

541/60

27, 1960

26

1000
1959

Supreme Court of Ceylon
No. S. C. 191 L (F) of 1954

District Court of Colombo
No. 6499/Land

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

THE LAND COMMISSIONER, Colombo *Defendant-Appellant*

AND

- (1) VASARA PINTO JAYEWARDENE,
- (2) BERTRAM AUGUSTUS PINTO JAYEWARDENE, both of
Hildon Place, Bambalapitiya in Colombo.....*Plaintiffs-Respondents*

RECORD
OF PROCEEDINGS

Supreme Court of Ceylon
No. S. C. 191 L (F) of 1954

District Court of Colombo
No. 6499/Land

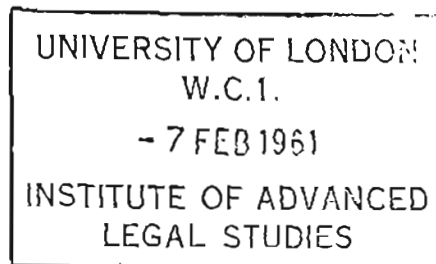
IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

THE LAND COMMISSIONER, Colombo *Defendant-Appellant*

AND

- (1) VASARA PINTO JAYEWARDENE,
(2) BERTRAM AUGUSTUS PINTO JAYEWARDENE, both of
Hildon Place, Bambalapitiya in Colombo *Plaintiffs-Respondents*



53928

RECORD OF PROCEEDINGS

INDEX

Part I

Serial No.	Description of Document	Date	Page
1	Journal Entries	24. 3.52 to 29. 3.58	1
2	Plaint of the Plaintiffs	24. 3.52	9
3	Petition of the Plaintiffs (Petitioners) for an interium injunction	7. 4.52	15
4	Affidavit of the 2nd Plaintiff	7. 4.52	18
5	Court order regarding issue of summons and order nisi	26. 5.52	20
6	Order Nisi entered by the District Court ..	26. 5.52	21
7	Answer of the Dofendant.. ..	16. 7.52	23
8	Issues framed	1.10.53	25
9	Plaintiffs' Evidence. Evidence of B. A. P. Jayawardeno	1.10.53	26
10	Defendant's Evidence. Evidence of A. C. L. Abeyesundera	1.10.53	28
11	Addresses to Court	1.10.53	29
12	Judgment of the District Court	6.11.53	30
13	Decree of the District Court	1.10.53	34
14	Petition of Appeal to the Supreme Court..	13.11.53	36
15	Order of the Honourable the Chief Justico referring the case to a Bench of Three Judges	15.11.56	39
16	Judgment of the Supreme Court	7. 2.58	40
17	Decree of the Supreme Court	7. 2.58	46
18	Application for conditional leave to appeal to the Privy Council	7. 3.58	48

Serial No.	Description of Document	Date	Page
19	Decree of the Supreme Court granting conditional leave to appeal to the Privy Council	29. 4.58	50
20	Application for Final Leave to Appeal to the Privy Council	23. 5.58	52
21	Decree of the Supreme Court granting Final Leave to Appeal to the Privy Council	4. 7.58	55

Part II

EXHIBITS

PLAINTIFFS. DOCUMENTS

Exhibit Mark	Description of Document	Date	Page
P1	Deed No. 1987	30. 1.32	56
P2	Deed No. 2210	20. 7.35	60
P3	Journal Entries in D. C. Colombo Case No. 840	3. 5.34 to 19. 9.35	65
	Plaint in D. C. Colombo Case No. 840	3. 5.54	69
	Decree in D. C. Colombo Case No. 840	18. 7.34	74

Journal Entries

24.3.52 to 29.3.58

IN THE DISTRICT COURT OF COLOMBO

No. 6499/L V. PINTO JAYAWARDANE and
 Class : V another Plaintiff.
 Amount : Rs. 25,000
 Nature : Land vs.
 Procedure : Regular
 10 THE LAND COMMISSIONER,
 Colombo Defendant.

JOURNAL

(1) The 24th day of March, 1952

Mr. H. A. Abeyewardana—Proctor files appointment and Plaint
 (1) together with Pedigree (1b) and Abstract of title (1c).

Support plaint on 28.3.52 in Court.

(Sgd.) Illegibly.

No appearance— No Order.

(Sgd.) Illegibly,
28.3.52*Additional District Judge.*

(2)

28.3.52

Mr. H. A. Abeyewardana for Plaintiff vide J. E. (1) support.

(3)

7.4.52

30 Mr. H. A. Abeyewardana for plaintiffs moves for a date to issue
 SS. He also moves that the returnable date of the order nisi be
 allowed as the returnable date of SS.

Support on 7.5.52

Intd.

No. 1.
Journal
Entries
24.3.52 to
29.3.58—*contd.*

(4)

8.4.52

Mr. H. A. Abeyewardene for Petitioners files Petition, Affidavit from the 2nd Petr. and for reasons stated therein moves for an O/N restraining the respondent from proceeding with acquisition of lands called Nagahalanda & Moragahalanda described in the schedule of the Petition pending the final decision of the case.

Support on 7.5.52

(Sgd.) Illegibly,

(5)

7.5.52

Mr. H. A. Abeyewardena for Plaintiff.

Support. Vide J. E. E. (3) & (4)

Mr. Abeyewardene points to SS 217 (F) CPC.

Further support is necessary—

Hearing on 13.5.52

(Sgd.) Illegibly

10

(6)

13.5.52

Mr. H. A. Abeyewardena for Plaintiff.

Vide J. E. (5) Further support necessary

20

(7)

12.5.52

Mr. H. A. Abeyewardena, Proctor for plaintiffs moves that court may be pleased to fix another date for counsel to support his application for summons and Order Nisi in this case.

Mr. Wikramanayake Counsel for Plaintiff is not in Colombo on 13.5.52. If it is convenient to the Court, he moves that this matter may be fixed for 26.5.52 in the afternoon of the 14th instant.

Hearing refixed for 26.5.52

(Sgd.) Illegibly

30

(8)

26.5.52

Mr. H. A. Abeyewardena for Plaintiff

Vide J. E. (7) further hearing

Vide proceedings— Filed.

Summons returnable 18.6.52 and the date for making the Order Nisi absolute will be the same

(Sgd.) Illegibly
A. D. J.

(9)

28.5.52

Mr. H. A. Abeyewardane for Potnr. tenders O/N.

Intd.

Asst. Secy.

(10)

5.6.52

SS issued on deft., W. P.

Order Nisi issued deft., W. P.

10

Intd.

(11)

18.6.52

Mr. H. A. Abeyewardane for Plaintiff

(a) SS. Served on Deft.—abs. M/S Billimoria & Jayesuriya file proxy of Defendant (11a)

(b) Order Nisi served on Respt.—Proctors have cause to show why the Respt. should not be restrained from proceeding with the acquisition of 2 lands called Nagahalandawatte & Moragahalanda—

20 Answers & objections on 16.7.52.

(Sgd.) Illegibly

A. D. J.

(12)

16.7.52

Mr. H. A. Abeyewardane for Plt.

M/S. Billimoria & Jayasuriya for Deft.

(a) Answer of deft due

File (12a)

(b) Objections of deft.—to Order Nisi due

Not filed.

30

Enter order absolute allowing the interim injunction. Deft's Proctors say defendant is not taking steps for the acquisition till this case is decided.

Trial on 30.1.53

(Sgd.) Illegibly

A. D. J.

No. 1.
Journal
Entries
24.3.52 to
29.3.58—*contd.*

(13)

15.1.53

Mr. H. A. Abeyewardane, Proctor for Pliffs with notice to Proctor for Deft. moves to file the following list of witnesses on behalf of the plaintiffs and moves for summons on them.

1. File
2. Issue SS.

(Sgd.) Illegibly
A. D. J.

(14)

30.1.53

Mr. H. A. Abeyewardana for Plaintiff instructing Messrs. E. B. Wikremanayake & C. E. Jayawardene

M/S Billimoria & Jayasuriya for Deft. instructing G..... C. C. Vide J. E. (12) Trial

Same matter raised in this Court has been argued before Supreme Court. Parties desire to await the decision.

Trial postponed to 1. X. 53 and seq.

Intd.

10

(15)

29.9.53

Mr. C. G. Jayasuriya, Proctor for Deft. with notice to Proctor for Plaintiffs files deft's list of witnesses in this case.

File.

Intd.

Asst. Secy.

20

(16)

1.10.53

Mr. H. A. Abeyewardana for Plaintiff.

M/S Billimoria & Jayasuriya for Deft.

Vide J. E. (14) Trial

Judgment 22.10.53.

30

(17)

22.10.53

Mr. H. A. Abeyewardana for Plaintiff.

M/S Billimoria & Jayasuriya for Deft.

Vide J. E. (16) Judgment.

Judgment on 6.11.53.

Intd.

(18)

6.11.53

Judgment delivered—in open Court.

No. 1.
Journal
Entries
24.3.52 to
29.3.58—contd.

Intd.

(19)

13.11.53

10 Mr. C. G. Jayasuriya, Proctor for Deft-Applt tenders Petition of Appeal (19a) of the deft. Applt against the judgment and decree of this Court dated 6th day of November, 1953. Moves that the same be accepted. He also tenders notice (19b) under Sec. 756 of the C. P. C. stating that the deft.-applt. will on the 25th day of November 1953 (or sooner if possible) deposit in court to the credit of this case a sum of Rs. 250 as security for the cost of appeal of the Plffs-Resps. to which the Proctor for Plffs.-Resps. has received notice & application (19c) for typewritten copies of the record for the purpose of appeal in terms of the Civil Appellate Rules of 1938. He also moves that the petition of appeal being accepted the court be pleased to allow order to deposit be issued to him for Rs. 250 & Rs. 50.

- 20
1. Filo
 2. Call case on 25.11.53 for security.
 3. Issue paying-in vouchers for Rs. 250 and 50.

Intd.

A. D. J.

(20)

14.11.53

30 The deft.-appls' petition of appeal having been received by Court Mr. C. G. Jayasuriya, Proctor for Deft.-Applt. tenders Rs. 250 as security for Plffs.-Resps' costs of appeal & moves for an order to deposit the sum in the Colombo Kachcheri. He further moves court to allow the notice of appeal on the Plffs.-Resps. to be issued for service on their Proctor. Proctor for Plffs.-Resps. consents.

Notice of appeal can issue only after the security tendered has been accepted by Court.

(Sgd.) Illegibly
A. D. J.

No. 1.
Journal
Entries
24.3.52 to
29.3.52—*contd.*

(21)

25.XI.53

Mr. H. A. Abeyewardena for plaintiff.
M/S Billimoria & Jayasuriya for defendants.
Security of appeal due
(Vide JE ———19)
Security accepted.
K/R & bond filed.
Issue notice of appeal for 20/1.

Intd. 10
A. D. J.

(22)

25.11.53

M/S Billimoria & Jayasuriya, Proctors for Deft. file Bond to
Prosecute. K. R. R. for Rs. 250 & Rs. 50 & notice of appeal
Vide J. E. (21) Issue notice of appeal for 20.1.54.

Intd.
Asst. Secy.

(23)

25.11.53

Notice of appeal sent to Fiscal W. P. to be served on Proctor for
Plaintiff.

Intd.

$\frac{18.3.54}{K. R. 10}$ T No. $\frac{1475}{97304}$ of 16.11.53 for Rs. 250—filed.

$\frac{18.3.54}{K. R. 10}$ T No. $\frac{1476}{97305}$ of 16.11.53 for Rs. 50—filed.

(24)

20.1.54

Mr. H. A. Abeyewardena for Plff-respondent.
M/S Billimoria & Jayasuriya for Defendant-Appellant.
Notice of Appeal served on Proctor for Plaintiff-respondent.
Forward Appeal.

Intd. 30
A. D. J.

(25)

18.2.54

The appeal Br. requests fees to be called from the following :—

Mr. B. K. Billimoria Rs. 50.

Mr. H. A. Abeyewardano Rs. 50.

Call for fees by registered post.

Intd.

A. D. J.

(26)

10 25.2.54

Mr. H. A. Abeyewardana, Proctor for Respt. applies for type-written copies of the record & applies for a paying-in-Vr. for Rs. 100. Issue.

Intd.

Ast. Secy.

(27)

$\frac{12.3.54}{K. R. 10}$ U No. $\frac{1272}{16321}$ of 11.3.54 for Rs. 50—filed.

(28)

20 $\frac{18.3.54}{K. R. 10}$ U No. $\frac{2552}{14926}$ of 26.2.54 for Rs. 50—filed.

(29)

2.4.54

Mr. H. A. Abeyewardana, Proctor for Plaintiffs tender Decree (29a) in this case Decree is entered of record.

Ast. Secy.

(30)

9.4.54

30 Land Commissioner invites attention to his letter dated 9.2.'54 and requests for a copy of Judgment as the same has to be forwarded to the Attorney-General.

Forward record to L. C. for reference and return within a fortnight.

Intd.

A. D. J.

No. 1.
Journal
Entries
24.3.52 to
29.3.58—*contd.*

(31)

17.2.58

Registrar S. C. returns record with S. C. judgment. It is considered and adjudged that this appeal is dismissed.

It is further ordered that Appellant do pay the respondents the taxed costs of this appeal

File.

Intd.

A. D. J.

(32)

29.3.58

Registrar S. C. requests that this record be forwarded to S. C. as application for conditional leave to appeal has been filed.

Forward record to S. C.

Intd.

Actg. D. J.

10

No. 2

Plaint of the Plaintiffs

No. 2.
Plaint of
the Plaintiffs
24.3.52.

24.3.52

IN THE DISTRICT COURT OF COLOMBO

No. 6499/L	(1) VASARA PINTO JAYEWAR-
Class : V	DENE, (2) BERTRAM AUGUSTUS
Nature : Land	PINTO JAYEWARDENE, both of
Value : Rs.25,000	Hildon Place, Bambalapitiya in
Procedure : Regular	Colombo Plaintiffs.

10

vs.

THE LAND COMMISSIONER,
Colombo Defendant.

On this 24th day of March, 1952.

The Plaint of the Plaintiffs abovenamed appearing by Henricus Abraham Abeywardane their Proctor states as follows :—

1. The Defendant resides and the cause of action hereinafter set out arose in Colombo within the local limits of the jurisdiction of this Court.

20 2. One Francis Pieris Suriyapperuma was the owner of certain lands called (1) Moragahalanda (2) Talpediwila Cumbura (3) Nagahalandewatte (4) Meeegahawatte situated at Dompe in Gangaboda Pattu of Siyane Korale (5) Several contiguous allotments of land called Delgahawatte, Alubogahalande and Handinnehenewatte situated in the villages Dompe and Hunukandana in Gangaboda Pattu aforesaid.

3. By bond No. 1987 dated 30th January, 1932 the said Francis Pieris Suriyapperuma mortgaged the said lands to one Cyril Pinto Jayewardene as security for the repayment of a sum of Rs. 5,500 lent to the said Francis Pieris Suriyapperuma.

