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

In the matter of an Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006.

SC Appeal No. 107/2015
SC/HCCA/LA No. 165/2014
SP/HCCA/GA/12/2006 (F)
DC Galle Case No. 10650/L

Susangatha De Fonseka,
No. 9, Gravets Road,
Panadura.

Plaintiff

vs

Pussewalage Ashokalatha,
Urala, Doowahena.

Defendant

And between

Susangatha De Fonseka,
No. 9, Gravets Road,
Panadura.

Plaintiff – Appellant

vs

Pussewalage Ashokalatha,
Urala, Doowahena.

Defendant – Respondent

And now between

Susangatha De Fonseka,
No. 9, Gravets Road,
Panadura.

Plaintiff – Appellant – Appellant

vs

Pussewalage Ashokalatha,
Urala, Doowahena.

Defendant – Respondent – Respondent

Before: **Buwaneka Aluwihare, PC, J**
Janak De Silva, J
Arjuna Obeyesekere, J

Counsel: Manohara De Silva, PC with Nadeeshani Lankatilleke and Dilmini De Silva for the Plaintiff – Appellant – Appellant

A S M Perera, PC with Uvindu Jayasiri and Chathurika Witharana for the Defendant – Respondent – Respondent

Argued on: 10th January 2023

Written Submissions: Tendered by the Plaintiff – Appellant – Appellant on 26th March 2015 and 27th April 2023

Tendered by the Defendant – Respondent – Respondent on 5th January 2023

Decided on: 13th November 2023

Obeyesekere, J

This appeal arises from a judgment delivered by the Provincial High Court of the Southern Province holden in Galle [the High Court] on 17th March 2014, by which the High Court upheld the judgment of the District Court of Galle [the District Court] dated 22nd February 2006 dismissing the plaint. Aggrieved by the said judgment, the Plaintiff – Appellant – Appellant [the Plaintiff] filed a petition of appeal before this Court on 4th April 2014 seeking leave to appeal from the said judgment. On 28th January 2015, leave to appeal was granted on the questions of law set out in paragraph 14(b) – (m) of the said petition and one question of law raised on behalf of the Defendant – Respondent – Respondent [the Defendant].

Facts in brief

The Plaintiff's father, the late Justin De Silva Warnakulasuriya Goonewardena was the owner of two agricultural lands in Galle. One was Manomani Estate in extent of 145 acres and part of which is the subject matter of this appeal. The other was Upper Langsland Estate in extent of 317 acres.

The following matters were recorded as admissions at the commencement of the District Court trial on 24th January 1992:

a) The Plaintiff's father had mortgaged Manomani Estate by way of Mortgage Bond No. 3514 executed on 1st February 1948 to Sumanawathie Weerapperuma and Don Frederick Subasinghe [the mortgagees] as a security for a loan given by the mortgagees;

b) Upon the Plaintiff's father defaulting on the payment of the moneys borrowed, the mortgagees had filed Case No. MB 1218 in the District Court of Galle against the Plaintiff's father [the MB action]. After trial, judgment had been entered in favour of the mortgagees on 25th October 1963 and decree had accordingly been entered on 18th December 1963;

c) The appeal preferred against the said judgment of the District Court by the Plaintiff's father had been dismissed by this Court on 5th July 1974;

d) The Plaintiff's father [mortgagor] had objected to the mortgagees' application for the enforcement of the decree but the said objection had been overruled by the District Court by its Order delivered on 22nd November 1983;

e) On 24th November 1983, the said decree had been executed and Manomani Estate which was the subject matter of the MB action, had been sold by public auction, with it being purchased by the mortgagees. Manomani Estate had accordingly been transferred to the mortgagees by a Fiscal conveyance on 27th June 1984 by Deed of Transfer No. 1339 and on the same day, the mortgagees had transferred the same to the Defendant by Deed of Transfer No. 1341.

Although it had been admitted that Manomani Estate had been transferred in its entirety to the Defendant, the evidence led at the trial was that pursuant to the sale, the mortgagees had sub-divided the land into several lots and what had been transferred to the Defendant was only a part thereof, as described in the schedule to Deed No. 1341. Be that as it may, *on the face of it*, with the execution of the decree and the Fiscal's conveyance as aforesaid, neither the Plaintiff nor her father could have claimed any ownership to Manomani Estate or any part thereof.

<u>The Land Reform Law</u>

I say *on the face of it* for the reason that the primary issue that needs to be determined in this appeal is whether the Plaintiff has title to that part of Manomani Estate referred to in the schedule to the plaint, in spite of the execution of the decree in the MB action and the Fiscal's conveyance. This issue arose due to the fact that while the appeal from the District Court in the MB action was pending, the Land Reform Law No. 1 of 1972 was introduced, and as a result of the application of certain provisions of the said Law and steps taken in terms of the said Law, an extent of 25 acres from Manomani Estate was gifted to the Plaintiff by her father in 1980, thus conferring the Plaintiff title in respect of such portion of Manomani Estate.

The Land Reform Law [the Law] is the first law enacted under the First Republican Constitution of 1972 by the National State Assembly, and came into operation on 26th August 1972. In its long title, the said Law was stated to be, "*A Law to establish a Land Reform Commission, to fix a ceiling on the extent of agricultural land that may be owned by persons, to provide for the vesting of lands owned in excess of such ceiling in the Land Reform Commission, and for such land to be held by the former owners on a statutory lease from the Commission, to prescribe the purposes and the manner of disposition by the Commission of agricultural lands vested in the Commission so as to increase productivity and employment, to provide for the payment of compensation to persons deprived of their lands under this Law and for matters connected therewith or incidental thereto*."

