

Supreme Court of Ceylon
No. 152 (Final) 1956

12, 1950
District Court, Colombo
No. 7184/L

207/1959

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

BETWEEN

THE ATTORNEY-GENERAL of Ceylon

..... *Defendant-Respondent-Appellant*

AND

R. B. HERATH of No. 52, Malabar Street, Kandy

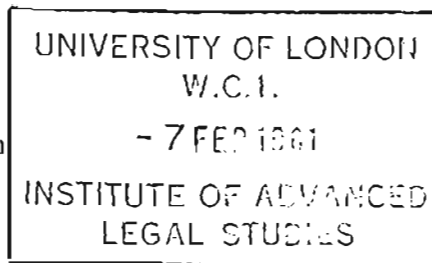
..... *Plaintiff-Appellant-Respondent*

P. B. ATTANAYAKE of Dumunumeeya, Hanguranketa

..... *Defendant-Respondent-Respondent*

RECORD
OF PROCEEDINGS

Supremo Court of Ceylon
No. 152 (Final) 1956



District Court, Colombo
No. 7184/L

50948

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BETWEEN

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..... *Defendant-Respondent-Appellant*

AND

R. B. HERATH of No. 52, Malabar Street, Kandy

..... *Plaintiff-Appellant-Respondent*

P. B. ATTANAYAKE of Dumunumecya, Hanguranketa

..... *Defendant-Respondent-Respondent*

RECORD OF PROCEEDINGS

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No. 1

Journal Entries

Journal Entries
3.5.54
to
25.8.58.

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of Kandy..... Plaintiff.

No. 7184/L

vs.

Class : IV

THE ATTORNEY-GENERAL of Ceylon

Amount : Rs. 10,000

and another Defendants.

Nature : Land

Procedure : Regular

10

JOURNAL

The 3rd day of May, 1954.

Mr. A. L. Gunasekara files appointment and Plaint.

Plaint accepted and summons ordered for 16.6.54.

Sgd._____,
Additional District Judge.

Summons issued on defendants 1 and 2 with Precept returnable
the day of 1954.

21.5.54

20 Mr. B. K. Billimoria, Proctor for 1st defendant tenders his
appointment as Proctor for the 1st defendant and moves that the
same be filed of record.

Appointment accepted. File papers.

Initld._____,
A. D. J.

16.6.54

Mr. A. L. Gunasekera for plaintiff.

Mr. B. K. Billimoria for 1st defendant.

Messrs. Samarasinghe and de Silva for 2nd defendant.

Summons served on 1st and 2nd defendants.

30

They are absent.

Vide Journal Entry dated 21.5.54 Proxy of 1st defendant filed.

Proxy of 2nd defendant filed.

Answer on 8.9.

Initld._____,
A. D. J.

8.9.64

Answer due. Filed by 2nd defendant.

1st defendant's answer filed.

Trial 11.3.

Intld. _____,
A. D. J.

14.2.55

Mr. Billimoria, Proctor for 1st defendant with notice to proctors for plaintiff and for 2nd defendant for 16.2.55 moves to allow him to amend the 1st defendant's answer as in motion—Amended answer filed. 10

Call case on 23.2.55—Vide Journal Entry dated 14.2.55

Intld. _____,
A. D. J.

14.2.55

With reference to the motion by the 1st defendant to amend his answer Mr. A. L. Gunasekera proctor for plaintiff moves that this case be called on 23.2.55 for consideration of the amendment and not on 16.2.55 as otherwise there will be insufficient time.

Proctors for 1st and for 2nd defendants consent. 20

Call on 23.2.55.

Intld. _____,
A. D. J.

17.2.55

Mr. A. L. Gunasekera, Proctor for plaintiff with notice to Proctor for defendants files list of witnesses and documents and moves for summons on them.

Issue summons.

Intld. _____,
A. D. J. 30

23.2.55

Mr. A. L. Gunasekera for plaintiff.

Mr. Billimoria for 1st defendant.

Vide Journal Entry. dated 14.2.55 Case called.

Mr. Gunasekera has no objection to a postponement of the trial. He says he will not be able to get ready for trial in view of the amended answer. He asks for costs of postponement which is rendered necessary by reason of the belated amendment of the 1st defendant's answer.

Question of costs will be considered at the trial.
 Take case off trial roll.
 Call on 11.3 for fixing trial date.

Intld. _____,
 A. D. J.

25.2.55

Summons issued on 1 witness by plaintiff.

11.3.55

10 Mr. A. L. Gunasekera for plaintiff instructing Messrs. C. E. S. Perera, Q.C., Samarawickrema and M. Perera.

Mr. B. K. Billimoria for 1st defendant.

Messrs. Samarasinghe and de Silva for 2nd defendant.

Vide Journal Entry dated 23.2.55 Case called to fix date of trial.
 Trial 26.7.

Intld. _____,
 A. D. J.

6.7.55

20 Proctor for plaintiff files additional list of witnesses and documents with notice to Proctors for 1st and 2nd defendants and moves for summons on them.

1. Allowed except on witness No. 4.

2. Re witnesses 1, 2 and 6 explain whether their personal attendance is necessary.

Intld. _____,
 A. D. J.

6.7.55

30 Proctor for plaintiff moves for an order to issue notice under Section 101 of the Civil Procedure Code on the Proctors for 1st and 2nd defendants to admit the genuineness of the documents mentioned in the motion.

Allowed.

Intld. _____,
 A. D. J.

7.7.55

Proctor for 1st defendant files list of witnesses and moves for summons on them.

Plaintiff's Proctor received notice.

1. File.

2. Cite.

40

Intld. _____,
 A. D. J.

8.7.55

Proctor for plaintiff files additional list of documents with notice to Proctors for 1st and 2nd defendants.

File.

Intld. _____,
A. D. J.

12.7.55

Notices issued on 2nd defendant's Proctor and 1st defendant.

Summons issued on 3 witnesses by 1st defendant.

Summons issued on 1 witness by plaintiff.

10

11.7.55

Mr. Billimoria, Proctor for 1st defendant moves to amend 1st defendant's answer by the addition of additional paragraph numbered 7 and files amended answer with notice to Proctor for plaintiff for 20.7.55.

Mention on 20.7.55.

Intld. _____,
A. D. J.

14.7.55

Proctor for plaintiff moves for an order on the Land Commissioner to issue a certified copy of the application made by P. B. Attanayake, (the 2nd defendant in this case) to the Land Commissioner under the Land Redemption Ordinance for the acquisition by the Crown of the lands called Waliwilakumbura and Huludorawatta situated at Hanguranketha and depicted as lots 1 to 6 in P. P. No. A. 1684 which said lands are the subject matter of this action.

20

He states that production of this document is necessary for the plaintiff's case.

Allowed.

Intld. _____,
A. D. J.

30

Copy issued.

Intld. _____

19.7.55

Summons issued on 1 witness by plaintiff.

20.7.55

Mr. A. L. Gunasekera for plaintiff.
 Mr. B. K. Billimoria for 1st defendant.
 Messrs. Samarasinghe and de Silva for 2nd defendant.
 Vide Journal Entry dated 11.7.55 Case called.
 Proctor for 1st defendant moves to amend answer.
 Amendment and additional para allowed.
 Trial date will stand.

Intld. _____,
 A. D. J.

10

22.7.55

Vide Journal Entry dated 14.7.55 Land Commissioner states that the application made by Mr. P. B. Attanayake (2nd defendant) is a confidential document coming under the provisions of Section 124 of the Evidence Ordinance and that he has decided to claim privilege in respect of this document. Copy of letter addressed to Mr. A. L. Gunasekera, Proctor, in reply to his application for a certified copy of the document in question is filed.

1. File.
2. Plaintiff's Proctor to note.

20

Intld. _____,
 A. D. J.

26.7.55

Mr. A. L. Gunasekera for plaintiff.
 Mr. B. K. Billimoria for 1st defendant.
 Messrs. Samarasinghe and de Silva for 2nd defendant.
 Vide Journal Entry dated 11.3.55 Trial. Vide proceedings.
 Proceedings filed.

Intld. _____,
 3/8

30

1.8.55

Mr. A. L. Gunasekera for plaintiff.
 Mr. B. K. Billimoria for 1st defendant.
 Messrs. Samarasinghe and de Silva for 2nd defendant.
 Order delivered in open court.
 Trial 1.12.55.
 Order filed.

Intld. _____,
 1.8.

31.10.55

Summons issued on 2 witnesses by plaintiff.

15.11.55

Summons issued on 3 witnesses by 1st defendant.

1.12.55

Mr. A. L. Gunasekera for plaintiff.

Mr. B. K. Billimoria for 1st defendant.

Messrs. Samarasinghe and de Silva for 2nd defendant.

Vide Journal Entry dated 1.8.55 Trial. Vide proceedings.

21.12.55

Proceedings filed. Further hearing on 27.1.56.

10

27.1.56

Mr. A. L. Gunasekera for plaintiff.

Mr. B. K. Billimoria for 1st defendant.

Messrs. Samarasinghe & de Silva for 2nd defendant.

Vide Journal Entry dated 1.12.55 Further hearing.

Vide proceedings

Judgment 7.2.56.

Proceedings filed.

Intld.

2.2.

20

P1-P27 filed

1D1-1D5 filed.

Intld.

30.1.

7.2.56

Mr. A. L. Gunasekera for plaintiff.

Mr. B. K. Billimoria for 1st defendant.

Messrs. Samarasinghe & de Silva for 2nd defendant.

Judgment delivered in open court.

30

Intld. _____,
A. D. J.

Judgment filed.

Intld.

7.2.

15.2.56

Mr. A. L. Gunasekera, Proctor for plaintiff-appellant files Petition of Appeal.

Filed.

Intld. _____,
A. D. J.

15.2.56

10 Mr. A. L. Gunasekera, Proctor for plaintiff-appellant states that the Petition presented by the plaintiff-appellant on 15.2.56 against the judgment of this Court delivered on 7.2.56 having been received by the said Court, he will on behalf of the plaintiff-appellant on the 21.2.56 at 10.45 in the forenoon or soon thereafter move to tender the sum of Rs. 200 as security for costs which may be incurred by each of the defendants-respondents in appeal in the premises.

Copy sent by registered post to the Proctor for the 1st defendant-respondent.

Proctors for 2nd defendant take notice.

He also moves for a paying-in-voucher for Rs. 12/- for appeal briefs.

- 20 1. Call case on 21.2.56 for security.
2. Issue paying-in-voucher for Rs. 200 each and Rs. 12/-.

Intld. _____,
A. D. J.

21.2.56

Mr. A. L. Gunasekera for plaintiff-appellant.

Mr. B. K. Billimoria for 1st defendant-respondent.

Messrs. Samarasinghe & de Silva for 2nd defendant-respondent.

Vide Journal Entry dated 15.2.56 Case called. Re security.

Security accepted.

Perfect bond.

- 30 Issue notice of appeal for 20.3.56.

Intld. _____,
A. D. J.

23.2.56

Mr. A. L. Gunasekera, Proctor for plaintiff-appellant tenders Bond to Prosecute.

Kachcheri Receipts for Rs. 400/- and Rs. 12/- and notice to appeal.

Vide Journal Entry dated 21.2.56 Issue notice of appeal for 20.3.56.

Intld. _____,
Asst. Secretary.

23.2.56

Notice of appeal sent to Fiscal to be served on the Proctor for 1st and 2nd respondents.

Intld.———,

22.2.56

Proctor for 1st defendant-respondent tenders application for typewritten copies.

1. File.

2. Issue paying-in-voucher for Rs. 15/-.

Intld.———,
A. D. J.

10

20.3.56

Mr. A. L. Gunasekera for plaintiff-appellant.

Mr. B. K. Billimoria for 1st defendant-respondent.

Messrs. Samarasinghe & de Silva for 2nd defendant-respondent.

Vide Journal Entry dated 21.2.56 Case called.

Notice of appeal served.

Forward record to Supreme Court in due course.

Intld.———,
A. D. J.

20

27.9.56

The Appeal Branch requests fees to be called from the following :—

Mr. A. L. Gunasekera . . . Rs. 48/-.

Mr. B. K. Billimoria for Rs. 120/-.

Messrs. Samarasinghe & de Silva . . . Rs. 60/-.

Call for fees by registered post.

Intld.———,
A. D. J.

Fees called for by registered post.

Intld.

2.10.

30

5.10.56

K. R. W No. 393 of 4.10.56 for Rs. 48/- filed.
13 098350

12.10.56

K. R. W No. 759 of 8.10 for Rs. 0/- filed.
13 098716

16.10.56

K. R. W No. 1018 of 10/10 for Rs. 120/- filed.
13 099075

25.10.56

Decree entered of record.

Intld. _____,
A. D. J.

7.11.56

Record forwarded to Supreme Court.

10

Intld. _____.

25.3.58

Registrar, Supreme Court, returns record with Supreme Court judgment.

Appeal is allowed and it is directed that decree be entered declaring the plaintiff-appellant entitled to the land and premises described in the schedule referred to.

It is further ordered that the plaintiff-appellant be restored to and quietd in possession of the said land and that the 2nd defendant-respondent be ejected therefrom.

20

And it is further ordered that the defendants-respondents do pay to the plaintiff-appellant his taxed costs both in Supreme Court and in the Court below.

File.

Intld. _____,
Actg. A. D. J.

No. 2.
Plaint of the
Plaintiff.
1.5.54.

No. 2

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52, Malabar Street, Kandy *Plaintiff.*

No. 7184/L

vs.

(1) THE ATTORNEY-GENERAL of Ceylon of Hultsdorp,
Colombo, (2) P. B. ATTANAYAKE of Dumunumeeya,
Hanguranketa *Defendants.*

On this 1st day of May, 1954.

The plaint of the Plaintiff above named appearing by Alfred Lionel Gunasekara and his Assistant Roland Maurice Karunaratne his Proctors state as follows :— 10

1. The 1st defendant resides within the Local Limits of the Jurisdiction of this Court.

2. The 1st defendant is the Attorney-General and sued in this action as representing the Crown.

3. On Deed No. 6032 dated 28th October, 1946, attested by A. M. K. Tillekeratne of Kandy, Notary Public, and by prescriptive possession the plaintiff was entitled to hold and possess the lands and premises described in the schedule hereto on payment of dues and/or performance of services to the Pathini Devale, Hanguranketha. The said lands and premises form part of the Kapu panguwa belonging to the said Pathini Devale, Hanguranketha. The said lands and premises are of the reasonable value of Rs. 10,000. 20

4. The Land Commissioner purported to acquire the said lands and premises on behalf of the Crown under the provisions of the Land Redemption Ordinance and on an order made under Section 36 of the Land Acquisition Act No. 9 of 1950 read with Section 3 (5) of the Land Redemption Ordinance officers of the Crown took possession of the said lands and premises from the plaintiff on or about 8th March, 1954. 30

5. The plaintiff states that the said lands and premises do not fall within any of the categories of lands that are liable to be acquired under the Land Redemption Ordinance and the Land Commissioner had no authority in law to acquire them and their purported acquisition and all steps and proceedings taken in respect thereof were void and ineffectual to vest title to the said lands or a right to possession of them on the Crown.

6. The plaintiff states that even if the said lands are liable to be acquired under the Land Redemption Ordinance the proceedings under the said Ordinance had commenced before the enactment of the Land Acquisition Act No. 9 of 1950 and the proceedings should have been continued in terms of the said Ordinance by a reference to the District Court and that the steps taken under the provisions of the Land Acquisition Act including the order under Section 36 thereof are bad and void.

10 7. By reason of the averments contained in the last two preceding paragraphs of this plaint, the Crown is not entitled to the said lands and premises or to the possession thereof and its taking possession and continuance in possession is a denial of the plaintiff's rights in the said lands and premises.

8. The Crown has placed the 2nd defendant in possession of the said lands and premises under a permit of licence to occupy it and the 2nd defendant is in possession of the same at the instance of and under the Crown. The said possession is unlawful and in derogation of the plaintiff's rights in the said lands and premises.