30 4. The said bond was put in suit in D. C. Colombo Case No. 840 and decree entered on 24th January, 1935.

5. By deed No. 2210 dated 20th July, 1935 the said Francis Pieris Suriyapperuma in pursuance of an agreement with the said Cyril Pinto Jayewardene conveyed to the said Cyril Pinto Jayewardene three of the said lands and an undivided 1/2 of another land in

No. 2.
 Plaint of
 the Plaintiffs
 24.3.52—contd.

satisfaction of the amount due on the said decree. The said lands are more fully described in the schedule hereon. The said Cyril Pinto Jayewardene thereupon entered into possession of the said lands.

6. The said Cyril Pinto Jayewardene died intestate on or about 7th August, 1937 leaving as his heirs the plaintiffs who are his widow and child who became thereupon entitled to the said lands.

7. The defendant who is the Land Commissioner has given notice to the plaintiffs that he intends to acquire the two lands called Nagahalandawatta and Moregahalanda in terms of section 3 of the Land Redemption Ordinance and has already taken certain steps towards the acquisition of the said lands. 10

8. The plaintiffs state that the said lands do not fall within the description in section 3 of the Land Redemption Ordinance, No. 61 of 1942 and are not therefore subject to acquisition by the defendant under the said Ordinance.

9. A cause of action has therefore accrued to the plaintiff to sue the defendant for an injunction restraining him from the acquisition of the said lands.

10. Due notice of this action has been given to the defendant as required by section 461 of the Civil Procedure Code. 20

11. The said two lands are of the value of Rs. 25,000.

WHEREFORE the plaintiffs pray :—

- (1) for a permanent injunction restraining the defendant from the acquisition of the lands called Nagahalandawatte and Moragahalanda thirdly and firstly respectively described in the schedule hereof,
- (2) for an interim injunction restraining the defendant from taking any steps towards the said acquisition pending the determination of this action, 30
- (3) for costs of suit, and
- (4) for such other and further relief as to this court shall seem meet.

(Sgd.) H. A. ABEYWARDENE,

Settled by Messrs.

Proctor for Plaintiff.

C. E. JAYAWARDENE and

E. B. WIKRAMANAYAKE, K. C.

Advocates

SCHEDULE ABOVE REFERRED TO

All that divided one half portion of the land called Moragahalanda situated at Dompe in the Gangaboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the North by the

garden of D. C. S. Jayasekera Vidane Aratchy on the East by the remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva containing in extent nine acres three roods and four perches (9A. 3R. 4P) according to the figure of survey thereof dated 28th September 1894 made by R. P. Perera Registered Surveyor which said portion is described in deed No. 15383 dated 11th February 1908 attested by A. P. S. A. Abayratne N. P. as an undivided half part of the land called Moragahalanda situated at Domppe aforesaid bounded on the East by the lands of Ganihiatchigo Sarnelis Appu and Pattividanalago Polonchi Appu on the South by the land of Karamanis Silva Vidane Aratchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijesinghe Hamine and Paulis Silva containing in extent about forty (40) bushels of paddy sowing.

2. All that undivided half part towards the South of the field called Talpediwila Kumbura situated at Domppe aforesaid and bounded on the East by high land on the South by the limitary ridge of the field of Karamanis Silva on the West by the land of Dona Christina Wijesinghe Hamine and on the North by the limitary ridge of Pincumbura containing in extent about twelve bushels of paddy sowing.

3. All that land called Nagahalandewatto situated at Domppe aforesaid bounded on the East by Lebumbima of Mahappugohamy on the South by a field on the West by the land of Henadira-kankanamalage Valenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing.

4. The several contiguous allotments of lands called Delgahawatta, Alubogahalanda and Handinnahenewatte containing in extent seventeen acres one rood and two perches (A17. R1. P2) situated in the villages Domppe & Hunukandana in the Gangaboda Pattu aforesaid and comprising the following allotments which adjoin each other and from their situation as respects each other can be included in one survey, to wit:—

(a) All that land called Delgahawatta situated at Domppe aforesaid bounded on the East by a field on the South by the hedge of this land on the West by the hedgo between this land and the jungle and on the North by the Deniyaland containing in extent about ten acres (A10. R0. 0P)

(b) All that allotment of land called Handinnehenewatte situated in the village Hunukandana in the Gangaboda Pattu aforesaid bounded on the South by land described in title plan No. 249279

No. 2.
Plaint of
the Plaintiffs
24.3.52—contd.

and on all other sides by lands claimed by natives containing in extent one acre, three roods and thirty two perches (A1. R3. P32) according to title plan No. 249278 dated 3rd February 1908 and authenticated by P. D. Warren, Esquire, Surveyor General.

(c) All that allotment of land called Handinnehenawatte situated at Hunukandana aforesaid bounded on the North by land described in title plan No. 249278 and on all other sides by land claimed by natives containing in extent three acres and thirty perches (A3. R0. P30) according to title plan No. 249279 dated 3rd February 1908 authenticated by P. D. Warren, Surveyor General. 10

(d) All that lot marked A of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by land of Dimungepurahunuge Jalis Fernando on the East by land of Francis Pieris Suriapperuma on the South by lots D, C and B of this land and on the west by Kosgahawatta of M. Amaris Fernando containing in extent one acre one rood and four perches (A1. R1. P4).

(e) All that lot marked B of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by Lot A on the East by Delgahawatte of Francis Pieris Suriapperuma on the South by paddy field and on the West by lot C allotted to Maggonahunuge Thonchi Fernando containing in extent three roods and sixteen perches (A0. R3. P16) according to survey plan dated 16th August 1922 and made by R. P. Perera Licensed Surveyor which two lastly mentioned lots A and B are a divided one fourth and one sixth share respectively of all that allotment of land called Alubogahalanda situated at Dompe aforesaid bounded on the North and West by ditch on the East by land of Isac Peris Suriapperuma and on the South by field containing in extent five acres (A5. R0. P0). 20

(Sgd.) H. A. ABEYEWARDENA
Proctor for Plaintiffs. 30

Documents filed with the Plaintiff :

1. Abstract of title.
2. Pedigree.

(Sgd.) H. A. ABEYEWARDENE
Proctor for Plaintiffs.

Documents relied on by the Plaintiffs :

Deeds referred to in the Plaintiff.

(Sgd.) H. A. ABEYEWARDENE,
Proctor or Plaintiffs. 40

PEDIGREE

FRANCIS PIERIS SURIAPPERUMA

By Deed No. 2210 dated 20th
July 1935, transferred to.

CYRIL PINTO JAYEWARDENE (Died)

Married Vasara Pinto Jayawardene
1st Plaintiff.

BERTRAM AUGUSTUS PINTO JAYEWARDENE

2nd Plaintiff.

Colombo, 24th March, 1952

(Sgd.) H. A. ABEYWARDENE,
Proctor for Plaintiffs.

Abstract of Titles

No.	Date	Notary	Nature	Grantor	Grantee	Name of Land	Original or Duplicate
2210	20.7.1935	H. A. Abeyewardene	Transfer	Francis Pieris Suriyapperuma	Cyril Pinto Jayewardene	<p>1. Undivided 1/2 of Moragabalanda situated at Dompe in Gangaboda Pattu of Siyane Korale containing extent 40 bushels of paddy sowing.</p> <p>2. Undivided 1/2 towards the south of the field called Talpediwila Kurubura situated at Dompe aforesaid in extent about 12 bushels of paddy sowing.</p> <p>3. Nagahalandewatto situated at Dompe aforesaid in extent about 8 bushels of paddy sowing.</p> <p>4. Several contiguous allotments of lands called Delgahawatte, Alubogahalanda and Handinnahenawatta situated in the villages of Dompe and Hunukandena in extent 17A. 1R. 2P.</p>	Original

Colombo, 24th March, 1952.

(Sgd.) H. A. ABEYWARDENA,
Proctor for Plaintiffs.

Petition of the Plaintiffs (Petitioners) for an Interim Injunction

No. 3.
Petition of the
Plaintiffs
(Petitioners)
for an Interim
Injunction
7.4.52.

7.4.52

IN THE DISTRICT COURT OF COLOMBO

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo Plaintiffs.

No. 6499/L Vs.

10 THE LAND COMMISSIONER, COLOMBO Defendant

And

In the matter of an application under Section 87 (1) of the Courts Ordinance 1889 for an Interim Injunction.

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo Petitioners.

Vs.

THE LAND COMMISSIONER, COLOMBO Respondent

On this 7th day of April, 1952.

20 THE Petition of the Petitioners abovenamed appearing by Henricus Abraham Abeyewardene their Proctor states as follows :—

1. One Francis Pieris Suriapperuma was the owner of certain lands called (1) Moragahalanda, (2) Talpediwila Cumbura, (3) Nagahalandewatta, (4) Meegahawatte, all situated at Dompe in Gangaboda Pattu of Siyane Korale, (5) Several contiguous allotments of land called Delgahawatta, Alubogahalanda and Handinnehenawatte, situated in the villages Dompe and Hunukandana in Gangaboda Pattu aforesaid.

30 2. By bond No. 1987 dated 30th January, 1932, the said Francis Pieris Suriapperuma mortgaged the said lands to one Cyril Pinto Jayewardene as security for the repayment of a sum of Rs. 5,500 lent to the said Francis Pieris Suriapperuma.

No. 3.
Petition of the
Plaintiffs
(Petitioners)
for an Interim
Injunction.
7.4.52—contd.

3. The said bond was put in suit in D. C. Colombo Case No. 840 and decree entered on 24th January, 1935.

4. By deed No. 2210 dated 20th July, 1935, the said Francis Pieris Suriyapperuma in pursuance of an agreement with the said Cyril Pinto Jayewardene conveyed to the said Cyril Pinto Jayewardene three of the said lands and an undivided 1/2 of another land in satisfaction of the amount due on the said decree and the said Cyril Pinto Jayewardene thereupon entered into possession of the said lands.

5. The said Cyril Pinto Jayewardene died intestate on or about 7th August, 1937, leaving as his heirs the Petitioners who are his widow and child who became thereupon entitled to the said lands. 10

6. The Respondent who is the Land Commissioner has given notice to the Petitioners that he intends to acquire the two lands called Nagahalandawatta and Moragahalande more particularly described in the Schedule hereto in terms of Section 3 of the Land Redemption Ordinance and has already taken certain steps towards the acquisition of the said lands.

7. The Petitioners state that the said lands do not fall within the description in section 3 of the Land Redemption Ordinance, No. 61 of 1942, and are not therefore subject to acquisition by the Respondent under the said Ordinance. 20

8. The Petitioners have brought the above-styled action against the Respondent suing the Respondent for a permanent injunction restraining him from acquiring the said lands, the respondent having been given due notice as required by Section 461 of the Civil Procedure Code.

9. It will cause injury and irreparable harm and damage and work great hardship on the petitioners if the respondent is not restrained from acquiring the said lands pending the decision of this case. 30

Wherefore the petitioners pray :—

- (1) for an Interim Injunction restraining the Respondent from proceeding with the acquisition of the said two lands called Nagahalandawatte and Moragahalande under section 3 of the Land Redemption Ordinance, No. 61 of 1942, pending the decision of this case,
- (2) for costs in this behalf, and
- (3) for such other and further relief as to this Court shall seem meet.

(Sgd.) H. A. ABEYWARDENE, 40
Proctor for Petitioners.

SCHEDULE ABOVE REFERRED TO

No. 1.
Petition of the
Plaintiffs
(Petitioners)
for an Interim
Injunction.
7.4.62.

1. All that land called Nagahalandawatte situated at Dompe in the Gangaboda Pattu of Siyane Korale in the District of Colombo, Western Province, and bounded on the East by Lebumbima of Mahappugehamy, on the South by a field, on the West by the land of Henadirakankanamalago Valenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing.

10 2. All that divided one half portion of the land called Moragahalande, situated at Dompe aforesaid, bounded on the North by the garden of D. C. S. Jayasekere, Vidano Aratchy, on the East by the remaining half part of this land allotted as planter's share, on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva, containing in extent nine acres three roods and four perches (A9. R3. P4.) according to the figure of survey thereof dated 28th September, 1894, made by R. P. Perera Registered Surveyor, which said portion is described in deed No. 15383 dated 11th February, 1908, attested by A. P. S. A. Abayaratne, Notary Public, as an un-

20 divided half portion of the land called Moragahalande, situated at Dompe aforesaid, bounded on the East by the lands of Ganihiatchige Sarnelis Appu and Pattividanalage Polonchi Appu, on the South by the land of Karamanis Silva, Vidane Aratchi, on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijeyesinghe Hamine and Paulis Silva, containing in extent about forty (40) bushels of paddy sowing.

(Sgd.) H. A. ABEYEWARDENE,
Proctor for Petitioner.

No. 4.
Affidavit of
the 2nd
Plaintiff.
7.4.52.

No. 4

Affidavit of the 2nd Plaintiff

7. 4. 52

IN THE DISTRICT COURT OF COLOMBO

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs.*

No. 6499/L Vs.

THE LAND COMMISSIONER, Colombo *Defendant.*

and

10

In the matter of an application under section 87 (1) of the Courts
Ordinance of 1889 for an Interim Injunction.

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Petitioners.*

Vs.

THE LAND COMMISSIONER, Colombo *Respondent.*

I, Bertram Augustus Pinto Jayewardene of Hildon Place,
Bambalapitiya in Colombo, make oath and say as follows :—

1. I am the second Petitioner abovenamed. The first petitioner is
my mother. 20

2. One Francis Pieris Suriyapperuma was the owner of certain
lands called (1) Moragahalanda, (2) Talpediwile Cumbure, (3) Nagaha-
landewatte, (4) Meegahawatta, all situated at Dompe in Gangaboda
Pattu of Siyane Korale, (5) Several contiguous allotments of land
called Delgahawatte, Alubogahalanda and Handinnehenewatte,
situated in the villages Dompe and Hunukandana in Gangaboda
Pattu of aforesaid.

3. By Bond No. 1987 dated 30th January, 1932, the said Francis
Pieris Suriyapperuma mortgaged the said lands to my father Cyril
Pinto Jayewardene as security for the repayment of a sum of Rs. 5,500
lent to the said Francis Suriyapperuma. 30

4. The said bond was put in suit in D. C. Colombo Case No. 840
and decree entered on 24th January, 1935,

No. 4.
Affidavit of
the 2nd
Plaintiff.
7.4.52.

5. By deed No. 2210 dated 20th July, 1935, the said Francis Pieris Suriyapperuma in pursuance of an agreement with my father the said Cyril Pinto Jayewardene conveyed to the said Cyril Pinto Jayewardene three of the said lands and an undivided 1/2 of another land in satisfaction of the amount due on the said decree and the said Cyril Pinto Jayewardene thereupon entered into possession of the said lands.