Section 2 of the said Law provides that the objects of the Land Reform Commission [the Commission] was *inter alia* to ensure that no person shall own agricultural land in excess of the ceiling set out in Section 3(1), which Section reads as follows:

> "*On and after the date of commencement of this Law* ***the maximum extent of agricultural land which may be owned by any person****, in this Law referred to as the "ceiling", shall:*
>
> *(a) if such land consists exclusively of paddy land, be twenty-five acres; or*
>
> *(b) if such land does not consist exclusively of paddy land, be fifty acres, so however that the total extent of any paddy land, if any, comprised in such fifty acres shall not exceed the ceiling on paddy land specified in paragraph (a)*." [emphasis added]

Section 3(2) provides further as follows:

> "*Any agricultural land owned by any person* ***in excess of the ceiling*** *on the date of commencement of this Law shall as from that date –*
>
> *(a)* ***be deemed to vest*** *in the Commission; and*

(b) *be* ***deemed to be held by such person under a statutory lease*** *from the Commission*." [emphasis added]

In terms of Section 6 of the Law, "*Where any agricultural land is vested in the Commission under this Law, such vesting shall have the effect of* ***giving the Commission*** *absolute* ***title*** *to such land as* ***from the date of such vesting****, and* ***free from all encumbrances***." [emphasis added]

Determination of the land that is to vest in the Commission

The cumulative effect of Sections 3 and 6 is that from the date of commencement of the Law, the maximum extent of agricultural land that could be owned by an individual is 50 acres with any land in excess of this ceiling being deemed vested in the Commission. The exact land area amounting to 50 acres of agricultural land that a person is permitted to own and in turn, the exact metes and bounds of the remaining agricultural land that was deemed to vest in the Commission was **to be** determined in terms of the Law. In other words, although in terms of Section 3(2), all agricultural lands owned by an individual over and above the ceiling were *deemed to vest* in the Commission, until the procedure stipulated in the Law for determining the exact land area forming the 50 acres that a person was entitled to elect to keep for himself was completed, it was not possible to determine exactly which land portion overshot the 50 acre ceiling and had therefore vested in the Commission.

The legal fiction of introducing a deemed concept in Section 3 was to ensure that (a) any person who owned more land than the 50 acre ceiling could not alienate such agricultural land pending a determination in terms of the Law of the precise land that was to be retained by such person, and (b) until such time, the entire land was *deemed to vest* in the Commission.

The concept of 'deemed vested' was considered by a bench of five Judges of this Court in **Jinawathie and Others v Emalin Perera** [(1986) 2 Sri LR 121] where Parinda Ranasinghe, J [as he then was] stated as follows:

"*A careful consideration of the provisions of the Land Reform Law … , in their proper sequence shows that, with the coming into operation of the said provisions, on 26.8.1972, the entirety of the agricultural land owned by a person, who is entitled to more than fifty acres, has to be deemed to vest immediately in the Commission; that what is so deemed to vest, vests absolutely free from all encumbrances; that thenceforth the person who owned such land is deemed to be a statutory lessee of the Commission upon the terms and conditions set out*; … " [page 126]

"*As has been set out above, where an agricultural land becomes subject to the provisions of this Law in consequence of its owner being one who is entitled to land over and above the ceiling, such agricultural land is "deemed" to vest in the Commission, and its owner is "deemed" to be a statutory lessee of such land. It is, therefore, necessary to examine the nature and scope, in law, of such a deeming provision as section 3(2) of this Law. In statutes the expression "deemed" is commonly used for the purpose of creating a statutory function so that the meaning of a term is extended to a subject matter which it properly does not designate. Thus where a person is "deemed to be something" it only means that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. When a thing is deemed to be something, it does not mean that it is that which it is deemed to be, but it is rather an admission that it is not what it is deemed to be, and that notwithstanding it is not that particular thing it is nevertheless deemed to be that thing. Where a statute declares that a person or thing shall be deemed to be or shall be treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding-vide Bindra: Interpretation of Statutes (6th Ed.) pp. 912-914*." [page 130]

Keeping in mind one of the questions of law that needs to be determined in this appeal, I should perhaps mention at this stage that the Law further provided for any person who became a statutory lessee to make an application in terms of Section 14 seeking the return to such statutory lessee [i.e., to the owner], agricultural land that was over and above the ceiling stipulated in Section 3(1) in order that the said land be transferred to such persons children who were over eighteen years of age or such persons parents.

Therefore, (a) until the exact 50 acre parcel of agricultural land that a person could retain was determined in terms of the Law, and (b) where an application had been made in terms of Section 14, until the process stipulated thereunder was completed, it was not possible to say which exact portion of the excess agricultural land held by an individual would in fact vest in the Commission, despite the law providing that all lands in excess of the ceiling were *deemed* to vest in the Commission from the date of commencement of the said Law.

The role of the statutory lessee

In terms of Sections 15 of the Law, while the land remained *vested* with the Commission pending the above, the owner of the land, who in terms of the Law had transformed into the role of a statutory lessee, was responsible for the management of the agricultural land once owned by him. The so created statutory lease was to continue for one year from the date of vesting, with provision for the extension of such period for a further one year at the discretion of the Commission. However, no such statutory lease could be continued for any further period by the Commission, except with the express approval of the Minister.

Thus, in terms of the Law, until such time a determination was made with regard to the 50 acres of agricultural land that a person could retain and the exclusion of any land that an owner would be allowed to transfer to children or parents pursuant to an application under Section 14, the agricultural land belonging to an individual to whom Section 3 applied, was *deemed vested* with the Commission. Furthermore, until such time a suitable entity was identified to manage the said lands, which period was limited to two years, the management was to remain with the individual or company that owned such land, on the basis of a statutory lease. The role of the Commission was that of a **repository of lands** that were deemed vested in the Commission in terms of the Law from the date of commencement of the Law until *inter alia* the land was returned to the owner or suitable persons were identified to manage the said lands or the lands were alienated or otherwise allocated in accordance with the Law.

I shall now consider three important provisions of the Law which are directly referable to the questions of law to be determined in this appeal, namely (a) the requirement for an owner of agricultural land above the ceiling to submit a "statutory declaration", (b) the option available to such an owner to seek land over and above the ceiling for children over the age of eighteen, and (c) the "statutory determination" that is made by the Commission pursuant to the submission of the said statutory declaration.

The statutory declaration

The mechanism to decide which 50 acres of agricultural land a person who owned more than the ceiling was entitled to retain, has been set out in Section 18(1), which reads as follows:

> "*The Commission may, by Order published in the Gazette and in such other form as it may deem desirable to give publicity to such Order, direct that every person who becomes the statutory lessee of any agricultural land shall,* ***within a month*** *from the date of the publication of the Order,* ***or of becoming a statutory lessee under this Law make a declaration****, in this Law referred to as a " statutory declaration ", in the prescribed form of the total extent of the agricultural land so held by him on such lease*."

While Section 18(2) stipulates the matters that a declaration under Section 18(1) shall contain, in terms of paragraph (f) thereof, the statutory lessee was required to "*specify the preference or preferences, if any, of the declarant as to the particular portion or portions of each such land which he should be allowed to retain*." Thus began the process of identifying the land that was to ultimately vest in the Commission, once all exemptions and permitted transfers under the Law had been entertained.

