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Judgment
5, 1965

IN THE PRIVY COUNCIL

NO.50 of 1962

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

D. ROBOSINGHO MUDALALI alias
GAMPAHA MUDALALI (Second Defendant) Appellant

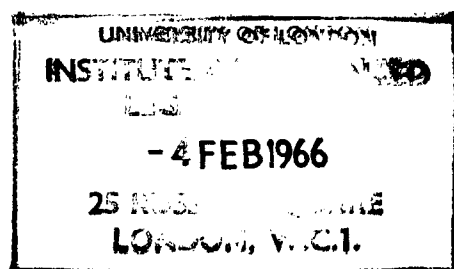
- and -

1. L. D. P. JAYAWARDENE (Plaintiff)
2. GALPOTTAGE HENDRICK PERERA
 (Plaintiff)
3. B.W.PATHIRANA (First Defendant)
4. DR. M.G. PERERA (Third Defendant) Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Fourth Respondent.



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IN THE PRIVY COUNCIL

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- and -

1. L.D.P. JAYAWARDENE
(Plaintiff)
2. GALPOTTAGE HENDRICK
PERERA (Plaintiff)
3. B.W.PATHIRANA
(First Defendant)
4. DR. M.G. PERERA
(Third Defendant) Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

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1.

NO. 1

PROCEEDINGS

IN THE DISTRICT COURT OF KURUNEGALA

In the
District Court

No.1

Proceedings
11th January
1956

1. L.D.P.JAYAWARDENE
2. GALPOTTAGE HENDRICK PERERA both
of Katuawala in the Pallepattu in
Salpiti Korale

Plaintiffs

CASE NO.10868

Vs.

10

1. B.W.PATHIRANE of Rajapihilla
Road, Kurunegala
2. D.ROBOSINGHO MUDALALI alias -
Gampaha Mudalali of Asgiriya in
Gampaha
3. DR.M.G.PERERA of No.171, New
Bullers Road, Colombo

Defendants

11.1.56.

20

Mr. Adv. Gooneratne instructed by Mr.
Ranaweera for the Plaintiff.

Mr. Adv. Jayakody instructed by
Mr.A.E.O. de Silva for the 2nd
Defendant.

Mr. Adv. Seneviratne instructed by
M/s Perera & Perera for the 3rd
Defendant.

30

It is brought to my notice that the 3rd
Defendant is due to leave the Island soon for
Europe. He has been noticed by the Plaintiff
to warrant and defend the title.

Mr. Seneviratne on behalf of the 3rd
Defendant applies that his client's attendance
from court in these proceedings be dispensed
with as the 3rd Defendant not only undertakes
to give evidence when called, but also to make
good any loss to the Plaintiff in pursuance of
his undertaking to warrant and defend title.

It is not necessary for me to make an

In the
District Court

No.1

Proceedings
11th January
1956
continued

order upon this application. The 3rd Defendant should advise himself in this matter.

A partition case is proceeding and I cannot commence the trial of this case.

Trial postponed to 5.9.56.

Sgd /

D.J.

5th September
1956

D.C. case No. 10868 (LD)

5.9.56.

Mr. Adv.Gunaratne instructed for Plaintiff.

10

Mr. Adv.Jayakody instructed for Defendants
1 & 2.

Mr. Amerasinghe for the 3rd Defendant who was only a vendor and has been noticed to warrant and defend the title. The Plaintiff moves for a date on the ground that the 3rd Defendant his vendor who had agreed to give evidence in this case is out of the Island. Mr. Gunaratne applies for a date on that ground. I am satisfied on his statement to Court that he had taken all steps to secure the attendance of the 3rd Defendant who had given him no chance of even having him examined de bene esse.

20

Mr. Jayakody wants his costs of the day.

Trial postponed to 21st February, 1957.

Plaintiff to pay taxed costs of today.

Sgd/

D.J.
5.9.56.

21st February
1957

D.C. Case No. 10868 (LD)

21.2.57

30

Mr. Adv. Gunaratne instd. for Plaintiff.

Mr. Adv. Jayakody instd. for the 2nd defdt.

M/s Perera & Perera have no instructions

3.

from the 3rd defdt. and are not appearing for him.

In the
District Court

No.1

Proceedings
21st February
1957
continued

10 Mr. Gunaratne states that he is placed in a peculiar predicament by reason of the attitude adopted by the 3rd defdt., his vendor on whom he had not been able to serve summons to give evidence in this case. He is forced to serve summons on him by reason of the fact that the 3rd defdt. had appeared on a previous occasion and had agreed to give evidence and has also filed an answer in the case. He (Mr. Gunaratne), therefore moves for a date.

Mr. Jayakody moves for his costs.

The Plaintiffs to pay the 2nd defendant Rs.100/- as costs of today. Of consent trial postponed to 14.6.57.