10 6. The said Cyril Pinto Jayewardene died intestate on or about 7th August, 1937, leaving as his heirs myself and my mother the petitioners who became thereupon entitled to the said lands.

7. The Respondent who is the Land Commissioner has given notice to us that he intends to acquire two of the said lands called Nagahalandewatto and Moragahalanda more fully described in the Schedule to the Petition which this affidavit supports in terms of section 3 of the Land Redemption Ordinance and has already taken certain steps towards the acquisition of the said lands.

8. The said lands do not fall within the description in section 3 of the Land Redemption Ordinance, No. 61 of 1942, and are not therefore subject to acquisition by the Respondent under the said Ordinance.

20 9. My mother and I have brought the above-styled action against the Respondent for a premanent injunction restraining him from acquiring the said lands.

10. It will cause injury and irreparable harm and damage to us and work great hardship on us if the respondent is not restrained from acquiring the said lands pending the decision of this case.

Signed and affirmed to at }
Colombo on this 7th day } (Sgd.) B. A. P. JAYEWARDENE
of April, 1952. }

Before me.

30

(Sgd.) J. H. FORBES,
J. P.

No. 5.
Court Order
regarding
Issue of
Summons and
Order Nisi.
26.5.52.

No. 5

Court Order regarding issue of Summons and Order Nisi
26.5.52

D. C. 6499/L

26th May, 1952

Mr. E. B. Wikramanayake, Q.C., with Mr. C. E. Jayawardene
for plffs. instructed.

Application for a perpetual injunction.

Mr. Wikramanayake heard :

Perpetual injunction is a legal remedy. Interim injunction is an equitable remedy. Section 86 of the Courts Ordinance deals only with an interim injunction. *29 N. L. R. 383. 43 N. L. R. 366 at 369. Kerr on Injunctions page 1.* Form of decree asked for is under Section 217 C. P. C. Land not subject to acquisition under Land Redemption Ordinance. 10

After hearing Mr. Wikramanayake, I allow summons on the deft. on the plaint, and an Order Nisi in terms of the petition. The summons is returnable on 18.6.52, and the date for making the order Nisi absolute will be the same.

(Sgd.) L. W. DE SILVA,
A. D. J.
26.5.52

20

Order Nisi entered by the District Court
26.5.52

No. 6.
Order Nisi
entered by the
District Court.
26.5.52.

ORDER NISI

(1) VASARA PINTO JAYEWARDENE and ANOTHER
of Hildon Place, Bambalapitiya in Colombo *Plaintiffs.*

No. 6499/L Vs.

THE LAND COMMISSIONER, Colombo *Defendant.*

And

10 In the matter of an application under Section 87 (1) of the Courts
Ordinance 1889 for an Interim Injunction.

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Petitioners.*

Vs.

THE LAND COMMISSIONER, Colombo *Respondent.*

20 This matter coming on for disposal before L. W. de Silva, Esquire,
Additional District Judge of Colombo on the 26th day of May, 1952,
in the presence of Mr. Adv. E. B. Wikramanayake, Q. C., with
Mr. C. E. Jayawardene instructed by H. A. Abeyewardene, Proctor,
on the part of the petitioners and the affidavit of the 2nd petitioner
abovenamed dated the 7th day of April, 1952, having been read:

It is ordered that the Respondent abovenamed be and he is hereby
restrained from proceeding with the acquisition of the two lands
called Nagahalanda and Moragahanda more fully described
in the Schedule hereto, under section 3 of the Land Redemption
Ordinance No. 61 pending the final decision of this case unless the
Respondent abovenamed shall on the 18th day of June, 1952, show
cause if any to the satisfaction of this Court to the contrary.

30

THE SCHEDULE ABOVE REFERRED TO

1. All that land called Nagahalanda situated at Dompe in the
Gangaboda Pattu of Siyane Korale in the District of Colombo,
Western Province and bounded on the East by Lebumbima of
Mahappugehamy on the South by a field on the West by the land

No. 6.
Order Nisi
entered by the
District Court
26.5.52.

of Henadirakankanamalage Valenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing.

2. All that divided one half portion of the land called Moragahalandanda situated at Dompe aforesaid bounded on the North by the garden of D. C. S. Jayasekera, Vidane Aratchy, on the East by the remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva, containing in extent nine acres three roods and four perches (A9. R3. P4.) according to the figure of survey thereof dated 28th September, 1894, made by R. P. Perera, Registered Surveyor, which said portion is described in deed No. 15383 dated 11th February, 1908, attested by A. P. S. A. Abeyratne, Notary Public, as an undivided half portion of the land called Moragahalandanda situated at Dompe aforesaid bounded on the East by the lands of Ganihiatchige Sarnelis Appu and Pattividanalage Polonchi Appu on the South by the land of Karamanis Silva Vidane Aratchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijeyesinghe Hamine and Paulis Silva containing in extent about forty (40) bushels of paddy sowing. 10 20

(Sgd.) L. W. DE SILVA,
Additional District Judge.
29.5.52

This 26th day of May, 1952.

16.7.52. The above Order Nisi is made absolute allowing the interim injunction.

(Sgd.) L. W. DE SILVA,
A. D. J. 30

Answer of the Defendant

16.7.52

IN THE DISTRICT COURT OF COLOMBO

No. 6499/L	(1) VASARA PINTO JAYAWARDENE
Class : V	(2) BERTRAM AUGUSTUS PINTO
Nature : Land	JAYAWARDENE, both of Hildon
Value : Rs. 25,000	Place, Bambalapitiya in
Proceduro : Regular	Colombo..... Plaintiff.

10

Vs.

THE LAND COMMISSIONER,
Colombo..... Defendant.

On this Sixteenth day of July, 1952.

THE answer of the defendant abovenamed appearing by his Proctors, Behram Kaikhushroo Billimoria and Christopher Gilbert Jayasuriya states as follows :—

1. Answering paragraph (1) of the plaint the defendant denies that any cause of action has accrued to the plaintiff.

20 2. Answering paragraphs 2, 3, 4 and 5 of the plaint the defendant admits the averments therein.

3. Answering paragraphs 6 and 11, the defendant states that he is unaware of the averments contained therein.

4. Answering paragraphs 7 and 8, the defendant denies the averments therein save as hereinafter expressly admitted.

5. Answering paragraph 9, the defendant denies that any cause of action has accrued to the plaintiff.

6. Answering paragraph 10, the defendant admits receipt of the notice therein mentioned.

7. Further answering the defendant states—

30 (a) that on or about the 31st of December, 1950, the then Land Commissioner determined under section 3 (4) of the Land Redemption Ordinance as amended by Ordinance 62 of 1947, and Act 9 of 1950, that the lands called Nagahalandawatte and Moragahalandewatte should be acquired,

No. 7.
Answer of the
Defendant.
18. 7. 52.

after being satisfied bona fide, that the said lands were of the description set out in Section 3 (i) (a) and/or Section 3 (i) (b) of the Land Redemption Ordinance, No. 61 of 1942 as amended by Ordinance 62 of 1947 and Act 9 of 1950.

8. As matters of law the defendant states that the plaintiffs cannot have and maintain this action against the Land Commissioner as :—

- (a) his determination under Section 3 (4) of the Land Redemption Ordinance is final ;
- (b) that the Land Commissioner having been bona fide satisfied that the lands were of the description set out in Section 3 (i) of the Land Redemption Ordinance, the Land Commissioner's determination that the lands should be acquired cannot be canvassed in a Court of Law.

10

9. As a further matter of law the defendant states that this action is wrongly constituted against the Land Commissioner in as much as any steps for the acquisition of the lands will be taken by the Minister and not by the Land Commissioner.

Wherefore the defendant prays that the plaintiffs' action be 20
dismissed with costs.

(Sgd.) C. G. JAYASURIYA,
Proctor for Defendant.

Issues Framed

1.10.53

D. C. 6499/Land

1st October, 1953

Mr. E. B. Wikramanayake, Q. C., with Mr. G. T. Samarawickremo for plaintiff instructed.

Mr. Tennekoon, C.C., for defendant instructed.

Mr. Wikramanayake suggests the following issues :—

- 10 1. Are the lands in question capable of being acquired under Section 3 of the Land Redemption Ordinance? (It is admitted that the Land Commissioner made a determination under Section 3, Sub-section 4 of the Land Redemption Ordinance.)

Mr. Tennekoon suggests :

2. Even if issue 1 is answered in favour of the plaintiff is the plaintiff entitled to an injunction restraining the Land Commissioner from taking steps to acquire them ?
3. Is the action properly constituted as against the Land Commissioner ?
4. Is the Land Commissioner's determination final and conclusive ?
- 20 5. If issue 4 is answered in the affirmative, can the said determination be canvassed in a Court of Law ?

Issues accepted.

No. 9.
Plaintiff's
Evidence.

No. 9

Evidence of
B. A. P. Jaya-
wardene.
1.10.53.

Plaintiff's Evidence

EVIDENCE OF B. A. P. JAYAWARDENE

1.10.53

BERTRAM AUGUSTUS PINTO JAYAWARDENE AFFD.

26, Law Student, residing at Hildon Place, Bambalapitiya, 2nd Pltff. I am a son of the late Mr. Cyril Pinto Jayawardene. 1st Pltff. is my mother. My father was the owner of two lands called Nagahalandawatte and Morgahalanda, which are the subject matter of this action, and on his death these lands devolved on my mother and myself. These lands belonged at one time to a person called Francis Pieris Suriapperuma and by deed 1987 of 1932, P1, Suriapperuma mortgaged these lands and a number of other lands for a sum of Rs. 5,500 to my father. The schedule of the mortgage bond deals with 5 allotments and the lands in question are lands Nos. 1 & 3. No. 1 is Moragahalanda and No. 3 is Nagahalandawatte. This mortgage bond was put in suit in D. C. Colombo No. 840 and decree was entered on 24. 1. 35. Then Suriapperuma and my father entered into an agreement. As a result of that agreement Suriapperuma conveyed to my father 3 portions of these lands and an undivided half share of another land by deed 2210 dated 20. 7. 35, P2. Suriapperuma's residing land he kept back although that also was subject to the mortgage. From 1935 my father had been in possession of this land.

10

20

B. A. P.
Jayawardene
cross-
examination

XXN: I Produce Mortgage Bond No. 1987, D1, on which Suriapperuma mortgaged to my father in respect of a debt of Rs. 5,500. That bond was put in suit in D. C. Colombo 840/M (Decree is marked P3). The decree there was for a sum of Rs. 7,170/62 with interest on Rs. 5,500 at the rate of 13½ per cent per annum. The lands were there declared bound and executable for that judgment debt were the same as the lands in P1. It was after that decree and in satisfaction of my money decree that Suriapperuma transferred to my father by P2 certain lands. The lands transferred were: Moragahalanda, that is land No. 1 in P1; the other land transferred was an undivided half share of Talpediwilakumbura, item 2 in the schedule, which is also land No. 2 in P1; he also transferred Nagahalandawatte which is land No. 3 in P1; he also transferred several contiguous allotments of land containing in extent 17 acres 1 rood 2 perches, which comprise land No. 5 in P1. He did not transfer in satisfaction of the decree the land called Meegahawatte, although that was one of the lands mortgaged and included in the decree.

30

40

Q : Do you say that P2 includes that land which was not originally mortgaged ?

A : All the lands in deed 2210 were included in the mortgage bond, with the exception of Suriyapperuma's residing land.

(TO COURT :—Q : There was no land transferred to your father which has not been included in the mortgage bond ?

A : No.)

10 I am not aware that Suriyapperuma had applied for the redemption of both of these lands Moragahalanda and Nagahalandewatte. I know that the Land Commissioner decided to acquire Moragahalanda and Nagahalandewatte. I was informed of this some time in February, 1951. (It is admitted by both sides that these are agricultural lands within the meaning of the Ordinance.)

20 These 4 lands which were transferred to my father are still owned by my mother and me. My mother owns other lands as well. Apart from these lands, I cannot say that she owns about 100 acres. I have not seen the originals of these deeds. Most of them came from my father. At the time of his death I was very young. The lands are not in one place but in several places. My mother owns other lands.

Q : No officer of Government has stepped on to the land or has tried to take possession of these lands.

A : Once a surveyor came.

He did not try to dispossess me or my mother.

(TO COURT :—Q : They did not come to take possession of the land ?

A : No.)

30 They did not ask me to leave the land. They probably came on some sort of inspection.

REXN. The second land mortgaged is all that field called Talpediwila Kumbura. The land transferred is an undivided half part of Talpediwila Kumbura. The other half part I redeemed.

(Sgd.) G. M. DE SILVA,
A. D. J.

Mr. Wikramanayake closes his case, reading in evidence P1 to P3.

No. 9
Plaintiff's
Evidence.

Evidence
B. A. P. Jayawardeno
1.10.53.

No. 10.
Defendants'
Case .

Evidence of
A. C. L.
Abeyesundera.
1.10.53

No. 10

Defendants' Case

Evidence of A. C. L. Abeyesundera

1.10.53

Mr. Tennekoon calls :

A. C. L. ABEYESUNDERA affd: Assistant Land Commissioner,
Colombo.

As a result of an application made by one Suriyaperuma, the Land Commissioner decided to acquire these lands Moragahalanda and Nagahalandewatte. The decision to acquire these lands was taken on 31.12.50. The Land Commissioner at that time was Mr. Kanagasunderam. No other steps have been taken by us. We have requested the Surveyor-General to survey this land. No statutory steps have been taken by us.

10

XXN : We do not propose to take any statutory steps.

REXN : Nil.

(Sgd.) G. M. DE SILVA,
A. D. J.

Addresses to Court

1.10.53

10 Mr. Tennakoon addresses : Cites 54 N. L. R. case. When a man mortgages 5 lots of land for the loan of Rs. 20,000 he cannot say that Lot A is for Rs. 5,000, lot B is for Rs. 5,000. The debt is indivisible. Falls under Section 31 (a). No difference between Section 31 (a) and Section 3.1 (b). All the elements of that section are completely satisfied. Re question as to whether mortgage is divisible or not he cites 19 N. L. R. 266. Also cites 19 N. L. R. 508 and 2 Court of Appeal Cases 11 page 43.

The act of acquisition made under Land Acquisition Act 9 of 1950. It is not the Land Commissioner himself who takes the steps, but the Minister. This action is not properly constituted against the Land Commissioner. Proper person against whom to bring an injunction is against the Minister. Determination made by Land Commissioner. Land Commissioner not a corporation sole. Cites 1891 (1) Chancery 73, also (1926) 43 Times Reports page 106.

20 Mr. Wikramanayake replies : No requirement at all that a man should be named. The 54 N. L. R. case does not affect this case at all. Cites 31 N. L. R. 115 Land Acquisition Act appears in Govt. Gazette, No. 8,958, Part II dated 29.6.42 at page 476. He cites 51 N. L. R. 93.

(Sgd.) G. M. DE SILVA,
A. D. J.