20 9. Due notice of this action as required by law has been given to the 1st defendant.

Wherefore the plaintiff prays :—

- (a) for declaration of title to the said lands and premises,
- (b) in addition to or in the alternative to (a) for a declaration of his right to possession of the said lands and premises,
- (c) that the plaintiff be restored to and quieted in the possession thereof,
- (d) for ejection of the (2nd) defendant from the said lands and premises,
- (e) for costs,
- 30 (f) for such other and further relief as to this Court shall seem meet.

(Sgd.) A. L. GUNASEKERA,
Proctor for Plaintiff.

THE SCHEDULE ABOVE REFERRED TO

1. All that field called Walliwelakumbura of five pelas paddy sowing extent situate at Hanguranketha in Diyatilake Korale of Udabewaheta in the District of Nuwara Eliya, Central Province, and bounded on the East by the stone fence of Mr. Soysa's garden, South by Ela separating Huludorawatte, West by Gansabawa
40 Road now Road Committee Road and North by stone fence of Potgul Vihare.

2. All that land called Huludorawatte of one pela paddy sowing in extent situated at Dumunumeeya in Diyatilake Korale aforesaid and bounded on the East by the stone fence of Mr. Soysa's land, South by the stone fence of the Gederawatte and Devale Iura, West by Gansabawa Road and North by Walliwalakumbura Ela together with the buildings and everything thereon.

And which said lands are also described as lots 1, 2, 3, 4, 5 and 6 in Preliminary Plan No. A 1684 ; land called Walliwelakumbura (lots 1-3) and Huludorawatta (lots 4, 5, 6) in extent Acres 2. Roods 1. Perches 27.

10

(Sgd.) A. L. GUNASEKERA,
Proctor for Plaintiff.

Settled by :

(Sgd.) G. T. SAMARAWICKREMA.

(Sgd.) CYRIL E. S. PERERA, Q.C.
Advocates.

Answer of the 1st Defendant

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52 Malabar Street, Kandy *Plaintiff.*No. 7184/Land *vs.*(1) THE ATTORNEY-GENERAL of Ceylon of Hultsdorf,
Colombo, (2) P. B. ATTANAYAKE of Dumunumecya,
Hangurankota *Defendants.*

On this 8th day of September 1954.

10 The answer of the 1st defendant above named appearing by
Behram Kaikhushroo Billimoria and his assistant Abdul Hameed
Mohamed Sulaiman his Proctors states as follows :—

1. This defendant admits the averments in paragraphs 1 and 2
of the plaint.

2. Answering paragraph 3 of the plaint this defendant admits
that the said lands form part of the Kapu Panguwa of the
Pathini Devale but denies that they are of the value of Rs.
10,000.

20 3. Answering paragraph 4 of the plaint this defendant states that
on the determination of the Land Commissioner acting on behalf
of the Crown to acquire the said lands the Assistant Government
Agent, Nuwara Eliya, as the acquiring officer for the Crown took
steps to acquire the said lands, possession of which was taken as
averred in the said paragraph of the plaint.

4. This defendant denies the allegations in paragraphs 5, 6
and 7 of the plaint.

30 5. Answering paragraph 8 of the plaint this defendant states
that the 2nd defendant is in possession of the said land on a permit
issued by the Crown but denies otherwise the allegations in the
said paragraph.

6. This defendant admits receipt of the notice referred to in
paragraph 9 of the plaint.

7. Answering further this defendant states that (a) the acquiring
officer above designated made his decision on the claim of the
plaintiff in terms of section 10 (1) (a) of the Land Acquisition Act,
No. 9 of 1950 which said decision became final in terms of section
10 (5) of the said Act, (b) the said acquiring officer made his award
of compensation on the said acquisition in terms of section 16 of

the said Land Acquisition Act, but the plaintiff made no appeal against such award as provided in the said Land Acquisition Act, which award thereby became final binding and conclusive as against the plaintiff who cannot therefore have or maintain this action.

8. As matters of law this defendant states :

(a) that this Court has no jurisdiction to hear or determine this action,

(b) that the plaint does not disclose and the plaintiff does not have any cause of action against this defendant and that plaintiff cannot therefore have or maintain this action. 10

Wherefore this defendant prays :

(a) that plaintiff's action be dismissed,

(b) for costs, and,

(c) for such other or further relief as to this Court shall seem meet.

(Sgd.) B. K. BILLIMORIA,
Proctor for 1st Defendant.

Settled by :

(Sgd.) L. JAYARATNE.
Crown Proctor.

Answer of the 2nd Defendant

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52, Malabar Street, Kandy Plaintiff.

No. 7184/Land vs.

(1) THE ATTORNEY-GENERAL of Ceylon of Huftsdorf,
Colombo, (2) P. B. ATTANAYAKE of Dumunumeeya,
Hanguranketa Defendants.

On this 8th day of September, 1954.

10 The answer of the 2nd defendant above named appearing by Nicol Henry Samarasinghe and Ruwanpura Gartin de Silva, carrying on business in Colombó under the name and style and firm of "Samarasinghe & de Silva" Proctors states as follows:—

1. This defendant admits the averments contained in paragraphs 1 and 2 of the plaint.

2. This defendant while admitting that the land in question forms part of Kapu Panguwa of the Pathini Devale, Hanguranketha, denies that the same is of the value of Rs. 10,000. He is unaware of the truth of the other averments contained therein.

20 3. Answering paragraph 4 of the plaint this defendant states that the land was acquired by the Crown and possession taken as averred therein.

4. This defendant denies the averments contained in paragraphs 5, 6 and 7 of the plaint.

5. Answering paragraph 8 of the plaint this defendant admits that he is in possession of the said land on a permit issued by the Crown but denies the rest of the averments therein contained.

6. This defendant is not aware of the truth or otherwise of the averments contained in paragraph 9 of the plaint.

30 7. Further answering this defendant states that so far as he is aware the land the subject matter of this action was acquired by the Crown under the provisions of the Land Acquisition Act, No. 9 of 1950, all proper steps therefor having been taken by the acquiring officer, whose decision under section 10 (1) (a) and award under section 16 of the said Act are now final and conclusive and binding on the plaintiff, who cannot therefore have and maintain this action.

8. As matters of law this defendant pleads that (a) this Court has no jurisdiction to hear and determine this action,

(b) The decree in D. C. Kandy No. L 362 operates as a bar to the plaintiff's maintaining this action.

Wherefore this defendant prays :—

(a) that plaintiff's action be dismissed.

(b) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) SAMARASINGHE & DE SILVA,
Proctors for 2nd Defendant. 10

Settled by :

(Sgd.) T. P. P. GUNATILEKE,
Advocate.

Amended Answer of the 1st Defendant

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52, Malabar Street, Kandy *Plaintiff.*

No. 7184/Land

vs.(1) THE ATTORNEY-GENERAL of Ceylon, (2) P. B. ATTA-NAYAKE of Dumunumceya, Hanguranketa *Defendants.*

This 8th day of September, 1954.

10 The amended answer of the 1st defendant above named appearing by Behram Kaikhushroo Billimoria and his assistant Abdul Hameed Mohamed Sulaiman, his Proctors, states as follows :—

1. Answering paragraph 1 of the plaint this defendant while admitting that the present holder of the office of Attorney-General resides in Colombo, denies that this Court is thereby vested with jurisdiction to hear and determine this action.

2. Answering paragraph 3 of the plaint, this defendant admits that the said lands form part of the Kapu Panguwa of the Pathini Devale but denies :

(a) that they are of the value of Rs. 10,000·00,

20 (b) that the Pathini Devale was at any material date the "owner" of the said lands within the meaning of that term as used in the Land Redemption Ordinance.

3. (a) Answering paragraphs 4, 5, 6 and 7 of the plaint this defendant denies all and singular the averments therein save and except as hereinafter expressly admitted.

30 (b) Further answering paragraphs 4, 5, 6 and 7 of the plaint this defendant states that upon a determination by the Land Commissioner to acquire the said lands for the purposes of the Land Redemption Ordinance, the Minister on the 10th day of May, 1951, made a written declaration under Section 5 (1) of the Land Acquisition Act, No. 9 of 1950 (read with section 3 (5) of the Land Redemption Ordinance as amended by section 62 of the said Act) that such land is needed for a purpose which is deemed to be a public purpose and will be acquired under the Act. The said declaration was published and exhibited in accordance with the said section 5 (1) and the directions of the Minister.

(c) The acquiring Officer for Nuwara Eliya District thereupon took proceedings for the acquisition of the said lands in accordance with law. The order of the Minister under section 36 of the Land Acquisition Act was published in *Government Gazette* No. 10,634 of 29th January, 1954.

4. Answering paragraph 8 of the plaint this defendant states that the 2nd defendant is in possession of the said land on a permit issued by the Crown but denies otherwise the allegations in the said paragraph.

5. This defendant admits receipt of the notice referred to in paragraph 9 of the plaint. 10

6. Further answering this defendant states :

(a) that the lands referred to in the plaint and acquired by the Crown fell within the description of lands which are liable to be acquired under the Land Redemption Ordinance ;

(b) that in any event, the declaration made by the Minister Under section 5 (1) of the Land Acquisition Act (read with section 3 (5) of the Land Redemption Ordinance) is conclusive proof that the said lands are needed for the purpose which is deemed to be a public purpose ; 20

(c) that accordingly it is not open to the plaintiff to canvass in these proceedings the question whether the said lands fall within the categories of land which are liable to acquisition under the Land Redemption Ordinance ;

(d) that title to the said land was vested absolutely in the Crown upon the publication of the order under section 36 of the Land Acquisition Act, No. 9 of 1950 read with Section 3 (5) of the Land Redemption Ordinance. ;

(e) that unless and until the said order under Section 36 is quashed or set aside in appropriate proceedings in an appropriate Court the plaintiff is not entitled to a declaration of title or to ejection of the Crown and its agents ; 30

(f) that in any event the averments in the plaint do not entitle the plaintiff to relief claimed in the prayer to the plaint.

7. (a) The plaintiff sued the Land Commissioner and the Assistant Government Agent, Nuwara Eliya in action No. L. 3632 of the District Court of Kandy for a declaration that the lands described in the plaint in this action are not liable to be acquired under the provisions of the Land Redemption Ordinance and for an injunction restraining the said Assistant Government Agent from proceeding with the acquisition of the said lands. 40

(b) The said action was dismissed with costs.

(c) This defendant pleads that the decision in the said case is Res Adjudicata of the matters in issue in the present action between the plaintiff and the Crown, and that accordingly the plaintiff cannot maintain this action against the Crown.

Wherefore this defendant prays :

- (a) that plaintiff's action be dismissed ;
- (b) for costs ; and
- (c) for such other or further relief as to this Court shall seem meet.

10

(Sgd.) B. K. BILLIMORIA,
Proctor for 1st Defendant.

Settled by :

(Sgd.) V. TENNEKOON,
Crown Counsel.

Amended Answer of the 1st Defendant

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52, Malabar Street, Kandy *Plaintiff.*

No. 7184/L

vs.

(1) THE ATTORNEY-GENERAL of Ceylon, (2) P. B. ATTA-NAYAKE of Dumunumeeya, Hanguranketa *Defendants.*

This 8th day of September, 1954.

The amended answer of the 1st defendant above named appearing by Behram Kaikhushroo Billimoria and his assistant Abdul Hameed Mohamed Sulaiman, his Proctors states as follows :— 10

1. Answering paragraph 1 of the plaint this defendant while admitting that the present holder of the office of Attorney-General resides in Colombo denies that this Court is thereby vested with jurisdiction to hear and determine this action.

2. Answering paragraph 3 of the plaint this defendant admits that the said lands form part of the Kapu Panguwa of the Pathini Devale but denies :

(a) that they are of the value of Rs. 10,000.00 ;

(b) that the Pathini Devale was at any material date the "owner" of the said lands within the meaning of that term as used in the Land Redemption Ordinance. 20

3. (a) Answering paragraphs 4, 5, 6 and 7 of the plaint this defendant denies all and singular the averments therein save and except as hereinafter expressly admitted.

(b) Further answering paragraphs 4, 5, 6 and 7 of the plaint this defendant states that upon a determination by the Land Commissioner to acquire the said lands for the purposes of the Land Redemption Ordinance, the Minister on 10th day of May, 1951 made a written declaration under section 5 (1) of the Land Acquisition Act, No. 9 of 1950 (read with section 3 (5) of the Land Redemption Ordinance as amended by section 62 of the said Act) that such land is needed for a purpose which is deemed to be a public purpose and will be acquired under the Act. The said declaration was published and exhibited in accordance with the said section 5 (1) and the directions of the Minister. 30

(c) The acquiring officer for Nuwara Eliya District thereupon took proceedings for the acquisition of the said lands in accordance

with law. The order of the Minister under section 36 of the Land Acquisition Act was published in *Government Gazette* No. 10,634 of 29th January, 1954.

4. Answering paragraph 8 of the plaint this defendant states that the 2nd defendant is in possession of the said land on a permit issued by the Crown but denies otherwise the allegations in the said paragraph.

5. This defendant admits receipt of the notice referred to in paragraph 9 of the plaint.

10 6. Further answering this defendant states :

(a) that the lands referred to in the plaint and acquired by the Crown fell within the description of lands which are liable to be acquired under the Land Redemption Ordinance;

(b) that in any event, the declaration made by the Minister under section 5 (1) of the Land Acquisition Act (read with section 3 (5) of the Land Redemption Ordinance) is conclusive proof that the said lands are needed for a purpose which is deemed to be a public purpose ;

20 (c) that accordingly it is not open to the plaintiff to canvass in these proceedings the question whether the said lands fall within the categories of land which are liable to acquisition under the Land Redemption Ordinance ;

(d) that title to the said land has vested absolutely in the Crown upon the publication of the order under section 36 of the Land Acquisition Act No. 9 of 1950 read with section 3 (5) of the Land Redemption Ordinance ;

30 (e) that unless and until the said order under section 36 is quashed or set aside in appropriate proceedings in an appropriate Court the plaintiff is not entitled to a declaration of title or to ejectment of the Crown and its agents ;

(f) that in any event, the averments in the plaint do not entitle the plaintiff to the relief claimed in the prayer to the plaint.

Wherefore this defendant prays :

(a) that plaintiff's action be dismissed ;

(b) for costs ; and

(c) for such other or further relief as to this Court shall seem meet.

(Sgd.) B. K. BILLIMORIA,
Proctor for 1st Defendant.

40

Settled by :

(Sgd.) _____,
Crown Counsel.

Issues Framed

D. C. 7184/L

26.7.55.

Mr. Advocate Cyril E. S. Perera with Mr. Advocate G. T. Samarawickreme instructed by Mr. A. L. Gunasekera for plaintiff.

Mr. Advocate B. Tennekoon, C.C., instructed by Mr. B. K. Billimoria for 1st Defendant.

Mr. Advocate T. P. P. Goonetilleke instructed by Messrs. Samarasinghe and de Silva for 2nd defendant.

Issues suggested by Mr. Perera—

10

1. Do the lands and premises described in the schedule to the plaint form part of the Kapu Panguwa belonging to the Pathini Devale, Hanguranketa ?

(This is admitted by the defendants.)

2. Was the plaintiff entitled to the possession of them on Deed No. 6032 of 28th October, 1946 ?

3. Did the Land Commissioner purport to acquire the said lands for the Crown under the Land Redemption Ordinance and Land Acquisition Act as pleaded in paragraph 4 of the plaint ?

4. Did the Crown take possession of the said lands on 8th March, 1954 ? 20

5. Do the said lands fall within the categories of lands liable to be acquired under the Land Redemption Ordinance ?

6. If not are all the steps and proceedings taken in respect thereof void and ineffectual to vest title in the said lands or a right of possession of them in the Crown ?