Sgd/

D.J. :-----
21.2.57.

20 D.C. Case No.10868 (I.D.)

30.4.58

30th April 1958

Mr. Adv. T.B. Dissanayake instructed by
Mr. D.A.B. Ratnayake for the Plaintiffs.
Mr. Adv. C. Fernando instructed by
Mr. A.E.O. de Silva for the 2nd defendant.
M/s Perera & Perera for the 3rd defendant.

Mr. Fernando objects to the participating in the trial of the 3rd defendant.

ORDER

30 No order has been made in the case that the case should proceed against him ex-parte. As such he can take part in the proceedings.

Sgd/

D.J.
30.4.58.

Issues:-

Mr. Dissanayake suggests:-

1. Are the plaintiffs entitled to the land and

In the
District Court

No.1

Proceedings
30th April 1958
continued

premises described in the Schedule to the
plaint upon the title pleaded in the plaint.

2. Are the 1st and 2nd defendants in wrong-
ful and unlawful occupation of the said
premises from about 22nd November, 1953?

3. If so, what damages are the plaintiffs
entitled to.

4. Prescriptive rights of parties?

(Of consent damages are agreed upon at
Rs.100/- a month claimed by the plaintiff from
date of ouster)

10

Mr. Fernando suggests :-

5. Is the 2nd defendant entitled to the land
described in the Schedule to the plaint upon
the title pleaded in the 2nd defendant's
answer?

6. Is the 2nd defendant entitled to compensa-
tion for improvements to the land?

7. What is the value of the improvements.

Mr. Amerasinghe raises no issues.

20

I accept these issues.

Sgd/

D.J.
30.4.58.

Plaintiffs'
Evidence

PLAINTIFF'S EVIDENCE

No.2

No.2

L.D.P. JAYAWARDENE

L.D.P.
Jayawardene
30th April 1958
Examination

Mr. Dissanayake calls :-

L.D.P. Jayawardene: Affirmed, 42 years,
Draftsman, Borelesgomuwa.

30

I am the 1st Plaintiff in this case.
Upon deed No.406 of 11.9.41, Pl, my Vendor

the 3rd Defendant became entitled to the premises described in the schedule to the plaint. The 3rd Defendant, Dr.M.G.Perera upon deed No.3098 of 5.5.53, P2 sold the said premises to me and the 2nd Plaintiff. We paid Rs. 5,000/- on P2 to the 3rd Defendant. I draw the attention of Court to the attestation in P2.

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Examination
continued

10 3rd Defendant put me and the 2nd Plaintiff in possession of the land. When we entered into possession, there were a few coconut trees here and there, some old papaw trees and some murunga trees scattered. There were about 10 or 15 coconut trees of which some were dying.

These trees were there when we left the land. I was informed that these trees had been removed by the 1st and 2nd Defendants.

20 I said that we left the land. The 2nd Plaintiff was in occupation of the land. On the 22nd of November, 1953 we lost possession of the land. At the time the land was in charge of a watcher and we were not in the land. I came to know that the watcher had been removed by a certain party and that people had taken possession of the land. I made a complaint to the Headman, the Gokarella Police and the A.S.P. Kurunegala. As a result of these Defendants taking possession, action was filed in the Magistrate's Court. We were advised by the A.S.P. to file a civil action. Paragraph 30 7 of the plaint refers to the criminal plaint. In that case we were advised to file an action in the civil courts. We have noticed the 3rd Defendant to warrant and defend our title. I draw the attention of Court to P2 in which the 3rd Defendant undertakes to warrant and defend title.

40 After we entered into possession, we cleared about 8 acres of land and fenced it with barb wire and dug holes for planting coconuts and ordered seedlings. In the meantime we planted about 1000 plantain suckers and manioc and sowed about 3 acres in paddy. We also made a nursery for planting tobacco. All that cost us about Rs. 10,000/-. After the 1st and 2nd Defendants entered into wrongful possession of these premises, as far as I am aware, they

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Examination
continued

have not done anything to the land. The land has been in jungle. The land has gone back to jungle.

The 1st and 2nd Defendants took possession on 22.11.53. This plaint was filed on 24th April, 1954. Prior to the date of action, 1st and 2nd Defendants were in possession of this land only for a period of 5 to 6 months. We built a small house on the land consisting of two rooms and a verandah. Defendants when they took possession of the land, got into that house and they are still occupying the house. 2nd Defendant's employee is occupying that house. In this action I ask that the 2nd Plaintiff and I be declared entitled to this land and that we be awarded damages claimed.