1.10.53

Judgment on 22nd October, 1953.

(Sgd.) G. M. DE SILVA,
A. D. J.

30

1.10.53

Judgement of the District Court

6.11.53

D. C. 6499/L

6/11/53

JUDGMENT

ONE Francis Peiris Suriyapperuma borrowed a sum of Rs. 5,500 from Cyril Pinto Jayawardena and as security for the loan he hypothecated five allotments of land described in the schedule to the mortgage Bond No. 1987 of 3.1.1932. This bond was put in suit in case No. 840 of this Court in 1934 and a hypothecary decree was entered in favour of Jayawardene for a sum of Rs. 7,170.62 with interest at 13½ per cent. from 3.5.1934 and thereafter on the aggregate at 9 per cent interest and cost of suit. About an year later in full satisfaction of the decree Francis Peiris Suriyapperuma by Deed No. 2210 of 30th July, 1935, P2 conveyed to Jayawardene lands Nos. 1, 3 and 5 and a half share of the land No. 2 described in the schedule to the mortgage bond. By effecting this transfer Suriyapperuma was able to save from being sold under the mortgage decree his residing land Meegahawatte which is the fourth land in the schedule and a half share of the field called Talpediwela, the entirety of which had been mortgaged. 10

Cyril Pinto Jayawardene is dead and the two plaintiffs are his widow and son respectively. They complain that the defendant who is the land Commissioner has taken steps to acquire two of the lands conveyed to Cyril Pinto Jayawardene by Suriyapperuma, viz : Nagahalande and Maragahalande purporting to act under Section 3 of the land Redemption Ordinance of 1942 when in fact the said two lands are not of the description set out in that section and they ask that the defendant be restrained by an injunction from acquiring the two lands. The defendant maintains that these two lands fall within the scope and ambit of the said section and further pleads that the plaintiffs are precluded from canvassing his decision to acquire the two lands as sub-section 4 of Section 3 enacts that his determination shall be final. This question as to the finality of the decision of the Land Commissioner to acquire land under Section 3 of the Land Redemption Ordinance came up for consideration before the Supreme Court in *M. S. Perera vs. Unantenne* reported in 54 New Law Reports page 457 where His Lordship the Chief Justice states as follows :— 30

“ On this matter I prefer the respondents contention that the function of the Land Commissioner or any delegate of his consists of two components : first the formulation of the question to be 40

decided and secondly the answering of that question in relation to the particular land. I agree with the second finding which is one of fact cannot be canvassed, but I am of the opinion that an incorrect formulation of the question to be decided is open to challenge”.

No. 12.
Judgment of
the District
Court.
6.11.53.

10 In this case it is the first finding of the Commissioner which is challenged. In view of this decision the objection that this Court has not jurisdiction to examine whether the two lands in question are of the description set out in Section 3 of the Ordinance cannot be sustained.

Section 3 of the Land Redemption Ordinance enacts :—

“ (1) The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that the land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January, 1929, either—

(a) sold in execution of a mortgage decree, or

20 (b) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the land.”

30 It is contended by the plaintiffs that the conveyance by Suriyapperuma to Cyril Pinto Jayawardene of the two lands which are sought to be acquired by the Land Commissioner is not a transfer as contemplated in Section 3 (1) (b) of the Land Redemption Ordinance in that the consideration for the transfer is not only the satisfaction of the mortgage debt—but also the release of one of the mortgaged properties in its entirety and a half share of another from the liability to be sold in execution of the mortgage decree.

40 The argument of the learned Counsel for the plaintiffs is that what is contemplated in Section 3 (1) (b) is that the mortgaged land if there be one only and all the mortgaged lands if there be many must be transferred by the mortgagor to the mortgagee to constitute such a transfer as to empower the Land Commissioner to act under that Section. It is pointed out that in this case Suriyapperuma had mortgaged five lands, but in full satisfaction of the debt he had transferred to the mortgagee only three lands and a half share of the fourth and by entering into this arrangement he was able to save his residing land and a half share of a field.

The Learned Crown Counsel submits that this Section presents no difficulty of interpretation, and the construction put on it by the learned Counsel, for the plaintiffs is unwarranted. Words must be

No. 12.
Judgment of
the District
Court.
6.11.53.

construed in their ordinary meaning and not in a restricted sense ; when so construed he argues the deed of transfer executed by Suriyapperuma is in satisfaction of the debt due from him to Cyril Pinto Jayawardena and therefore the two lands in question come within the meaning of this Section.

This Ordinance interferes with the existing rights of the subject and their contractual rights and obligations. Where a mortgaged property had been sold by the mortgagor to the mortgagee in satisfaction of the debt the Land Commissioner is empowered to appropriate the owner on payment of compensation and reconvey the land to the original owner. This is a drastic provision having far-reaching effects. Even today a mortgagee buys a mortgaged property at an execution sale or by private treaty and runs the risk of being dispossessed of the property. It is a canon of construction that a statute which takes away vested rights has to be construed strictly. Supposing a person mortgages a land and borrows a thousand rupees and later being unable to redeem the mortgage he sells the land to the mortgagee for Rs. 2,500, the debt at that time being Rs. 1,500 he cannot be said to have transferred the land in satisfaction of the debt due, for there is a further consideration of Rs. 1,000 for the transfer. Similarly, where a person mortgages several lands and obtains a release of one or more such lands by transferring the rest, the consideration for such transfer is in satisfaction of the debt and the release of some lands. In my view on a strict construction of this Section its operation has to be limited to such transfers as have been effected in satisfaction or part satisfaction of the debt only but, if there is any other consideration present, it does not fall within the ambit of this Section. In this case there is such other consideration and I hold that the Land Commissioner has no jurisdiction to acquire the two lands in question.

There is one other matter for consideration. It has been submitted that the Land Commissioner is not a legal persona and the action against him is not properly constituted. The suggestion of the learned Crown Counsel was that the section should have been instituted against the Attorney General. He relied on an English Case *Hutton vs The Secretary of State for War* 43 Times Law Reports page 106 where it was held that an action will not lie against a Crown official, as such for a wrong done in exercise of a statutory authority. Tomlin J. says :

“ First it was said by the Attorney-General and indeed not disputed by Mr. Schiller that an action against the Crown would not lie. There were methods by which relief might be obtained against the Crown but not by action.”

If this action was instituted against the Attorney-General the plaintiffs would have been met with the plea that no action lies against the Crown and an injunction such as asked for in this Case is not available against the Crown. In England there is the remedy by way of petition of rights which is not known to our law.

No. 12.
Judgment of
the District
Court.
8.11.53.

Basnayake, J. says in *Samarasakera vs. D. C. Secretary Matara*.
51 N. L. R. page 19 :

10 "There are generally officers of the Crown who for certain purposes are in the nature of a corporation sole. Such quasi corporations sole are familiar in our Statute law, as for example the Attorney-General under the Civil Procedure Code and the Ceylon Savings Bank Ordinance, the Government Agent under the Land Settlement Ordinance."

To this category may be added the Land Commissioner under the Land Redemption Ordinance.

I hold that the action is properly constituted and that the plaintiff are entitled to the relief they seek.

A answer the issues as follows :—

- 20
- (1) No.
 - (2) Yes.
 - (3) Yes.
 - (4) No.
 - (5) Does not arise.

I enter judgment for plaintiffs as prayed for with costs.

(Sgd.) G. M. DE SILVA,
A. D. J.

Decree of the District Court

6.11.53

DECREE

IN THE DISTRICT COURT OF COLOMBO

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs.*

Vs.

THE LAND COMMISSIONER, Colombo *Defendant.* 10

THIS action coming on for final disposal before G. M. de Silva, Esquire, Additional District Judge of Colombo on the 1st day of October 1953 in the presence of Mr. Adv. E. B. Wikramanayake, Q. C. with Mr. Adv. G. T. Samarawickrame instructed by Mr. H. A. Abeyewardene, Proctor, on the part of the Plaintiffs and Mr. Adv. Tennekoon, Crown Counsel instructed by Messrs. B. K. Billimoria and C. G. Jayasuriya, Proctors, on the part of the defendant :

It is ordered and decreed that the Plaintiffs abovenamed are entitled to a permanent injunction restraining the Defendant from the acquisition of the lands called Nagahalandewatte and Moragahalanda fully described in the schedule hereto under section 3 of the land Redemption Ordinance No. 61 of 1942. 20

It is further ordered and decreed that the defendant do pay to the Plaintiffs costs of this action.

THE SCHEDULE ABOVE REFERRED TO

1. All that land called Nagahalandawatta situated at Dompe in the Gangaboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the East by Lebumbima of Mahappugehamy on the south by a field on the West by the land of Henadira Kankanamalage Valenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing. 30

2. All that divided one half portion of the land called Moragahalanda situated at Dompe aforesaid bounded on the North by the garden of D. C. S. Jayasekere Vidana Arachchy on the East by the

remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the Property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva containing in extent nine acres three roods and four perches (A9. R3. P04.) according to the figure of Survey thereof dated 28th September 1894 made by R. P. Perera Registered Surveyor which said portion is described in Deed No. 15383 dated 11th February, 1908 attested by A. P. S. Abayaratne N. P. as and undivided half part of the land called Moragahalanda situated at Dompe aforesaid

10 bounded on the East by the lands of Ganhiatchigo Sarnelis Appu and Pattividanalago Polonchi Appu on the South by the land of Karamanis Silva Vidana Arachchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijesinghe Hamine and Paulis Silva containing in extent about Forty (40) bushels of paddy sowing.

(Sgd. G. C. T. A. DE SILVA,
Additional District Judge.
2.4.54.

Colombo the 6th day of November, 1953.

20 Drawn by me,

(Sgd.) H. A. ABEYEWARDENE,
Proctor for Plaintiffs.

No. 14.
Petition of
Appeal to the
Supreme Court.
13.11.53.

No. 14

Petition of Appeal to the Supreme Court

13.11.53

S. C. No. 191/L/F/1954

D. C. Colombo No. 6499/L

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs.*

Vs.

THE LAND COMMISSIONER, Colombo *Defendant.* 10

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*

Vs.

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiff-Respondents.*

To : THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 13th day of November, 1953.

THE petition of appeal of the Defendant-Appellant abovenamed
appearing by Bertram Kaikhushroo Billimoria and Christopher 20
Gilbert Jayasuriya, his Proctors, states as follows :—

1. The plaintiffs-respondents sued the defendant appellant in
the above styled action for, inter alia, an injunction restraining
the defendant-appellant from acquiring certain lands known as
Nagahalandawatte and Moragabalandewatte which the defendant-
appellant had under the provisions of the Land Redemption
Ordinance, No. 61 of 1942, determined should be acquired for the
purposes of the said Ordinance.

2. The defendant-appellant filed answer pleading that the said
lands fell within the provisions of section 3 (1) (b) of the Land 30
Redemption Ordinance and that the Land Commissioner had power
to decide to acquire the said lands ; that in any case his determination

to acquire the said lands was final and conclusive ; and that the action was misconceived and wrongly constituted against the Land Commissioner.

No. 14.
Petition of
Appeal to the
Supreme Court.
13.11.53.

3. The case was tried on the 1st of October 1953 by the learned Additional District Judge of Colombo on five issues ; the five issues and the manner in which the learned Additional District Judge answered them in his judgment dated the 6th of November 1953 are as follows :—

- 10 1. Are the lands in question capable of being acquired under section 3 of the Land Redemption Ordinance ? (Answer : No).
2. Even if issue 1 is answered in favour of the plaintiff, is the plaintiff entitled to an injunction restraining the Land Commissioner from taking steps to acquire them ? Answer : Yes.
3. Is the action properly constituted as against the "Land Commissioner" ? Answer : Yes.
4. Is the Land Commissioner's determination final and conclusive ? Answer : No.
- 20 5. If issue 4 is answered in the affirmative, can the said determination be canvassed in a Court of Law ? Answer : Does not arise.

4. By the said judgment dated 6th November 1953 the learned Judge entered judgment for the Plaintiff-respondents as prayed for with costs.

5. Being aggrieved by the said judgment the defendant-appellant appeals to Your Lordships' Court on the following among other grounds that may be urged by counsel at the hearing of this appeal :—

- 30 (a) The said judgment is contrary to law and the weight of evidence adduced in the case,
- (b) that the learned District Judge was wrong in holding that the transfer of the said lands by deed No. 2210 of 30th July 1935 was not a transfer by the owner in satisfaction or part satisfaction of a debt which was due from the owner to the transferee and which was secured by a mortgage subsisting immediately prior to the mortgage,
- (c) that the learned Judge has misconstrued section 3 (1) (b) of the Land Redemption Ordinance,
- 40 (d) that the Learned District Judge was wrong in holding that the Court had jurisdiction to set aside the determination of the Land Commissioner to acquire the

No. 14.
Petition of
Appeal to the
Supreme Court
13.11.53.

said lands when section 3 (4) of the Land Redemption Ordinance provides that the said determination is final,

(e) that the learned District Judge was wrong in holding that the action was properly constituted against the Land Commissioner. The defendant-appellant submits—

(i) that after the determination of the Land Commissioner is made under Section 3 (4) that the lands should be acquired, further steps for the acquisition are, according to the provisions contained in the said Ordinance, to be taken by the Minister and not by the Land Commissioner and that accordingly an injunction is futile against the Land Commissioner and is available, if at all, only against the Minister ;

(ii) that the " Land Commissioner " is not a " person " known to the law and that accordingly the action is not properly constituted.

Wherefore the defendant-appellant prays that Your Lordships' Court be pleased to set aside the order of the Learned District Judge, to dismiss the plaintiffs-respondents' action and to grant the defendant-appellant costs and such other and further relief as in the premises may seem meet to Your Lordships' Court.

(Sgd.) C. G. JAYASURIYA,
Proctor for Defendant-Appellant.

Settled by
V. TENNEKOON,
Crown Counsel.

10

20

**Order of the Honourable the Chief Justice referring the
Case to a Bench of Three Judges**

15. 11. 56

No. 15.
Order of the
Honourable the
Chief Justice
referring the
Case to a
Bench of
Three Judges.
15.11.56.

S. C. No. 191

D. C. Colombo No. 6499/L

Present : Basnayako, C.J. and K. D. de Silva, J.

Counsel : Walter Jayawardene with A.E. Keuneman, C.C., for
Defendant-Appellant.

10 H. W. Jayawardene, Q.C., with Lyn Wirasekera and
P. Ranasinghe for Plaintiffs-Respondents.

Argued and decided on : November 15, 1956.

BASNAYAKE, C.J.

AS there is a difference of opinion between my brother and myself on the main point in this appeal, I direct that this appeal be listed before a Bench of three Judges.

(Sgd.) HEMA H. BASNAYAKE,
Chief Justice.

Judgment of the Supreme Court

7.2.58

*S. C. No. 191**D. C. Colombo No. 6499/L.**Present* : Basnayake, C.J., Pulle, J. & K. D. de Silva, J.*Counsel* : Walter Jayawardena with V. Tennakoon, Senior Crown Counsel, and J. W. Subasinghe, Crown Counsel, for the Defendant-Appellant.