7. Even if the said lands are liable to be acquired under the Land Redemption Ordinance were the continuation of proceedings begun under the Land Redemption Ordinance under the Land Acquisition Act bad and illegal and void as pleaded in paragraph 6 of the plaint ? 30

8. If the proceedings under the Land Redemption Ordinance or the continuation of them under the Land Acquisition Act are void and ineffectual is the plaintiff entitled to a declaration that he is entitled to the possession of the said lands ?

9. Is the plaintiff entitled to a writ of possession against the defendants and their ejectment ?

Mr. Tennekoon suggests—

10. Is the plaintiff the owner of the lands described in the schedule to the plaint ?

11. If issue 10 is answered in the negative is the plaintiff entitled to a declaration in terms of paragraph (a) of the prayer ?

12. (a) Does either of the defendants reside within the jurisdiction of this Court ?

(b) If not, has this Court jurisdiction to hear the case ?

10 13. Did the Minister on or about 10th May, 1951 make a declaration under section 5 sub-section 1 of the Land Acquisition Act read with Section 3 sub-section 5 of the Land Redemption Ordinance ?

14. If issue 13 is answered in the affirmative is it open to the plaintiff to challenge the validity of the acquisition on the grounds contained in paragraph 5 of the plaint ?

15. Were the lands described in the plaint needed for a public purpose ?

16. If issue 15 is answered in the affirmative was the Crown acting contrary to law in proceeding to acquire the said land ?

20 17. Was an order under section 36 of the Land Acquisition Act published in respect of the lands described in the schedule to the plaint ?

18. If issue 17 is answered in the affirmative has title to the said lands vested absolutely in the Crown ?

19. Did the Crown take possession of the land referred to in the plaint in pursuance of section 36 of the Land Acquisition Act ?

20. If issue 19 is answered in the affirmative is plaintiff entitled to a possessory decree ?

(The averments in paragraphs 7 (a) and 7 (b) of the answer are admitted by the plaintiff.)

30 21. Is the decision in D. C. Kandy L. 3632 res judicata in regard to issue 5 ?

Mr. Goonetilleke raises no issues.

Mr Perera objects to issues 15 and 16.

Mr. Tennekoon withdraws these issues.

Issues 15 and 16 are deleted.

Mr. Tennekoon moves that issues 12 (a) and 12 (b) be tried first as it goes to the root of the case.

I think these issues may be tried first.

Mr. Tennekoon addresses Court. He states that the 2nd defendant resides in Hanguranketa which is in the Kandy District,

He refers to paragraph 1 of the plaint. Mr. Tennekoon says that he concedes that the present holder resides in Colombo and that his office is in Colombo. He refers to section 456, 456 (2) and 457 Cap. 31. He refers to section 25 of the Code. He submits that the Attorney-General is the agent of the Crown. The cause of action in this case is not against the Attorney-General, the defendant is the Crown.

Mr. Goonetilleke addresses Court. He supports the submission of Crown Counsel.

Mr. Perera addresses Court. He submits that if one of the 10 defendants reside within the jurisdiction of the Court that is sufficient. He refers to sections 456, 457, 461 and 463 Cap. 31.

Mr. Tennekoon replies. Refers to section 26 of the Code. He cites 16 N. L. R. 161 at 179.

Order 1/8/55.

(Sgd.) _____,
A. D. J.

Order regarding Jurisdiction

ORDER

The land in respect of which this action is brought is situate, and the 2nd defendant resides outside the local limits of the jurisdiction of this Court.

The only reason why the action is filed here is because the 1st defendant named in the plaint is the Attorney General.

10 It is submitted for the 1st defendant that this Court has no Jurisdiction.

Crown Counsel argues that Plaintiff's cause of action is against the Crown and since the Crown cannot be said to have any residence the plaintiff should file his action in the Court on which Jurisdiction is conferred by sub-sections (b) (c) and (d) of Section 9 of the Civil Procedure Code.

20 It is true that the " Crown " as such has no residence. But for the purposes of legal procedure it is laid down by Section 456 of the Code that all actions against the Crown shall be instituted against the Attorney General. Under Section 457 the original summons must always be served on him.

The Attorney General therefore becomes a " party " to the case just like any other party.

In this action he is the 1st defendant and the provisions of Section 9 Sub-Section (a) " where a party defendant resides " would apply.

It cannot be denied that his office is in Colombo and the Attorney General functions as such in Colombo.

I am of opinion that this Court has jurisdiction and would answer the issues submitted for preliminary decision as follows :—

12 (a) Yes.

30 12 (b) Does not arise.

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

1st August, 1955.

Addresses to Court

D. C. 7184/L

1.12.55

Mr. Advocate Cyril E. S. Perera with Mr. Advocate G. T. Samarawickreme instructed by Mr. A. L. Gunasekera for plaintiff.

Mr. Advocate Tennekoon, C. C., with Mr. Advocate Ian Wikramanayake, C. C., instructed by Mr. B. K. Billimoria for 1st defendant Attorney General.

Mr. Advocate T. P. P. Goonetilleke instructed by Messrs. De Silva & Mendis for 2nd defendant. 10

It is admitted that the 2nd defendant was a Paraveni Nilakaraya and also that the plaintiff became Paraveni Nilakaraya after his purchase.

Issue 4 is admitted i.e. that the Crown took possession of the lands on 8th March 1954.

It is admitted that the 2nd defendant made an application to the Land Commissioner on 6th July 1945 for the redemption of the two lands mentioned in the schedule to the plaint.

It is not disputed that the Land Commissioner being satisfied that the lands fell within the description set out in schedule 3 (1) (b) of the Land Redemption Ordinance 61 of 1942 decided to acquire these two lands on or about 20th March 1949. 20

(Adjourned for lunch)

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

1.12.55

After Lunch

It is agreed between the parties that the documents be marked without formal proof.

Mr. Perera marks the following documents. 30

Notice dated 14th March 1947 issued under Section 71 of the Land Redemption Ordinance 61 of 1942—P1.

Letter by plaintiff to Assistant Land Commissioner dated 22nd March 1947—P2.

Notice of survey of the land dated 16th Jan. 1950—P3.

The Notice was sent by the Government Surveyor.

Letter dated 28th Feb. 1950 by the plaintiff to the Land Commissioner—P4.

The Land Commissioner's letter to the plaintiff dated 24th March 1950—P5

Letter by the Land Commissioner dated 21st June 1950—P6.

Two letters dated 21st December 1946—P7 and P8.

Mr. Perera states that P7 and P8 are produced merely to prove that they are Paraveni Nilakarayas.

Letter dated 15th November 1950 by the plaintiff to the Land Commissioner—P9.

Notice dated 30 August 1951—P10.

10 The annexure referred to in P10 dated 15th August 1951—P11.

Letter dated 12th Jan. 1953 from the Asst. Government Agent Nuwara Eliya to the plaintiff—P12.

Notice dated 12th Jan. 1953—P13.

Notice of award under Section 60 dated 19th March 1953—P14.

The award under Section 60 referred to in P14 dated 19th March 1953—P15.

Letter from the D. R. O dated 8th March 1950 intimating that possession has been taken over—P16.

20 Registered letter dated 23rd March 1954 from the A. G. A. Nuwara Eliya to the plaintiff requesting a receipt for a voucher—P17.

Annexure referred to P17 is marked P18. The annexure is the voucher.

Letter dated 19th Feb. 1954 by the plaintiff to the Land Commissioner—P19.

The Land Commissioner's reply dated 27th Feb. 1954—P20.

The deed No. 6032 of 29th October 1946 pleaded by the plaintiff—P21. According to P21 the plaintiff purchased from one Solomon Sumanaweera.

30 The plaint dated 23rd June 1952 and amended answer of 8th July 1953 in D. C. Kandy L/3632—P22.

Decree Nisi dismissing the plaintiff's action in that case D. C. Kandy L/3632 dated 13th October 1953—P23. Mr. Perera states that in that case plaintiff asked for a restraining injunction that the lands be not acquired.

Journal entries in D. C. Kandy L/3632 from the 21st Oct. 1953 to 26th Oct. 1953—P24.

Mr. Tennekoon, Crown Counsel, marks the following documents :—

40 The declaration made by the Minister dated 10th May 1951—1D1. He submits that the declaration is made under Section 5 (1) of the Land Acquisition Act as amended by the Land Redemption Ordinance.

No. 9.
Addresses to
Court.
1.12.55—contd

No. 9.
Addresses to
Court.
1.12.55—*contd.*

He marks as 1D2 an extract from the *Government Gazette* in which that same declaration is published. *Gazette* No. 10,285 of 24th August 1951. 1D1 is published in that *Gazette* notification.

The order under Section 36 of the Land Acquisition Act dated 19th January 1954—1D3.

Mortgage Bond No. 25814 of 26th May 1926 mortgaged by the 2nd defendant to one D. Allis Perera 1D4.

Deed of Transfer No. 1357 of 5th March 1931 a transfer by the 2nd defendant to Allis Perera the mortgagee of the same land in satisfaction of the mortgage debt—1D5.

10

Mr. Goonetilleke does not mark any documents.

Mr. Perera marks the following further documents.

Deed No. 1566 of 7th Feb. 1945—P25.

He says that the vendor is one Premawathie Gunasekera.

Deed No. 2332 of 30th October 1942—P26. The vendor on this deed is Alwis Perera Appuhamy.

Deed No. 1112 of 9th December 1909 which is in favour of the 2nd defendant from Appuhamy Kapurala and his wife—P27.

(Mr. Goonetilleke wants it noted that Athanayaka Mudiyanseleage Punchibanda Kapurala is the same as the 2nd defendant who is described as P. B. Attanayaka in this case.)

20

Mr. Perera says that it will be useful to note the order of the documents as P27, 1D5, P26, P25, and P21.

Mr. Tennekoon addresses Court.

He draws the attention of Court to the written law under which this acquisition took place.

He refers to Ordinance 61 of 1942 that is the Land Redemption Ordinance as amended by Ordinance 62 of 1947. He reads section 3 (b) of the Ordinance and says that here the relevant documents are 1D4 and 1D5.

30

He reads section 3 (4) and 3 (5).

He submits that that section had also been amended by reason of the fact that the Land Acquisition Act repealed that section and points to the schedule to the Land Acquisition Act. He submits that under sub-section 5 of the amendment the acquisition will be conducted under the Land Acquisition Act as amended by the First Schedule. Now the first schedule itself has been completely replaced. This refers to the document 1D1. Mr. Tennekoon reads sub-section 2 of the Act. These two sub-sections are actually

substitutions for the original sub-sections 1 and 2 in the Land Acquisition Act. He refers to Section 5 of the Land Acquisition Act. The publication under section 5 (3) is the document 1D2. He states that the ordinary proceeding for acquisition is then taken and under section 36 an order is published which vests title in the Crown. The order under section 36 is referred to in 1D3. These are briefly the statutory steps which were taken in regard to this land.

No. 2.
Addresses to
Court.
I. 12. 55—contd.

10 It will be seen from the plaint the plaintiff's position is that the temple is the owner but that he is entitled to possession. Counsel refers to the prayer in the plaint. This action therefore boils down to a simple possessory action. In order to entitle him to a possessory decree it is well known that he must establish possession for a year and a day before ouster. He must come to Court within a year and a day of ouster, which of course he has done. The Crown took possession on 8th March 1954 and the plaint is dated somewhere in September 1954. Plaintiff is not entitled to a possessory decree for the reason that there is no evidence that he was in possession before the Crown took over. There is no evidence as to who was in possession on the day on which the Crown took possession. With regard to issue 5 the 2nd deft was in fact and in law the owner and it was mortgaged by the owner and is transferred by the owner as shown by deeds 1D4 and 1D5. He cites 23 N. L. R. 155. It would appear that all the incidents of ownership are in the nilakaraya who is referred to as the tenant. He refers to a parallel relationship referred to in *Lee page 131*. In regard to the question of his earlier submission on possessory action he cites 15 N. L. R. 297.

30 With regard to issue 7 he refers to sections 5 sub-sections 1, 2 and 3 of the Land Acquisition Act. There was an admission that the Land Commissioner decided to acquire this land in 1949. The amendment to the Land Redemption Ordinance was the Land Acquisition Act which came into force on 9th March 1950. The position of the plaintiff is that the Land Commissioner having decided prior to the amendments to acquire the land, he could continue proceedings to acquire only if at all under the Land Redemption Ordinance and not under the Land Acquisition Act. Once the declaration under section 5 (1D2) was made, the amendments are merely procedural. He cites Maxwell 7th Edn. page 194. He submits that this is an amendment in regard to procedure and that procedural amendments apply even to pending matters and the new procedure can be adopted *in toto*. He submits that under the new procedure the land can be acquired although the decision was in 40 1949.

(Further hearing on 27/1/56)

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

27/1/56.

No. 9.
Addresses to
Court.
25.1.56—contd.

Appearances as before.

Mr. Tennekoon, C. C., addresses Court :

He refers to section 3 sub-section 1 (b) of the Land Redemption Ordinance No. 61 of 1942 as amended by Ordinance 62 of 1947 ; it is on this section that the Land Commissioner acquired the land. He says the mortgage by the owner is 1D4 and the transfer by the owner is 1D5. Pltff's case is that the 2nd deft is not the owner and that the temple is the owner. Mr. Tennekoon submits that the Paraveni Nilakaraya is the owner. He cites 19 N. L. R. 361 at 363 and 366. 26 C. L. W. 1 at 3. He submits that once the Land Commissioner is satisfied under Section 3 (1) (b) that the land was mortgaged or transferred by the owner then he has the power to acquire even if it can be shown that it was not in law mortgaged or transferred. Any error on the part of the Land Commissioner can be corrected only by an extraordinary writ of the Supreme Court and not by the District Court. He also refers to Section 3 (4). He cites 1954 3 A. E. R. 449 at 452, 453. He says that the decision of the Land Commissioner under Section 3 (1) (b) remains final until it is quashed by the Supreme Court. There is no evidence at all that the plff had any possession and he cannot therefore ask for a declaration of his right to possess as prayed for at paragraph (b) of the plaint. He cannot ask for a declaration of title as owner as prayed for in paragraph (a) without first Establishing that the 2nd deft is the owner which he now denies.

With regard to Issue 7 at first after the decision under 61 of 1942 by the Land Commissioner he had to take steps under the Land Acquisition Ordinance Chapter 203. That was the position up to 1950, vide Section 3 (5) of the Land Redemption Ordinance. In 1950 Chapter 203 was repealed by the Land Acquisition Act, 9 of 1950, the schedule to that amended the Land Redemption Ordinance 61 of 1942. He refers to 1D1 and 1D2.

Maxwell on interpretation of Statutes 7th Ed. page 195, Craies 370 and 371, With regard to Issue 13 he points to 1D2. He submits that once a declaration under Section 5 is published it is conclusive evidence that it is required for a public purpose and no one can challenge that, sub-section 5 of the Land Redemption Ordinance as amended by schedule at page 33 in 9 of 1950. 1919 Appeal cases 646. 4 C. W. R. 251.

He refers to section 36 of the Land Acquisition Act and 1D3 in regard to Issue 17. page 37 of the schedule. With regard to Issue 21 he refers to P22 and P23. The defts were the Land Commissioner and the Assistant Government Agent. The matters he puts in issue are identical with those in the present claim. That action was dismissed as the plff was absent. He submits that that decision is *res judicata* in regard to Issue 5 he cannot canvass that here. The Land Commissioner and the A. G. A. were acting as Agents of

the Crown for acquisition. He says a decision in favour of an agent can be used by the Principal as *res judicata*. He cites Umchance on the Law of *Res Judicata* 1894 Ed. page 208, 209, 219. Spencer Bauer on *Res judicata* 126.

No. 9.
Addresses to
Court.
27.1.56—*contd.*

Mr. Goonetilleka supports Crown Counsel's submissions.

