

8, 1950

In the Privy Council.

No. 20 of 1948.

ON APPEAL FROM THE SUPREME COURT
OF THE ISLAND OF CEYLON

UNIVERSITY OF LONDON
W.C.1.
-5 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

44344

BETWEEN

1. PIYARATANA UNNANSE
2. AMUNUGAMA RATANAPALA THERO

(Plaintiffs) APPELLANTS

AND

1. WAHAREKE SONUTTARA UNNANSE (since deceased,
now represented by Respondents Nos. 5 and 6 *infra*)
2. WAHAREKE CUNARATANA UNNANSE
3. AKWATTE DEWAMITTA UNNANSE
4. MADUGALLE SEELAWANSA UNNANSE

- | | |
|--------------------------------|---|
| 5. WAHAREKE SOBITHA UNNANSE | } substituted
in place
Respondent No. 1
(deceased) |
| 6. WAHAREKE RATANAPALA UNNANSE | |

(Defendants) RESPONDENTS.

CASE FOR THE RESPONDENTS

1.—This is an Appeal against a decree of the Supreme Court of the Island of Ceylon (hereinafter called "the Supreme Court") dated the 17th May, 1944, setting aside an Order of the District Court of Kandy, dated the 22nd March, 1943, whereby a decree of the said District Court in favour of the Appellants, dated the 6th February, 1941, was directed to be amended in manner, and for the reason hereinafter specified, notwithstanding that, earlier, an appeal therefrom had, on a preliminary objection, been dismissed by a decree of the Supreme Court, dated the 1st October, 1942

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p 152
pp. 144-148
p. 150, ll. 1-12
p. 141

2.—The present appeal is concerned with the power of a District Judge to amend a decree purporting to be drawn up in accordance with the

judgment of one of his predecessors and the necessity or propriety of such amendment, the two main questions for determination being as follows :—

(1) Whether, on the application of the successful plaintiffs in a previous action in the District Court, who were also the successful respondents in the appeal that followed and who did not then object to the terms of the decree which they had obtained, it is open to a subsequent District Court Judge to amend the said decree on the ground that it does not conform to the judgment in accordance with which it purports to be drawn ?

(2) If it is so open to a District Court Judge to amend a decree 10 on the said ground whether there was in fact any such variance between the judgment and the decree in this case as to justify the Order for amendment that was made ?

Without examining the first of these questions, the Supreme Court has settled the present dispute between the parties by answering the second question in the negative. Had it examined the first question it would, it is respectfully submitted, have returned a similar answer.

3.—So far as they are relevant for the purposes of this Appeal, the facts are as follows :—

The original dispute between the parties, all of them Buddhist priests 20 or monks, was concerned with the rights of ownership and occupation of a monastic building known as the Meda Pansala, to which the Respondents, who were resident therein, laid claim, but which the Appellants said was part of the endowments of a larger monastic establishment known as the Degaldoruwa Vihare and, as such, was vested in the Appellant No. 1 who, by pupillary succession, was now the rightful incumbent of the said Vihare.

In their Complaint, dated the 4th July, 1934 (filed in the District Court of Kandy, in proceedings instituted against the Respondents Nos. 1 to 4) the Appellants said :—

“ 1. The first Plaintiff is the incumbent Priest of the 30
“ Degaldoruwa Vihare* and second Plaintiff is the Trustee of
“ that temple.

“ 2. The Defendants are Buddhist Priests residing at the
“ Malwatte Vihare in Kandy.

“ 3. Moratota Mahanayake Unnanse . . . was the
“ incumbent of the Degaldoruwa in Amunugama in the District
“ of Kandy, and as such was entitled to the Meda Pansala* situate
“ at the Malwatte Pansala in Kandy with the right to occupy
“ the same.