E. B. Wikramanayake, Q.C., with G. T. Samarawickreme and Lyn Wirasekara for the Plaintiff- Respondents. 10

Argued on : 14th and 15th November, 1957.*Decided on* : 7th February, 1958.

PULLE, J.

THE defendant in this action, who is the appellant, is the Land Commissioner. He appeals from a decree dated 6th November, 1953, which declared that the two plaintiffs who are the intestate heirs of one Cyril Pinto Jayawardene were entitled to a permanent injunction restraining him (the Land Commissioner) from acquiring two lands called Nagahalandewatta and Mahagahalande, described in the schedule to the decree, under section 3 of the Land Redemption Ordinance, No. 61 of 1942. 20

The appeal raises broadly the questions :

- (a) whether the action is properly constituted against the Land Commissioner who is sued by only his official name,
- (b) Whether the provision in section 3 (4) is a bar to the court granting an injunction, and
- (c) Whether the conditions laid down in section 3 (1) (b) subject to which the Land Commissioner was empowered to acquire the lands in question were satisfied. 30

The answer to the last question depends on the facts special to this case and the true interpretation of section 3 (1) (b) of the land Redemption Ordinance, No. 61 of 1942, which has been amended

by the Land Redemption (Amendment) Ordinance, No. 62 of 1947, and the Land Acquisition Act, No. 9 of 1950. It is not necessary to have recourse to either of the amending statutes to solve the problems arising on the application of section 3 (1) (b) to the facts of the case.

No. 16.
Judgment
of the
Supreme Court.
7. 2. 58.

10 Whether an action like the present one against the Land Commissioner *nomine officii* can be maintained was argued at length in the case of *Ladamuttu Pillai v. Attorney-General and others* (S. C. 457/D. C. Colombo Case No. 288/Z). My Lord, the Chief Justice, has in his judgment stated the reasons for answering the question in the affirmative. I agree with those reasons and have nothing to add to them.

The answer to the second question does not, in my opinion, admit of a doubt. Sub-section 4 of section 3 answers itself: It reads

20 “ The question whether any land which the Land Commissioner is authorised to acquire under sub-section (1) should or should not be acquired shall subject to any regulations made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment and every such determination of the Land Commissioner shall be final. ”

Before any finality can be claimed for a determination by the Land Commissioner to acquire a land it is essential to establish that the land comes within the provisions of section 3 (1). The plaintiffs asserted that the lands “ do not fall within the description in section 3 of the Land Redemption Ordinance, No. 61 of 1942, and are not therefore subject to acquisition by the defendant under the said Ordinance ”.

30 If that be the fact the provision in sub-section 4 cannot defeat their claim to have the Land Commissioner restrained from acquiring the lands.

I come now to the last and important question, namely, whether the contention on behalf of the Land Commissioner is correct that the lands he sought to acquire fall within the description in section 3 (1) (b).

40 One Francis Suriyaperuma by a bond dated the 30th January, 1932, mortgaged the two lands sought to be acquired and three others to Cyril Pinto Jayawardene, as security for a loan of Rs. 5,500. The bond was put in suit on 3rd May, 1934, and on the 18th July 1934, a decree was entered ordering the mortgagor to pay Rs. 7170/62, with interest and costs of suit. The properties were declared specially bound and executable for the payment of this sum. The decree provided that the order to sell would be stayed if certain payments indicated in the decree were made. The decree was not executed.

By a deed dated 20th July, 1935, the mortgagor conveyed to Cyril Pinto Jayawardene in consideration of a sum of Rs. 8,000 the two Lands sought to be acquired, a third land of the extent of 17A. 1R. 2P and an undivided half share of a field called Talpediwila Cumbure. In other words all the lands mortgaged were transferred by the mortgagor except his residing land called Meegahawatte and an undivided half share of Talpediwila Cumbure.

The learned trial Judge held against the defendant because in his opinion the consideration for the transfer in favour of the mortgage was not merely the judgment debt but also the release from the mortgage of the entirety of Meegahawatte and a half share of Talpediwila Cumbure and that, therefore the transfer could not be said, within the meaning of section 3 (1) (b), to be in satisfaction or part satisfaction of a debt due from the mortgagor to the transferee. If the learned Judge's interpretation of the section is that it is a condition precedent to the exercise of the power of acquisition that all the lands bound by the mortgage must be transferred, I am in agreement with him. Can it be said that the debt in question was secured by a mortgage of the lands transferred? The question cannot be answered in the affirmative because the debt was secured not only by the mortgage of the lands transferred but also by the mortgage of the entirety of Meegahawatte and the remaining half share of Talpediwila Cumbure. The Security for the debt was a mortgage of all the five lands and not two lands and an undivided share of a third.

The interpretation of section 3 (1) (b) was the subject of a lengthy argument in *Ladamuttu Pillai v. Attorney-General and others*. I adhere to the view I expressed in that case that unless all the lands mortgaged are transferred in satisfaction or part satisfaction of the debt secured there is no room for the application of section 3 (1) (b).

It was submitted for the plaintiffs that section 3 (1) (b) had no application because it could not be said that, immediately prior to the transfer, the debt created by the decree was secured by a mortgage. The correctness of the ruling in *M. S. Perera v. Unatenna* (54 N. L. R. 457) was questioned before us. I concurred in the judgment in that case and, having reconsidered it, I see no reason for thinking that it was wrongly decided.

In the result the appeal fails and should be dismissed with costs.

(Sgd.) M. F. S. PULLE,
Puisne Justice. 40

Judgment of the Supreme Court

7.2.58

No. 16.
Judgment
of the
Supreme Court.
7.2.58.

S. C. 191 L/1954

D. C. Colombo 6499/L

BASNAYAKE, C.J.

I have had the advantage of reading the judgment prepared by my brother Pille. I am in entire agreement with it and I concur in the order dismissing the appeal with costs.

10 I do not propose to discuss the questions of Law arising on this appeal as my judgment in the case of *Ladamuttu Pillai v. Attorney-General and Others* (S. C. 457/D. C. Colombo 288/z) S. C. Minutes of 31st January, 1958, covers them all. It is sufficient to say that—

- (a) Section 3 (1) (b) of the Land Redemption Ordinance applies to a case of a transfer, in satisfaction or part satisfaction of the debt, of the entire land where only one land is mortgaged and of all the lands where more than one land is mortgaged.
- 20 (b) The Court has power to grant an injunction against the Land Commissioner restraining him from taking steps to acquire a land under the Land Redemption Ordinance.
- (c) The Land Commissioner may be sued *nomine officii*.
- (d) Section 3 (4) of the Land Redemption Ordinance does not preclude a person from challenging in a regular action the legality of the determination of the Land Commissioner to acquire a land.

(Sgd.) HEMA H. BASNAYAKE,
Chief Justice.

Judgment of the Supreme Court

7.2.58

*S. C. No. 91**D. C. Colombo No. 6499/L.*

K. D. DE SILVA, J.

I have had the advantage of reading the judgment prepared by my brother Pulle. The main question which arises on this appeal is whether the lands sought to be acquired by the Land Commissioner, in this case, fall within the description of lands set out in section 3 (1) (b) of the Land Redemption Ordinance, No. 61 of 1942. It was argued on behalf of the defendant-appellant that they fell within that category of lands whereas Mr. Wikramanayake, Q. C., the counsel for the plaintiffs-respondents supported the contrary view. It was contended on behalf of the respondents that the provisions of section 3 (1) (b) would apply only to a case where all the lands mortgaged had been transferred by the owner to the mortgagee in satisfaction of the mortgage debt. This same question arose for decision in the case of *Ladamuttu Pillai v. Attorney-General and others* (S. C. 457/D. C. Colombo Case No. 288/z) and there I took the view that a transfer of all the lands mortgaged was not a condition precedent to proceedings being taken under section 3 (1) (b) and I still adhere to that view. If the legislature intended to restrict the application of the provision only to cases where all the mortgaged lands had been transferred to the mortgagee it could have stated so, in clear and unambiguous terms. Without unduly straining the language of section 3 (1) (b), I do not think it can be said, that the legislature contemplated the application of this provision only to cases where all the mortgaged lands have been transferred. The object of this Ordinance was to render assistance to a class of debtors who got into difficulties during an abnormal period of financial stress. If the view put forward on behalf of the respondents is to prevail that object would be defeated to a very large extent. According to that view if a person borrowed a sum of Rs. 50,000 by hypothecating ten lands—nine of which were very valuable—as security for the loan and he later transferred to the mortgagee the nine valuable lands in satisfaction of the debt he would not be entitled to obtain any relief through the intervention of the Land Commissioner even though the 10th land which he did not transfer was worth only Rs. 100. It is difficult to believe that the Legislature, in passing this Ordinance, intended to countenance such a situation.

10

20

30

40

In my view the lands in question come within the purview of section 3 (1) (b) and the Land Commissioner was entitled to acquire them. I would therefore allow the appeal and dismiss the plaintiffs' action, with costs costs in both Courts.

No. 10
Judgment
of the
Supreme Court.
7.2.69.

(Sgd.) K. D. DE SILVA,
Puisne Justice.

Decree of the Supreme Court

7.2.58

D. C. (F) 191 L
1954

ELIZABETH THE SECOND, QUEEN OF CEYLON AND
OF HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

10

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya, in Colombo *Plaintiffs.*

Vs.

THE LAND COMMISSIONER, Colombo *Defendant*

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*

against

(1) VASARA PINTO JAYEWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYEWARDENE, both of Hildon
Place, Bambalapitiya, in Colombo *Plaintiff-Respondents.*

20

Action No. 6499/L

DISTRICT COURT OF COLOMBO

This cause coming on for hearing and determination on the 14th
& 15th November, 1957 & 7th February, 1958 and on this day,
upon an appeal preferred by the Defendant-Appellant before the
Hon. H. H. Basnayake, Q. C., Chief Justice, the Hon. M. F. S. Pulle,
Q.C., Puisne Justice, and the Hon. K. D. de Silva, Puisne Justice,
of this Court, in the presence of Counsel for the Defendant-Appellant
and Plaintiffs-Respondents.

It is considered and adjudged that this appeal be and the same is hereby dismissed.

No. 17
Decree of the
Supreme Court.
7.2.58.

It is further ordered that appellant do pay the respondents the taxed costs of this appeal.

(Vide copy of Judgment attached.)

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 12th day of February, in the year One thousand Nine hundred fifty-eight and of our Reign the Seventh.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 18.
Application for
Conditional
Leave to
Appeal to the
Privy Council.
7.3.58.

No. 18

Application for Conditional Leave to Appeal to
the Privy Council

7.3.58

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs.*

Vs.

THE LAND COMMISSIONER, Colombo *Defendant.* 10

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*

Vs.

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya, in Colombo *Plaintiffs-Respondents.*

In the matter of an application for conditional leave to appeal to
Her Majesty the Queen in Council.

THE LAND COMMISSIONER, Colombo .. *Defendant Appellant-
Appellant.*

Vs.

20

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya, in Colombo .. *Plaintiffs Respondents-
Respondents.*

To : THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 7th day of March, 1958.

The humble Petition of the Land Commissioner, the Defendant
Appellant-Appellant abovenamed appearing by Abdul Hameed
Mohamed Sulaiman, his Proctor, states as follows :—

30

1. Upon an appeal preferred to the Supreme Court by the
Defendant Appellant-Appellant abovenamed, the Supreme Court

delivered judgment thereon on the 7th day of February, 1958, dismissing the said appeal with costs. The said appeal bears No. 191 (Final) of 1954—D. C. Colombo Case No. 6499/L.

No. 18
Application for
Conditional
Leave to
Appeal to the
Privy Council.
7.3.68.

2. That feeling aggrieved by the said judgment of this Honourable Court, the abovenamed Defendant Appellant-Appellant is desirous of appealing to Her Majesty the Queen in Council.

3. That—

(a) the said judgment is a final judgment and the matter in dispute on the appeal is of the value of Rs. 25,000 ;

10 (b) that the questions involved in the appeal are questions which by reason of their great general or public importance ought to be submitted to Her Majesty in Council for decision.

4. That the notice of the intended application for leave to appeal has been duly given to the 1st and 2nd Plaintiffs Respondents-Respondents in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance, Chapter 85. Affidavits in proof of the said fact are annexed hereto marked " X " and " Z1 ".

20 Wherefore the Defendant Appellant-Appellant prays for Conditional Leave to Appeal to Her Majesty the Queen in Council against the said judgment of this Court dated the 7th day of February, 1958.

(Sgd.) A. H. M. SULAIMAN,
Proctor for Defendant Appellant-Appellant.

Settled by :

(Sgd.) V. TENNEKOON,
Senior Crown Counsel.

No. 19.
Decree of the
Supreme Court
granting
Conditional
Leave to
Appeal to the
Privy Council.
29.4.58.

**Decree of the Supreme Court granting Conditional Leave to
Appeal to the Privy Council**

29.4.58

S. C. Application No. 85

**ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF
HER OTHER REALMS AND TERRITORIES, HEAD
OF THE COMMONWEALTH**

**IN THE SUPREME COURT OF THE ISLAND OF
CEYLON**

10

In the matter of an Application dated 7th March, 1958, for Conditional Leave to Appeal to Her Majesty the Queen in Council by Defendant-Appellant against the decree dated 7th February, 1958.

THE LAND COMMISSIONER, Colombo .. *Defendant-Appellant*
APPELLANT

against

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya, in Colombo *Plaintiffs-Respondents* 20
RESPONDENTS

Action No. 6499/L (S. C. 191—Final)

DISTRICT COURT OF COLOMBO

THIS cause coming on for hearing and determination on the 29th day of April, 1958, before the Hon. M. C. Sansoni, Puisne Justice, and the Hon. T. S. Fernando, Q.C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the Applicant do within one month from this date :

30

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

No. 19.
Decree of the
Supreme Court
granting
Conditional
Leave to
Appeal to the
Privy Council
29.4.58

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

10 Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 6th day of May, in the year One thousand Nine hundred and fifty-eight and of Our Reign the Seventh.

(Sgd.) W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 20.
Application for
Final Leave to
Appeal to the
Privy Council.
23.5.58.

No. 20

Application for Final Leave to Appeal to the
Privy Council

23. 5. 58

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs.*

vs.

THE LAND COMMISSIONER, Colombo *Defendant.* 10

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*

vs.

(1) VASARA PINTO JAYAWARDENE, (5) BERTRAM
PINTO JAYAWARDENE, both of Hildon Place, Bambala-
pitiya in Colombo *Plaintiffs-Respondents.*

In the matter of an Application for Final Leave to Appeal to
Her Majesty the Queen in Council.

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*
APPELLANT

vs.

20

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs-Respondents.*
RESPONDENTS

To : THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 20.
Application for
Final Leave to
Appeal to the
Privy Council.
23.5.58.

