without any means of access to them did not make
sense of the position at all.

p. 151
p. 157

20. From this Judgment and Decree of the Supreme Court dated the 17th May, 1944, the Appellants were granted by the Supreme Court conditional leave to appeal to the Privy Council on the 5th September, 1945, the leave being made final on the 22nd October, 1945.

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21. It is submitted that the Judgment and Decree of the Supreme Court dated the 17th May, 1944, ought to be set aside and the Order of the District Court of Kandy dated the 22nd March, 1943, ought to be restored for the following amongst other

REASONS

1. BECAUSE the Appellants' claim from the outset was to an area of land with buildings on it, not merely to a particular building or buildings;
2. BECAUSE the Appellants' evidence established that the area of land involved was one amunam paddy sowing in extent, *i.e.* 2 acres or thereabouts;
3. BECAUSE the Respondents themselves, so long as title was in dispute, conceded that the area involved was one amunam paddy sowing in extent and by their own evidence established that it consisted in part of land occupied by a road;
4. BECAUSE the evidence called by the Appellants established that the area edged in green on Mr. Spencer's plan was the area of one amunam paddy sowing in extent covered by the description of the Meda Pansala;
5. BECAUSE the Respondents, having failed on the basis of the original title put forward by them to the whole area, were not entitled in the further proceedings to put forward a new title with a view to effecting a change in the area under discussion;
6. BECAUSE, even if allegations of an alternative title were admissible, the claim of the Respondents based on it was only to the buildings identified on Mr. Spencer's plan by the numbers 1, 4 and 5 and not to any land without buildings on it;
7. BECAUSE, in disallowing the Respondents' attempts to invoke a new title and in rejecting their claims that the Meda Pansala consisted only of the building identified on Mr. Spencer's plan by the Number 2, the District Judge in his Judgment dated the 6th February, 1941, manifestly intended to award to the Appellants all that they claimed, subject to the specified reservations;
8. BECAUSE the interpretation placed on the said Judgment dated the 6th February, 1941, by the District Judge in his Judgment dated the 22nd March, 1943, was right and ought to be restored;
9. BECAUSE the Judgment of the Supreme Court dated the 17th May, 1944 was wrong and ought to be set aside.

STEPHEN CHAPMAN.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

UNNANSE, P. and Another (Plaintiffs)
Appellants

v.

UNNANSE, W. S. (deceased) and Others
(Defendants)
Respondents

— AND —

UNNANSE, W. S. and Another
(Defendants)
Respondents.

CASE FOR THE APPELLANTS.

DARLEY, CUMBERLAND & CO.,
36, John Street,
Bedford Row,
London, W.C.1,
Appellants' Solicitors.