“ 4. The said Vihare with its appurtenances was held by 40
“ the said Moratota under the tenure of . . . pupillary
“ succession.”

pp. 20-21
* A “ Vihare ” is
a monastic
establishment or
temple, see
p. 52, l. 32

* A “ Pansala ” is
a dwelling house
of a monk or
monks see
p. 29, ll. 7-8

4.—In paragraphs 5 to 8 of the said *Plaint*, the *Plaintiffs* purported to set out the pupillary succession to the said *Meda Pansala* which, they maintained, had devolved on the first *Plaintiff*; and in paragraph 9 thereof they alleged that the first *Plaintiff* and his predecessors in office had held and possessed the said *Pansala* “undisturbedly and uninterruptedly in terms of Section 14 of the Ordinance No. 22 of 1871 and the *Degaldoruwa Vihare* has by such possession acquired a title to the said *Meda Pansala* “by prescription.”

p. 21, ll. 10-25

p. 21, ll. 26-30

In paragraph 11 of the *Plaint*, the *Plaintiffs* complained—

p. 21, ll. 34-39

10 “that the *Defendants* since about two years ago are disputing the “right of the first *Plaintiff* the incumbent of the *Degaldoruwa Vihare* to possess and occupy the same and are wrongfully “preventing the first *Plaintiff* from exercising his right as “incumbent of the said *Vihare* to occupy the said *Meda Pansala* “to the loss and damage of the first *Plaintiff* of Rs. 100/-.

So far as relevant, their prayer was as follows:—

“ (1) That the said *Meda Pansala* may be declared to be part and parcel of the endowments of the *Degaldoruwa Vihare* and as such vested in the *Plaintiffs*.”

p. 22

20 “ (2) That first *Plaintiff* be declared entitled to the possession “thereof.

“ (3) That the *Defendants* may be ejected from the said “*Meda Pansala* and that the *Plaintiffs* may be placed in possession “thereof.”

It should be noted that the boundaries of the said *Meda Pansala* were not defined anywhere in the *Plaint* and, further, that the *Plaint* did not conform to the provisions of the *Civil Procedure Code* relating to claims to specific portions of land. According to Section 41 of the said *Code*

30 “When the claim made in the action is for some specific “portion of land, or for some share or interest in a specific portion “of land, then the portion of land must be described in the *plaint* “so far as possible by reference to physical metes and bounds, or “by reference to a sufficient sketch, map, or plan to be appended “to the *plaint*, and not be name only.”

The said *Meda Pansala* was described by name only.

5.—By their Answer, dated the 28th November, 1934, the first and second *Defendants* denied that the *Plaintiffs* were entitled to the *Meda Pansala* and asserted their own title thereto. They denied that the said *Moratota Maharayake Unnanse* (from whom the *Plaintiffs* had traced their title) was ever entitled to the said *Pansala* which, they said, was not appurtenant to the *Degaldoruwa Vihare*; they traced their own title to the *Pansala* from one *Parusala* who, they said, was seised and possessed of the same and from whom, by bequest and pupillary succession, it had

pp. 23-24

p. 23, ll. 12-15

p. 23, ll. 16-33

p. 23, ll. 34-37

descended to all four Defendants ; and, further, they said that they and their predecessors in title had, by reason of an undisturbed adverse possession for over seventy-five years, acquired a prescriptive title to the said Pansala. In the event of the Plaintiffs being declared entitled to the Pansala, they claimed, in reconvention, the sum of Rs. 20,000/- for improvements effected to the Pansala by themselves and their predecessors.

p. 23, ll. 38-41

p. 24, ll. 3-9

They prayed that the action be dismissed, with costs, and that they be declared entitled to the Pansala or, in the alternative, that they be granted compensation in a sum of Rs. 20,000/-.

pp. 24-26

6.—By their separate Answer, also dated the 28th November, 1934, 10 the third and fourth Defendants made similar claims, saying, however, as to their right to compensation, as follows :—

p. 25, l. 37 to
p. 26, l. 5

“ 12. These Defendants state that save and except a small part of the buildings presently constituting the Meda Pansala the rest were constructed by the said Parusala . . . and by these Defendants at cost of Rs. 15,000/-. In the event of the Plaintiffs being declared entitled to the possession of the said Meda Pansala these Defendants pray that the Plaintiffs be decreed to pay to the Defendants the said sum of Rs. 15,000/- until which payment these Defendants claim to be in possession 20 of the same.”