On this 23rd day of May 1958.

THE humble petition of the Defendant Appellant-Appellant abovenamed appearing by Abdul Hameed Mohamed Sulaiman, his Proctor, sheweth as follows :—

10 1. That the Defendant Appellant-Appellant on the 29th day of April 1958 obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Her Privy Council against the judgment of this Court pronounced on the 7th day of February, 1958. The conditions subject to which leave was so granted were:—

(a) Deposit with the Registrar of the Supreme Court a sum of Rs. 3000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

20 (b) Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

2. That the Defendant Appellant-Appellant has :

30 (a) on the 17th day of May 1958 deposited with the Registrar of this Court the sum of Rs. 3000 being the security for costs of appeal under Rule 3 (a) of the schedule rules and hypothecated the said sum of Rs. 3000 by bond dated 21st day of May 1958 for the due prosecution of the appeal and that the payment of all costs that may become payable to the Plaintiffs Respondents-Respondents in the event of the Defendant Appellant-Appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non prosecution or of Her Majesty the Queen in Council ordering the Defendant Appellant-Appellant to pay Plaintiffs Respondents-Respondents costs of appeal, and

40 (b) on the 17th day of May 1958 deposited the sum of Rs. 300 in respect of the amounts and fees as required by paragraph 8 (a) of the Appellate Procedure (Privy Council) Order made under section 4 (b) and (c) of the Ordinance No. 31 of 1909 (Chapter 85).

No. 20.
Application for
Final Leave to
Appeal to the
Privy Council.
23. 5. 58.

Wherefore the Defendant Appellant-Appellant prays that he be granted final leave to appeal against the said judgment of this Court dated the 7th day of February 1958 to Her Majesty the Queen in Her Privy Council.

(Sgd.) A. H. M. SULAIMAN,
*Proctor for Defendant-Appellant
Appellant.*

Decree of the Supreme Court granting Final Leave to Appeal to the Privy Council

4. 7. 58

No. 21.
Decree of the
Supreme Court
granting
Final Leave to
Appeal to the
Privy Council.
4. 7. 58.

S. C. Application No. 185

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF
HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

10

In the matter of an Application dated 23rd May, 1958, for Final Leave to Appeal to Her Majesty the Queen in Council by Defendant-Appellant against the decree dated 7th February, 1958.

THE LAND COMMISSIONER, Colombo *Defendant-Appellant.*
APPELLANT

against

(1) VASARA PINTO JAYAWARDENE, (2) BERTRAM
AUGUSTUS PINTO JAYAWARDENE, both of Hildon
Place, Bambalapitiya in Colombo *Plaintiffs-Respondents.*
RESPONDENTS

20

Action No. 6499/L. (S. C. 191—Final).

DISTRICT COURT OF COLOMBO

THIS cause coming on for hearing and determination on the 4th day of July, 1958, before the Hon. M. F. S. Pulle, Q.C., and the Hon. N. Sinnetamby, Puisne Justices of this Court, in the presence of Counsel for the Appellant.

It is considered and adjudged that this application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

30

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 10th day of July, in the year One thousand Nine hundred and fifty-eight and of Our Reign the Seventh.

(Sgd.) B. F. PERERA,
Deputy Registrar, S. C.

Deed No. 1987 of 30.1.32.

D 163

Prior Registration : $\frac{163}{250}$

244 to 247*No. 1987*

KNOW all men by these presents that I, Francis Pieris Suriapperuma of Dompe in the Gangaboda Pattu of Siyane Korale (hereinafter calling myself and referred to as the Obligor) am held and firmly bound unto Cyril Pinto Jayawardene of Udamapitigama in the Gangaboda Pattu of Siyane Korale (hereinafter called and referred to as the Obligee) in the sum of Rupees Five thousand and five hundred (Rs. 5500) of lawful money of Ceylon for money borrowed and received by me from the said Obligee at the execution of these presents I the said obligor hereby renouncing the Beneficium non numerate pecuniae do engage and bind myself to pay unto the said obligee or to his certain attorneys, heirs, executors, administrators, or assigns the said sum of Rupees Five thousand and five hundred (Rs. 5500) with interest thereon at and after the rate of thirteen and half per centum per annum to be computed from this date on receiving from the said obligee or his aforewritten six calendar months' previous notice in writing requiring payment of the said principal sum and interest as aforesaid. 10

And for securing the payment of the said amount with the interest accruing thereon I the said obligor do hereby specially mortgage and hypothecate to and with the said obligee and his aforewritten as a first or primary mortgage free from any incumbrance whatsoever the permises in the Schedule hereto fully described with all the estate, right, title, interest, property, claim and demand whatsoever therein and thereto :— 20

And I the said obligor do hereby covenant and declare with and to the said Obligee and his aforewritten that the said premises and every part thereof are free from all encumbrances whatsoever and that I shall not nor will any time hereafter during the continuance of the mortgage effected by these presents lease out or mortgage the aforesaid premises hereby mortgaged and hypothecated or commit any act or deed whereby or by reason whereof the rent income or issues thereof may be in any wise incumbered without the consent in writing of the said obligee or his aforewritten having been first had and obtained thereto and that any such lease mortgage or incumbrance without such consent in writing shall be absolutely null and void. 30 40

And I do declare further to engage and bind myself and my heirs, executors and administrators, for the true performance of this obligation.

P 1.
Deed No. 1987
of 30.1.32

In witness whereof I the said Francis Pieris Suriapperuma do hereunto and to two others of the same tenor and date as these presents set my hand at office No. 136 Hultsdorf in Colombo on this thirtieth day of January in the year One thousand nine hundred and thirty two.

THE SCHEDULE ABOVE REFERRED TO :

- 10 (1) All that divided one half portion of the land called Moragahalandanda situated at Dompe in Gangaoboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the North by the garden of D. C. S. Jayasekera Vidane Aratchy on the East by remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva, containing in extent Nine acres three roods and four perches (9A. 3R. 4P.) according to the figure of survey thereof dated 28th September 1894 made by R. P. Perera Registered Surveyor and
- 20 held and possessed by me the said obligor under deed No. 15383 dated 11th February 1908 attested by A. P. S. A. Abeyaratne Notary Public and as paternal inheritance which said portion is described in the said Deed as an undivided half part of the land called Moragahalands situated at Dompe aforesaid bounded on the East by the lands of Ganiatchige Sarnelis Appu and Pattividanalage Polonchi Appu on the South by the land of Karamanis Silva Vidane Aratchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijesinghe Hamine and Paulis Silva containing in extent
- 30 about forty (40) bushels of paddy sowing.

(2) All that land called Talpediwila Cumbure situated at Dompe aforesaid and bounded on the East by High land on the South by the limitary ridge of the field of Karamanis Silva on the West by the land of Dona Christina Wijesinghe Hamine and on the North by the limitary ridge of Pincumbura containing in extent about twelve bushels of paddy sowing.

- 40 (3) All that land called Nagahalandewatte situated at Dompe aforesaid bounded on the East by Labumbima of Mohoppugehamy on the South by a field on the West by the land of Henadirakankanamalage Valenti Appu and on the north by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing.

P L.
Deed No. 1987
of 30.1.32.

(4) All that land called Meegahawatte together with the house thereon situated at Dompe aforesaid bounded on the East, West and north by fields and on the South by the garden of Dona Christina Wijesinghe Hamine containing in extent about twelve bushels of paddy sowing which said 2nd 3rd and 4th lands have been held and possessed by me the said Obligor under the said Deed No. 15383 and by right of paternal inheritance.

(5) The several contiguous allotments of land called Delgahawatte, Alubogahalanda, and Handinnahenawatte containing in extent seventeen acres one rood and two perches (A17. R1. P2) situated in the villages Dompe and Hunukandana in Gangaboda Pattu aforesaid comprising the following allotments which adjoin each other and from their situation as respects each other can be included in one survey to wit :—

10

(a) All that land called Delgahawatte situated at Dompe aforesaid bounded on the East by a field on the South by the hedge of this land on the West by the hedge between this land and the jungle and on the North by the Deniyaland containing in extent about ten acres (A10. R0. P0.) and held and possessed by me the said Obligor under the said Deed No. 15383.

20

(b) All that allotment of land called Handinne henawatte situated in the village Hunukandana in Gangaboda Pattu aforesaid bounded on the South by land described in title plan No. 249279 and on all other sides by lands claimed by natives containing in extent one acre three roods and thirty two perches (A1. R3. P32) according to title plan No. 249278 dated 3rd February 1908 and authenticated by P. D. Warren Esquire Surveyor General.

(c) All that allotment of land called Handinne henawatte situated at Hunukandana aforesaid bounded on the North by land described in the title plan No. 249278 and on all other sides by land claimed by natives containing in extent three acres and thirty perches (A3. 0R. 30P.) according to title plan No. 249279 dated 3rd February 1908 authenticated by P. D. Warren Surveyor General and which said two allotments of land have been held and possessed by me the said defendant under Deed No. 26613 dated 24th July 1926 attested by D. J. Gunasekere Notary Public.

30

(d) All that lot marked " A " of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by land of Domingupurahunuge Jalis Fernando on the East by land of Francis Pieris Suriapperuma on the South by lots D, C and B of this land and on the West by Kosgahawatte of M. Amaris Fernando containing in extent one acre one rood and four perches (1A. 1R. 4P.) and

40

(e) All that lot marked " B " of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by Lot " A " on the East by Delgahawatte of Frances Pieris Suriapperuma

10 on the South by paddy field and on the West by lot "C" allotted to Maggonahunuge Thonchi Fernando containing in extent three roods and sixteen perches (0A. 3R. 16P) according to Survey Plan dated 16th August 1922 and made by R. P. Perera Licensed Surveyor which two lastly mentioned Lots A and B are a divided one fourth and one sixth share respectively of all that allotment of land called Alubogahalanda situated at Dompe aforesaid bounded on the North and West by ditch on the East by land of Issac Pieris Suriapperuma and on the South by field containing in extent five acres (5A. 0R. 0P) and held by me the said obligor under Deed No. 9694 dated 5th February 1926 attested by D. G. P. Abeyewardene Notary Public and Deed No. 24795 dated 3rd July 1925 attested by D. J. Gunasekera Notary Public.

(Sgd.) F P. SURIYAPPERUMA,

Witnesses :

(Sgd.) A. S. OUSMAN

(Sgd.) A. AMIT

(Sgd.) H. A. ABEYEWARDENE,
Notary Public.

20 I, Henricus Abraham Abeyewardene of Colombo in the Island of Ceylon, Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the said Francis Pieris Suriapperuma who signed an "F. P. Suriyapperuma" in the presence of Abdul Salam Ousman of Silversmith Street, Colombo who signed as "A. S. Ousman" and Alal Amit of Hultsdorf Street, Colombo who signed as "A. Amit" the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant and by the said witnesses and also by me the said Notary in my
30 presence and in the presence of one another all being present together at the same time at Colombo aforesaid on this thirtieth day of January in the year of Our Lord, One thousand Nine hundred and thirty two.

And I further certify and attest that in the original of the said instrument in page 1 line 12 the words "on demand" were deleted in page 3 line 20 the word "between" was deleted and "dividing"

P. 1
Deed No. 1987
of 30.1.32

written over, and in line 27 of same page the word "me" was interpolated, and in the duplicate thereof in page 1 line 12 the words "on demand" were deleted in page 3 line 6 the words "Appuhamy" were deleted and "Vidana Aratchy" written over, in line 7 of same page the words commencing from the word "on" and ending with the words "others" were interlineated in line 20 of same page the word "between" was deleted and "dividing" written over and in page 4 the line 17 was interlineated before the said instrument was read over and explained as aforesaid, that the consideration hereof represents a part of the claim settled in case No. 42552 District Court of Colombo by the two cheques for Rs. 5000 mentioned in the deed No. 1986 attested by me, that the said original bears a stamp of the value of Rupee one and the duplicate of this instrument bears three stamps of value of Rupees fifty (Rs. 50) which were supplied by me.

10

(Sgd.) H. A. ABEYEWARDENE,
Notary Public.

Date of attestation :

30th January, 1932.

} (SEAL)

20

True copy to which a stamp of one Re. 1 is affixed.

Colombo, 11 July, 1947

H. A. ABEYEWARDENE
Notary Public.

P 2

P 2.
Deed No. 2210
of 20.7.35

Deed No. 2210 of 20.7.35

P. 2

Prior Registration : (1) D 163/250 (2) D 163/244
(3) D 163/245 (4) D 163/247

No. 2210

30

KNOW all men by these presents that I, Francis Pieris Suriyapperuma of Dompe in the Gangaboda Pattu of Siyane Korale (hereinafter called the Vendor) for and in consideration of the sum

of Rupees Eight thousand (Rs. 8000) of lawful money of Ceylon well and truly paid to me by Cyril Pinto Jayawardene of Udampitigama presently of Mount Lavinia (hereinafter called the Purchaser) (the receipt whereof I do hereby admit and acknowledge) have, granted, bargained, sold, assigned, transferred, and set over, and do by these Presents, grant, bargain sell, assign, transfer and set over unto the said purchaser his heirs executors, administrators, and assigns the premises fully described in the schedule hereto, together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in anywise appertaining or usually held used occupied or enjoyed therewith, or reputed or known as part or parcel thereof and together with all the estate right, title interest, claim and demand, whatsoever of me the said vendor, of, in, to, upon, or out of, the said premises and every part thereof and together with all the title deeds, vouchers and other writings therewith held or relating thereto, which said premises have been held and possessed by me the said vendor in manner set out hereinafter.

To have and to hold the said premises hereby sold and conveyed with the rights and appurtenances unto him the said Purchaser his heirs, executors, administrators and assigns absolutely and for ever.

And I the said Vendor for myself and my heirs, executors, administrators do hereby covenant promise, and declare with and to the said purchaser his heirs executors, administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that I have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said premises or any part thereof are or is can shall or may be impeached or encumbered in the title charge estate or otherwise howsoever and that I and my aforewritten shall and will at all times hereafter warrant and defend the title to the said premises and every part thereof unto him and his aforewritten against any person or persons whomsoever and further also shall and will at all times hereafter at the request and cost of the said purchaser or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances matters and things whatsoever for the further and more perfectly assuring the said premises hereby sold and conveyed and every part thereof unto him and his aforewritten as by him or his aforewritten may be reasonably required.

In Witness Whereof I the said Francis Pieris Suriyapperuma do hereunto and unto two others of the same tenor and date as

P 2.
Deed No. 2210
of 20. 7. 35.

these presents set my hand at No. 132 Hultsdorf in Colombo on this twentieth day of July One thousand Nine Hundred and thirty five.