10

Cross-
examination
by Mr.Fernando

XXD: by Mr. Fernando

I used to visit the land once a fortnight after my purchase. The other Plaintiff was more or less living on this land. He is present in Court today. The criminal action against the 2nd Defendant and other was filed by the 2nd Plaintiff and not by me. I did not figure in that case. I thought that it was sufficient if one of us filed the case. Hendrick Perera was the person who was improving the land. He was living on the land off and on. He was not living there permanently. He was carrying out the improvements. We had only 5 months possession. We bought the land in May 1953. We were ousted in November, 1953. Before our purchase I saw this land. When I saw the land prior to the purchase, there was no house on the land. There was not even a hut on the land. There were a few coconut plants. There were coconut plants in two blocks. I cannot say how many trees there were. Roughly there were 10 to 15 trees. Part of the land was scrub jungle. There were no jack trees. There were a few murunga trees. I cannot say how many. I do not know who planted those murunga trees. We were informed that our vendor planted those coconut trees. I cannot say personally.

20

30

40

After the purchase, I went to the land in the month of May. I went with the other

Plaintiff. On the 28th we started work on the land. Before we started work, we had to construct a house. We constructed a house after starting working. We spent Rs. 500/- with personal labour. This is a wattle and daub house and a mason was not necessary. We employed casual labour from the village. We are not calling any of these labourers to give evidence. This is a thatched house. During that month of May, Dr. Perera did not come to the land. He had no occasion to come. The house was completed on 30.7.53. Having completed the house my co-owner came into occupation. That house was built. We had to have some place to stay on the land. That was not for our residence but for the purpose of cultivating the land.

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Cross-
examination
by Mr. Fernando
continued

On the day that we were ousted, I was not present. The 2nd Plaintiff had fallen ill and had left the land on 11.8.53. After that till November he could not come. I could not come to the land during that period. I was informed by my watcher that we were ousted. Abba was the man who informed me. He is not here today. We cannot trace him. One Dingiri Banda of Digama also informed me. He is H.M. Dingiri Banda. I am not calling him.

We first dug holes and were about to plant the land. We did not plant any coconut plants. Before we could plant, we were dispossessed. We planted plantain suckers. We planted about 1000 suckers. I cannot give the exact number. I cannot give the exact amount I spent on the land. We planted manioc and we sowed about three acres in paddy and we prepared a nursery for tobacco. I was not present at the time and I cannot say exactly how much of paddy was sown. We could not plant tobacco also. We made preparations to plant tobacco. We got labour to prepare the nursery. The Nursery was 4 ft. wide by 10 to 15 ft. long. We prepared the ground. That is all that we did. We also fenced the land with barb wire.

In para.4 of the plaint we say that we made improvements to the land to the value of

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Cross-
examination
by Mr.Fernando
continued

Rs.10,000. That statement should be correct. The instructions with regard to the improvements is correct. I have made a statement to my proctor that the improvements were Rs. 10,000/- roughly. We had spent that amount roughly. Our claim is roughly about Rs. 10,000/-.

Q. I put it to you that this is an exaggerated Claim? (No answer).

I do not know whether Dr. M.G. Perera came to this land. We were given possession by his agent. I cannot say how many times I went to this land. I went to this land once a month or once a fortnight depending on the time I had available. Sometimes 2nd Plaintiff also accompanied me. Hendrick Perera was living in the house. Since the date of completion of the house he was occupying it till he went after he fell ill. He was more or less occupying that house continuously for that period. He was there for about a fortnight. I spent a night in this house. There is a verandah, and two rooms to this house. When I purchased this land from Dr. M.G. Perera, I purchased it on my own initiative. I was informed that there was a land for sale and the two of us (2nd Plaintiff and I) joined together and purchased the land. This land is 50 acres in extent. I have gone round the 50 acres. I have not fenced the entire 50 acres. We fenced and cleared up only a portion. We fenced and cleared about 8 acres. We paid Rs. 5,000/- on this deed. We paid Rs.4,000/- on the date of the deed and Rs. 1,000/- was given as an advance earlier. That deed states that Dr. Perera had bought the land from Rana Fernando. I do not know who Rana Fernando is. I did not inquire who Cyril and Henry Fernando were. Because we were depending on the doctor's title we did not inquire. We thought his title was good. Prior to the purchase the land was pointed out by the agent of Dr. Perera. Dr.Perera did not come with me to the land at any time to point out the land to me.

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XXD: by Mr. Amerasinghe:

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Cross-
examination
by Mr. Amerasinghe

10 The agent whom I referred to is Mr. Wickremasinghe. Hendrick Perera the 2nd Plaintiff brought the information that the land was for sale. He came with Mr. Wickremasinghe. Mr. Wickremasinghe was employed as an Assistant Superintendent under the 3rd Defendant. The 3rd Defendant I am aware is a gentleman who owns about 3000 acres of coconut, rubber and tea. I could not expect him to be
20 visiting this small block of 50 acres. Mr. Wickremasinghe was looking after this land and I was satisfied that it was in the possession of Dr. Perera. I made inquiries and I was satisfied that Dr. Perera was entitled to the land and no one was disputing his title. Mr. Wickremasinghe showed me the land. He stated that the trees had been planted by him on behalf of Dr. Perera. Some of the trees
20 were about 11 or 12 years old.