7.—Issues framed in the suit were, after a consideration of the evidence adduced by both sides, answered thus by the learned District Judge :—

p. 27, l. 15

“ 1. Was Meda Pansala an appurtenant of Degaldoruwa Vihare ? ”

p. 46, l. 13

Answer : “ Yes.”

p. 27, ll. 16-17

“ 2. Was Moratota Mahanayake Unnanse the Adhikari Bhikshu ” [i.e. the incumbent] “ of the Degaldoruwa Vihare and as such entitled to Meda Pansala ? ”

p. 46, l. 14

Answer : “ Yes.” 30

p. 27, ll. 18-19

“ 3. Are the persons referred to in paragraphs 5 to 8 of the plaint the pupillary successors of Moratota Mahanayake ? ”

p. 46, l. 15

Answer : “ Yes.”

p. 27, ll. 20-21

“ 4. If so, have they resided in the said Pansala till about two years ago as averred in paragraph 11 of the Plaint ? ”

p. 46, l. 16

Answer : “ No.”

p. 27, l. 22

“ 5. Is the said ouster fictitious ? ” [The Plaintiffs had alleged that the Defendants had, for about two years, wrongfully prevented the first Plaintiff from exercising his right to occupy the said Pansala.] 40

p. 46, l. 17

Answer : “ Yes.”

p. 27, l. 23

“ 6. Is the Plaintiff's cause of action prescribed ? ”

p. 46, l. 18

Answer : “ Yes.”

8.—Further Issues were answered thus by the learned District Judge :—

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“ 7. Was Parusala Dhammajothi Annunayake Thero from pp. 27, ll. 24-25
 “ prior to 1885 in possession of the said Pansala as Adhikari
 “ Bhikshu till his death in 1902 ? ”

Answer : “ Yes.” p. 46, l. 19

“ 8. Had the said Parusala and his pupils possessed for p. 27, ll. 26-27
 “ over the prescriptive period the sacerdotal rights of the said
 “ Pansala and acquired a title thereto ? ”

Answer : “ Yes.” p. 46, l. 20

10 “ 8A. Have Defendants and their predecessors in title been p. 28, ll. 4-6
 “ in the undisturbed and uninterrupted possession of the said
 “ Pansala, for over seventy five years and acquired a prescriptive
 “ title thereto ? ”

Answer : “ Yes.” p. 46, l. 23

“ 9. Did Parusala and his pupillary } p. 27, ll. 28-33
 “ successors effect improvements to the said } **Answer* . “ The *p. 46, l. 21
 “ Pansala ? } decision of these

“ 10. If so, what are the costs of such }
 “ improvements ? } Issues has been
 } held over.”

20 “ 11. If the Plaintiff is held entitled to the [For subsequent
 “ premises, are Plaintiffs liable to pay Defen- } Answers to these
 “ dants the costs of such improvements and are } Issues, see para-
 “ they entitled to a *jus retentionis* ? ” } graph 20 hereof.]

[“ It is agreed that the question of the value of the improve- p. 27, ll. 35-36
 “ ments is to be decided after the other issues of fact.”]

“ 12. Is the first Plaintiff entitled to claim possession of the p. 28, l. 7
 “ Meda Pansala ? ”

Answer : “ No.” p. 46, l. 22

30 9.—By his Judgment, dated the 10th February, 1936, incorporating pp. 42-46
 the said Answers to Issues, the learned District Judge, being of opinion that p. 46, ll. 8-11, 24
 the Plaintiffs' cause of action was prescribed in three years from the time
 of accrual, dismissed the action, with costs.

10.—A decree, in accordance with the Judgment of the District Court, pp. 46-47
 was drawn up on the 10th February, 1936, and against the said decree the
 Plaintiffs appealed to the Supreme Court. pp. 47-49

40 11.—The appeal was heard by a Bench of the Supreme Court pp. 51-54
 consisting of Poyser, J. and Fernando, A. J. who, by their Judgments, p. 54, ll. 26-42
 dated the 29th June, 1937, set aside the decree of the District Court and
 remitted the case to that Court for trial on the undetermined Issues relating
 to compensation for improvements, viz., Nos. 9, 10 and 11.

In agreement with the Court below, the learned Supreme Court Judges p. 53, ll. 22-24
 held that the Meda Pansala was appurtenant to the Degaldoruwa Vihare

p. 54, ll. 22-25

but, disagreeing with that Court, they found that the first Plaintiff and his predecessors in office had exercised the right of occupation of the said Pansala which they had, and that the Defendants and their predecessors had not acquired any title thereto by prescription. They, therefore, remitted the case, as stated, with a direction that the parties could, if they so desired, raise the question (by means of Issues if necessary) whether the Defendants were, in law, entitled to claim compensation.