10 Mr. Perera addresses Court. He submits that this was not one of the categories of lands which could be acquired. By Ordinance 61 of 1942 he has got rights to deal with lands transferred by an owner only not by a lessee or mortgagee. The only question is whether the Paraveni Nilakaraya is the owner. He submits that the Paraveni Nilakaraya is not the owner. Cites 3 Balasingham's Reports 67 at 68. 19 N. L. R. 361 at 363 and 364. 45 N. L. R. 97 at 99. Haloy at 252. He refers to the Buddhist Temporalities Ordinance Chapter 222 Section 27 and 44. A Paraveni Nilakaraya is a tenant and not the absolute owner of the land. If he is not an owner the Ordinance has no application.

20 He refers to P1, P2, P3 and P4. The Land Acquisition Act came into force on 4/3/50. The Act was not in existence when they started surveying the land. Refers to P5. Submits there is nothing in the Land Acquisition Act to show what should be done with proceedings started under the Land Redemption Ordinance. He has been deprived of certain rights of which the subject has now been deprived. He cites 52 N. L. R. 95, 54 N. L. R. 457, 53 N. L. R. 235 at 236 and at 421. They entered into possession on 8/3/54. The plaint in the earlier case is 23/6/52, the cause of action complained of here had not arisen at that time. The Land Commissioner is curator of statute not an agent of the Crown. In the earlier case they have not been sued as the agents of the Crown. That action did not go to trial. No issues were raised. This is not a possessory action. In the
30 plaint he says he is the owner of the land. He cites 54 N. L. R. 457 and 458.

(Adjourned for Lunch)

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

27/1/56.

After Lunch

(Mr. Perera continues his address.)

He cites 53 N. L. R. 421, 5 N. L. R. 326.

40 Mr. Tennekoon addresses Court. He points out that no steps at all were taken under Chapter 203. Cites 1 N. L. R. 217.

Documents to be handed over with list tomorrow.

JUDGMENT 7/2

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

No. 10.
Judgment of
the District
Court.
7.2.58

No. 10

Judgment of the District Court

D. C. 7184/L

JUDGMENT

It is admitted that the 2nd defendant was the Paraveni Nilakaraya of the lands described in the schedule to the plaint. He on mortgage bond No. 25814 of 26th May 1926 (1D4) mortgaged them with one Allis Perera and thereafter on deed No. 1357 of 5th March 1931 (1D5) transferred the lands to Allis Perera in satisfaction of the debt.

(Allis Perera's rights have subsequently passed to the plaintiff on Deeds P26, P29 and P21.) 10

Acting under the Land Redemption Ordinance the Land Commissioner has acquired the land and permitted the 2nd defendant to remain in possession. The plaintiff now sues the Crown and the 2nd defendant and the main contention for him is that the land is not one which can be acquired under that Ordinance because it is submitted that the 2nd defendant is not the "owner."

Section (3) 1 (b) of the Land Redemption Ordinance 61 of 1942 as amended by 62 of 1947 is as follows :-

Section 3 (1)—"The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that that land was at any time before or after the date appointed under Section 1 but not earlier than the 1st of January 1929 (a)..... (b) transferred by its owner or his executors or administrators to any other person or the heirs executors or administrators of any other person in satisfaction or part satisfaction of a debt which was due from that owner or his predecessor in title to that other person and which was secured by a mortgage of that land subsisting immediately prior to the transfer " 20 30

It will be seen that these lands would come directly under this section if the 2nd defendant was their "owner".

If one thinks of ownership of land as a right completely unfettered by any kind of restriction whatsoever then the rights of the 2nd defendant (as has been argued for the plaintiff) fall short of that conception for a Paraveni Nilakaraya has to perform certain services to the temple. But subject to the performance of services his "ownership" if one may use the term at this stage is absolute. I think the correct position is that the Paraveni Nilakaraya is the "owner" of the land and the temple, the "overlord" entitled to services from the "owner". The Nilakaraya cannot, of course, partition the land because the services are indivisible. In the case reported in 19 N. L. R. page 361 where it was held that a Nindagama land cannot be partitioned Ennis J. made the remark at page 363, "In my 40

opinion a Paraveni Nilakaraya holds the rights which under Maarsdorp's definition constitute ownership, but he nevertheless does not possess the full ownership....."

No. 10.
Judgment of
the District
Court
7.2.50—contd.

10 If the Nilakaraya refuses or neglects to perform the services the temple can only sue for damages (Section 25 of the Services Tenures Ordinance Chapter 323) But the Nilakaraya's rights in the land itself remains entirely unaffected by the right to the temple to claim his services. He can alienate it by will—if he dies intestate it would pass to his heirs. He can secure a debt by mortgaging it and of course can transfer it in satisfaction of that debt. All such transactions would be valid and recognised by law, and I think, the Land Redemption Ordinance was designed to apply all these agricultural lands which could be mortgaged or transferred in satisfaction of a debt.

It is true that a Nilakaraya is sometimes referred to as a " Paraveni tenant " in legal text but that does not alter his rights over the land.

I am of opinion that the subject matter of this action belongs to the class of lands referred to in Section 3 of the *Land Redemption Ordinance*.

20 I am also in agreement with the submission made by Crown Counsel that in *the circumstances of this case* the discretion exercised by the Land Commissioner under section 3 cannot be questioned by filing an ordinary action in the District Court.

It will be seen from Section 3 that : " If the Land Commissioner is satisfied that the land was transferred by its owner " etc. he can acquire it. Here of course the Land Commissioner has to act judicially but his decisions in this case whether the 2nd defendant is the " owner " is not a question of fact depending on evidence.

30 In these circumstances I am of opinion that the decision in the case of *Leo vs. The Land Commissioner* (57 N. L. R. page 178) would apply. If the plaintiff was dissatisfied with the Land Commissioner's order under Section 3 his remedy was to make an application to the Supreme Court for a mandate in the nature of a writ of certiorari quashing that order.

40 There are further difficulties in the way of the plaintiff. Having failed to adopt what (in my opinion) was the correct legal procedure to question the Land Commissioner's order under section 3 (1) (if indeed that order was wrong) he is now precluded from proceeding any further by the provision of Section 3 (4) which is in the following terms :—

" Section 3 (4)—The question whether any land which the Land Commissioner is authorised to acquire under sub-section 1 should or should not be acquired shall subject to any regulations made in that behalf be determined by the Land Commissioner in the exercise of his individual judgment ; and every such *determination* of the Land Commissioner shall be final."

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the District
Court.
7.2.56—contd.

Gratiaen J. in the course of his judgment in *Leo vs. The Land Commissioner* (supra) after analysing Section 3 and showing that the Commissioner when acting under sub-section 1 has to act judicially and his decision then becomes amenable to *certiorari*, pointed out that his act under sub-section 4 is purely administrative. "It is apparent" (says his Lordship) "from this analysis that the Commissioner's final decision under Section 3 (4) is purely administrative in character and does not involve the exercise of judicial or even quasi-judicial functions. He is guided at that stage solely by consideration of policy and expediency and by "his individual judgment" so that the Courts have no power to interfere with that discretion by *certiorari*".

10

I think it is quite clear that the plaintiff cannot challenge the validity of the acquisition and it is hardly necessary to proceed further.

I would like to observe, however, that though (admittedly) the Land Commissioner decided to acquire these lands on or about 20th March 1949, there is no provision of law which requires him to take the procedural steps for acquisition within any specific period of time.

In this instance by the time the Crown took the procedural steps the Land Acquisition Ordinance Chapter 203 had been repealed and replaced by the Land Acquisition Act 9 of 1950. The notice of survey (P3) dated 16th, January 1950 is obviously under Section 6 of the Land Redemption Ordinance. The notice itself is headed "Notice of survey of land for the purposes of the Land Redemption Ordinance".

20

I do not think that the Commissioner was bound to take steps under the repealed Ordinance merely because the decision under Section 3 (1) of the Land Redemption Ordinance was made in 1949. In fact no steps at all were taken under Chapter 203 so that the cases reported in 53 N. L. R. pages 235 and 421 can be distinguished.

30

On the question of *res judicata*, however, I am inclined to agree with the plaintiff. He had filed an action in June 1952 D. C. 3632/L. in the District Court of Kandy (vide P22) against the Land Commissioner and the Government Agent, Nuwara Eliya. That action was dismissed (Decree P23) as the plaintiff was absent on the day fixed for hearing. The defendants in that case are different—they cannot represent the Crown—besides in the present plaintiff avers that the Crown took possession in March 1954 and bases a claim on this fact too. In my opinion the earlier decree is not *res judicata*.

40

In regard to the plaintiff's claim for possession there is no evidence whatsoever that the plaintiff ever possessed this land or that he was wrongfully dispossessed.

I would answer the issues as follows :—

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the District
Court.
7.2.56—*contd.*

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. Yes.
6. Does not arise.
7. No.
8. Does not arise.
- 10 9. No.
10. No.
11. No.
12. (a) and 12 (b) have already been answered.
13. Yes.
14. No.
15. & 16 were withdrawn.
17. Yes.
18. Yes.
19. Yes.
- 20 20. No.
21. No.

I dismiss the plaintiff's action with costs.

7th February, 1956.

(Sgd.) A. L. S. SIRIMANNE,
A. D. J.

Decree of the District Court

IN THE DISTRICT COURT OF COLOMBO

R. B. HERATH of No. 52, Malabar Street, Kandy *Plaintiff*
No. 7184/L

vs.

(1) THE ATTORNEY GENERAL of Ceylon of Hulstorp,
Colombo, (2) P. B. ATTANAYAKA of Dumunumeeya,
Hanguranketa *Defendants.*

This action coming on for disposal before A. L. S. Sirimanne 10
Esquire, Additional District Judge of Colombo, on the 7th day of
February 1956 in the presence of Mr. Advocate Cyril E. S. Perera
with Mr. G. T. Samarawickrema instructed by Mr. A. L. Gunasekara
Proctor on the part of the plaintiff, Mr. Advocate B. Tennekoon
Crown Counsel instructed by Mr. B. K. Billimoria Proctor on the part
of the 1st defendant and of Mr. Advocate T. P. P. Goonetilleke ins-
tructed by Messrs. Samarasinghe & De Silva Proctor on the part of
the 2nd defendant.

It is ordered and decreed that the plaintiff's action

- (a) for declaration of title to the land and premises more fully 20
described in the schedule hereto.
- (b) in addition to or in the alternative to (a) for a declaration
of his right to possession of the said land and premises.
- (c) that the plaintiff be restored to and quieted in the possession
thereof.
- (d) for ejectment of the 2nd defendant from the said land and
premises be and the same is hereby dismissed with costs.

THE SCHEDULE ABOVE REFERRED TO

1. All that field called Walliwelakumbura of Five Pelas paddy 30
sowing extent situate at Hanguranketa in Diyatilake Korale of
Udahewaheta in the District of Nuwara Eliya Central Province
and bounded on the East by the stone fence of Mr. Soysa's garden
South by Ela separating Huludorawatte West by Gansabawa Road
now Road Committee Road and North by stone fence of Potgul
Vihare.

2. All that land called Huludorawatte of One Pela paddy sowing
in extent situated at Damunumeeya in Diyatilake Korale aforesaid
and bounded on the East by the stone fence of Mr. Soysa's land

South by the stone fence of the Gederawatte and Devale Iura West by Gansabawa Road and North by Walliwalakumbura Ela together with the buildings and everything thereon.

No. 11.
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District Court.
7.2.56—*contd.*

And which said lands are also described as lots 1, 2, 3, 4, 5 & 6 in Preliminary Plan No. A. 1684 land called Walliwelakumbura (lots 1-3) and Huludorawatta (lots 4, 5, 6) in extent Acres 2, Roods 1, Perches 27.

(Sgd.) A. L. S. SIRIMANNE,
Additional District Judge.

10 The 7th day of February 1956.

Drawn by :

(Sgd.) A. L. GUNASEKERA.
Proctor for Plaintiff.

No. 12.
Petition of
Appeal to the
Supreme Court.
14.2.56.

Petition of Appeal to the Supreme Court

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

R. B. HERATH of No. 52, Malabar Street, Kandy *Plaintiff.*

vs.

(1) THE ATTORNEY-GENERAL of Ceylon, Hultsdorp,
Colombo, (2) P. B. ATTANAYAKE of Dumunumeeya,
Hanguranketa *Defendants.*

and

No. 7184-Land.

10

R. B. HERATH of No. 52, Malabar Street, Kandy
. *Plaintiff-Appellant.*

vs.

(1) THE ATTORNEY-GENERAL of Ceylon, Hultsdorp,
Colombo, (2) P. B. ATTANAYAKE of Dumunumeeya,
Hanguranketa. *Defendants-Respondents.*

On this 14th day of February, 1956.

TO

The Honourable the Chief Justice and the other Judges of the
Supreme Court of the Island of Ceylon.

20

The petition of appeal of the Plaintiff-Appellant abovenamed
appearing by Alfred Lionel Gunasekara and his assistant Roland
Maurice Karunaratne his Proctors state as follows :—

1. The Plaintiff-Appellant filed this action for declaration of
title or in the alternative to declaration of his right to possession of
the land described in the schedule to the plaint and for consequential
relief.

2. The Plaintiff-Appellant averred that he was the paraveni
nilakaraya of the Pattini Devale and held the premises in question
as tenant of the temple and that the Land Commissioner had pur-
ported to acquire the said premises under the Land Redemption

30

Ordinance. The Plaintiff-Appellant averred that the land was not liable to be dealt with under the Land Redemption Ordinance and that in any event the proceedings had were not validly taken.

No 12.
Petition of
Appeal to the
Supreme Court.
14.2.50—contd.

3. The Defendants-Respondents filed answers denying the averments in the plaint and stating inter alia that it was not open to the Court to go into the question whether the land was liable to be acquired.

4. After trial the learned District Judge delivered judgment on 7th February, 1956, dismissing plaintiff-appellant's action with costs.

10 5. Aggrieved by the said judgment the plaintiff-appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal.

(a) the said judgment is contrary to law and against the weight of evidence led in the case.

(b) the Plaintiff-Appellant respectfully submits that the premises in question are not those transferred by its owner in satisfaction of a mortgage debt within the meaning of Section 3 (1) of the Land Redemption Ordinance.

20 (c) the dealings relied on by the Crown were by paraveni nila-karayas and the interests dealt with by them were those of tenants.

(d) it is submitted that the said land and premises do not fall within any of the categories of lands referred to in Section 3 (1) of the Land Redemption Ordinance.

(e) it is submitted that the learned Judge had misdirected himself in holding that it was not open to a Court to inquire into the validity of the determination to acquire and the proceedings taken thereafter.

30 (f) it is respectfully submitted that where the plaintiff claims that his rights in and to a land or to the possession of it are unaffected by proceedings purported to have been taken to acquire it on the ground that the said proceedings were void and ineffectual to vest title in the Crown, it is open to a Court to inquire into and decide upon the validity of the said proceedings.

40 (g) it is further submitted that the determination having been made on or about 20th March, 1949, the provisions of the Land Acquisition Ordinance applied to the acquisition in terms of Section 3 (5) of the Land Redemption Ordinance and the proceedings had in terms of the Land Acquisition Act No. 9 of 1950 were void and/or ineffectual to vest title in the Crown.

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 Petition of
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 Supreme Court.
 14.2.56—*contd.*

- (h) it is submitted that the determination under Section 5 (1) and the order under Section 36 of the Land Acquisition Act were in any event not validly made and were void and ineffectual.
- (i) it is submitted finally that the plaintiff's action was not a possessory action but one for declaration of his title and/or his right to possession and proof of possession by him followed by dispossession by the defendants was not necessary.

Wherefore the plaintiff-appellant prays :

10

- (a) that the judgment of the learned District Judge be set aside.
- (b) that judgment be entered in favour of the Plaintiff as prayed for in the plaint.
- (c) for costs.
- (d) for such other and further relief not specifically prayed for as to Your Lordships' Court might seem meet.

(Sgd.) A. L. GUNASEKERA,
Proctor for Plaintiff-Appellant.

Judgment of the Supreme Court

No. 13.
Judgment of the
Supreme Court.
6. 3. 58.

S. C. 152

D. C. Colombo 7184

HERATH *v.* ATTORNEY-GENERAL & ANOTHER

Present : Basnayake, C.J., Pulle, J., and de Silva, J.