Q. H.M. Dingiri Banda of Deegalla was the person who had been on this land under Dr. Perera?

30 A. I suppose so. I am not quite sure. Dingiri Banda worked on the land under me as a casual labourer. He told me that he had been on this land under Dr. Perera. 2nd Plaintiff is a neighbour of mine, from Katuwawela in Pallepattu. Both of us were on the look out for a land to plant. If I had known that there were any dispute I would not have purchased this land. I went to the land recently after I was ousted. I did not find a single (sic) of the coconut trees that were on the land. When I went to the land after the ouster, there was not a single tree. It is possible that the 1st and 2nd Defendants had uprooted the trees and tried to obliterate evidence of the plantation.

40 Q. I put it to you that the coconut trees were uprooted?

A. It was what I heard but I cannot say definitely. The stumps were not available. Not a single tree had been left on the land. There were some murunga trees left after the ouster. I now know that the 1st and 2nd

In the
District Court

Plaintiffs'
Evidence

No.2

L.D.P.
Jayawardene
30th April 1958
Cross-
examination
by Mr.Amerasinghe
continued
Re-examined

Defendants got on to the land on the footing of a deed executed in their favour some days prior to their entry on the land. I went to Mr. H.A. Abeywardene for the purpose of getting the title examined. He passed title. He is a senior proctor. I had no doubt that he would not pass title if there was no title.

RE-XD:

I was asked about the M.C. case in which the 2nd Plaintiff was the complainant. I produce a certified copy of the plaint in that case marked P3 and a copy of order marked P4. The charge there was of criminal trespass and annoyance.

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No.3

C.B.
Wickremasinghe
30th April 1958
Examination

NO.3

C.B. WICKREMASINGHE

C.B.Wickremasinghe: Sworn; 47 years, Assistant Superintendent, Clovasana Estate, Kuruwita.

20

I am the Assistant Superintendent of Dr. M.G. Perera. I know the subject matter of this action. I was in charge of this land on behalf of Dr. M.G. Perera the 3rd Defendant. Dr. M.G. Perera bought this land in 1941. He sold this land in May 1953. I was in possession for the entirety of that period. I was Superintendent during the entirety of that period. During that time I was in charge of this land. At the time Dr. Perera bought this land, we opened up about 10 to 15 acres and planted coconuts. When this land was sold to the Plaintiffs they were put in possession of the land. I took the Plaintiffs round and I gave over possession to them on behalf of Dr. M.G. Perera. We built a small house on this land with two rooms and a verandah for me to stay when I go there. At the time the property was sold to the Plaintiffs that house was there but it was neglected and partly broken.

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40

To Court:

No one interfered with my possession at any time.

XXD by Mr. Fernando:

That house was put up during my time. From time to time I went and lived in that house. I went there for the purpose of opening up the land and planting it with coconuts. Almost immediately after the Doctor's purchase, we took possession and opened up the land. Within 10 to 15 acres roughly about 60 to 70 trees per acre must have been planted. We must have planted about 200 odd trees in 4 or 5 acres. I also went to this land regularly to look after the land. There was also a watcher on the property. He was K.M. Kiribanda. I do not know if he has come to court. I did not see him. We had to give up planting during the war years and the plantation was neglected and there was also a severe drought. Some of the plants died when they were young. At the time the land was sold to the Plaintiffs there were 15 to 20 trees. All that I could possibly do I did to the land. The Dr. spent and with labour I tried to improve the land. I went round the estate and showed it to the plaintiffs before their purchase. I remember taking one of the plaintiffs round. I think it is the 2nd plaintiff Hendrick Perera. Mr. Jayawardene went with me when I gave him possession. He did not come and go round the land with me.

As superintendent of Dr. M.G. Perera I was paid at that time Rs. 250/- per month. The fruits of all my labour was 15 coconut trees by 1953. I was also the private secretary of Dr. Perera. Dr. Perera is a fairly wealthy person and is very busy. He has an arrack distillery. He owns many other properties. His income tax is more than a lac of rupees.

Q. Do you seriously say that you were sent to

In the
District Court

Plaintiffs'
Evidence

No.3

C.B.
Wickremasinghe
30th April 1958

Cross-
examination
by Mr. Fernando

In the
District Court

Plaintiffs'
Evidence

No.3

C.B.
Wickremasinghe
30th April 1958
Cross-
examination
by Mr. Fernando
continued

this outlandish place for the purpose of opening up this jungle by Dr. Perera when you were the Superintendent of another estate?