THE SCHEDULE ABOVE REFERRED TO :

- (1) All that divided one half portion of the land called Moragahalanda situated at Dompe in the Gangaboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the North by the garden of D. C. S. Jayasekera Vidane Aratchy on the East by the remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva containing in extent nine acres three roods and four perches (9A. 3R. 4P.) according to the figure of survey thereof dated 28th September 1894 made by R. P. Perera, Registered Surveyor and held and possessed by me the said vendor under deed No. 15383 dated 11th February 1908 attested by A. P. S. A. Abeyratne Notary Public and as paternal inheritance which said portion is described in the said deed as an undivided half part of the land called Moragahalanda situated at Dompe aforesaid bounded on the East by the lands of Ganihiatchige Sarnelis Appu and Pattividanalage Polonchi Appu on the South by the land of Karamanis Silva Vidane Aratchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijesinghe Hamine and Paulis Silva containing in extent about forty (40) bushels of paddy sowing. 10
- (2) All that undivided half part towards the South of the field called Talpediwila Kumbura situated at Dompe aforesaid and bounded on the East by high land on the South by the limitary ridge of the field of Karamanis Silva on the West by the land of Dona Christina Wijesinghe Hamine and on the North by the limitary ridge of Pincumbura containing in extent about twelve bushels of paddy sowing. 20 30
- (3) All that land called Nagahalandewatte situated at Dompe aforesaid bounded on the East by Lebumbima of Mahappugehamy on the South by a field on the West by the land of Henadirakankanamalage Valenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing which said 2nd and 3rd lands have been held and possessed by me under the said deed No. 15383 and by right of paternal inheritance. 40
- (4) The several contiguous allotments of lands called Delagahawatte Alubogahalanda and Handinnahenawatte containing in extent seventeen acres one rood and two perches (17A. 1R. 2P.) situated

in the villages Dompe and Hunukandana in the Gangaboda Pattu aforesaid and comprising the following allotments which adjoin each other and from their situation as respects each other can be included in one survey to wit:—

P 2.
Deed No. 2210
of 20. 7. 35

10 (a) All that land called Dolgahawatto situated at Dompe aforesaid bounded on the East by a field on the South by the hedgo of this land on the West by the hedge between this land and the jungle and on the North by the Deniyaland containing in extent about ten acres (10A. 0R. 0P.) and held and possessed by me under the said deed No. 15383.

(b) All that allotment of land called Handinnehenawatto situated in the village Hunukandana in the Gangaboda Pattu aforesaid bounded on the South by land described in title plan No. 249279 and on all other sides by lands claimed by natives containing in extent one acre three roods and thirty two perches (1A. 3R. 32P.) according to title plan No. 249278 dated 3rd February 1908 and authenticated by P. D. Warren Esquire, Surveyor-General.

20 (c) All that allotment of land called Handinnehenawatte situated at Hunukandana aforesaid bounded on the north by land described in title plan No. 249278 and on all other sides by land claimed by natives containing in extent three acres and thirty perches (3A. 0R. 30P.) according to title plan No. 249279 dated 3rd February 1908 authenticated by P. D. Warren Surveyor-General and which said two allotments of land have been held and possessed by me under deed No. 26613 dated 24th July 1926 attested by D. J. Gunasekera, Notary Public.

30 (d) All that lot marked A of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by land of Dimingupurahunuge Jalis Fernando on the East by land of Francis Peris Suriapperuma on the South by lots D, C and B of this land and on the west by Kosgahawatte of M. Amaris Fernando containing in extent one acre one rood and four perches (1A. 1R. 4P.) and

40 (e) All that lot marked B of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by lot A on the East by Delgahawatte of Francis Pieris Suriapperuma on the South by paddy field and on the West by lot C allotted to Maggonahunuge Tonchi Fernando containing in extent three roods and sixteen perches (0A. 3R. 16P.) according to Survey Plan dated 16th August 1922 and made by R. P. Perera, Licensed Surveyor which two lastly mentioned lots A and B are a divided one fourth and one sixth share respectively of all that allotment of land called Alubogahalanda situated at Dompe aforesaid bounded on the North and West by

P 2.
Deed No. 2210
of 20. 7. 35.

ditch on the East by land of Isac Peris Suriapperuma and on the South by field containing in extent five acres (5A. 0R. 0P.) held by me the said vendor under deed No. 9694 dated 5th February 1926 attested by D. C. P. Abeywardene, Notary Public and Deed No. 24795 dated 3rd July 1925 attested by D. J. Gunasekera, Notary Public.

Witnesses :

Signed in the presence of us
and we declare that we are
well acquainted with the
excutant and know his proper
name occupation and resi-
dence

(Sgd.) F. P. SURIAPPERUMA,

10

(Sgd. H. J. F. RODRIGO,

(Sgd.) ARTHUR DE SILVA.

(Sgd.) H. A. ABEYWARDENE,
Notary Public.

I, Henricus Abraham Abeyewardene of Colombo in the Island of Ceylon, Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the therein named Francis Peris Suriyapperuma who signed as " F. P. Suriyapperuma " in the presence of Hetti-
aratchige James Francis Rodrigo of Belmont Street, Hultsdorf, and
Don Paulu Aratchige Arthur de Silva Jayasekera of Dompe who
respectively signed as " H. J. F. Rodrigo " and " Arthur de Silva " the subscribing witnesses thereto all of whom are known to me the same was signed by the said executant by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at No. 132 Hultsdorf in Colombo aforesaid on this twentieth day of July, in the year One Thousand Nine Hundred and thirty five.

20

30

And I further certify and attest that before the said instrument was read over and explained as aforesaid in the original in page 3 line 5 the words " Abeyaratna Notary " were typed on erasure, in page 4 line 6 the word " about " and in same page line 7 the word " under " were interpolated, and in the duplicate in page 5 line 4 the letter " a " was interpolated, that the consideration hereof was

set off against the claim and costs due to the purchaser in case No. 840 of the District Court of Colombo, that the said original bears a stamp of one rupee and that the duplicate of this instrument bears three stamps to the value of Rupees One Hundred and Thirty and that the said stamps were supplied by me.

P 2.
Decd No. 2210
of 20. 7. 35.

(Sgd.) H. A. ABEYEWARDENE,
Notary Public.

(SEAL)

Date of Attestation :

10 20th July, 1935.

True copy to which a stamp of Re. 1 is affixed.

(Sgd.) H. A. ABEYEWARDENE,
Notary Public.

Colombo, 17 July, 1947.

P 3

**Journal Entries in D. C. Colombo Case No. 840
3.5.34 to 19.9.35**

Plaint in D. C. Colombo Case No. 840—3.5.34

Decree in D. C. Colombo Case No. 840—18.7.34

P 3.
Journal entries
in D. C.
Colombo
Case No. 840—
3.5.34 to
19.9.35.
Plaint in
D. C. Colombo
Case No. 840—
3.5.34.
Decree in D. C.
Colombo
Case No. 840
18.7.34.

20

IN THE DISTRICT COURT OF COLOMBO

No. 840 C. P. JAYAWARDENE..... Plaintiff
Class : IV
Amount : Rs. 7170/62
Nature : Money vs.
Procedure : Regular
 F. P. SURIYAPPERUMA..... Defendant.

JOURNAL

The 3rd day of May 1934.

Mr. H. A. Abeywardene files appointment and plaint together with bond.

P 3.
Journal entries
in D. C.
Colombo
Case No. 840—
3.5.34 to
19.9.35.
Plant in
D. C. Colombo
Case No. 840—
3.5.34.
Decree in D. C.
Colombo
Case No. 840
18.7.34.

Plaint accepted and summons ordered for 21.5.34.

5.5.34

Summons issued with Precept returnable 19 May 1934.

21.5.34

Case called—

Summons served on Defendant.

Mr. S. Gunasekera moves to file proxy and affidavit. 8/6.

Intld. G. C. T.
D. J.

8.6.34

10

Case called—

Proxy of Defendant }
Affidavit } filed.

Inquiry 18.7.34

Intld. G. C. T.
D. J.

18.7.34

Case called—Vide proceedings and order.

Intld. G. C. T.
D. J.

Decree entered.

20

31.8.34

Deposit order No. B 8550 for Rs. 500 issued.

7.9.34

Proctor for Plaintiff moves for an order of payment in favour of Plaintiff for Rs. 500 deposited,

Allowed,

Intld. G. C. T.
D. J.

10.9.34

Order of payment No. C 22882 for Rs. 500 entered in favour of plaintiff.

25.1.35

Mr. Abeywardene for plaintiff applies for execution of Decree by issue of commission to Mr. H. J. F. Rodrigo.

Allowed.

Intld. G. C. T.
D. J.

P 3.
Journal entries
in D. C.
Colombo
Case No. 840—
3. 5. 34 to
19. 9. 35.
Plaint in
D. C. Colombo
Case No. 840—
3. 5. 34.
Decree in D. C.
Colombo
Case No. 840
18. 7. 34.

10 25.1.35

Commission issued returnable 25.1.36.

28.1.35

Auctioneer files conditions of sale for approval.

Approved.

Intld. G. C. T.
D. J.

28.2.35

Mr. Abeywardene moves for an order to bid and for credit at the sale.

20

Allowed.

Plaintiff not to buy below appraised value.

Intld. G. C. T.
D. J.

20.2.35

Proctor for petitioner files petition and affidavit from the defendant praying for stay of execution and moves for a notice on the plaintiff's Proctor returnable on Friday the 22nd instant to show cause why the application should not be allowed.

Notice plaintiff's Proctor returnable 22/2.

30

Intld. G. C. T.
D. J.

P 3.
Journal entries
in D. C.
Colombo
Case No. 840—
3. 5. 34 to
19. 9. 35.
Plaint in
D. C. Colombo
Case No. 840—
3. 5. 34.
Decree in D. C.
Colombo
Case No. 840
18. 7. 34.

20.2.35

Notice issued on Mr. H. A. Abeywardene.

22.2.35

Case called—

Notice to stay execution on Proctor for Plaintiff not served.

No appearance for Defendant.

Intld. G. C. T.
D. J.

28.2.35

Vide order.

10

Intld. G. C. T.
D. J.

4.4.35

Proctor for plaintiff moves to certify payment of Rs. 219.75 made by the defendant on 22.3.1935.

Allowed.

Intld. G. C. T.
D. J.

25.7.35

The Auctioneer returns the Commission and the copy of decree as the sale for the 20th instant having been stayed at the sale of the Proctor for plaintiff. 20

File.

Intld. G. C. T.
D. J.

8.8.35

Proctor for plaintiff moves that satisfaction of judgment be entered and moves to withdraw the bond.

Allowed. Bond to be returned by 7.10.35.

Intld. G. C. T.
D. J.

P 3.
Journal entries
in D. C.
Colombo
Case No. 840—
3. 5. 34. to
19. 9. 35
Plaint in D. C.
Colombo
Case No. 840—
3. 5. 34.
Decree in D. C.
Colombo
Case No. 840—
18. 7. 34.

Received Bond.

Intld. H. A. A.
26/8

10 19.9.35

Mr. Abeywardene tenders discharged bond.

File.

Intld. G. C. T.
D. J.

P 3

Plaint in D. C. Colombo Case No. 840/Money

3. 5. 34

P 3.
Plaint in D. C.
Co'ombo
Case No. 840—
Money.
3. 5. 34.

IN THE DISTRICT COURT OF COLOMBO

20

No. 840/Money
Class : IV
Amt. Rs. 7170/62
Nat. Money
Pro. Regular.
Plaint accepted,
Summons to issue
for 21.5.34.
Intld. G. C. T.
D. J.

CYRIL PINTO JAYAWARDENE of Udampitigama in the Gangaboda Pattu of Siyane Korale Plaintiff.

vs.

FRANCIS PIERIS SURIAPPERUMA of Dompe in Gangaboda Pattu of Siyane Korale Defendant.

P 3.
 Plaint in D. C.
 Case No. 840—
 Money
 3. 5. 34.

The 3rd day of May 1934.

The Plaintiff of the Plaintiff abovenamed appearing by Henricus Abraham Abeywardene his Proctor states as follows :—

(1) That by a Mortgage Bond or writing obligatory bearing No. 1987 dated 30th January 1932 attested by H. A. Abeywardene N. P. which is marked A and herewith produced and filed executed at Colombo within the jurisdiction of this Court and duly registered at the Land Registry Colombo on the 5th February 1932 under title D Volume and folios 163/250, 163/244 to 247, the defendant abovenamed bound himself unto the said Plaintiff in the sum of Rs. 5500 for money borrowed and received from him by the said defendant and did thereby engage and bind himself to pay unto the said plaintiff the said sum with interest thereon at the rate of $13\frac{1}{2}$ per cent per annum from the date of the said bond on receiving from the said plaintiff 6 calendar months previous notice in writing requiring payment of the said sum and interest. 10

(2) And for securing the payment of the said sum with interest accruing thereon as aforesaid the said defendant did in and by the said Bond specially mortgage and hypothecate to and with the said plaintiff as a first or primary mortgage free from all security mortgage or incumbrances whatsoever the lands in the said bond and fully described in the schedule hereto. 20

(3) There is now due and owing to the said plaintiff from the defendant the sum of Rs. 7170.62 to wit : Rs. 5500 being principal and Rs. 1670.62 being interest thereon at $13\frac{1}{2}$ per cent per annum from the date of Bond up to date hereof which sum of Rs. 7170.62 or any portion thereof the said defendant had failed and neglected to pay though thereto often demanded.

(4) The plaintiff on the 7th October 1933 gave notice to the Defendant in writing requiring the payment of the said sum Rs. 5500 and interest thereon. 30

Wherefore the plaintiff prays for a Decree against the said defendant as follows :—

(a) Ordering the said defendant to pay him the said sum of Rs. 7170 with further interest on Rs. 5500 at $13\frac{1}{2}$ per cent per annum from date hereof till date of decree and thereafter on the aggregate amount of the decree at 9 per cent per annum till payment in full together with the costs of this action on some day to be named by the Court. 40

(b) declaring the premises fully described in the schedule hereto specially bound and executable for the payment of the said sum Rs. 7170.62 interest and costs on the footing of the said mortgage bond.

- 10 (c) In default of such payment within the period specified by the Court the said premises declared specially bound and executable as aforesaid be ordered to be sold by Public auction by H. J. F. Rodrigo, Licensed Auctioneer after such publication as the said Auctioneer may consider sufficient upon the annexed conditions of sale marked B submitted for approval of Court or such other conditions of sale as may be prescribed by the Court the said Auctioneer being directed and authorised to allow Plaintiff or any one else on his behalf to bid for and purchase the said premises at such sale and to do so upon such special terms as the Court may impose if the Court imposes any and in the event of the Plaintiff becoming the purchaser thereof to allow him credit to the extent of his claim and costs on his producing an order of Court authorising the said Auctioneer to do so.
- 20 (d) that the Secretary of this Court be authorised and empowered to execute the necessary conveyance in due form of law in favour of the purchaser or purchasers as such sale on his or their complying with the conditions of sale on the said Secretary being satisfied (i) that if the purchaser be the plaintiff that the credit allowed by the auctioneer as aforesaid has been sanctioned by the production of an order of Court to that effect (ii) in the event of the purchaser being third party that the full amount of the purchase money has been deposited in Court.
- 30 (e) that the proceeds of such sale be applied in and towards the payment of the amount of the said sum of Rs. 7170.62 interests and costs.
- (f) that if such proceeds shall not be sufficient for the payment in full of such amount the defendant be ordered to pay to the said plaintiff the amount of the deficiency with interest thereon at the legal rate of 9 per cent per annum until realization and that for that purpose all proper directions may be given and accounts by the Court.
- (g) For such other and further relief in the premises as to this Court shall seem meet.