Counsel : H. V. Perera, Q.C., and G. T. Samarawickrame and
G. L. L. de Silva, for Plaintiff-Appellant.

V. Tennakoon, Senior Crown Counsel, with A. Mahendra-
rajah, Crown Counsel, for 1st Defendant-Respondent.

10 T. P. P. Goonetilleke with S. Sharvananda and R. D. B.
' Jayasekera for 2nd Defendant-Respondent.

Argued on : December 5, 9, 10, 11, 13, 19 and 20, 1957.

Decided on : March 6th, 1958.

BASNAYAKE, C.J.

It was agreed at the hearing of this appeal that the decision on the
questions of law which are common to this appeal and the appeal
in the case of *Ladamuttu Pillai v. Attorney-General & others* (S. C.
Minutes of 31. 1. 58) which was argued earlier should be regarded
as equally binding in this case. As the judgment in that case
20 was delivered on 31st January last, only the following questions
need be decided for the purposes of this appeal :—

(a) whether a paraveni nilakaraya is the owner of the lands
comprised in his share of the paraveni panguwa within
the meaning of the expression "owner" in section 3 (1)
(b) of the Land Redemption Ordinance, No. 61 of 1942,

(b) whether the legality of a declaration by the Minister under
section 5 (1) of the Land Acquisition Act, No. 9 of 1950,
as modified for the purpose of the Land Redemption
Ordinance, can be canvassed by way of a suit against
30 the Attorney-General,

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Supreme Court,
6. 3. 58—*contd.*

- (c) whether the plaintiff is precluded by the Order of the Minister under section 36 of the Land Acquisition Act from seeking the relief he claims, and
- (d) whether the dismissal on 23rd October 1953 of the plaintiff's action No. L.3632 against the Land Commissioner and the Assistant Government Agent, Nuwara Eliya, in the District Court of Kandy, operates as *res judicata* and bars this action.

In the instant case no oral evidence was led by either side at the trial. The plaintiff and the Attorney-General, the 1st defendant, who will hereinafter be referred to as the Attorney-General, by agreement tendered without proof the documents on which they relied. The trial proceeded on the pleadings, the admissions of counsel, and the documents relied on by the parties. 10

The material facts are as follows: The 2nd defendant P. B. Attanayake of Dumunumeya in Hanguranketa was one of the praveni or paraveni nilakarayas of the kapu panguwa belonging to the Pattini Dewale of Hanguranketa. His share of the panguwa consisted of the two lands, described in the Schedule to the plaint, of a total extent of 2 acres 1 rood and 27 perches. 20

On 26th May 1926 by 1D4 he mortgaged as security for a loan of Rs. 1,500 to Udawattege Don Allis Perera Appuhamy (hereinafter referred to as Allis Perera) a field Walliwela kumbura and a highland Huludorawatta. His rights in those lands were thus described in the deed—

I the undersigned Attanayaka Kapugedera Mantilaka Mudi-yanselage Punchi Banda Attanayake, Kapurala of Damunumeya in Diyatilaka Korale of Udahehaheta by right of purchase upon the annexed deed of transfer No. 1112 dated 9. 12. 1909 and attested by E. D. W. Siebel, Notary Public, (bearing Registration References G.83/255-256 O.16/338, 339) *being in possession of* 30

- (1) All that field Walliwela kiyana kumbura
- (2) All that land called Huludorawatta

On 5th March 1931 by 1D5 the 2nd defendant transferred to Allis Perera the mortgage in consideration of a sum of Rs. 2,400 being the amount of the principal and the accrued interest on the mortgage debt the two lands mortgaged by him and which he again described as lands possessed by him by virtue of the deed referred to in 1D4. Allis Perera gifted Walliwela kumbura and Huludorawatta to his daughter Florence Letitia Premawathie Gunasekara (P26). She sold them to Daluwattage Solomon Sumanaweera (P25) who sold them to the plaintiff (P21) on 28th October 1946. 40

On 14th March 1947 the plaintiff was directed by a notice under section 7 (1) of the Land Redemption Ordinance (P1) signed by an Assistant Land Commissioner to furnish to the Land Commissioner a return. The notice reads as follows :—

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G. S. 58—contd.

10 You are hereby directed under section 7 (1) of the Land Redemption Ordinance, No. 61 of 1942, to furnish to the Land Commissioner before the (29th) Twenty-ninth day of March 1947 a return, on the form sent herewith, in respect of the Land known as (1) Walliwela Kumbura and (2) Huludorawatta situated in the village of Hanguranketa in Diyatilako Korale of Uda Hewaheta in the District of Nuwara Eliya, Central Province.

2. Please attach to the return a plan of the land to enable the verification of such extent of the land as may be mentioned in the return.

3. If the space in the form sent herewith is found to be insufficient, the entry of the particulars should be continued in an annex.

4. The return should be sent to the abovementioned office in an envelope addressed to the Land Commissioner and marked with the letters " L. R. O. "

20 5. It should be noted that section 7 of the aforesaid Ordinance provides that any person who, when required to furnish a return, or any information or explanation, or any evidence under that section, fails or refuses to furnish such return, information, explanation or evidence, or knowingly furnishes a return containing any particulars which are false or any information or explanation which is false, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred rupees.

6. If you have any objections to the acquisition of the said land, please state your objections in writing.

30 He complied with the Assistant Land Commissioner's notice and in forwarding the return on 22nd March 1947 wrote the following letter :—

With reference to your letter No. LRO/A.P.L. 1736 of the 14th instant, I return herewith the form in duplicate sent therewith duly completed together a copy of the registers of encumbrances and rough sketch showing the position of the lands as I possess no other plans.

I strongly object to the acquisition of these lands on the following grounds.

40 1. Though these lands are purchased in my name they are held by me in trust for my brother W. B. Herath. Half of the purchase money was supplied by him. On receipt of the balance I have to

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transfer the lands to him. At present all the members of my family are resident together in my house. After my brother marries in the near future he wishes to live separately by putting up a house on these lands. My said brother owns no other immovable property.

2. According to the encumbrances I do not think that the original owner is capable of maintaining these properties.

In the event of a compulsory acquisition I claim on behalf of my said brother Rs. 5,000 at which the lands were purchased plus all costs incurred, up to date.

10

On 16th January 1950 he received the following notice signed by a Government Surveyor (P3) :—

I, P. Arampu, being a person acting under the written authority of Mr. A. C. L. Abeyesundere, Assistant Land Commissioner, do hereby give you notice, that I shall on the 25th day of January 1950 at 8 a.m. enter the above-mentioned land together with servants and workmen and do all such acts as may be necessary for the purpose of making a survey of that land. I therefore request you or your representative to be present at the survey of the land and to make to me such representations regarding the survey of the land as you may desire.

20

You are requested to meet me at the above mentioned land at 8 a.m. on the said date to point out the land to me.

Thereupon on 28th February 1950 the plaintiff wrote to Land Commissioner the letter P4 which is as follows :—

With reference to your memo No. LRO/APL. 1735 of the 14th March 1947, I beg to lay the following facts for your kind and sympathetic consideration :

The Forms in duplicate referred to in the above memo of yours were duly perfected and forwarded to your address together with the Register of Encumbrances, a rough Sketch, of the property, and my objection to the acquisition of the said land under registered post on the 22nd March 1947, but no acknowledgment has been made.

30

Further in 1948, I interviewed your honour and explained that this property belongs to "Pathini Dewale" of Hanguranketha which is subject to the "Rajakariya" of the Buddhist Temporalities Society, which is clearly proved by the two Documents I handed over to your honour at the interview.

On the consultation with my council he too advised me that the Redemption Ordinance does not apply on the properties of the Buddhist Temporalities Society.

40

Furthermore let me mention you Sir, that this Claimant is owning some more properties of his own.

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It was not queried up this date and on the 16th of January last the said land was surveyed by a Government Surveyor named Mr. P. Arampu.

I shall be very much grateful to you if you will kindly cause an investigation and enlighten me on the subject as to why it was surveyed.

Thanking you in anticipation of an early reply.

- 10 The documents referred to in the above letter are the Public Trustee's acknowledgment of the notice required to be given under section 27 of the Buddhist Temporalities Ordinance in respect of any transfer of interest in any temple land. They read as follows :—

(P7)

To : Sirimalwatte Heratmudiyanselage Ranbanda Herat,
Damunumeeya, Hanguranketa.

- 20 The receipt is hereby acknowledged of your notice dated 19th November 1946 under section 27 of the Buddhist Temporalities Ordinance, Chapter 222, relating to the transfer in your favour subject to services to the Hanguranketa Pattini Devale of the paraveni pangu tenant's interest in the land called Walliwela, situated at Hanguranketa in the District of Nuwara Eliya.

Colombo, December 21, 1946.

(P8)

To : Sirimalwatte Heratmudiyanselage Ran Banda Herat,
Damunumeeya, Hanguranketa.

- 30 The receipt is hereby acknowledged of your notice dated November 19, 1946, under section 27 of the Buddhist Temporalities Ordinance, Chapter 222, relating to the transfer in your favour subject to services to the Hanguranketa Pattini Devale of the paraveni pangu tenant's interest in the land called Huludorawatta situated at Damunumeeya in the District of Nuwara Eliya.

Colombo, December 21, 1946.

The following letter (P5) was received from the Acting Land Commissioner in reply to P4 :—

With reference to your letter dated 28.2.50, I have the honour to inform you that the land in question has been surveyed for acquisition for the purposes of the above Ordinance.

- 40 2. Please furnish detailed particulars of the properties which belong to the applicant.

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Supreme Court.
6.3.58—*contd.*

On the receipt of letter P5 the plaintiff appears to have consulted his lawyers. On 15th November 1950 the plaintiff's proctor wrote the following letter to Land Commissioner :—

(P9)

With reference to your letter of the above number dated the 11th instant, I have been instructed by my client Mr. R. B. Herath to inform you that he objects to the acquisition of the lands claimed by the applicant on the ground that the applicant is the owner and is possessed of the following lands :—

1. Weuliyaddewatte in which the applicant resides at present. 10
2. Weuliyadde Kumbura which adjoins land No. 1.
3. Weuliyaddemullewatte which the applicant's son now resides.
4. Yathakmalpekumbura of 2 pelas.
5. Dambuyaddehena situate at Karalliyade.
6. Shares in the paddy fields known as Kotagepitiyeyaya and Mapanakumbureyaya.
7. Weuliyaddewatte.

The applicant has also transferred a number of lands to his children and has also disposed of several other lands to outsiders.

He is the trustee of Hanguranketha Potgul Vihare and has furnished security for the due performance of his services as such trustee in land. 20

The applicant is not a person who is in need of any assistance and is in receipt of a considerable income which is quite sufficient or more than is necessary for the maintenance of himself and his family.

I shall therefore thank you to kindly stay all further proceedings in this matter.

The plaintiff's objection to the acquisition of the two lands and his furnishing a list of the lands owned by the second defendant seem to have had no effect. Neither he nor his proctor received from the Land Commissioner a reply to the letter P9. Instead he received from the Assistant Government Agent, Nuwara Eliya, the following letter forwarding the notices published in the *Government Gazette* under section 7 of the Land Acquisition Act No. 9 of 1950. 30

(P10)

30.8.1951

I have the honour to forward herewith, in Sinhalese, Tamil and English, a *Gazette Extract* of my Notice under Section 7 of the Land Acquisition Act, No. 9 of 1950, published in the *Government Gazette* No. 10,285 of 24.8.51 in the above connection. 40

The English notice which is the only one produced in these proceedings reads as follows :—

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0.3.68—contd.

(P11)

I, Eardley Godfrey Goonewardene, Assistant Government Agent of the Nuwara Eliya District, do hereby give notice under section 7 of the Land Acquisition Act, No. 9 of 1950, that—

- (1) it is intended to acquire under the said Act, for the purposes of the Land Redemption Ordinance, No. 61 of 1942, the land described in the schedule hereto,
- 10 (2) claims for compensation for the acquisition of such land may be made to me, and
- (3) every person interested in such land shall—
- (a) appear, personally or by agent duly authorised in writing, before me at the Nuwara Eliya Kachcheri, on October 4, 1951, at 10.30 a.m., and
- (b) notify to me in writing, on or before September 27, 1951, the nature of his interests in the land, the particulars of his claim for compensation, the amount of compensation, and the details of the computation of such amount.
- 20

SCHEDULE

Preliminary Plan No. P. P. A. 1,634. Village—Hanguranketa

Lot	Name of Land	Description	Name of Claimant	Ezient A. R. P.
1	Walliwelakumbura Assessment No. 105	Paddy field..	R. B. Herat, Ananda Transport Service, Hanguranketa	1 2 31
2	Do.	.. do. ..	do. ..	0 0 4
3	Do.	.. do. ..	R. B. Herat, Ananda Transport Service, Hanguranketa and Hanguranketa Pattini Dewale (Trustee: A. B. Pannanwela, Basnayake Nilame, Talatu Oya)	0 0 18
4	Huludorawatta Assessment No. 106	Chena ..	R. B. Herat, Ananda Transport Service, Hanguranketa	0 0 8
5	Do.	.. Chena ..	R. B. Herat, Ananda Transport Service, Hanguranketa, and Hanguranketa Pattini Dewale (Trustee: A. B. Pannanwela, Basnayake Nilame, Talatu Oya)	0 0 13
6	Do.	.. do. ..	do. ..	0 1 35
Total ..				<u>2 1 27</u>

I have quoted in full the correspondence between the officers of Government and the plaintiff produced at the trial as they show the plaintiff's bona fides and that from the very outset he took up the stand that the two lands in question were not lands that fall

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within the ambit of section 3 (1) (b) of the Land Redemption Ordinance. His representations do not seem to have received the careful attention they deserved. For if they, especially the representation that the Pattini dewale was the owner of the land that the Government sought to acquire, had been examined more closely, all these years of litigation might have been avoided.

As all the plaintiff's protests and efforts to have the threatened acquisition of these two lands stayed were of no avail he appears to have decided after he received P11 to seek the assistance of the Courts in defending his rights. On 23rd June 1952 his proctor filed in the District Court of Kandy a plaint (P22^a) against the Land Commissioner and the Assistant Government Agent of Nuwara Eliya in which he asked for—

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- (a) a declaration that the lands in question are not liable to be acquired under the provisions of the Land Redemption Ordinance,
- (b) an injunction restraining the Assistant Government Agent from proceeding with the acquisition.

On 8th July 1953 more than a year after the institution of the action the Land Commissioner and the Assistant Government Agent filed a joint answer (P22^a) denying the allegations of the plaintiff that the lands do not fall within the category of lands the Land Commissioner was authorised to acquire under the Land Redemption Ordinance. They also took the plea that the Court had no jurisdiction to hear the action and prayed its dismissal. The plaintiff having failed to appear on the day fixed for the hearing of the action, on 23rd October 1953 the Court entered decree nisi under Section 84 of the Civil Procedure Code dismissing the plaintiff's action (P23). The plaintiff appeared within the prescribed time and showed cause for his non-appearance but was not successful and the decree became absolute.

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The acquisition proceedings seem to have gone on despite the plea of the plaintiff in paragraph 3 of his plaint that "the continuance of the acquisition will cause loss and damage to the plaintiff", and in January 1953 while the action was pending the plaintiff received the following letter from the Assistant Government Agent, Nuwara Eliya :—

(P12)

I have the honour to forward herewith a Notice in accordance with Section 10 (1) (a) of the Land Acquisition Act, No. 9 of 1950, in connection with the above acquisition.

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I, Victor Alexander Justin Senaratne, Assistant Government Agent of the Nuwara Eliya District, do hereby give notice under Section 10 (1) (a) of the Land Acquisition Act, No. 9 of 1950, that in respect of your claim or dispute relating to any right, title or

interest to, in or over the land described in the schedule hereto which is to be acquired or over which a servitude is to be acquired, my decision is as follows :—

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“ Mr. R. B. Herat, Ananda Transport Service, Hanguranketa, is declared entitled to the land subject to the ‘ kapu services ’ which are due on all the lots in the schedule below to the ‘ Trustee of the Hanguranketa Pattini Dewale. ”

10 I hereby declare that unless you make a written application to me within fourteen days of the receipt of this notice, for reference of your claim or dispute for determination to the District Court/Court of Requests, my decision shall be final.