p. 54, ll. 32-37

pp. 49-50

p. 55

12.—A decree in accordance with the Judgment of the Supreme Court was drawn up on the 29th June, 1937, and, as decreed, Further Proceedings in the suit were instituted in the District Court for the trial of the said Issues 9, 10 and 11. 10

p. 55, ll. 10-16

13.—In the said Further Proceedings, a Commission (by consent and at joint expense) was issued to a Valuer (A. Morley Spaar) ‘to show the “Meda Pansala as claimed by Plaintiff and to report fully on the alleged “improvements and buildings claimed to have been put up by Defendants “and their predecessors showing the age, value and cost of building and the “like with special reference to the oldest building and Meda Pansala “premises.”’

p. 55, ll. 30-33

p. 56, ll. 34-35

The said Valuer (Spaar) having reported to the District Court that he could not execute the Commission until a survey of Meda Pansala had been made, a further Commission to supply that deficiency was issued to a Surveyor named Spencer. 20

Facing p. 58

14.—On the 16th July, 1938, Spencer drew up a “Plan of the Buildings “standing on the land belonging to the Meda Pansala as pointed out by “the Plaintiffs and Defendants, situated at Malwatta Vihare, Kandy.” This Plan, which is referred to in the Record as “Spencer’s Plan,” contains an Inset bearing the following words: “The Property of Malwatta Vihare “as per T.P.” [Title Plan. “No. 58,891, showing the buildings as “surveyed by me (Black lines) and the land pointed out by Plaintiff, “coloured green (sketched).” The area of the land covered by the whole of the Inset is shown as 8 acres 3 roods and 34 perches, exclusive of a road. 30

The whole Plan, showing the location of ten buildings, bears the following explanation by its author (Mr. Spencer) :—

“*Plaintiffs state* buildings 1 to 6 are the Meda Pansala, and “7, 8, 9 and 10 are built on the premises of the Meda Pansala “and belong to it. They claim the buildings 1 to 10 and the “land sketched by me in inset and edged green.

“*Defendants state* building 2 is the Meda Pansala for which “they claim compensation, and no ground attached to it; that “the ground on which these various Pansalas stand belong in “common to all the High Priests; that building 1 belongs to “Parusala Nayaka Unnanse and it is built on the ground “belonging to the Poyage, building 3 belongs to Ginigathpitiye 40

“Nayaka Unnanse, building 4 was built by Parusala Nayaka
 “Unnanse and belongs to him, building 5 belongs to Mahalla
 “Nayaka Unnanse, and building 6 to Kaballowita Nayaka
 “Unnanse.

“Building 6 was claimed by H. Rewata Unnanse on
 “16-7-38.

“Buildings 3, 8, 9 and 10 were claimed by B. Dewamitta
 “Unnanse on 16-7-33.”

15.—On the 13th September, 1938, the said Valuer (Spaar), having
 10 now Spencer’s Plan before him, submitted a Valuation and Report to the
 District Judge in which he said, *inter alia* :—

“In the plan prepared by Mr. Spencer, he has shown buildings, p. 58, ll. 8-20
 “numbered 1 to 6, claimed by the Plaintiffs as constituting the
 “Meda Pansala.

“The Defendants, on the other hand, state that only the
 “building marked 2 on the plan is the Meda Pansala. They make
 “no claims to the other buildings which are claimed by priests
 “who are not defendants in this action.

20 “It would therefore appear that the Plaintiffs’ claim against
 “the Defendants is confined to building No. 2 only.

“Buildings 1 to 6 have been, more or less, improved,
 “modernised or rebuilt from time to time and it is not therefore
 “possible to state with any degree of certainty which of the
 “buildings is the oldest on the premises.

“As both the Plaintiffs and the Defendants are on common
 “ground *re* building No. 2, I have confined my measurements
 “and valuation to this building and submitted my valuation
 “on it.”

He valued building No. 2 at about Rs. 3,000/-. p. 59, l. 20

30 16.—On the resumption of the Further Proceedings in the District
 Court on the 22nd March, 1939, it was agreed between the parties that
 “the Court will have to define what the Meda Pansala is and an Issue p. 56, ll. 13-15
 “will have to be framed.”

At a subsequent hearing on the 2nd June, 1939, Counsel for the pp. 56-57
 Defendants having drawn the attention of the Court to the fact that from p. 56, ll. 34-39
 Spencer’s Plan “it would appear that some of the buildings which are
 “claimed by the Plaintiffs to comprise the Meda Pansala are adversely
 “claimed by other priests, who are not parties to these proceedings, on
 “certain independent rights,” the following additional Issue was framed
 40 by the Court :—

“13. Do the buildings marked 1, 2, 3, 4, 5 and 6 and the p. 57, ll. 34-36
 “land shown in the Inset edged green, in Mr. Spencer’s plan,

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“ represent the Meda Pansala which is the subject-matter of this action ? ”

As appears hereinafter (see paragraph 18 *post*), this Issue was, later, amended, by omitting therefrom buildings 3 and 6.