It is admitted that the Plaintiff's father made two statutory declarations on 20th November 1972 in which he declared Manomani Estate and Upper Langsland Estate as being agricultural lands owned by him. In the said declarations, the Plaintiff's father had declared that, (a) he wishes to retain as his entitlement in terms of the Law, land from the Upper Langsland Estate, and (b) there existed a mortgage in respect of Manomani Estate

which was subject to the MB action. He had however failed to mention that decree had already been entered in the MB action.

Section 14 of the Law

It is admitted that the Plaintiff was one of several children of Justin De Silva Warnakulasuriya Goonewardena.

Section 14(1) provides that, "*Any person who becomes a statutory lessee of any agricultural land under this Law may* ***within three months*** *from such date* ***make an application to the Commission*** *in the prescribed form* ***for the transfer*** *by way of sale, gift, exchange or otherwise* ***of the entirety or portion of such agricultural land to any child who is eighteen years of age*** *or over or to a parent of such person*." [emphasis added]

Acting in terms of the above Section, the Plaintiff's father had made an application that he be permitted to transfer out of the two Estates, 50 acres per child to each of his children who by then were all between the ages of 19 and 32.

In terms of Section 14(2), "***The Commission may*** *by order made under its hand* ***grant*** *or refuse to grant* ***approval for such transfer****. Such order shall be made within one year of the date of application under subsection (1). Every such order shall be sent by registered post to the applicant under subsection (1). Any such applicant aggrieved by the order may appeal to the Minister within three weeks of the receipt of such order. The receipt of the order shall be deemed to be effected at the time at which letters would be delivered in the ordinary course of post*." [emphasis added]

Although the said application had initially been rejected, pursuant to an appeal to the Minister, the Commission, by its letter dated 31st December 1973 had informed the Plaintiff's father that approval had been granted to transfer 25 acres each, to each of his children. This included two 25 acre lots from Manomani Estate, which by then formed part of the subject matter of the decree issued in the MB action, but which fact (i.e., of the decree) had not been disclosed to the Commission. It must perhaps be noted that in terms of Section 18(5), making a declaration knowing such declaration to be false is an

offence and the Commission was empowered to forfeit the compensation payable under the Law.

The formal Order of the Commission granting its approval was conveyed to the Plaintiff's father by letter dated 10th June 1974. The said Order contained the steps to be followed by the Plaintiff's father in transferring the land to the Plaintiff and her sister, including the requirement to have a survey plan prepared and to submit to the Commission a copy of the deed of transfer upon its execution.

In terms of Section 14(3), "***Any transfer*** *effected in accordance with the provisions of an order made under subsection (2) or such order as amended, varied or modified on appeal* ***shall have the effect of transferring*** *right,* ***title*** *or interest* ***in property so transferred*** *free of the statutory lease*." [emphasis added]

Thus, once the approval of the Commission was received, the transfer was to be effected by the applicant in favour of his or her child, and not by the Commission. In the process, the applicant ceased to be a statutory lessee of such land that was to be transferred. Accordingly, by Deed of Transfer No. 2085 dated 16th August 1980 executed by the Plaintiff's father, 25 acres each from Manomani Estate were transferred to the Plaintiff and her sister. This is borne out by the contents of the said Deed which clearly state that the Plaintiff is receiving the title of her father.

While I shall elaborate later on in this judgment, I must state at this point that:

(a) it is not the Commission that transferred the impugned land to the Plaintiff but her own father; and

(b) what was transferred to the Plaintiff was the title that the Plaintiff's father had in the said land at the time the Law came into force, and therefore free of the statutory lease to which the Plaintiff's father's rights over the land had been reduced to in terms of Section 3 of the Law.

Thus, although the Plaintiff's father was only entitled to 50 acres in terms of the Law, the Commission had granted him approval to transfer a further 175 acres to his children,

obviously not as a statutory lessee but as the owner who was capable of such dispositions. The Plaintiff thus acquired title over that part of Manomani Estate referred to in Deed No. 2085, and morefully set out in the schedule to the plaint, subject to the encumbrances that existed over her father's title to the said land.

Statutory Determination

It is only thereafter that the Commission, acting in terms of Section 19 of the Law, published its Statutory Determination in Extraordinary Gazette No. 196/2 dated 29th December 1975 declaring that the Plaintiff's father is allowed to retain 50 acres of land from Upper Langsland Estate.

The effect of a statutory determination is set out in Section 20 in the following manner:

> "*Every statutory determination published in the Gazette under section 19 shall come into operation on the date of such publication and the* ***Commission shall have no*** *right,* ***title*** *or interest in the agricultural land specified in the statutory determination from the date of such publication*." [emphasis added]

In **Jinawathie and Others v Emalin Perera** [supra; at page 139] this Court had held that:

> *"P6 the statutory determination in this case states, as set out earlier, that the plaintiff-respondent "shall be allowed to retain" the said extent of land referred to in the schedule to P6, and also fully described in the schedule to the plaint in this case. The effect of such a statutory determination, upon its publication in the Gazette, is set out in this Law itself, in Section 20. All that is stated therein is that "the Commission shall have no right, title or interest in the agricultural land specified in the statutory determination from the date of such publication".* ***It is merely a renunciation of all interests on the part of the Commission.*** *There is,* ***in P6, no express vesting or conferment of title in the plaintiff****-respondent, who is referred to in P6 as the statutory lessee, in respect of the Land referred to in P6 and described in P6 as "the portion of agricultural land owned" by the statutory lessee and which she shall be allowed to retain.*

What then is the effect, in law, of the plaintiff-respondent being "allowed to retain" the land described in the schedule to P6-which is also, as set out already, the land more fully described in the schedule to the plaint-and further referred to as a portion of agricultural land "owned" by the statutory lessee? The order embodied in P6 is made as the final act in the process of "ensuring that no person (plaintiff-respondent) shall own agricultural land in excess of the ceiling (50 acres)" – vide Section 2(a)." [emphasis added]

It was further stated [at page 141] that:

"… the person, in whose favour a statutory determination … is made, would, upon the making of such a determination, become possessed of those attributes – viz: the right to possess, to take the income, and to deal with it in any way, including alienation and even destruction, so long as it is not illegal, which are, in law, the essence of ownership."