Schedule

Lots 1, 2, 3, 4, 5 & 6 in Preliminary Plan No. A. 1684, land called Walliwclakumbura (lots 1-3) and Huludorawatta (lots 4, 5, 6) in extent acres 2, roods 1, perches 27.

It is not clear why the acquiring officer proceeded with the acquisition while the plaintiff’s challenge of his right to acquire was still pending in the District Court of Kandy. That challenge was in the following terms :—

20 The plaintiff pleads that the said lands do not fall within any of the categories of lands that are liable to be acquired under the said Ordinance and that the acquisition of them in excess of the powers unlawful and is a denial of the rights of the plaintiff who holds the said lands by payment of dues and or performance of services to the Pattini Dewale at Hanguranketa.

The other steps in the acquisition proceedings followed and the plaintiff received from the Assistant Government Agent, Nuwara Eliya, the following letter dated 19th March 1953 (P14) and the award (P15) annexed to it :—

30 (P14)

I have the honour to forward herewith my Notice of Award made under Section 16 of the Land Acquisition Act No. 9 of 1950 in connection with the acquisition of the above land for the purposes of the Land Redemption Ordinance, No. 61 of 1942.

(P15)

I, Victor Alexander Justin Senaratne, Assistant Government Agent of the Nuwara Eliya District in the Central Province of the Island of Ceylon make the following award :—

40 1. Every person referred to in column I hereunder shall be entitled to the interest specified in the corresponding entry in column II :

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I	II
<i>Name and Address of Person entitled to Compensation</i>	<i>Nature of Interest in Land to be acquired</i>
1. Mr. R. B. Herat, Ananda Transport Services, Hanguranketa	By Right of Purchase
2. Trustees, Hanguranketa Pattini Dewale (Mr. A. B. Pananwela, Basnayake Nilame, Talatu Oya)	By Kapu Services (Rajakariya) due to the Dewale

2. The total amount of the claims for compensation for the acquisition of the land or servitude is Rupees Fifteen thousand only.

3. The sum of Rupees Three thousand three hundred and thirty only shall be paid by the Government of the said Island for the acquisition of the said land by way of compensation to the said persons, each person to be paid the amount specified below against his name.

<i>Name of Persons entitled to Compensation</i>	<i>Amount of Compensation</i>
1. Mr. R. B. Herat	Rs. 3,108-50
2. Trustee, Hangurankota Dewale	Rs. 221-50

On 8th March 1954 the Divisional Revenue Officer of Uda Hewaheta placed the 2nd defendant in possession of the lands and reported to the plaintiff as follows :— 10

(P16)

This is to inform you that I have handed over lots 1 & 6 in P. P. A. 1684 acquired under the L. R. O. to the applicant Mr. P. B. Attanayake of Damunumeya today.

2. In this connection your reference is requested to my letter of even number dated 13.2.54.

The plaintiff next received from the Assistant Government Agent, Nuwara Eliya, the following letter of March 23, 1954 :—

(P17) 20

With reference to my letter No. LD. 1051 dated 19.3.1953 forwarding my Notice of Award under Section 16 of the Land Acquisition Act No. 9 of 1950, I have the honour to request you to receipt the annexed voucher for Rs. 3,108-50 on a -/06 cts. stamp duly witnessed by a responsible person and to return same early to enable me to tender you the amount of my Award by cheque.

The plaintiff did not comply with the request contained in the letter P17 and he did not return the voucher. It is produced in these proceedings marked P18. As his action in the District Court 30

of Kandy had been dismissed for default of his appearance and his further representations to the Land Commissioner and the Assistant Government Agent had been unsuccessful he decided once more to seek his legal remedy and on 9th April 1954 he wrote the following letter to the Land Commissioner with a copy to the Assistant Government Agent, Nuwara Eliya :—

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(P19)

10 I have the honour to inform you that I am instructed by my Lawyers to file action for the recovery of the property known as Walliwela Cumbura in the above acquisition for the purpose of the Land Redemption Ordinance No. 61 of 1942 Lots 1—6 in PPA. 1684 No. LD. 1051.

I understand that the A. G. A. Nuwara Eliya has given instructions to the D. R. O. Uda Hewaheta to harvest the crop of the property referred to.

As the property is under litigation I wired the A. G. A. Nuwara Eliya to suspend the paddy pending the decision of the action. Further I beg to state that I will hold you responsible for damage to the value of the paddy harvest.

20 Please acknowledge the receipt of this letter and take immediate steps.

His request was turned down by the following letter :—

(P20)

With reference to your letter of 9.4.54, I have the honour to inform you that I regret that your request cannot be complied with.

30 The plaintiff purchased the rights he claims in the lands in question for Rs. 5,000 on 28th October 1946, but he has been offered as compensation only a sum of Rs. 3,108.50 on 19th March 1953. These proceedings do not show why the plaintiff has been offered less than the purchase price. His claim was Rs. 15,000. As all his attempts to stop his lands from being acquired were in vain, and as his action against the Land Commissioner failed owing to default of his appearance on the date of trial, he had to resort to the Courts to obtain relief.

On 1st May 1954 the plaintiff instituted the present action against the Attorney-General in which he challenges the authority of the Land Commissioner to acquire the lands in question, and asks—

- 40
- (a) that he be declared entitled to them and to possess them,
 - (b) that he be restored to and quieted in possession of them, and
 - (c) that the 2nd defendant be ejected therefrom.

The Attorney-General in his answer states—

- (a) that the Pattini Dewale of Hanguranketa is not the “ owner ” of the lands within the meaning of the term in the Land Redemption Ordinance.
- (b) that upon the determination by the Land Commissioner to acquire the lands the Minister made a declaration under section 5 (1) of the Land Acquisition Act as modified,
- (c) that the Minister made an order under section 36 of the Land Acquisition Act and that the order was published in the *Gazette*. 10

He contends that—

- (a) the lands fall within the description of lands which are liable to be acquired under the Land Redemption Ordinance,
- (b) the declaration made by the Minister under the Land Acquisition Act is conclusive proof that the lands are needed for a purpose which is deemed to be a public purpose,
- (c) it is not open to the plaintiff to canvass in these proceedings the question whether the lands fall within the categories of lands which are liable to acquisition under the Land Redemption Ordinance, 20
- (d) until the order under section 36 of the Land Acquisition Act is set aside the plaintiff is not entitled to the relief he claims,
- (e) the dismissal of the plaintiff’s action in D. C. Kandy case No. L.3632 operates as *res judicata*.

It is admitted by the Attorney-General that the lands in question form part of the kapu panguwa of the Pattini Dewale and that the nilakarayas of that panguwa of whom the plaintiff is one are liable to render services to the Dewale in respect of the land held by them. There is no evidence as to what the services are. The sannasa or grant under which the lands in question were given to the Dewale has not been produced, nor has any evidence as to any special custom governing the tenure of these lands been placed before the Court. It was assumed at the hearing of this appeal that these lands are held on the usual tenure of dewalagama lands and that the services are personal services rendered to the Dewale. 30

The learned trial Judge held—

- (a) that the lands in question formed a part of the kapu panguwa belonging to the Pattini Dewale of Hunguranketa, 40

- (b) that the plaintiff was by virtue of deed No. 6032 of 28th October 1946 entitled to possess them,
- (c) that the Land Commissioner purported to acquire them under the Land Redemption Ordinance, and that the Crown took possession of them on 8th March 1954,
- (d) that the lands fall within the category of lands liable to be acquired under the Land Redemption Ordinance,
- (e) that the plaintiff is not the owner of the lands in question,
- (f) that the lands have vested absolutely in the Crown,
- 10 (g) that the decision in the D. C. Kandy Case No. L.3632 is not *res judicata*.

It would be helpful if a brief reference is made to the system of land tenure under the Kandyan Kings before the questions arising on this appeal are discussed. In this judgment I shall for the sake of convenience refer to the grantee of a gama (village) be it a nindagama, viharagama or dewalagama, as the ninda lord.

A village or gama in respect of which services (rajakariya) were performed are of four kinds, viz., gabadagama, nindagama, viharagama, and dewalagama. A gabadagama is a royal village which
20 was the exclusive property of the Sovereign. The Royal Store or Treasury was supplied from the gabadagama, which the tenants had to cultivate gratuitously in consideration of being holders of praveni panguwas. A nindagama is a village granted by the Sovereign to a chief or noble or other person on a sannasa or grant. Similarly, a village granted by the Sovereign to a Vihare is a viharagama and to a dewala is a dewalagama. Each gama or village consisted of a number of holdings or minor villages. Each such holding or minor village was known as a panguwa. Each panguwa
30 consisted of a number of fields and gardens. Panguwas were of two kinds, viz., praveni or paraveni panguwa and maruwena panguwa. A praveni panguwa is a hereditary holding and a maruwena panguwa is a holding given out to a tenant for each cultivation year or for a period of years. The holder of a panguwa was known as a nilakaraya. They were of two kinds: Praveni or paraveni nilakarayas, and maruwena nilakarayas. The praveni nilakarayas are generally those who were holders of panguwas prior to the Royal Grant and the ninda lord is not free to change them. They were free to transmit their lands to their male heirs, but were not free to sell or mortgage their rights. They were obliged to perform services in respect of
40 their panguwas. The services varied according as the ninda lord was an individual, a vihare or a dewale. In the case of vihares or dewales personal services were such as keeping the buildings in repair, cultivating the fields of the temple, preparing the daily dana, participating in the annual procession, and performing services at the daily pooja of the vihare or dewale. In the scheme of land tenure

the panguwa though consisting of extensive lands is indivisible and the nilakarayas are jointly and severally liable to render services or pay dues. Though the panguwa was indivisible, especially after a praveni nilakaraya's right to sell, gift, devise, and mortgage his panguwa came to be recognised, the practice came into existence of different persons who obtained rights from a nilakaraya occupying separate allotments of land for convenience of possession. The Maruwena nilakaraya though known as a tenant-at-will held on tenancy which lasted at least for one cultivation year at a time. Unlike the praveni nilakaraya he could be changed by the ninda lord; but it was seldom done. He went on year after year, but was not entitled to transmit his rights to his heirs. On the death of a maruwena tenant his heirs are entitled to continue only if they receive the tenancy. Though in theory maruwena tenure was precarious, in fact it was not so. So long as he paid his dues the ninda lord rarely disturbed him. Besides the praveni and maruwena panguwas in a nindagama, viharagama or dewalagama, there were also lands owned absolutely by the ninda lord both ownership and possession being in him. 10

Under the Kandyan Kings and during the early British period there were also lands held by nilakarayas directly under the Sovereign. The holders of these lands were not free to gift, sell, bequeath or mortgage their rights. Their rights were transmissible only to their male heirs and the possession reverted to the State on the failure of the male heirs or breach of the Conditions of Tenure. The rights of the State in respect of such lands called in early British legislation "Service parveny Lands" were declared by Regulation 8 of 1809 thus : 20

Whereas there is reason to believe that abuses prevail with respect to the Lands called Service Parveny Lands, in prejudice of the Rights of Government, and to the impoverishment of Families holding the said Lands. 30

His Excellency the Governor in Council deems it necessary to declare, conformably to the ancient Tenure of the said Lands, and it is hereby declared accordingly—

1st. That all such Lands are held, as in former times, immediately under Government :

2ndly. That the privilege of succeeding thereto is in the Male Heirs only, of those who die possessed of such Lands, and that the same revert to His Majesty's use on failure of such Male Heirs or breach of the Conditions of Tenure : 40

3rdly. That the same are not capable of alienation by Gift, Sale, Bequest or other Act of any party, or of being charged, or incumbered with any Debt whatsoever :

4thly. That the said Lands, are not liable to be sold by virtue of any Writ of Execution or other legal process of any Court or Courts in this Island :

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The Service Praveni Lands Succession Ordinance of 1852, however, extended to female heirs the right of succession to persons who die possessed of service praveni lands. It also declared that service praveni lands were capable of alienation, gift, sale, devise or other act or of being charged or encumbered with any debt. Similar legislation was not enacted in respect of service tenure lands not owned by the State but by a ninda lord. The Service Tenures Ordinance which applies to such lands did not give the nilakaraya power to sell, gift, devise, or mortgage his panguwa but provided for the commutation of his services by a money payment imposed a period of limitation of one year in respect of the recovery of arrears of personal services and two years in the case of commuted dues. The right to recovery of services or dues if not enforced for ten years was to result in the loss for ever of the ninda lord's rights and on the nilakaraya becoming the owner (section 24). The Ordinance also deprived the proprietor of the right to proceed to ejectment against the nilakaraya (section 25) on his failure to render personal services or dues. He was permitted to recover the value of the services by seizure and sale—

- (a) of the crop or fruits of the panguwa, or failing them,
- (b) of the personal property of the nilakaraya, or failing both
- (c) by the sale of the panguwa, subject to the personal services, or commuted dues in lieu thereof.

The proceeds of sale have to be applied in payment of the amount due to the proprietor, and the balance, if any, is to be paid to the evicted nilakarayas. If there is a prior encumbrance upon the holding the balance is to be applied to satisfy such encumbrance. Despite these far-reaching changes the character of the ninda lord or proprietor remained the same. In course of time it seems to have been assumed, though no express legislative provision in that behalf was made, that the nilakarayas of a nindagama, viharagama or dewalagama had the same rights of alienation, gift, and mortgage as the holder of a service praveni land.

Though the nilakaraya's rights in respect of his holding became enlarged in the course of time it was never at any time doubted that the ninda lord was the owner of the soil and the legislation relating to service tenure lands recognised that position of the ninda lord and did not alter but preserved it. Sections 21 and 27 of the Buddhist Temporalities Ordinance refers to the nilakarayas as " temple tenants " (section 21) and speaks of the transfer of " a paraveni pangu tenant's interest in any land held of a temple "

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(section 27), and gives implied legislative recognition to the alienability of a nilakaraya's rights and not the land. It leaves no doubt as to what the praveni nilakaraya may transfer. Section 54 of the Partition Act No. 16 of 1951 also proceeds on the footing that the nilakaraya is not the owner of his panguwa, for, it provides "Every paraveni nilakaraya shall, for the purposes of this Act, be deemed to be a co-owner of the praveni panguwa of which he is a shareholder". Today the ninda lord stands in the shoes of the Royal Grantor subject to the restrictions or conditions imposed by the sannasa or grant and the nilakarayas continue as tenants of the grantee, though with far greater rights than they ever enjoyed under the Kandyan Kings. Despite the extension of their rights the nilakarayas had to render services or pay commuted dues to the ninda lord. If ever the line of succession of the nilakarayas of a panguwa became extinct the possession of the land would revert to the ninda lord. As the nilakaraya was free to sell his rights the ninda lord was free in course of time by purchase to enlarge his rights of ownership, by adding to his rights those of the nilakaraya.

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It is not clear why the Service Tenures Ordinance refers to the ninda lord as proprietor and not as owner. The same expression is used in the Partition Act No. 16 of 1951. Now to my mind there is no difference between the expressions proprietor and owner in the context in which the former expression is used. The Oxford Dictionary defines "proprietor" as one who holds something as property; one who has the exclusive right or title to the use or disposal of a thing; an owner. Webster's Dictionary defines the expression thus: "One who has the legal title or exclusive right to anything, whether in possession or not; an owner". The ninda lord is the owner of his service lands without possession and the nilakaraya is the possessor of those lands without ownership. The writers on Jurisprudence, both ancient and modern, bring out clearly the difference between the concepts of ownership and possession. For the purpose of this judgment it is sufficient to quote a passage from Salmond, one of the modern writers. (Salmond on Jurisprudence, 11th Edn. p. 302).