17.—On the said additional Issue 13, and in reference to his Plan Mr. Spencer, on the 2nd June, 1939, gave evidence. He said, *inter alia*, that :—

p. 64, ll. 9-14

“ The Inset shows the portion which belonged to the Meda Pansala approximately the extent of the Meda Pansala would be about 3 acres. 10

“ Lots 7, 8 and 9 fall within the green edged portion. Lots 3, 4, 5 and 6 fall within the portion shown as buildings in 1863. “ The building hatched blue in the Inset corresponds to the “ buildings 1, 2, 3, 4, 5 and 6 in my plan.”

p. 65, ll. 6-8

The witness was directed by the Court to show in his plan the total extent of Lots 1, 2, 3, 4, 5 and 6 and the portion of land tinted green in the Inset ; and also the extent of Lot 2 separately.

At a subsequent hearing, on the 28th May, 1940, the District Judge recorded the following note :—

p. 65, ll. 23-26

“ It is common ground that Lot 2 in the plan is included in 20 “ Meda Pansala although the Plaintiffs say that Lots 1 to 9 form “ Meda Pansala.

“ The Defendants, on the other hand, claim to be in possession “ of Lots 1, 4 and 5 under another title.”

18.—On the case being called again on the 28th August, 1940, the learned District Judge, after hearing arguments, recorded the following note :—

p. 66, ll. 14-15

“ Admittedly there is no dispute between the parties that “ Lot 2 is Meda Pansala.”

p. 66, ll. 21-24

As to Lots 1, 4 and 5, which the Defendants claimed upon an 30 independent title, he directed them to file a Statement or Pleading in Court giving particulars of their claim and to serve a copy thereof on the Plaintiffs ; and as to Lots 3, 6, 7, 8, 9 and 10, all of which had been claimed by persons not parties to the proceedings, he recorded the admission by Counsel for the Plaintiffs that in any declaration which the Court might ultimately make on the question as to what is comprised within the Meda Pansala, regard would not be had to the title to the said lots, without prejudice to the Plaintiffs' rights to establish their title thereto in separate proceedings.

p. 66, ll. 25-32

The learned Judge concluded as follows :—

40

p. 66, ll. 33-39

“ If, however, as a result of my finding on Issue 13, which “ for the purpose of enquiry, which I now propose to hold, would

“ be modified by substituting in place of the lots referred to in
 “ that Issue the following Lots only—1, 2, 4 and 5—it is found
 “ that Lots 1, 4 and 5 do form part of the Meda Pansala, the
 “ Defendants will be entitled to claim compensation in respect
 “ of any improvements effected by them, if, as a matter of law,
 “ it is held that they are entitled to claim such compensation.”

Thus modified, Issue 13 became as follows :—

10 “ 13. Do the buildings marked 1, 2, 4 and 5 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 ? ”

19.—Following further evidence which was adduced by both sides,
 the learned District Judge, on the 6th February, 1941, answered the said
 Issue 13, as modified, as follows :—

“ Upon a consideration of the evidence before the Court by p. 131, ll. 22-25
 “ 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
 “ for the Defendants . . .

20 “ In the result I would hold on Issue 13 as framed by me p. 134, ll. 34-37
 “ that the Meda Pansala which is claimed to be an appurtenant
 “ 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 court of the trial.”

20.—As to Issues 9 to 11, relating to compensation for improvements
 (see paragraph 8 hereof) which had been remitted to him for trial, the learned
 Judge’s Answers were as follows :—

Answer to Issue 9 : “ Parusala did effect certain improvements p. 134, ll. 38-39
 “ to the Pansala.”

30 *Answer to Issue 10* : “ The costs of these improvements have p. 134, ll. 39-41
 “ not been ascertained by me, it being unnecessary to do so| in
 “ view of my finding on Issue 11.”

Answer to Issue 11 : “ The Plaintiffs are not liable to pay to p. 134, ll. 41-43
 “ the Defendants the cost of any improvements . . . and the
 “ Defendants are not entitled to the *ius retentionis*.”