It must be emphasised that by the time the aforesaid Deed No. 2085 was executed, the appeal in the MB action had been dismissed by this Court, but this fact had not been disclosed to the Commission. Accordingly, the said inter-family transfer pertained to a portion of a land which, in terms of Section 2 of the Mortgage Act No. 6 of 1949, was bound by an order of Court and liable to judicial sale to enforce payment due upon the mortgage. Be that as it may, the decree in the MB action was executed and Manomani Estate was sold at a public auction in November 1983, with it being purchased by the mortgagees themselves, who in turn sold part of the said land to the Defendant, with Deed of Transfer No. 1341 being executed in June 1984.

Action in the District Court

Thus, by June 1984, the Plaintiff had a deed in her favour in respect of 25 acres of Manomani Estate, namely Deed No. 2085 executed in 1980 in terms of the Law, while the Defendant too held Deed No. 1341 in respect of a part of Manomani Estate pursuant to a Fiscal's conveyance executed in 1984. Having purchased part of Manomani Estate, the Defendant had soon thereafter taken possession of the land she had purchased.

It is in this background that by plaint dated 13th June 1985, the Plaintiff instituted a *rei vindicatio* action against the Defendant in respect of the 25 acres transferred to her by her father, relying on Deed No. 2085 to establish her title. The Plaintiff had pleaded in the alternative that she has acquired prescriptive title to the said land. In terms of the amended plaint filed on 5th May 1991, the Plaintiff had sought a declaration of title to Lot 'R' in Plan No. 148 which is the portion of land purchased by the Defendant and for an order ejecting the Defendant from the said land.

Answer having been filed, the matter proceeded to trial on 24th January 1992. While I have already referred to the admissions, the issues raised by the parties are set out below.

Issues proposed by the Plaintiff:

(1) පැමිණිලි පතුයේ සඳහන් පරිදි ඩී.ජේ.එස්. වර්ණකුලසුරිය ගුණවර්ධනට හිමිව තිබූ මනෝමනී වත්ත නැමැති අක්කර 145 කින් යුත් මෙම නඩුවට අදාල වන 1 වෙනි සහ 2 වෙනි උපලේඛනයෙහි සඳහන් ඉඩම් ඇතුලුව එම අක්කර 145 මගින් 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ පනත යටතේ ඉඩම් ප්‍රතිසංස්කරණ සභාවට සියළුම බැදීම් වලින් තොරව හිමිවිද?

(2) 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ පනතෙහි ප්‍රතිපාදනයන් අනුව ඉහත සඳහන් කළ ඉඩම් වල ව්‍යවස්ථාපිත බදුකරු එම වර්ණකුලසුරිය ගුණවර්ධන නැමැත්තාද?

(3) ඉහත පණතෙහි ප්‍රතිපාදනයන් අනුව එම ගුණවර්ධන විසින් කරන ලද ඉල්ලීමක් මත මෙම නඩුවට අදාල ඉඩම පැමිණිලිකරුගේ නමට පැවරීමට බලය දුන්නාද?

(4) **ඒ අනුව ඉහත සඳහන් ගුණවර්ධන විසින් 1980.08.16 වෙනි දින අංක 2085 දරණ තැගි කරයෙන් එම ඉඩම් මෙම පැමිණිලිකාරියට තැගි දී ඇද්ද?**

(5) පැමිණිල්ලේ සඳහන් පරිදි අංක 148 දරණ නඩුවට ගොනු කොට ඇති පිඹුරේ 'ආර්' අක්ෂරය දරණ කැබැල්ලට මෙම නඩුවහි විත්තිකාරිය ආරවුල් කරයිද?

(6) එසේ නම් පැමැණිලිකාරියට පැමිණිල්ලේ ඉල්ලා ඇති සහනයක් ලබා ගත හැකිද?

Issues proposed by the Defendant:

(7) මෙම අධිකරණයේ එම්.බී. 1218 දරණ නඩුවේ තීන්දුව ප්‍රකාර ඉඩම් විකිණීම වලංගු විකිණීමක්ද?

(8) එම විකිණීම මත මිලදිගත් විත්තිකාරියගේ අයිතිය ඒ අනුව වලංගු වූ අයිතියක්ද?

(9) එම වෙන්දේසියේ ඉදිරිපත් කරන අවස්ථාවේ ඊට විරුද්ධව කිසිම විරුද්ධතාවයක් ඉදිරිපත් කරන ලද්දේද?

(10) ඒ නිසා එම විකිණීම අධිකරණය විසින් ස්ථිර කරන ලද්දේද?

(11) කෙසේ වෙතත් නීතිමය කරුණක් වශයෙන් ඉඩම් ප්‍රතිසංස්කරණ පනතේ සඳහන් වන බැඳීම (encumbrances) යන වචනයේ අර්ථ නිරූපනයට අධිකරණය විසින් දෙන ලද තීන්දු, ප්‍රකාෂයක් ඇතුලත් විද?

(12) කෙසේ වෙතත් 1981 අංක 39 පනතේ 27බී වගන්තිය යටතේ එවැනි බැඳීමක් අහෝසි වී තිබුනේ වී නමුත් යලිත් ප්‍රකෘත්තිමත් වේද?

(13) එසේ නම් විත්තිකරුවන්ට මෙම ඉඩමේ අයිතිය නීත්‍යානුකූලව ලැබේද?

Consequential issues proposed by the Plaintiff:

(14) 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ පනත හා 1981 අංක 39 දරණ සංශෝධිත පනතේ අර්ථ නිරූපනය කිරීමේ දී සංශෝධන පනත අතීතයට බලපාන පරිදි ක්‍රියාත්මක වේද?

(15) එසේ නැතහොත් එම වගන්තිය ප්‍රකාර බැඳීම් ප්‍රකෘතිමත් විය හැකිද?

Order on Issue Nos. 11–15

The parties had thereafter moved that Issue Nos. 11–15 be determined as preliminary issues of law. The order on the said issues had been delivered on 15th December 1992, with the District Court answering the said issues in the affirmative. In essence, the District Court had held that, (a) the mortgage subsists until the decree is executed; (b) a decree is an encumbrance for the purposes of the Law; and (c) Section 27B of the Law applies with retrospective effect.

Aggrieved by the said judgment, the Plaintiff had filed an appeal in the Court of Appeal [CA Case No. 57/1993], By its judgment delivered on 16th July 1993, the Court of Appeal had held as follows:

> "*This is an application for leave to appeal notwithstanding lapse of time from the order dated 15.12.92. By that order learned District Judge answered preliminary legal issues 11, 12, 13, 14 and 15 in favour of the Defendant. These issues relate to the vesting of the land in the Land Reform Commission and the operation of the amendment to the Land Reform Commission Law done by Act No. 39 of 1981. The trial has to now proceed in the District Court with regard to the issues of fact on the competing claims based upon prescription. We are of the view that the order of the*

learned District Judge on the preliminary issues may be canvassed in the final appeal in the event of a final appeal being filed by the Plaintiff. The application is dismissed subject to the foregoing reservation."