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No man is said to own a piece of land or a chattel, if his right over it is merely an encumbrance of some more general right vested in some one else. In its full and normal compass corporeal ownership is the right to the entirety of the lawful uses of a corporeal thing. This compass, however, may be limited to any extent by the adverse influences of *jura in re aliena* vested in other persons. The right of the owner of a thing may be all but eaten up by the dominant rights of lessees, mortgagees, and other encumbrancers. His ownership may be reduced to a mere name rather than a reality. Yet he none the less remains the owner of the thing, while all the others own nothing more than rights

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over it. For in him is vested that *jus in re propria* which, were all encumbrancers removed from it, would straightway expand to its normal dimensions as the *universum jus* of general and permanent use. He, then, is the owner of a material object, who has a right to the general or residuary uses of it, after the deduction of all special and limited rights of use vested by way of encumbrance in other persons.

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10 How true these words are of the ninda lord and the nilakaraya. The latter cannot be said to be the owner of the land as his rights are merely an encumbrance of a general right vested in the ninda lord and the ninda lord whose rights are reduced to merely the receipt of personal services or commuted dues is none the less the owner of the land. Apart from legal concepts even laymen in the Kandyan provinces will not regard the nilakaraya as the owner of the nindagama. The difference between ownership and possession is so clearly ingrained in the minds of the people in the Kandyan Provinces that the lands of a nindagama are spoken of as lands of the ninda lord and not of the nilakaraya. They would speak of nindagama lands as lands belonging to the Dalada Maligawa or Sri
20 Maha Bodhi or Ridi Vihare or to such and such a family. In the instant case the reference in the mortgage bond (1D4) to the mortgagor "being in possession of" the lands referred to therein by virtue of the deed recited and the absence of any reference to title are significant and to my mind indicate that the mortgagor and the notary realised the difference between the rights of the ninda lord and the nilakaraya.

30 Learned counsel for the Crown has not been able to cite a single decision of this Court in support of his contention that a nilakaraya of a service panguwa is its owner. In fact the decisions of this Court are the other way. They hold that a nilakaraya is not the owner and that a nilakaraya is not the owner and that it is not competent for him to institute a partition action as he is not the owner of the land of which he is in possession. The first of these decisions is the case of *Jolihamy v. Dingirihamy*, (1906) 3 Bal. Reports 67. In that case Wendt J. observed—

40 Now the *dominium* in Service Tenures land is generally regarded as vested in the person usually described as proprietor of the *Nindagama*, or the overlord, while the *Nilakarayo* are similarly spoken of as tenants. I do not of course forget that the interests of a Paraveny Nilakaraya cannot be determined against his will by a proprietor although upon the non-performance of services judgment can be recovered for damages and the interest of the tenant sold up and so brought to an end. But I do not see that this makes a tenant an owner; he cannot therefore claim partition of the land.

This case was followed by *Kaluwa v. Rankira* (1907) 3 Bal. Reports 264, which is also an action for the partition of nindagama land.

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One of the defences set up was " that the plaintiff cannot maintain the action because he is not an ' owner ' within the meaning of section 2 of the Partition Ordinance 10 of 1863, as the land is subject to Rajakaria Services ". Hutchinson C.J. was invited by the plaintiff-appellant to hold that the case of *Jotihamy v. Dingirihamy* (*supra*), a decision of two judges (Wendt J. & Middleton J.) was wrong. But he declined to do so as he thought the decision was right.

The next decision is the case of *Appuhamy v. Menike*, 19 N. L. R. 361, which was an action brought by a praveni nilakaraya of a panguwa of the Dodampe Nindagama for the partition of certain lands appertaining to his panguwa. The proprietors of the nindagama intervened and disputed the right of the plaintiff to bring an action for partition. That case was heard by a Bench of three Judges. Two of the Judges agreed with the decision in *Jotihamy v. Dingirihamy* (*supra*) while De Sampayo J. dissented from the view that a praveni nilakaraya is not the owner of his holding but agreed that he could not compel a partition. As stated above, to-day a nilakaraya can institute a partition action, though he is not the owner of his panguwa, by virtue of the special provisions (sec. 54 *et seq*) in the Partition Act, No. 16 of 1951. 10

I am in respectful agreement with the previous decisions of this Court cited above and the opinion formed by the majority of the Judges in *Appuhamy v. Menika* (*supra*) I must confess I am unable to follow the view taken by De Sampayo J. If a praveni nilakaraya cannot bring an action for partition it can only be on the ground that the land does not belong to him for if it does he is entitled to compel a partition. The relevant words of section 2 of the repealed Partition Ordinance which was considered in that case are " When any landed property shall belong in common to two or more owners, it is and shall be competent to one or more of such owners to compel a partition of the said property. . . . " If it is not rights of ownership that the ninda lord has what are his rights? A ninda lord can gift, sell, or mortgage his nindagama, his heirs can inherit it, or his rights can be sold in execution against him, (*Tillekeratne v. Dingey Hamy*, Ramanathan 1860-61-62, p. 144). A nindagama can be acquired by prescription (*C. P. Samarasinghe v. Radage Weerapulia and others*, 5 S. C. C. 40) by establishing that a person has enjoyed the ninda lord's rights over every component part of the nindagama for the prescribed period. 30

In the course of his judgment in *Samarasinghe's* case, Clarence A. C. J. observed— 40

The entry in the services tenures commutation register, though conclusive against the tenants on the question of tenure, is not conclusive against anybody on the question—Who is the owner of the nindagama?

It appears from the judgment in that case that the fact that the ninda lord is the owner of the nindagama was never in doubt or dispute. Our legislation has always assumed that the ninda lord is the owner of the nindagama and in the decisions of this Court too the ninda lord has always been regarded as the owner of the service lands of the nindagama and the praveni nilakaraya as his tenant. However extensive the rights of a praveni nilakaraya may have become in the course of time still he never became the owner of his holding; he remained a nilakaraya.

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- 10 I shall now turn to section 3 (1) (b) of the Land Redemption Ordinance. It speaks of agricultural land "transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer secured by a mortgage of the land". In the instant case the transfer was by the praveni nilakaraya of his interests in the holding of which as I have said above he is not the owner. It was not the land that was transferred, but the right to possess and enjoy it with the attendant rights of a praveni nilakaraya subject to the rendering of services or payment of commuted dues. The debt was not due from the owner but from 20 his tenant the 2nd defendant. The debt of the praveni nilakaraya the 2nd defendant was not secured by a mortgage of the land but by a mortgage of the 2nd defendant's rights as praveni nilakaraya. It will therefore be seen that section 3 (1) (b) has no application whatsoever to the transactions evidenced by deeds I D4 and I D5. The Land Commissioner had therefore no authority under section 3 (1) (b) of the Land Redemption Ordinance to acquire the lands. His determination that the lands should be acquired is not one to which sub-section (4) applies as the determination which is declared 30 by that provision to be final is a determination in a case in which "he is authorised by sub-section (1) to acquire the lands". The meaning and effect of sub-section (4) has been discussed in my judgment in *Ladamuttu Pillai v. Attorney-General (supra)*. In this case too the Land Commissioner's decision is not final as he has by a wrong construction of the expressions "owner" and "land" in section 3 (1) (b) given himself a jurisdiction he did not have. I think I should take this opportunity of referring to the case of *Bogolle Punchirala and others v. Kadapatwehera Ding and others*, 6 S. C. C. 157 (which was not cited in my previous judgment) wherein 40 a similar matter under the Service Tenures Ordinance was decided. In that case it appeared that the Service Tenures Commissioners had travelled outside their powers and entered in the register they were authorised to make under the Ordinance particulars which they were not required to determine or enter in the register. The defendants claimed that their determination of the matters they were not empowered by the Ordinance to determine was not final and conclusive as the finality and conclusiveness conferred on their

determination by section 9 of the Service Tenures Ordinance did not extend to the determinations made outside the scope of their authority. This Court upheld their submission.

There is a further circumstance which appears in document P15 which cannot be allowed to pass unnoticed. The acquiring officer appears to have acquired the interests of the dewale as well. His act is clearly illegal. The praveni nilakaraya did not, and could not in law, transfer to his creditor the rights of the ninda lord, the dewale, nor did he purport to do so. The authority granted by section 3 (1) (b) is to acquire land transferred by the owner in satisfaction or part satisfaction of a debt which was due from the owner and which was immediately prior to such transfer secured by a mortgage of the land. The ninda lord owed no debt, his rights were not secured by a mortgage, he did not transfer his rights to the 2nd defendant. Clearly the Land Commissioner had no authority to acquire the ninda lord's rights and his determination to acquire his rights being illegal cannot be final.

The result of this intrusion on the rights of the ninda lord is that the dewale has been illegally deprived of its rights to the services it received in respect of these lands of the kapu panguwa and the 2nd defendant who possessed the lands under a tenure which obliged him to render services or pay commuted dues is now in occupation of them by virtue of the permit given to them by the Crown without any such obligation. The Land Commissioner's action in acquiring the interests of the nilakaraya and the dewale are both illegal and must be declared null and void.

I shall now deal with the question whether the legality of a declaration under section 5 (1) of the Land Acquisition Act as modified for the purpose of the Land Redemption Ordinance can be canvassed in these proceedings. The Land Redemption Ordinance adapts the machinery of the Land Acquisition Act for the purpose of acquisition under the Ordinance. Provision for such adaptation is made in section 3 (5) of the Ordinance, the relevant portion of which reads—

Where the Land Commissioner determines under sub-section (4) that any land shall be acquired, the purpose for which that land is to be required shall be deemed to be a public purpose, and the provisions of the Land Acquisition Act, subject to the exceptions, substitutions and modifications set out in the First Schedule, shall apply for the purposes of the acquisition of that land....”

We are here concerned with the modified sub-sections (1) and (2) of section 5 of the Land Acquisition Act. They read as follows :—

(1) Where the Land Commissioner determines that any land shall be acquired for the purposes of the Land Redemption Ordinance, the Minister shall make a written declaration that such land

is needed for a purpose which is deemed to be a public purpose and will be acquired under this Act, and shall direct the acquiring officer of the province or district in which such land is situated to cause such declaration in the Sinhalese, Tamil and English languages to be published in the *Gazette* and exhibited on some conspicuous places on or near such land.

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(2) A declaration made under sub-section (1) in respect of any land shall be conclusive evidence that such land is needed for a purpose which is deemed to be a public purpose.

10 It would appear from the copy of the declaration ID1 that the Minister purporting to act under section 5 of the Land Acquisition Act on 10th May 1951 made the following declaration :—

Declaration under Section 5 of the Land Acquisition Act,
No. 9 of 1950

Whereas the Land Commissioner has determined that the land described in the Schedule hereto shall be acquired for the purpose of the Land Redemption Ordinance, No. 61 of 1942 :

20 Now therefore, I, Dudley Shelton Senanayake, Minister of Agriculture and Lands, do hereby declare under section 5 (1) of the Land Acquisition Act, No. 9 of 1950 (read with section 3 (5) of the said Ordinance as amended by section 62 of that Act) that the said land is needed for a purpose which is deemed to be a public (sic) and will be acquired under that Act.

30 In the first place the caption to the declaration is inaccurate. The text of the declaration shows that it is not one which purports to be made under section 5 of the Land Acquisition Act, but one which purports to be made under section 5 (1) of the Land Acquisition Act as modified for the purposes of the Land Redemption Ordinance. Though, where the statute does not require that a declaration should contain a caption, an incorrect caption to a declaration which is legal in all respects, does not vitiate such a declaration, it is important that public functionaries charged with the responsibility of making statutory declarations, especially when they have far reaching consequences, should exercise extreme care in making them and they should not leave room for the impression that the declarant failed to give his mind to the document he was signing. For if it can be established that the declarant signed a document of the contents of which he was not aware he cannot be said to have discharged the function entrusted to him by the statute.

40 It would appear from the recital that the foundation of the declaration is the determination of the Land Commissioner under section 3 (4) of the Land Redemption Ordinance. I have shown above that the lands in question are not lands the Land Commissioner is authorised by section 3 (1) (b) to acquire and that his determination is in consequence not final and that it being not a determination which

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he is authorised to make under the statute is bad in law and does not afford the Minister legal authority to make the declaration he has made. Where there is no valid determination under that Ordinance the Minister can make no declaration under section 5 (1) of the Land Acquisition Act as modified and therefore the declaration he has made in respect of the lands in the instant case is a nullity and is of no effect in law and is therefore not the statutory declaration contemplated in section 5 (1).

Where the declaration which purports to be made under section 5 (1) is a nullity it does not become "conclusive evidence" of the fact that the land is needed for a purpose which is deemed to be a public purpose; because it is only a valid declaration that is given that effect by the Act. The opening words of section 5 (2) make the position clear. They are "A declaration made under sub-section (1)", i.e., a declaration validly made under that sub-section, and not "A declaration which purports to be made under sub-section (1)" though not validly made thereunder. Similarly the publication of an invalid declaration in the *Gazette* will not be "conclusive evidence" of the fact that a declaration under sub-section (1) was duly made, for sub-section (3) also provides that the publication of a *declaration under sub-section (1)* in the *Gazette* shall be conclusive evidence of the fact that *such* declaration was duly made. An invalid declaration has the same effect as if no declaration was ever made and cannot be acted on and confers no authority for taking the steps consequential on a valid declaration under the Land Acquisition Act as modified and does not therefore have the conclusiveness given by section 5 (2) to a valid declaration. 10 20

There is a further inaccuracy in the declaration in that it states that the land will be acquired under the Land Acquisition Act. The acquisition is under the Land Redemption Ordinance; but the legislature has authorised the use of the machinery of the Land Acquisition Act as modified for the purposes of the Land Redemption Ordinance. It is the failure of the acquiring officer to appreciate the fact that the authority for the acquisition of lands for the purposes of the Land Redemption Ordinance is in that Ordinance itself that has led him to acquire the rights of the *dewale* when he had no authority to do so. The copy of the declaration produced by the Attorney-General ID1 is in English alone. Neither copies nor originals of the Sinhalese and Tamil declarations have been produced nor is there any evidence that the Minister ever made them. I am of the view that sub-section (1) of section 5 of the Act requires the Minister to make a declaration in each of the three languages and the requirements of the section are not satisfied if he does not do so. 30 40

Sub-section (1) of section 5 further requires the Minister to direct the acquiring officer of the province or district in which the land which is to be acquired is situated to cause such declaration in the

Sinhalese, Tamil and English languages to be published in the *Gazette* and exhibited in some conspicuous places on or near the land. There is no evidence that such a direction was given nor is there any evidence that the acquiring officer of the province or district in which the land is situated caused the declaration to be published in the *Gazette* in Sinhalese and Tamil. Learned counsel for the Crown tendered at the trial, not the *Gazette* in which the declaration was published, but an extract from the *Government Gazette* certified by an Assistant Land Commissioner 1D2 in which

10 the declaration appears in the English language alone. This Court has always regarded the requirement that a publication should be made in English, Sinhalese and Tamil as imperative. Failure to publish in all three languages has been regarded as vitiating the publication. The cases of *H. Foerander v. M. Ugo Fernando*, 4 S. C. C. 113, and *Dias v. A. G. A., Matara*, 3 N. L. R. 175, are two of the cases that take that view. Apart from the fact that the declaration is invalid for the reason that the condition precedent to the making of the declaration is absent these other defects I have pointed out above also affect its validity.

20 I shall now deal with the contention of learned counsel for the Attorney-General that sub-section (2) of section 5 of the Act as modified precludes the plaintiff from questioning in these proceedings the legality of a declaration made by the Minister, whether or not his action is within the powers confided in him by the legislature. No decision of this Court or of any Superior Court in any other part of the Commonwealth was cited in support of his contention. The sub-section embodies a rule of evidence and not a rule of law. In the instant case the plaintiff is not seeking to produce counter evidence to prove that the land is not needed for a purpose which is

30 deemed to be a public purpose; but he is questioning the legality of the declaration and the words "conclusive evidence" do not preclude him from doing so. The expression "conclusive evidence" which is familiar in the law of England and the United States though used in some of our statutes when a rule of evidence is sought to be enacted is not used in our Evidence Ordinance which uses the expression "conclusive proof". The former expression is used in the same sense as the latter and I for one think the latter expression is more precise and for that reason the better expression. The effect of the words "conclusive proof" in the Evidence Ordinance is

40 thus stated therein (section 4 (3)):

When one fact is declared by this Ordinance to be conclusive proof of another, the court shall on proof of the one fact regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Here it is not sought to lead evidence to disprove the declaration made by the Minister. Learned counsel's contention is not sound and cannot be upheld.