A. At that time I was superintendent solely of this estate. Now I am superintendent of another estate. That estate was purchased about 2½ years ago. At that time I was mainly occupied with this planting. This land is 52 odd acres. Apart from the watcher who was on the estate, I got a large number of people from the village for labour to open up this land. That was immediately after the purchase by Dr. Perera. I can name some of the people whom I employed for labour on this land. Of them there is no one present in Court today.

10

Q. Why did so much of the plantation die?

A. Coconut planting should be done by an experienced planter. I was only acting on the instructions of the visiting agent and I had started planting during the drought.

20

At the time I gave the land to the plaintiffs there were 9 year old trees on the land. I did not pluck a single nut from the trees.

In between the coconut plantations there were catch crops till the trees came up. They were Tala etc. Tala was brought to the Doctor's bungalow. When I handed over possession there were a few trees and there was a live fence of Murunga trees. I think they are still there.

30

I do not know if after this purchase Dr. Perera had much litigation in Colombo. I remember that he had a case with the Daily News for Rs. 50,000/-. That was over a commission. That may have been in 1945. I say that I went to plant this land during that time although I was acting as his private Secretary. I was present in Court on the last date of trial. I came on behalf of Dr. Perera. I expected Dr. Perera to come here. I came from Kuruwita direct. In the meantime there was a letter from his lawyers that the trial would go down. I informed the lawyers that the Dr. would not come to Court.

40

During the years 1941 to 1945 I visited this land regularly. No one obstructed my possession. Up to 1953 I possessed this land and no one disturbed my possession.

I do not know if this identical land was allotted under the Middle Class Scheme to one Kulatunga. I do not know if he resided on this land from 1945 to 1948 and planted this land. In 1950 I do not know if he was asked to give up the land back to Govt. as it has been allotted to him by a mistake. I heard from Dr. Perera that the Govt. Agent had asked him to vacate the land as it had been allotted to Dr. Perera. To my knowledge Kulatunga did not occupy this land.

XXD. by Mr. Amerasinghe:

This 50 acre block was the smallest isolated block of the land owned by Dr. Perera. The extent of the estate of which I am now superintendent is 395 acres in Duruwita. Dr. Perera owns a coconut estate at Hettipola in the Kurunegala District. He owns about 3000 acres of coconut, rubber and tea land. He was never going to be bothered by this small extent of 50 acres. But I visited this land and I swear that from 1941 till the land was sold to the plaintiffs, it was in the possession of Dr. Perera and no one disturbed his possession.

In regard to the sale in 1953, it was I who arranged the sale. I live in the village close to where the Plaintiffs come from. 1st Plaintiff is a friend of mine, and he was on the look out for a land and I told him that there was such a land and that I could arrange it to be sold to him. They offered Rs. 5,000/-. The Dr. had purchased this land when it was in jungle for Rs. 1,000/-. I suggested to him that it be sold and he agreed to sell as he did not want to be bothered with a jungle land. I went with the 2nd Plaintiff and showed the land prior to the purchase. Subsequently I went there after the sale and put them in possession. Till the events complained of, there was no complaint made to me that their possession

In the
District Court

Plaintiffs'
Evidence

No.3

C.B.
Wickremasinghe
30th April 1958
Cross-
examination
by Mr. Fernando
continued

Cross-
examination by
Mr. Amerasinghe

In the
District Court

Plaintiffs'
Evidence

No.3

C.B.
Wickremasinghe
30th April 1958
Cross-
examination by
Mr.Amerasinghe
continued

was disturbed. I am aware that the Govt. made an allocation of a portion of this land to somebody. I am aware of the fact that the G.A. wrote to that person that the land be given back. When the Doctor came to know that the land had been allotted to someone else, he wrote to the G.A. and the G.A. wrote back saying that that allocation was cancelled. That was somewhere in 1945. Mr. Ernst was the Govt. Agent.

The coconut plantation got neglected. Dingiri Banda lives close to the property. I think he lived on this land for a short time. That is the Dingiri Banda who worked under the Plaintiffs subsequently.

RE-XD: NIL.

Sgd/

D.J.
30.4.58.

Plaintiffs' case closed. Pl to P4 read in evidence. Plaintiffs are not calling Dr. M.G. Perera as a witness because 3rd Defendant's Proctors will be calling him.

Intld.

D.J.
30.4.58.

Second
Defendant's
Evidence

SECOND DEFENDANT'S EVIDENCE

NO. 4

No.4

C.S. FERNANDO

C.S. Fernando
30th April 1958
Examination

Claude Stanley Fernando: Sworn; 55 years;
Advocate, Bambalapitiya.