Further trial

Further trial before the District Court proceeded on Issue Nos. 1 – 10, with an officer from the Tea Control Department, an officer from the Commission and the Plaintiff's brother giving evidence on behalf of the Plaintiff while the Defendant gave evidence on her own behalf. During the trial, each party had raised a further issue on prescription. By its judgment delivered on 22nd February 2006, the District Court answered Issue Nos. 1-10 against the Plaintiff and dismissed the action. The appeal that was filed by the Plaintiff against the said judgment of the District Court too had been dismissed by the High Court, resulting in this appeal.

I must perhaps mention that the sister of the Plaintiff who received 25 acres of land from Manomani Estate under the same circumstances as the Plaintiff instituted Case No. 10911/L in the District Court of Galle against another person who had purchased land from the mortgagees following the Fiscal's conveyance. That case was decided in favour of the sister of the Plaintiff. The appeal preferred to the High Court had been dismissed and this Court had refused leave to appeal against the said judgment of the High Court.

Questions of Law

This Court has granted leave to appeal on thirteen questions of law, with the first twelve being raised by the Plaintiff, and the thirteenth by the Defendant. The said questions of law are reproduced below:

(1) The learned Judges of the High Court erred by not taking into consideration the decisions of the High Court made in SP/HCCA/GA/09/2001 marked A1 and the Supreme Court made in SC/HCCA/LA 546/2011 marked A2;

(2) The learned Judges of the High Court erred by holding that the Defendant obtained title to the property in suit (by Deed 1341 dated 27th June 1984) prior to the Plaintiff whose deed No. 2085 is dated 16th August 1980;

(3) The learned Judges of the High Court erred by holding that the Defendant's title based on Deed 1341 dated 27th June 1984 is valid;

(4) The learned High Court Judges failed to consider that the decree dated 18th December 1963, being only a decree entered in a hypothecary action "for the payment of money due upon the mortgage and to enforce such payment by a judicial sale of the mortgage property," did not pass title to the judgment creditor upon such decree being entered and therefore the Defendant did not derive title prior to the Plaintiff;

(5) The learned High Court Judges failed to consider that when the property was vested in the Land Reform Commission in 1972 i.e., prior to the Fiscal sale in MB/1218, the same vested in the Land Reform Commission free from all encumbrances in terms of Section 6 of the Land Reform Law;

(6) The learned High Court Judges failed to consider that with the enactment of the Land Reform Law in 1972, absolute title to the property vested in the Land Reform Commission free from all encumbrances and accordingly by operation of law, right title and interest of the property got transferred to the Land Reform Commission;

(7) The learned High Court Judges failed to consider the provisions of Section 3, 6 and 14 of the Land Reform Law which grants absolute title in the Plaintiff from the Land Reform Commission free from all encumbrances;

(8) The learned High Court Judges failed to consider the provisions of Section 12 of the Land Reform Law;

(9) The learned High Court Judges failed to consider that it is only upon the sale of the property at the auction that the purchaser will acquire title to the property, until then the mortgagor continues to hold title to the property;

(10) The learned High Court Judges failed to consider that the Fiscal sale was in 1984, that is, much after absolute title free from all encumbrances vested in the Land Reform Commission 1973 which transferred title to the Plaintiff on 16th August 1980 by Deed No. 2085;

(11) In the circumstances the learned High Court Judges erred in not considering the correct legal effect of Fiscal sale effected under the Mortgage decree in Case No. MB/1218 in 1984 vis-a-vis the Plaintiff's title derived from Deed No. 2085 of 16th August 1980 executed under the provisions of Section 14(2) of the Land Reform Law No. 1 of 1972;

(12) The learned High Court Judges have erred by holding that the Plaintiff has failed to prove that she has prescribed to the land;

(13) Is the mortgage decree entered into in District Court of Galle Case No. 1218/MB on 25th October 1963 an encumbrance under Section 6 of the Land Reform Law?

I must state that the High Court has failed to consider the matters set out in questions of law Nos. 5 – 11, thus necessitating this Court to consider such matters in detail.

I shall commence by considering questions of law Nos. 1 and 12.

Issue Nos. 1 and 12

Although a copy of the plaint in Case No. 10911/L filed by the Plaintiff's sister has not been produced, there is agreement among the parties that the principal legal issue raised in this appeal is identical to that raised in the aforementioned case. Be that as it may, the fact that the High Court in HC Case No. SP/HCCA/GA/09/2001(F) upheld the judgment of the District Court in Case No. 10911/L is irrelevant when one considers the fact that the said judgment of the High Court is not binding on the High Court that heard the appeal from the judgment of the District Court in this case.

This Court refused to grant leave to appeal from the said judgment by its Order dated 10th September 2012 made in SC/HC/CALA No. 546/2011. In **The Commissioner General of Inland Revenue v. Janashakthi General Insurance** [CA (TAX) No. 14/2013; CA Minutes of 20th May 2020] my brother, Justice Janak De Silva responding to an argument that refusal by the Supreme Court to grant special leave to appeal is binding in other cases, cited with approval the finding in **B.M. Karunadasa, Assistant Commissioner of Labour vs W. Balasuriya, Sports of Kings** [CA (PHC) APN No. 97/2010; CA minutes of 17th July 2013] that it is a misconception to come to the conclusion that the refusal of leave by the Supreme Court constitutes the affirmation of the judgment of the lower court, and held that such an order cannot be considered as creating a precedent. I am of the view that the refusal on the part of this Court to grant leave to appeal would only be binding between the same parties, and therefore is not a consideration that weighs in the mind of this Court today.

In these circumstances, it cannot be said that the learned Judges of the High Court erred in law when they proceeded to hear the appeal before them [i.e., the appeal that has given rise to this appeal] on its merits and made an independent determination. Question of law No.1 is therefore answered in the negative.

With regard to question of law No. 12, it was in evidence that Manomani Estate was a neglected and abandoned property, that the Plaintiff went into possession of the impugned 25 acres of Manomani Estate only after Deed No. 2085 was executed in her favour in 1980, and that she was dispossessed by the Defendant after she purchased the land in 1984 resulting in action being filed in the District Court in 1985. Thus, the question of prescription does not arise and the said question of law is answered in the negative.