P 3.
Decree in D. C.
Colombo
Case No. 840
money
3. 5. 34.

Documents filed with the plaint :

(1) Mortgage Bond No. 1987 dated 30th January 1932 marked letter " A " referred to in the plaint.

(2) Conditions of sale marked B referred to in the plaint.

(Sgd.) H. A. ABEYWARDENE,
Proctor for Plaintiff.

THE SCHEDULE ABOVE REFERRED TO

(1) All that divided one half portion of the land called Moragahalandanda situated at Dompe in Gangaboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the North 10
by the garden of D. C. S. Jayasekera Vidane Aratchy on the East
by remaining half part of this land allotted as planter's share on
the South by the garden of D. C. Wijesinghe Hamine and by the
property of D. P. Silva Jayasekera and on the West by the garden
of Johannes Silva containing in extent nine acres three roods
and four perches (9A. 3R. 4P.) according to the Figure of Survey
thereof dated 28th September 1894 made by R. P. Perera Registered
Surveyor and held and possessed by the said defendant under
deed No. 15383 dated 11th February 1908 attested by A. P. S. 20
Abeyratne, Notary Public and as paternal inheritance which said
portion is described in the said deed as an undivided half part of
the land called Moragahalanda situated at Dompe aforesaid bounded
on the East by the lands of Ganiatchige Sarnelis Appu and Patti-
vidanalage Polonchi Appu on the South by the land of Karamanis
Silva Vidane Aratchi on the West by the ditch of the land of Johannes
Silva Appuhamy and others and on the North by the land of Dona
Christina Wijesinghe Hamine and Paulis Silva containing in extent
about forty (40) bushels of paddy sowing.

(2) All that field called Talpediwila Kumbura situated at Dompe 30
aforesaid and bounded on the East by high land on the South by
the limitary ridge of the field of Karamanis Silva on the West by
the land of Dona Christina Wijesinghe Hamine and on the North
by the limitary ridge of Pincumbura containing in extent about
twelve bushels of paddy sowing.

(3) All that land called Nagahalandewatte situated at Dompe
aforesaid bounded on the East by Lebumbima of Mahappugehamy
on the South by a field on the West by the land of Henadira-
kankanamalage Valenti Appu and on the North by the ditch dividing
the land of Liyanage Welun Appu containing in extent about eight
bushels of paddy sowing. 40

(4) All that land called Meegahawatte together with the house thereon situated at Dompe aforesaid bounded on the East, West and North by fields and on the South by the garden of Dona Chiritina Wijesinghe Hamine containing in extent about twelve bushels of paddy sowing which said 2nd, 3rd and 4th lands have been held and possessed by the said defendant under the said Deed No. 15383 and by right of paternal inheritance.

P 3.
Decree in D. C.
Colombo
Case No. 840—
money
3. 5. 34.

10 (5) The several contiguous allotments of land called Delgahawatte, Alubogahalanda and Handinnehenawatte containing in extent seventeen acres one rood and two perches (17A. 1R. 2P.) situated in the villages Dompe and Hunukandana in Gangaboda Pattu aforesaid and comprising the following allotments which adjoin each other and from their situation as respects each other can be included in one survey to wit :—

20 (a) All that land called Delgahawatte situated at Dompe aforesaid bounded on the East by a field on the South by the hedge of this land on the West by the hedge between this land and the jungle and on the North by the Deniyaland containing in extent about ten acres (10A. 0R. 0P.) and held and possessed by the said defendant under the said Deed No. 15383.

(b) All that allotment of land called Handinnehenawatte situated in the village Hunukandana in Gangaboda Pattu aforesaid bounded on the South by land described in title Plan No. 249279 and on all other sides by lands claimed by natives containing in extent one acre three roods and thirty two perches (1A. 3R. 32P.) according to title plan No. 249278 dated 3rd February 1908 and authenticated by P. D. Warren, Esquire, Surveyor General.

30 (c) All that allotment of land called Handinnehenawatte situated at Hunukandana aforesaid bounded on the North by land described in title Plan No. 249278 and on all other sides by land claimed by the natives containing in extent three acres and thirty perches (3A. 0R. 30P.) according to title plan No. 249279 dated 3rd February 1908 authenticated by P. D. Warren Surveyor General and which said two allotments of land have been held and possessed by the said defendant under Deed No. 26613 dated 24th July 1926 attested by D. J. Gunsekera, Notary Public.

40 (d) All that lot marked " A " of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by land of Dimingupurahunuge Jalis Fernando on the East by land of Francis Pieris Suriapperuma on the South by lots D, C and B of this land and on the West by Kosgahawatte of M. Amaris Fernando containing in extent one acre one rood and four perches (1A. 1R. 4P.).

(e) All that lot marked B of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by lot A on the East by Delgahawatte of Francis Peiris Suriapperuma on the South

P 3.
Decree in D. C.
Colombo
Case No. 840
money
3. 5. 34.

by paddy field and on the West by lot C allotted to Maggonahunuge Thonchi Fernando containing in extent three roods and sixteen perches (0A. 3R. 16P.) according to survey plan dated 16th August 1922 and made by R. P. Perera, Licensed Surveyor which two lastly mentioned lots A and B are divided one fourth and one sixth share respectively of all that allotment of land called Alubogahalanda situated at Dompe aforesaid bounded on the North and West by ditch on the East by land of Isac Pieris Suriapperuma and on the South by field containing in extent five acres (5A. 0R. 0P.) and held by the said defendant under deed No. 9694 dated 5th February 1926 attested by D. C. P. Abayawardene, Notary Public and deed No. 24795 dated 3rd July 1925 attested by D. J. Gunasekera, Notary Public.

10

(Sgd.) H. A. ABEYWARDENE,
Proctor for Plaintiff.

P 3

P 3.
Decree in D. C.
Colombo
Case No. 840.
18. 7. 34.

Decree in D. C. Colombo Case No. 840

18. 7. 34

Prior Registration :

D 163/250, 163/244 to 247.

20

MORTGAGE DECREE

IN THE DISTRICT COURT OF COLOMBO

CYRIL PINTO JAYAWARDENE of Udamapitigama in the
Gangaboda Pattu of Siyane Korale *Plaintiff.*

No. 840

Vs.

FRANCIS PIERIS SURIYAPPERUMA of Dompe in the
Gangaboda Pattu of Siyane Korale *Defendant.*

THIS action coming on for final disposal before G. C. Thambyah, Esquire, District Judge of Colombo on the 18th day of July, 1934 in the presence of Mr. Adv. Nadarajah, instructed by Mr. H. A. Abeyewardene, Proctor, on the part of the Plaintiff and of Mr. Adv. Eddussuriya instructed by Mr. S. Gunasekera, Proctor, on the part of the Defendant.

30

It is ordered and decreed :—

P 3.
Decree in D. C.
Colombo
Case No. 840
18. 7. 34.

That the defendant do pay to the plaintiff the sum of Rs. 7170.62 with interest on Rs. 5500 at the rate of 13½ per centum per annum from the 3rd day of May 1934 till date hereof and thereafter on the aggregate amount of the decree at the rate of 9 per centum per annum till payment in full and costs of suit.

10 It is further ordered and decreed that if the defendant pays Rs. 500 on 1st September 1934 and all the balance arrears of interest within 3 months thereafter order to sell shall not issue for a period of six months from date hereof. In default of any one instalment Plaintiff shall be entitled to issue order to sell.

That the property described in the schedule hereto be and the same is hereby declared specially bound and executable for the Payment of the said sum interest and costs on the footing of Mortgage bond No. 1987 dated 30th January 1932 attested by H. A. Abyewardene of Colombo Notary Public.

20 That in default of payment of the said sum interest and costs aforesaid the said property declared specially bound and executable as aforesaid be sold by public auction by H. J. F. Rodrigo Licensed Auctioneer, after such advertisement as the said auctioneer may consider sufficient upon conditions of sale approved by Court, the said auctioneer being hereby directed and authorised to allow the plaintiff or any one else on his behalf to bid for and purchase the said property at such sale and to do so upon such special terms as the Court may impose if the Court imposes any, and in the event of the plaintiff becoming the purchaser thereof to allow him credit to the extent of his claim and costs.

30 That the Secretary of this Court do execute the necessary conveyance in due form or law in favour of the purchaser or purchasers at such sale on his or their complying with the conditions of sale and on being satisfied, if the purchaser be the plaintiff that he has been allowed credit and in the event of the purchaser or purchasers being a third party or parties that the purchase money has been deposited in Court.

That the proceeds of such sale be applied in and towards the payment of the said sum interest and costs.

40 That if such proceeds shall not be sufficient for the payment in full of the said sum interest and costs, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of nine per centum per annum until realisation.

P. 3
Decree in D. C.
Colombo
Case No. 840—
18.7.34

THE SCHEDULE ABOVE REFERRED TO :

(1) All that divided one half portion of the land called Moragahalanda situated at Dompe in Gangaboda Pattu of Siyane Korale in the District of Colombo Western Province bounded on the North by the garden of D. C. S. Jayasekera Vidane Aratchy on the East by remaining half part of this land allotted as planter's share on the South by the garden of D. C. Wijesinghe Hamine and by the property of D. P. Silva Jayasekera and on the West by the garden of Johannes Silva containing in extent nine acres three roods and four perches (9A. 3R. 4P.) according to the figure of Survey thereof dated 28th September 1894 made by R. P. Perera Registered Surveyor and held and possessed by the said defendant under Deed No. 15383 dated 11th February 1908 attested by A. P. S. A. Abeyratne Notary Public and as paternal inheritance which said portion is described in the said deed as an undivided half part of the land called Moragahalanda situated at Dompe aforesaid bounded on the East by the lands of Ganiatchige Saranelis Appu and Pattividanalage Polonchi Appu on the South by the land of Karamanis Silva Vidane Aratchi on the West by the ditch of the land of Johannes Silva Appuhamy and others and on the North by the land of Dona Christina Wijesinghe Hamine and Paulis Silva containing in extent about forty (40) bushels of paddy sowing. 10

(2) All that field called Talpediwila Kumbura situated at Dompe aforesaid and bounded on the East by high land, on the South by the limitary ridge of this field of Karamanis Silva, on the West by the Land of Dona Christina Wijesinghe Hamine and on the North by the limitary ridge of Pincumbure, containing in extent about twelve bushels of paddy sowing. 20

(3) All that land called Nagahalandawatte, situated at Dompe aforesaid, bounded on the East by Lebumbima of Mahappugehamy on the South by a field, on the West by the land of Henadira-kankanamalage Velenti Appu and on the North by the ditch dividing the land of Liyanage Welun Appu containing in extent about eight bushels of paddy sowing. 30

(4) All that land called Meegahawatte together with the house thereon situated at Dompe aforesaid bounded on the East, West and North by fields and on the South by the garden of Dona Christina Wijesinghe Hamine, containing in extent about twelve bushels of paddy sowing which said, 2nd 3rd and 4th lands have been held and possessed by the said defendant under the said deed No. 15383 and by right of paternal inheritance. 40

(5) The several contiguous allotments of land called Delgahawatte, Alubogahalanda and Handinnehenawatte containing in extent seventeen acres one rood and two perches (17A. 1R. 2P.) situated

in the villages Dompe and Hunukandana in Gangaboda Pattu aforesaid and comprising the following allotments which adjoin each other and from their situation as respects each other can be included in one survey to wit:—

P. 3
Decree in D. C.
Colombo
Case No. 840
18.7.34.

10 (a) All that land called Delgahawatte situated at Dompe aforesaid, bounded on the East by a field, on the South by the hedge of this land, on the West by the hedge between this land and the jungle and on the North by the deniyaland containing in extent about ten acres (10A. 0R. 0P.) and held and possessed by the said defendant under the said Deed No. 15383.

(b) All that allotment of land called Hendinnehenawatte situated in the village Hunukandana in Gangaboda Pattu aforesaid bounded on the South by land described in title plan No. 249279 and on all other sides by lands claimed by natives containing in extent one acre three roods and thirty two perches (1A. 3R. 32P.) according to title Plan No. 249278 dated 3rd February 1908 and authenticated by P. D. Warren, Esquire, Surveyor General.

20 (c) All that allotment of land called Handinnehanawatte situated at Hunukandana aforesaid bounded on the North by land described in title plan No. 249278 and on all other sides by land claimed by the natives containing in extent three acres and thirty perches (3A. 0R. 30P.) according to title plan No. 249279 dated 3rd February 1908 authenticated by P. D. Warren, Surveyor General, and which said two allotments of land have been held and possessed by the said defendant under Deed No. 26613 dated 24th July 1926 attested by D. J. Gunasekera, Notary Public.

30 (d) All that lot marked "A" of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by land of Dimingupurahunuge Jalis Fernando on the East by land of Francis Peris Suriapperuma on the South by lots D., C. and B of this land and on the West by Kosgahawatte of M. Amaris Fernando containing in extent one acre one rood and four perches (1A. 1R. 4P).

40 (e) All that lot marked B of the land called Alubogahalanda situated at Dompe aforesaid bounded on the North by lot A on the East by Delgahawatte of Francis Peiris Suriapperuma on the South by paddy field and on the West by lot C allotted to Maggonnahunuge Thonchi Fernando containing in extent three roods and sixteen perches (0A. 3R. 16P) according to survey plan dated 16th August 1922 made by R. P. Perera, Licensed Surveyor, which two lastly mentioned lots A and B are a divided one fourth and one sixth share respectively of all that allotment of land called Alubogahalanda situated at Dompe aforesaid bounded on the North and West by

P. 8.
Decree in D. C.
Colombo
Case No. 840—
18.7.34

ditch on the East by land of Isac Peiris Suriapperuma and on the South by field containing in extent five acres (5A. 0R. 0P.) and held by the said defendant under Deed No. 9694 dated 5th February 1926 attested by D. C. P. Abeyawardene, Notary Public, and deed No. 24795 dated 3rd July 1925 attested by D. J. Gunasekera, Notary Public.

(Sgd.) G. C. THAMBYAH,
District Judge.
24.1.35

18th July, 1934.

Drawn by me,
(Sgd.) H. A. ABEYEWARDENE,
Proctor for Plaintiff.

True Copy of Journal Entry, Complaint and Decree in D. C., Colombo
Case No. 840/M.B.

(Sgd.) Illegible,
Secretary, D. C., Colombo
17.7.47