My father is Henry Fernando. He died. His heirs were his sons and daughters. His eldest son was Dr. Albert Cyril Fernando. He predeceased my father. He left two children: Leila Godvia and Bede Chandra. My father left as his heirs his children: myself, Stella Agnes Fernando who was married to one Silva,

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20

30

Lily Olga Fernando and Harry Lionel Fernando and his two grand-children by Albert Cyril Fernando, Leila Godvia and Bede. I sold this property to the 2nd Defendant Robo Singho along with these heirs that I mentioned earlier. The people who actually signed the deed were myself and Chandra Bede. Chandra Bede is a journalist. On behalf of the others I got a power of attorney and I signed on their behalf. I produce the deed of transfer marked 2D1 by which this land was transferred viz: No.35 of 7.10.53. I also produce marked 2D2 and 2D3 powers of attorney given by the other heirs of my father to me.

In the
District Court

Second
Defendant's
Evidence

No.4

C.S. Fernando
30th April 1958
Examination
continued

My father Henry and my brother Cyril got a transfer of this property from the Crown. Subsequently I came to know this. I came to know this a few years before this deed was executed in 1953. About 4 or 5 years before 1953 I came to know of it. Till then I was not aware of the Crown transfer. My father died in 1938 or so. From that date I was not aware of the existence of this land till about 4 or 5 years before the transfer in 1953.

I also produce marked 2D4 extract from the Ceylon Govt. Gazette No. 6927 of 1.3.18 by virtue of which this land became settled on my father Henry and my brother Cyril. I also produce a mapping out diagram F.V.P. 1848 marked 2D5 which took in this land as Lot L 114A and O.114. I cannot say whether that F.V.P. refers to this land. I had never been to this land in my life. Bede had not been to this land.

In the deed of transfer to the Defendants I described this land as described in the Govt. notification 2D4.

Albert Cyril died leaving two children: Leila Godvia and Chandra Bede. I know Dr.M.G. Perera. He is supposed to have got a transfer from Rana Fernando. I do not know who that Rana Fernando is. There was no Rana Fernando in my family. My father is Henry Fernando. My mother was Engaltina Fernando. I produce a certified copy of my birth Certificate marked 2D6.

In the
District Court

Second
Defendant's
Evidence

No.4

C.S. Fernando
30th April 1958
Examination
continued

Cross-
examination by
Mr. Amerasinghe

I know nothing of this land except that in the Govt. notification it was settled on my father and brother and that we are the legitimate heirs and on that footing I have transferred this property.

XXD: by Mr. Dissanayake: NIL

XXD: by Mr. Amerasinghe:

The first time I knew that there was a settlement was when someone came to get a transfer from me. When an offer for this land was made to me I came to know of this land. The offer was made by Pathirana. I did not know that he was a broker. I thought he wanted to buy the land. I do not know whether he is a broker even now. Pathirana had told me that he came to see me and that he had gone to Arthur Abeyratne Proctor to find the heirs of the persons who were given in the settlement Order. He said he did not know the heirs. He was trying to trace the heirs of Dr. Fernando. Proctor Abeyratne was contacted and he had directed Pathirana to me.

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My brother Dr. Fernando had died in 1933. I cannot say whether his estate was administered. He left two children: Leila Godvia and Bede. These two children took up residence with my father. Subsequently they left for Malaya. Bede returned to Ceylon. I acted as Attorney of Leila Godvia. Eric my brother predeceased even my other brother Dr. Fernando. The others are in Malaya. I acted as their Attorney.

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The first time that I realised that there was a land in Kurunegala was when Pathirana came and asked me for a transfer. Shown 2D1 - Search for encumbrances has been dispensed with in this. I know nothing about this land. I have had no possession. To my knowledge I do not know if my father had possession. I was willing to sell but I was not prepared to undertake liability and I refused to warrant and defend title. I got the clause regarding warranting and defending title deleted. I cannot say what I would have done if I was asked to warrant and defend title. I was agreeable to

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transfer this land on the understanding that the warranty clause should be deleted. The Vendee was prepared to accept the transfer on that condition. They paid I think Rs.5000/-. It may be Rs. 4,500/-. I did not get copies of the Settlement Order. They were not brought to me. I got a friend of mine to check up in the Land Registry and I consulted my people in Malaya to sell this land. 2D3 is on 1.12.53. I did not obtain that. I do not know anyone by the name of Rana Fernando in my family. I do not know who Rana Fernando is.

RE-EX: NIL.

Sgd.

D.J. 30.4.58.

NO.5

K.M.D.B. KULATUNGA

KULATUNGA MUDIYANSELAGE DINGIRI BANDA KULATUNGA
Affd. 56 yrs., Trader, Weuda, Waraddana.

I know the land in dispute in this case.

To Court:

I cultivated the land. I know that the Plaintiffs are claiming that land. I possessed the land from 1945 to 1950. I only know Mr. Wickremasinghe after I came to Court in connection with this case. He did not possess the land that I possessed. He said he possessed this land and no one disturbed his possession. This land is in Chandrayagama village adjoining Deegama Village.

Examination-in-chief (contd.)