Title to the land

One of the primary issues that needs to be decided in a *rei vindicatio* action is whether the plaintiff has established that he or she has title to the land from which the ejection of the defendant is sought. If I were to very briefly summarise the contentions of the parties, then they would be as follows. The position of the Plaintiff was that, (a) the mortgage executed by her father was **wiped out** as a result of Manomani Estate being vested in the Commission free of encumbrances, and (b) she derived her title from the Commission,

and therefore free of any encumbrance. The position of the Defendant was four-fold. The first was that with the decree in the MB action being entered in 1963, the Plaintiff's father did not have title to the land thereafter. The second was that a decree is not an encumbrance for the purposes of the Law. The third was that the land is free of encumbrances only while it remains vested in the Commission. The fourth was that Section 27B of the Law applies with retrospective effect and therefore the mortgage has been revived, with the result that the Plaintiff derives her title subject to the mortgage.

The above arguments presented by the learned Presidents Counsel in order to support their respective position that title to the land referred to in the schedule to the plaint is with the party they represent, are reflective of the issues that were raised before the District Court. I shall therefore consider these arguments under six heads in addressing questions of law Nos. 2 – 11 and 13.

Does a mortgagor lose title to the land once the decree is entered?

The learned President's Counsel for the Defendant submitted that the Plaintiff's father lost his title to Manomani Estate upon the decree in the MB action being entered in 1963. If this Court were to agree with the said submission, it would mean that the Plaintiff's father did not have title to the land at the time the Law was enacted and hence, Manomani Estate could not be deemed to have vested with the Commission.

There is no dispute that the MB action filed in 1956 by the mortgagees was only a hypothecary action in which title to Manomani Estate was not in issue. A hypothecary action has been defined in Section 2 of the Mortgage Act to mean, "*an action to obtain an order declaring the mortgaged property to be bound and executable for the payment of the money due upon the mortgage and to enforce such payment by a judicial sale of the mortgaged property*;".

It was the position of the learned President's Counsel for the Plaintiff that the decree entered in the MB action on 18th December 1963 was only for the payment of money due upon the mortgage, and that, while no title passed to the judgment creditor upon such decree being entered, it is only when the property is sold in a public auction that the

purchaser acquires title to the land purchased and the mortgagor simultaneously loses title to the same.

This position is reflected in Section 289 of the Civil Procedure Code, in terms of which, "*The right and title of the judgment- debtor or of any person holding under him or deriving title through him to immovable property sold by virtue of an execution is not divested by the sale until the confirmation of the sale by the Court and the execution of the Fiscal's conveyance. But if the sale is confirmed by the Court and the conveyance is executed in pursuance of the sale, the grantee in the conveyance is deemed to have been vested with the legal estate from the time of the sale*." This provision is made applicable to mortgaged land directed to be sold in execution of a decree by Section 61(1)(a) of the Mortgage Act.

The learned President's Counsel for the Plaintiff buttressed his argument by stating further that an argument to the contrary, namely that title passes upon the decree being entered, is not tenable for the reason that the mortgagee may not be the person who purchases the property at the public auction.

A similar question arose for consideration in **M S Perera (Assistant Government Agent, Kandy) v Unantenna and Others** [54 NLR 457] where Chief Justice Alan Rose while observing [at pages 459 and 460], that R W Lee in **An Introduction to Roman Dutch Law** [(1953) 5th ed. Oxford University Press] makes no mention of a transformation or change of nature on the part of a mortgage after decree, stated as follows:

> "*Wille in Principles of South African Law (1937 edition, page 192) does not support the contention that a decree entered in a mortgage action has the effect of extinguishing the mortgage. According to him a sale in execution must follow the decree in order that the mortgage may be extinguished. In dealing with the law as to how by a decree of court a mortgage may be extinguished the learned author does not even suggest that the bare entering up of a decree in an action to enforce the mortgage has the effect of terminating it.*"

Accordingly, the Plaintiff's father was free to dispose of Manomani Estate subject to the mortgage and the decree until such time as the decree was executed, at which point the

purchaser at the public auction acquired title to the land upon the Fiscal's conveyance. I am therefore in agreement with the learned President's Counsel for the Plaintiff, and take the view that the entering of the decree in 1963 in the MB action did not take away the title that the Plaintiff's father had to Manomani Estate. Thus, when the Law came into force, title to Manomani Estate remained with the Plaintiff's father, subject to the mortgage and the decree.

Is a decree entered in a hypothecary action an encumbrance for the purposes of the Law?

Even though the issue whether a decree entered in a mortgage action is an encumbrance for the purposes of the Law was raised by the Defendant as Issue No. 11 and has been answered by the District Court in favour of the Plaintiff, the said issue has not been addressed by the High Court.

I have already referred to Section 3(2) of the Law in terms of which all agricultural land in excess of the ceiling was deemed to vest in the Commission. The effect of such vesting is reflected in Section 6 which provides that, "*Where any agricultural land is vested in the Commission under this Law, such vesting shall have the effect of* ***giving the Commission absolute title*** *to such land as* ***from the date of such vesting****, and* ***free from all encumbrances***." [emphasis added]

What existed at the time the Law came into force was the mortgage, and the decree in the MB action filed to enforce the mortgage, but with an appeal made in respect of the judgment from which the decree arose.

The learned President's Counsel for the Plaintiff submitted that, (a) on the date that the Law came into operation [26th August 1972], the legal owner of Manomani Estate was the Plaintiff's father, although encumbered by the mortgage which was the subject matter of the hypothecary action, (b) the Plaintiff's father was therefore required by the Law to declare his ownership in Manomani Estate, and (c) in view of Section 6, Manomani Estate vested in the Commission **free of all encumbrances**, including the mortgage and the decree entered in the MB action. It was therefore his position that although decree had been entered, given the fact that the MB action was only a hypothecary action, the mortgage was *very much alive* at the time the Law came into force, and that the mortgage and the decree are encumbrances for the purposes of Section 6.

The view that the mortgage as well as the decree are encumbrances over the land is supported by the meaning attached to "*incumbrance*" in **Misso v Hadjear** [19 NLR 277 at page 278] where De Sampayo, J stated that, "*In the largest sense it means any kind of burden on or diminution of the title, and in a narrower sense it is generally employed to indicate a mortgage or charge upon the property*."