The learned Judge dismissed the Defendants’ claim in reconvention p. 135, ll. 6-7
 for compensation for improvements.

21.—It is submitted that briefly and fairly summarised the whole of
 these proceedings had, at this stage, resulted as follows :—

- 40 (1) Meda Pansala was adjudged to belong to the Plaintiffs.
 (2) The said Pansala was represented by the buildings
 numbered 1, 2, 4 and 5 on Spencer’s Plan. The Plaintiffs were

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held entitled to these buildings subject to the reservation as regards the further claims to buildings which were made in the course of the trial.

(3) The land shown in the Inset edged green was held not to be part of the said Pansala.

(4) The Defendants were held not to be entitled to any compensation for improvements effected to the Pansala.

pp. 126-135

p. 128, ll. 19-20

22.—In his Judgment in the Further Proceedings, dated the 6th February, 1941, incorporating the said Answers to Issues 13 and 9 to 11, the learned District Judge, “on the main question as to what is comprised 10
“within the corpus of the Meda Pansala,” referred to the plans which had been produced in evidence in these terms :—

p. 128, ll. 20-43

“Be it noted that a plan of the premises of the Malwatte “Vihares and the buildings standing thereon was made in the “year 1863. A certified copy of this plan certified by the “Surveyor-General has been produced marked X.

“Mr. Spencer, surveyor, has given evidence with reference to “this plan. He has also prepared a plan of these premises being “marked (20 A) filed of record. He has shown in his plan the “various buildings claimed by the Plaintiffs and the lands 20
“claimed by them as sketched by him in the Inset and edged green. “Accordingly to Mr. Spencer’s evidence, Lots 3, 4, 5 and 6 fall “within the portion shown as buildings in the plan of 1863. He “has also stated that the buildings edged blue in the Inset “correspond to the buildings numbered 1, 2, 3, 4, 5 and 6 in “the plan made by him.

“He also states that the buildings now on the land occupy “the identical site occupied by the buildings as shown in the “plan of 1863, although there is a slight difference in the contour 30
“of the buildings.

“After Mr. Spencer gave 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 the land tinted green “in the Inset and also to show the extent of Lot 2 separately. “He has shown it in his computation marked 20 B. 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 is “nearly 2 acres which is the extent of 1 amunam of paddy sowing “extent which is the extent referred to in the deeds produced.” 40

p. 129, ll. 1-32

23.—The learned District Judge then referred to the descriptions of the Meda Pansala contained in two Deeds, dated the 11th September, 1844 (Ex. P. 3) and the 7th May, 1849 (Ex. P. 2), drew attention to the

“discrepancy between the extent of the corpus contained in Lot 2 and the description of the Meda Pansala as stated in these two deeds,” and expressed the opinion that the Defendants, by saying that the Pansala consisted only of Lot 2, had thereby sought to limit its corpus and extent after the Supreme Court had decided that they had no title thereto. p. 129, ll. 16-18
p. 129, ll. 29-32

As to Lots 1, 4 and 5 which the Defendants said were not part of the Meda Pansala and which they claimed on an independent title by their amended Statement, dated the 29th October, 1940, the learned Judge held that the claim came too late and could not, therefore, be entertained. p. 131, l. 26 to
p. 132, l. 3

10 24.—Concluding, the learned District Judge said :—

“Judgment will be entered, in terms of the Judgment of the Supreme Court, declaring the first Plaintiff entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare and decreeing that the Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof. p. 135, ll. 1-7

“The claim in reconvention of the Defendants for compensation is dismissed.”

20 25.—A decree which, in the Respondents’ submission, was in accordance with the Judgment of the learned District Judge was drawn up on the 6th February, 1941. This decree, in its unamended form, is referred to on pages 143, 149 and 150 of the Record, the document printed on page 135 thereof being the decree, as amended, with a printing error. p. 149, l. 37 to
p. 150, l. 12

The present dispute is mainly concerned with the question as to whether or not the said decree was in conformity with the said Judgment and it is, therefore, useful to set out its terms which were as follows :—

30 “It is ordered and decreed that the first Plaintiff be and he is hereby declared entitled to the possession of the Meda Pansala as an appurtenance and endowment of the Degaldoruwa Vihare as comprised of Lots 1, 2, 4 and 5 depicted in Plan marked 20 (a) and dated 16th July, 1938, made by Mr. P. Spencer and filed of record in this case. p. 150, ll. 1-12
p. 143, ll. 27-32

“It is further ordered that the said Defendants be ejected from the said Meda Pansala and that the Plaintiffs be placed in possession thereof.