I know the land which the 2nd defdt. is possessing now. After he began work I have not gone to the land. Some people told me that he took possession in 1953. In 1952 I went to the land. In 1952 Robo Singho did not come to the land.

In the
District Court

Second
Defendant's
Evidence

No.4

C.S. Fernando
30th April 1958
Cross-
examination by
Mr.Amerasinghe
continued

No.5

K.M.D.B.
Kulatunga
30th April 1958
Examination

In the
District Court

Second
Defendant's
Evidence

No.5

K.M.D.B.
Kulatunga
30th April 1958
Examination
continued

To Court:

I do not know what land the Plaintiffs are claiming. Because the boundaries were given I say that it is the land. The boundaries were given to me by Robo Singho 2nd Defendant.

Examination-in-chief (contd.)

In 1945 I got a land called Chandrayagama depicted in F.V.P. 1848 from the Govt. Agent, N.W.P. I produce marked 2D7 receipt given by the G.A. for Rs.50/- to me being lease rent for 50 acres of land in F.V. 1848 Chandrayagama. I also produce marked 2D8 letter received from the G.A. N.W.P. in respect of the same land in F.V.P. 1848.

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(These documents are admitted subject to their being proved. Mr. Amerasinghe objects to the production of these documents. I uphold the objection. These documents are admitted subject to proof.)

I produce extract from the Govt. Gazette No. 9850 of 2.4.48 marked 2D9 being Government notification of a land Kachcheri. Under this Scheme I got a particular land. The extent of that is 50 acres. The headman of the village is here. The headman was aware of the fact that I was cultivating the land. I cleared 15 acres. I cultivated coconuts in 5 acres and I was clearing the balance when I was told that it was private land and I was asked to give up the land. I was told by the Kachcheri that it was private land. I received certain letters from the Kachcheri asking me to surrender the land. I asked for compensation from Government. Government said that no compensation could be paid and I was asked to take another land. I attended the land Kachcheri which was held subsequently. I got a land. That land is to the west of this land. It is adjoining this land on the west. The boundaries of the land which I got originally under the Middle Class Scheme are:

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West land given to Mr. Werellagama by the Crown. When I went they were working that

land. There was no unallotted portion between that land and my land. The northern boundary is the road. It is a cart road. The eastern boundary is Deegama village. On the south is Bibilewatte Ela.

I started cultivating in 1945. Till 1949 I worked the land. The land was looked after by a man whom I placed there. He was there till 1949. After 1949 I did not go to the land. Before 1945 this land had not been cultivated. After I left the land I cannot say who cultivated the land.

XXD: by Mr. Dissanayake: NIL

XXD: by Mr. Amerasinghe:

I said I am from Weuda Waraddana. That is 30 miles from Chandrayagama. Chandrayagama is in the jungle and one has to cross the Kimbulwana Oya to get to it. I cannot give the total extent of Chandrayagama Village. The document 2D9 is a notification to attend a certain Land Kachcheri. I am not in occupation of any land that I got under the land Kachcheri. In 2D9 the land in Chandrayagama is given as 87 acres. I do not know where that land is. In relation to the land in dispute, I do not know where that land is. The whole extent is called Chandrayagama. Government asked me to quit the land of which I gave the boundaries earlier. Those boundaries are not in any document given to me by Government. The clerk in the Kachcheri gave me those boundaries. 2nd Defendant did not give me those boundaries. I got the boundaries from the Kachcheri. The Kachcheri said that the boundaries would be mentioned in a document. It was not mentioned.

I got summons to attend Court. I did not get summons to attend court today. I did not get summons for the last date. I got summons for the first day. After that I have come regularly without summons. I was told the date and I came. My expenses were not paid by the 2nd Defendant. I came in 2nd Defendant's car. I am not a good friend

In the
District Court

Second
Defendant's
Evidence

No.5

K.M.D.B.
Kulatunga
30th April 1958
Examination
continued

Cross-
examination by
Mr. Amerasinghe

In the
District Court

Second
Defendant's
Evidence

No.5

K.M.D.B.
Kulatunga
30th April 1958
Cross-
examination by
Mr. Amerasinghe
continued

of his. 2nd Defendant must have come to know that I possessed this land from the headman. 2nd Defendant told me that he came to know about my possessing the land from the headman. I do not know the 1st Defendant, Pathirana. 2nd Defendant told me that he had been informed by the headman that I was in possession and he asked me to come and give evidence. I agreed to give evidence. I agreed to give evidence according to the documents given to me by Government. I do not know the name of this land. I know that this land is in Chandrayagama. Chandrayagama is adjoining Deegama. I said that there was no plantation at all when I went to the land. I do not know if the trees on the land were cut down. I cannot say if there are no coconut trees on the land now. I planted the land. I was directed by the Government Agent to quit the land in 1948. The Government Agent told me that by a mistake I had been allotted this land which was a private land. I was in possession of the land till 1949. I was in possession from 1945 to 1949. Nobody else possessed the land during that time. The moment I came to know that Government had allotted this land to me by a mistake, I left the land.