In **Sarvanamuttu v Solamuttu** [26 NLR 385; at page 389] Bertram, CJ stated that a mortgage decree does 'affect the land' in the sense of it investing a person with an interest in the land or imposing or creating some charge, interest, or liability which would operate prejudicially to the title of any subsequent purchaser.

I am in agreement with the learned President's Counsel for the Plaintiff that as the MB action was only a hypothecary action, the mortgage retained its character without any transformation, even though decree had been entered, and that as at the date of the Law coming into force, the mortgage was very much in existence, although subject to the decree. I am therefore of the view that the aforementioned mortgage and decree are encumbrances on Manomani Estate and were subject to the provisions of the Law.

Does Section 6 of the Law apply only while land is deemed vested in the Commission?

Referring to Section 6, the learned President's Counsel for the Plaintiff submitted that the title to Manomani Estate vested in the Commission free of encumbrances and that Section 6 had the effect of completely **wiping out the mortgage and the decree**. He therefore submitted that with the mortgage and decree having been wiped out, Manomani Estate could not have been sold at a public auction in satisfaction of a decree which no longer had any legal validity and therefore no title could have passed to the person who bought Manomani Estate at the auction [in this case the mortgagees] and consequently no title passed to the Defendant.

I agree that with the application of Section 6, title to Manomani Estate vested in the Commission free of the mortgage suit and the decree, but subject to the caveat that it would continue to be so only so far as the land remained vested in the Commission or where the Commission alienated the land to a third party in terms of the Law. In other words, if Manomani Estate which was deemed vested in the Commission was to revert

back to the owner, either in its entirety or in part, such as for example upon the making of the statutory determination in terms of Section 19 or an Order in terms of Section 14(2), it would revert back to the owner with the mortgage and the decree that Manomani Estate was encumbered with on the day the Law came into operation. Thus, in such circumstances there is no wiping out of the mortgage. What takes place is that in terms of Section 6, Manomani Estate was deemed vested in the Commission free of all encumbrances and would continue to be so, with the encumbrance floating over Manomani Estate, only for it to be attached to the land once again in the event of Manomani Estate or part thereof being returned to the Plaintiff's father. This is clearly further borne out by the provisions of Section 27B introduced by the Land Reform (Special Provisions) Act, No. 39 of 1981, to which I will advert to later in this judgment.

Did the Plaintiff derive the title of her father or that of the Commission?

The learned President's Counsel for the Plaintiff submitted that with the coming into operation of the Law and with land over and above the ceiling deemed to have been vested in the Commission free of any encumbrance, the Plaintiff's father *lost his title* to the mortgaged property and was transformed into a statutory lessee. He therefore submitted that when the Plaintiff's father executed Deed No. 2085, he did so not as the owner of Manomani Estate which was subject to a mortgage but as the statutory lessee of a land that was no longer encumbered. He submitted further that with Manomani Estate being deemed vested in the Commission in 1972, the Plaintiff derived her title to 25 acres of Manomani Estate not from her father but from the Commission, and most importantly, free of any encumbrance.

I am unable to agree with this argument of the learned President's Counsel for the Plaintiff. Although in terms of Section 3(2), all agricultural lands in excess of the ceiling are deemed to have vested in the Commission on the day the Law came into operation by way of a legal fiction, as I have already stated, for the purposes of this case, that vesting is subject to:

(a) a statutory determination of the land area amounting to 50 acres that an owner would be allowed to retain as his entitlement in terms of the Law; and

(b) the release to the owner of land in excess of the ceiling in order that the said land be gifted to his children who are over the age of eighteen.

What the Commission did in terms of the Order made under Section 14(2) was grant approval to the owner to transfer land to his children, which is a further manifestation of the concept of the land being merely deemed vested in the Commission. In doing so, the Commission revived the title of the owner to that portion of land for which approval was being granted, while simultaneously removing his status as statutory lessee, thereby enabling the land be transferred to his children. This is reflected in the wording of Section 14(3), as well as by the fact that the Deed of Gift was executed by the Plaintiff's father and not by the Commission. Thus, I am of the view that the Plaintiff in this case derived her title from her father and not from the Commission.

Having said so, I must reiterate that the benefit of title vesting free of any encumbrances, as provided by Section 6, has only been conferred upon the Commission, and that when the Commission grants approval in terms of Section 14(2) for an inter-family transfer, the title that the beneficiaries of such transfer receive is not the unencumbered title of the Commission but the title of the person who owned the land at the time the Law came into force, including any encumbrance that may have existed at the time in respect of such land. Indeed, this is the process of 're-attachment' of an encumbrance that I have discussed earlier.

In other words, the Plaintiff derived her title to 25 acres of Manomani Estate from her father subject to the mortgage executed by her father and the decree in the MB action. To hold otherwise would mean that an encumbered title can be cleared of such encumbrances via the Law for the benefit of its owner, who could thereby evade his or her obligations and liabilities under a mortgage or any other encumbrance. This certainly would not have been the intention of the legislature when the Law was enacted, in spite of the apparent consensus that landowners losing vast tracts of land overnight be given certain concessions such as inter-family transfers of land over the stipulated ceiling.

The above position is confirmed by:

(a) the latter part of Section 12 of the Law, to which I shall advert; and

(b) Section 21(c) of the Law, in terms of which, "*Every statutory determination published in the Gazette under Section 19 shall inter alia specify any servitude or* ***encumbrance attaching to such agricultural land***." [emphasis added], which means that when the Commission makes a statutory determination, any encumbrance that existed over such land referred to in the statutory determination at the time the said land vested in the Commission, continues to hang over the owner.

Section 12(1)

The learned President's Counsel for the Plaintiff, whilst conceding that an injustice would be caused to mortgagees from the blanket suppression of all encumbrances on land vested in the Commission through the operation of Section 6, submitted that a mortgagee has been provided a solution by way of Section 12(1) of the Law and that the mortgagees ought to have pursued relief under this section.

Section 12(1) reads as follows:

> "*Where any agricultural land subject to a mortgage, … vests in the Commission under the provisions of this Law the mortgagee, … shall have a lien to the extent of his interest in such agricultural land on the compensation payable to the owner thereof and where such compensation is not sufficient to meet his claim, such mortgagee, … shall be entitled to enforce his rights against any land subject to such mortgage, … in the hands of the owner of the agricultural land vested in the Commission after the ceiling of agricultural land is applied to him*."