“It is further ordered and decreed that the claim in reconvention of the Defendants for compensation is hereby dismissed.

40 “And it is further ordered and decreed that the Defendants do pay to the Plaintiffs the costs of this action.”

26.—Against the said decree of the District Court, dated the 6th February, 1941, the Defendants appealed to the Supreme Court, but pp. 136-140

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their appeal was, on a preliminary objection, dismissed by a decree of that Court, dated the 1st October, 1942. As to the nature of the said preliminary objection, the Record makes no mention.

It is not unimportant to observe that the Plaintiffs did not prefer any appeal, or raise any objection, against the said decree, with the terms of which they were, at that stage, presumably, satisfied.

27.—More than three months after the said dismissal of the Defendants' appeal, the Plaintiffs filed a petition in the District Court of Kandy to amend the decree which they had obtained on the 6th February, 1941.

pp. 142-144

In their Petition for Amendment, dated the 11th January, 1943, they 10 alleged that there was a variance between the decree and the judgment, saying, *inter alia*, as follows :—

p. 143, ll. 33-37

“ 6. It is urged, with respectful submission, that inasmuch
“ as it has been adjudged that the buildings marked as Lots 1, 2,
“ 4 and 5 are comprised in the Meda Pansala as represented by the
“ Inset edged green in Mr. Spencer's said Plan and it has been
“ decreed that the ' Meda Pansala ' as (*sic*. is ?) comprised of
“ Lots 1, 2, 4 and 5—there is a variance between the said
“ Judgment and decree.

p. 143, ll. 38-44

“ 7. It is most respectfully submitted that in order that 20
“ decree might confirm (*sic*, conform) to the Judgment the decree
“ should read as follows :—

“ It is ordered and decreed that the first Plaintiff be and he
“ is hereby declared entitled to the possession of the Meda Pansala
“ as an appurtenance of the Degaldoruwa Vihare the said Meda
“ Pansala, in which are comprised Lots 1, 2 4 and 5 being
“ represented by the Inset edged green in Plan dated 16th July,
“ 1938, and made by Mr. P. Spencer and filed of record.”

p. 144, ll. 2-9

They prayed “ that the Court may be pleased to direct that in order
“ that the decree may be brought into conformity with the Judgment the 30
“ decree may be amended by the deletion of the words beginning
“ ‘ as comprised of,’ and ending ‘ in this case ’ and by the substitution
“ therefor of the following words, namely :—

“ The said Meda Pansala in which are comprised Lots 1, 2,
“ 4 and 5 being represented by the Inset edged green in
“ Mr. Spencer's Plan marked 20 (a) dated 16th July, 1938, made
“ by Mr. P. Spencer and filed of record.”

p. 145, ll. 1-6

28.—The Petition for Amendment was opposed by the Defendants on
whose behalf it was argued, at the hearing, that : (a) the District Court had 40
no jurisdiction to amend the decree, an appeal therefrom by the Defendants
having been dismissed by a decree of the Supreme Court and the successful
Plaintiffs not having lodged any appeal; and (b) even if, in the

circumstances of this case, the District Court had jurisdiction to amend the decree, the Petition for Amendment, being "in reality an application to amend the Judgment itself rather than one to bring the decree in conformity with the Judgment," should be refused.

RECORD
—

29.—By his Order, dated the 22nd March, 1943, the learned District Judge directed that the decree of the District Court, dated the 6th February, 1941 (see paragraph 25 hereof), should be amended by interpolation therein, after the figure "5" and the word "depicted," of the following words :—

"and the land shown in the Inset edged green."

10 30.—In making the said Order for amendment, the learned District Judge referred to the "settled law that once a judgment of an original Court is either affirmed or set aside by the Appellate Court and a decree entered by the latter Court the decree in the case thereupon becomes the decree of the Appellate Court and the original Court would have no jurisdiction to amend even though a transparent and obvious error be found therein"; but, as in this case the appeal against the decree had been dismissed on a preliminary objection, he held that that rule of law was not applicable.

20 31.—The learned Judge held that there was a variance between the said Judgment and decree because in his opinion :—

(1) The trial related to the ownership of not only the buildings marked 1, 2, 4 and 5 on Spencer's Plan but also to that of the land depicted in the Inset thereof.