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I have not seen Mr. Wickremasinghe. He did not come to the land when I was in possession. The moment Government asked me to leave the land, I gave up the land without getting any compensation for my trees. I waited to get compensation for some months. I was promised another land and I was waiting to remove the plantation.

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Re-examination

RE-XD:

I left the land because I was asked to leave the land by the Government Agent. After I left the land somewhere in 1949 I did not go to it thereafter.

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Sgd.

D.J.
30.4.58.

NO.6

A.M.RAMBANDAIn the
District CourtSecond
Defendant's
Evidence

No.6

A.M. Rambanda
30th April 1958
Examination

A.M. Rambanda: Affirmed, 48 years, Village Headman. No.80 Ponnilawa Palata.

10 I know the village of Chandrayagama. It is within my Palata. I have been headman for 22 years. I know the land the 2nd Defendant is now planting. The extent of that land is about 50 acres. Of that he has opened up about 25 acres.

To Court:

20 I know the extent of the land from the plan. The plan is No.1849. It is the plan of Chandrayagama. Lands had been given in 1942 and I had seen the plan. I remember the number of the plan. I have noted down the number of the plan. I have lands. I have paraveni lands. I do not remember the numbers of the deeds of my lands. I got married in 1925. In June 1925 I got married. I remember the number of this plan and the extent.

Examination-in-chief (continued)

30 There was a criminal case in respect of the possession of the 2nd Defendant. I know the land in respect of which that action was filed. That criminal action was filed by Hendrick the 2nd Plaintiff. I know the land in respect of which the 2nd Plaintiff filed action. That is the land which Robo Singho the 2nd Defendant is cultivating now. In Chandrayagama there is no other land which the 2nd Defendant is cultivating. Nor is there any other land which the 2nd Plaintiff cultivated.

40 I know Dingiri Banda Kulatunga. He cultivated 5 acres from 1945. The number of the plan is noted down by us when occasion arises and we refer to them. I remember what I had seen I did not refer up when I came in connection with this case.

In the
District Court

Second
Defendant's
Evidence

No.6

A.M. Rambanda
30th April 1958
Examination
continued

Cross-
examination by
Mr. Amerasinghe

To my knowledge before Kulatunga no one cultivated this land. I do not know Mr. Wickremasinghe. I have not seen him coming to this land.

To Court:

I did not give information to Govt. that Kulatunga had cultivated a private land. I do not know how it was found that he had cultivated a private land.

XXD: by Mr. Dissanayake: NIL

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XXD: by Mr. Amerasinghe:

I deny that Mr. Wickremasinghe came with 2nd Plaintiff and made a complaint. I live about 4 miles from this land. This land is in the jungle. Prior to this I had been to this land. Before that I got an order from the D.R.O. to make inquiries about the land. I went to the land on 11.11.53. This complaint was on 24.11.53. I had been to the land on 11.11.53 on a reference made by the D.R.O. The D.R.O. told me that one Jayawardene had bought the land and that the 2nd Defendant was going to take possession of the land. On the 11th when I went 2nd Defendant and several others were there. It may be that Jayawardene had made a complaint earlier to the D.R.O. When I first went to the land there were several young coconut plants. Some of them were not 9 years old. There were plants about 1 year to 6 months old. I did not see any trees which were above the reach of cattle. Near the house there were no trees about 9 years old. When I went on the 24th November there was not a single coconut plant. I did not see any plants removed. When I went on the 24th there were small plants. There were no trees 10 years old.

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To Court:

I did not make any notes of the observations I made on the 11th.

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RE-XD: NIL

Sgd/

D.J. 30.4.58.

23.

NO. 7

PROCEEDINGS

In the
District Court

No.7

2nd Defendant's case closed. 2D1 to
2D9 read in evidence.

Proceedings
30th April 1958

Mr. Fernando addresses Court.

Mr. Amerasinghe states he is not calling his client and that his client is prepared to warrant and defend the title.

10 Mr. Dissanayake moves to mark the proceedings of 11.1.56 as P5 where the 2nd Defendant undertakes to warrant and defend title and to make good any loss caused to the Plaintiff.

Judgment on 16.5.58.

Intld.

D.J. 30.4.58.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

D. ROBOSINGHO MUDALALI alias
GAMPAHA MUDALALI (Second Defendant) Appellant

- and -

1. L. D. P. JAYAWARDENE (Plaintiff)
 2. GALPOTTAGE HENDRICK PERERA
(Plaintiff)
 3. B.W.PATHIRANA (First Defendant)
 4. DR. M.G. PERERA (Third Defendant) Respondents
-

SUPPLEMENTAL RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.
Solicitors for the Fourth Respondent.