It is clear that in terms of Section 12(1), a mortgagee has a claim on the compensation that is payable to the mortgagor. However, this was not in issue before the District Court and therefore there is no evidence before this Court indicating whether compensation was in fact paid to the Plaintiff's father for the balance part of Manomani Estate that vested with the Commission. Although the said Section further provides that where such amount of compensation is not sufficient to meet the mortgagee's claim, the mortgagee can enforce his or her rights over the 50 acres of land that is released to the owner from the mortgaged land, this will not apply in the present case as no part of Manomani Estate remained with the Plaintiff's father.

I am in agreement with the learned President's Counsel for the Plaintiff that the mortgagees could have made a claim on the compensation paid to the Plaintiff's father but differ in holding that they were not obliged to do so, especially in view of the subsequent Order made in terms of Section 14(2) which had the effect of restoring the mortgage and the decree, and thereby the rights of the mortgagees over Manomani Estate.

Did Section 27B(1) apply with retrospective effect?

The necessity to consider the application of Section 27B, introduced by Section 8 of Act No. 39 of 1981, and forming the basis of the question of law raised by the learned President's Counsel for the Defendant, does not arise in view of the above conclusion that the title of the Plaintiff is subject to the mortgage and the decree. I shall nonetheless refer to the arguments of the parties not only for the sake of completeness but also because it reflects the intention of the legislature with regard to encumbrances where an Order is made under Section 14.

Section 27B(1) reads as follows:

> "***Where any agricultural land is transferred to any person in consequence of an order under section 14*** *or is alienated, or vested in, any person under paragraph (f) of section 22 or where any person is allowed to retain any agricultural land in consequence of a determination made under section 19,* ***such order****, alienation, vesting or determination, as the case may be,* ***shall have the effect of reviving, with effect from the date of such order****, alienation, vesting or determination, as the case may be,* ***any encumbrance which subsisted over that land on the day immediately preceding the date on which that land was vested in the Commission***." [emphasis added]

Section 27B(1) thus makes it clear that all encumbrances that existed on the day immediately preceding the day the Law came into operation, shall be revived in respect of lands to which an Order under Section 14 would apply, with effect from the date of such Order. Section 27B(1) supports my previous finding that any agricultural land over which there exists an encumbrance continues to be so encumbered when returned to the

hands of the owner to be retained or transferred to a child or parent, and is free of the encumbrance only when such land is in the hands of the Commission or is alienated by the Commission to a third party in terms of the Law.

It was the position of the learned President's Counsel for the Defendant that in terms of Section 27B(1) the mortgage that was executed over Manomani Estate on 1st February 1948 by Mortgage Bond No. 3514, and which mortgage stood suppressed while the land was deemed vested in the Commission, was revived when the Commission made its Order under Section 14(2) on 10th June 1974, with effect from such date. The learned President's Counsel for the Plaintiff however submitted that Section 27B(1) applies only in respect of an order made after Act No. 39 of 1981 was enacted into law and that Section 27B(1) does not apply with retrospective effect. He accordingly submitted that as the Order under Section 14(2) was made in June 1974 and Deed No. 2085, by which the Plaintiff derived her title, was executed in 1980, prior to Act No. 39 of 1981, the provisions of Section 27B has no application in this case.

I am attracted by the submission of the learned President's Counsel for the Plaintiff for two reasons. The first is that Act No. 39 of 1981 introduced detailed provisions that permitted land owners to make applications seeking approval to effect further inter-family transfers, in spite of the 3 month time limit imposed by the principal enactment for such applications. The second is that while Section 27B has been introduced by Section 8 of Act No. 39 of 1981, Section 16 of that Act only provides that, "*The amendments made to the principal enactment by section 2 (a), 12 and 15 of this Act shall be deemed for all purposes to have come into operation on the date of commencement of the principal enactment*."

I am however mindful that in **Jinawathie** [supra; at page 139] it was held that, "… *an encumbrance which subsisted over and in respect of the plaintiff-respondent's undivided shares in the larger land would, from and after the date on which P6 came into operation, be revived and attach to the land described in P6.*"

P6 is the statutory determination in **Jinawathie** and was dated 25th September 1974, and so it seems that the five Judge Bench of this Court in **Jinawathie** has considered, despite not explicitly spelling it out, that Section 27B does have retrospective operation. However,

this is not a matter that I wish to pronounce on today, as, for the purposes of the present case, I have already arrived at the conclusion that, independent of Section 27B, the Plaintiff derived her title from her father subject to the encumbrances attaching thereto.

Conclusion

Thus, the mortgage over Manomani Estate, effected in 1948, which was sought to be enforced through the MB action from 1956, which continued following the entering of the decree in 1963 until the introduction of the Law in 1972, and which stood suppressed while Manomani Estate was vested in the Commission, completed its full circle when the Order under Section 14(2) was made in 1974 in favour of the Plaintiff's father, thereby reviving the mortgage and the decree.

I am of the view that the title the Plaintiff acquired in terms of Deed No. 2085 was that of her father's and was therefore subject to the mortgage and the decree. With this Court having dismissed the appeal against the MB action in July 1974, and part of the land having been returned to the Plaintiff's father to be transferred to the Plaintiff and her sister, the mortgagees had every right to enforce the decree in respect of that part of the land, which was duly done in November 1983. Upon such execution of the decree, the Plaintiff lost her title to the 25 acres of land in Manomani Estate referred to in Deed No. 2085 and the Defendant simultaneously acquired title to a part of Manomani Estate, through Deed No. 1341.

I am therefore of the view that the Plaintiff had no title to the land referred to in the plaint when she instituted District Court Case No. 10650/L, while the Defendant had title to such land by virtue of Deed No. 1341. The Plaintiff is therefore not entitled to the relief prayed for in the plaint.

The questions of law are answered as follows:

(1) No.

(2) Even though the finding of the High Court that the Defendant acquired title prior to the Plaintiff is erroneous, the said finding has no bearing on the principal issues in this case.

(3) No.

(4) Even though the High Court has failed to consider this issue, the finding of the District Court on this question of law was in favour of the Plaintiff and regardless, such finding has no bearing on the principal issues to be decided.

(5) – (11) Even though the High Court has failed to examine the provisions of the Law, it has no bearing on the final outcome of this case for the reasons set out in this judgment.

(12) No.

(13) Yes.

The judgment of the District Court and the High Court are affirmed. This appeal is dismissed, without costs.

JUDGE OF THE SUPREME COURT

Buwaneka Aluwihare, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree.

JUDGE OF THE SUPREME COURT