(2) The earlier paragraphs of the Judgment dealt with the title to the soil, the later paragraph being devoted to the title to the buildings thereon.

30 (3) The paragraph in the Judgment, "In the result I would hold on Issue 13 as framed by me that the Meda Pansala which is claimed to be an appurtenant of the Degaldoruwa in 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," was one of the said later paragraphs and "must be limited to the conclusion reached by the learned Judge in regard to the buildings and no more."

(4) Passages from the Judgment could be interpreted to show that the Plaintiffs' claim to the soil was upheld.

40 32.—Against the said Order of the District Court directing amendment of the decree, the first and second Defendants (the present Respondents Nos. 1 and 2) preferred an appeal to the Supreme Court. In their Petition of Appeal, to which the present Appellants and the Respondents

RECORD

Nos. 3 and 4 were made parties, they submitted, as they now do, that: (a) the decree directed to be amended was in entire conformity with the Judgment; (b) if the successful Plaintiffs were aggrieved by the terms of the decree their proper course was to have appealed against it; and (c) in any event the District Court had no jurisdiction to make the Order.

p. 151

33.—The appeal was heard by a Bench of the Supreme Court consisting of Howard C.J. and de Kretser J. who, by their Judgments, dated the 17th May, 1944, set aside the said Order of the District Court, dated the 22nd March, 1943, and directed that the amended decree be restored to its original form.

10

34.—The learned Judges of the Supreme Court were of the clear opinion that there was no variance at all between the said Judgment and the decree.

Delivering the main Judgment of the Court, Howard C.J. (with whom de Kretser J. agreed) said :—

p. 151

“ On the 22nd of March, 1943, the District Judge by Order
“ amended a decree of one of his predecessors dated the
“ 6th of February, 1941, as follows :—‘ By the interpolation of
“ ‘ the following words after the figure “ 5 ” ’ and the words
“ ‘ depicted therein ’ (*sic.* word ‘ depicted ’—not ‘ words depicted 20
“ therein ’)—‘ and the land shown in the Inset edged green.’
“ The District Judge made this modification in the decree on the
“ ground that the decree was at variance with the Judgment.
“ The effect of the Order was to award to the Plaintiffs an
“ additional land to that which had been awarded by the decree.

“ On scrutinising the Judgment of the 6th of February, 1941,
“ it is clear that the learned District Judge answered Issue No. 13
“ unequivocally and specifically and awarded on that issue Lots
“ Nos. 1, 2, 4 and 5 subject to the reservation as regards the further 30
“ 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 Plaintiffs were not entitled to the land shown in what
“ is described as the Inset edged green. In these circumstances
“ there is no variance between the decree and the Judgment.

“ The Order of the 22nd March, 1943, is set aside and the
“ decree must be restored to its previous form. The Defendants
“ will have their costs of the appeal and of the proceedings in the
“ District Court which led to the decree being amended.”

p. 152

35.—A decree in accordance with the Judgment of the Supreme Court was drawn up on the 17th May, 1944, and against the said decree 40
this appeal is now preferred to His Majesty in Council, the Appellants

having been granted Conditional and Final Leave to appeal by decrees of the Supreme Court, dated the 5th September, and the 22nd October, 1945. RECORD
pp. 154-155,
157-158

The Respondents respectfully submit that the appeal should be dismissed, with costs, for the following, among other

REASONS.

1. BECAUSE there was no variance at all between the said Judgment of the District Court, dated the 6th February, 1941, and the decree of the same date drawn up in accordance therewith.
- 10 2. BECAUSE, in the circumstances of this case, the District Court had no jurisdiction to amend the said decree.
3. BECAUSE the Judgment of the Supreme Court, dated the 17th May, 1944, is right, and the Order of the District Court, dated the 22nd March, 1943, is wrong.

L. M. D. DE SILVA.

R. K. HANDOO.

In the Privy Council.

No. 20 of 1948.

ON APPEAL FROM THE SUPREME COURT OF
THE ISLAND OF CEYLON.

BETWEEN

1. PIYARATANA UNNANSE
2. AMUNUGAMA RATANAPALA
THERO (*Plaintiffs*) APPELLANTS

AND

1. WAHAREKE SONUTTARA
UNNANSE AND OTHERS
(*Defendants*) RESPONDENTS.

CASE FOR THE RESPONDENTS

BURCHELLS,
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Solicitors for the Respondents.