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Even if the declaration had been a declaration *intra vires* of the statute its imperfections are so many that it cannot be received even for the purpose for which section 5 (2) declares it to be "conclusive evidence".

The rule of construction applicable to provisions which declare the declaration or certificate of a person who is not before Court conclusive evidence of a fact is stated thus by Viscount Dunedin in the case of *Penrikyber Navigation Colliery Co. v. Edwards*, (1933) A. C. 28 at 38—

I think that a provision which gives this effect to a certificate 10
 of a person who is not before the Court, and makes it conclusive against the evidence of competent witnesses who are, is, if any provision ever is, one which must be applied strictly, and must be limited to an exact compliance with its terms.

As the question whether the declaration in question may be admitted as conclusive evidence of the fact that the lands referred to in the plaint are needed for a purpose which is deemed to be a public purpose does not arise for decision on this appeal it is not necessary to discuss the matter further.

Learned counsel for the Attorney-General contended that the 20
 Order made by the Minister under section 36 of the Land Acquisition Act was in the way of the plaintiff and that he could not succeed unless and until that Order is set aside. That contention would be sound only if the Order he had made is one which the Minister was entitled to make under the Act and he had complied with its requirements in doing so. But the Order in the instant case is one which he had no power in law to make and in the making of which he has not complied with the requirements of the Act. There being no valid declaration under the modified section 5 (1) of the Act, the acquiring officer had no authority in law to proceed under section 6 and the 30
 subsequent sections. The legal authority to proceed under these provisions flows only from a valid declaration under modified section 5 (1). All the steps taken by the acquiring officer and the Minister are therefore null and void and the position in law is as if both of them had taken no action under the statute and as if no Order under section 36 was ever made. The publication of a void order under section 36 authorising the acquiring officer to take possession of a land does not have the effect of vesting that land in Her Majesty as provided in section 37 (a) of the Act. No question of setting aside the Order therefore arises. There being no Order under section 36 40
 in existence in law the Land Commissioner had no power to alienate the two lands in question under section 5 (1) of the Land Redemption Ordinance. That being the case the 2nd defendant's possession is illegal and he is liable to be ejected from the two lands.

I now come to the plea of *res judicata* taken by the Attorney-General. It was raised in paragraph 7 of the amended answer filed on 8th September, 1954, which reads—

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10 7(a) The plaintiff sued the Land Commissioner and the Assistant Government Agent, Nuwara Eliya, in action No. L. 3632 of the District Court of Kandy for a declaration that the lands described in the plaint in this action are not liable to be acquired under the provisions of the Land Redemption Ordinance and for an injunction restraining the said Assistant Government Agent from proceeding with the Acquisition of the said lands.

(b) The said action was dismissed with costs.

(c) The defendant pleads that the decision in the said case is *Res Adjudicata* of the matters in issue in the present action between the plaintiff and the Crown, and that accordingly the plaintiff cannot maintain this action against the Crown.

Shortly the facts relevant to this plea are as follows:—On 23rd June, 1952, the plaintiff instituted an action against the Land Commissioner and the Government Agent of Nuwara Eliya, the Acquiring Officer. In his plaint he alleged—

20 (3) The plaintiff pleads that the said lands do not fall within any of the categories of lands that are liable to be acquired under the said Ordinance and that the acquisition of them is in excess of the powers unlawful and is a denial of the rights of the plaintiff who holds the said lands by payment of dues and or performance of services to the Pattini Dewale at Hanguranketa.

(4) The continuance of the proceedings for acquisition will cause loss and damage to the plaintiff.

30 (5) A cause of action has therefore accrued to the plaintiff to sue the defendant for a declaration that the said lands are not liable to be acquired under the provision of the Land Redemption Ordinance and for an injunction prohibiting the 2nd defendant from carrying on any further the proceedings to acquire the lands.

He asked—

(a) for a declaration that the lands and premises more fully in the Schedule at the foot hereof are not liable to be acquired under the provisions of the Land Redemption Ordinance,

(b) for an injunction restraining the 2nd defendant abovenamed from proceeding any further with the said acquisition until the final determination of this action.

40 The defendants filed a joint answer denying all the allegations of the plaintiff except that the lands are subject to performance of services to the Pattini Dewale of Hunguranketa. They also pleaded that the Court had no jurisdiction to hear and determine the action.

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The plaintiff having failed to appear on 13th October, 1953, the day fixed for the hearing of the action, it was dismissed under section 84 of the Civil Procedure Code. His attempt to show cause for his nonappearance was unsuccessful.

I shall examine the features of the two actions before discussing the question whether the plaintiff's present action is barred by the dismissal of the Kandy case.

The present action is against the Attorney-General and the 2nd defendant the mortgagor. The Kandy case was against the Land Commissioner *nomine officii* and E. G. Goonewardene, Assistant Government Agent, Nuwara Eliya. In the present action the plaintiff seeks a declaration of title to the lands in question and in addition to it or in the alternative a declaration of his right to their possession and to have the 2nd defendant ejected therefrom. In the Kandy case the plaintiff sought a declaration that the lands in question were not liable to be acquired and asked for an injunction restraining the Assistant Government Agent from proceeding with the action. The plaintiff bases both actions on the ground that the Land Commissioner has no authority in law to acquire the Lands. 10

This is a convenient point to discuss the scope of the doctrine of *res judicata*. It has its origin in the Roman Law where it is stated thus: *Res Judicata dicitur, quae finem controversiarum pronuntiatione judicis accipit, quod vel condemnatione vel absolutione contingit* (Digest XLII, Tit. I. Sec. 1). Scott translates it into English thus: "By *res judicata* is meant the termination of a controversy by the judgment of a Court. This is accomplished either by an adverse decision, or by discharge from liability." (The Civil Law, Vol. 9, p. 228). Hukm Chand expresses the view that this doctrine is founded upon the maxim *nemo debet bis vexari pro una et eadem causa*, which is itself an outcome of the wider maxim, *interest reipublicae ut sit finis litium* (Hukm Chand, *Res Judicata*, 1894 Edn, p. 5). The Roman doctrine which has been adopted in Roman Dutch Law as well cannot be extended to cases not falling within its ambit except by legislation. Voet defines it in almost the same terms as the Digest: *Res Judicata est, quae finem controversiarum pronuntiatione judicis accipit, absolutione vel condemnatione* (Voet, Bk XLII, Tit. I, Sec. 1). Gane renders it into English thus (Vol. 6, p. 297): "A *res judicata* is a matter in which an end has been put to disputes in a declaration of a judge by absolution or adverse judgment." In our legal system the doctrine being one that appertains to the filed of civil procedure provisions against parties being vexed twice for the same cause of action and provisions designed to prevent interminable litigation between parties have been enacted in our Civil Procedure Code. Similar though not the same provisions exist in the Indian Civil Procedure Code. The provisions of our Code in my opinion go beyond the scope of the doctrine as understood in Roman and 20 30 40

Roman Dutch Law. The early English decisions adopted the doctrine as understood in Roman Law. This is clearly shown in the following observations of Lord Romilly in *Jenkins v. Robertson* (1867 L. R. 1 H. L. (Sc. Ap.) p. 117): "*Res Judicata* by its very words, means a matter upon which the Court has exercised its judicial mind, and has come to the conclusion that one side is right, and has pronounced a decision accordingly. In my opinion, *res judicata* signifies that the Court has, after argument and consideration, come to a decision on a contested matter." Some of the early English cases adopt Vinnius's definition of *res judicata*. In *Hunter v. Stewart* (4 De G. F. & J. 176, (1861) 45 E. R. 1151) Lord Westbury cited, with approval the following passage from his commentary on the Institutes (Lib. IV, Tit. XIII, S. 5): "*Exceptio rei judicate non aliter agentis abstat quam si eadem quaestio inter easdem personas revocetur, itaque ita demum nocet, si omnia sint eadem, idem corpus, eadem quantitas, idem jus, eadem causa petendi, eadem condito personarum.*"

As the English decisions I have cited set out the basic principles of the law of *res judicata*, it is unnecessary to refer to later English decisions for in England the law of *Res Judicata* is a branch of the law of estoppel. In our law the subject of *res judicata* appertains to the province of civil procedure properly so called. In seeking the aid of English decisions for the solution of our problems of *res judicata* we have to bear in mind this fundamental difference between the two systems. In India too the subject has been dealt with in the same way as we have dealt with it; but when referring to Indian decisions we should not forget that almost from the earliest times statutory provision had been made in that country for barring actions on the ground of *res judicata*. In the result the decisions of the Indian Courts and of the Privy Council in appeal from those Courts were more concerned with interpreting the relevant statutes than in expounding the principles of *res judicata*. Nevertheless some of the judgements contain valuable discussions of the principle.

In this country our Civil Procedure Code very properly makes provision to ensure the observance of the doctrine of *res judicata* and the maxims *memo debet bis vexari pro una et eadem causa* and *interest reipublicae ut sit finis litium*. The provisions are sections 34, 207, and 406. In the case of *Samichi v. Pieris*, 16 N. L. R. 257, which was heard by a bench of three judges, two of the judges refused to uphold the contention that the whole of our law of *res judicata* is to be found in sections 34, 207, and 406 of the Civil Procedure Code. Lascelles C.J. observed: "The law of *res judicata* has its foundation in the civil law, and was part of the common law of Ceylon long before Civil Procedure Codes were dreamt of. But even if these sections contain an exhaustive statement of the law on this point, I cannot see that there is anything in them which is inconsistent with the principles which have been followed in the

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English, Indian, and American Courts". Wood Renton J. observed in the same case: "It is suggested that the principles of English and Indian law as to *res judicata* are excluded by section 207 of the Civil Procedure Code. I see no reason to alter the opinion which I have already expressed in various other cases that section 207 and similar sections of the Civil Procedure Code do not embody the whole law as to *res judicata* in Ceylon." The dissenting judge, Pereira J., took the view that our law of *res judicata* was in the Civil Procedure Code and that we cannot go outside it.

With the greatest respect to the two most eminent judges who formed the majority, I find myself unable to agree that theirs is the proper approach to the interpretation of a Code. The principles of interpretation applicable to a Code are stated in the case of *Bank of England v. Vagliano Brothers*, (1891) A.C. 107. In that case Lord Halsbury stated at page 120: "I am wholly unable to adopt the view that where a statute is expressly said to codify the law, you are at liberty to go outside the Code so created, because before the existence of that Code another law prevailed."

In the same case Lord Herschell made the following remarks at page 144:—

"My Lords, with sincere respect for the learned judges who who have taken this view, I cannot bring myself to think that this is the proper way to deal with such a statute as the Bills of Exchange Act, which was intended to be a code of the law relating to negotiable instruments. I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view."

"If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such

resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely ; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be
10 justified on some special ground."

As stated earlier *res judicata* is dealt with in Roman Dutch Law, a matter of Civil Procedure, as an "exceptio" which expression is used in the sense of a special defence or a special plea. Voet defines it thus : "Now an exception is the shutting out of an action which is available in strict law." (Bk XLIV, Tit. I, S. 2, Gane Vol. 6, p. 337.) *Res Judicata* is an exception that must be pleaded and tried. I shall now examine the relevant provisions of our Code.

The first section that merits consideration is section 34. It provides as follows :—

20 " (1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.

(2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but if he omits (except with the leave of the Court obtained before the hearing)
30 to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted."

The Attorney-General does not claim that the plaintiff is barred by section 34 (2) from bringing his present action. The Kandy case was brought while the acquisition was threatened and before the lands were actually acquired and the plaintiff is not now seeking to sue for a remedy he omitted to seek in the Kandy case, nor is he seeking to enforce a claim he relinquished then.

The next provision that calls for attention is section 207. It reads :

40 " All decrees passed by the Court shall, subject to appeal, when an appeal is allowed, be final between the parties ; and no plaintiff shall hereafter be non-suited.

Explanation. Every right of property, or to money, or to damages or to relief of any kind which can be claimed, set up, or put in issue between the parties to an action upon the cause of action for which the action is brought, whether it be actually so claimed, set up, or put in issue or not in the action, becomes, on the passing of the final decree in the action, a *res adjudicata*, which cannot afterwards be made the subject of action for the same cause between the same parties ”.

The first question that needs consideration is whether the expression “ all decrees ” includes decrees entered under section 84. Now section 207 occurs in a chapter which has a heading “ Judgment and Decree ” and makes elaborate provision regarding the pronouncing of judgment, the drawing up of decrees. Section 184 provides that upon the evidence which has been duly taken or upon the facts admitted in the pleading or otherwise and after the parties have been heard either in person or by their pleaders judgment shall be pronounced in open court after notice to the parties. Section 188 provides that as soon as the judgment is pronounced a formal decree bearing the same date as the judgment shall be drawn up by the Court in the form No. 41 in the First Schedule or to the like effect specifying in precise words the order which is made by the judgment in regard to the relief granted or other determination of the action. The succeeding sections make elaborate provisions regarding decrees in respect of immovable property, movable property, interest, specific performance, payment by instalments set off, mesne profits, accounts etc.

Section 206 provides that the decree or certified copy thereof shall constitute the sole primary evidence of the decision or order passed by the Court. The preceding provisions of the Chapter in which section 207 occurs to my mind show that the decrees spoken of in that section are decrees drawn up by the Court under section 188 after judgment has been pronounced in the manner contemplated in sections 184, 185, 186 and 187. Such decrees are final between the parties subject to appeal. Section 207 will therefore apply only to decrees pronounced after there has been an adjudication on the merits of a suit and not to decrees entered under section 84.

Section 84 of the Civil Procedure Code under which the plaintiff’s action was dismissed provides that if the plaintiff fails to appear—

(a) on the day fixed for the appearance and answer of the defendant, or

(b) on the day appointed—

(i) for the filing of the answer, or

(ii) for the filing of replication, or

(iii) for the hearing of the action, and

if the defendant on the occasion of such default of the plaintiff to appear is present in person or by proctor, and does not admit the plaintiff's claim, and does not consent to postponement of the day for the hearing of the action, the Court shall pass a decree *nisi* in the Form No. 21 in the First Schedule, or to the like effect, dismissing the plaintiff's action, which said decree shall, at the expiration of fourteen days from the date thereof, become absolute, unless the plaintiff shall have previously, on some day of which the defendant shall have notice, shown to the Court good cause, by affidavit or otherwise, for his non-appearance.

Assuming for the moment that the action had been rightly dismissed does the dismissal operate as *res judicata*. Clearly there has been no judgment in the sense contemplated in section 184 of the Code. In this connexion Spencer Bower's observation at page 19 of his treatise on *Res Judicata* is apposite and bears repetition.

Obviously, there is *prima facie* no decision in civil any more than in military warfare, where the attacking party sounds a retreat for strategic purposes. His retirement may indicate a perilous or even disastrous position for the moment, but there is no battle, and no "decision"; indeed, his every object in declining the former is to escape the latter. This was the effect of the old common law non-suit, in which the plaintiff voluntarily withdrew from the contest at the trial for the express purpose of avoiding any judgment, and reserving his liberty to bring a fresh action. It is true that, in the Supreme Court, this ancient right of a plaintiff, and several, analogous rights, both in law and in equity, to abandon his claim are either abolished or qualified, but the authorities on the old practice are still very useful as illustrations of the principle now under discussion.

In the case of *Brandlyn v. Ord.*, (1738) 1 Atk. 571, 26 E. R. 359, it was held by Lord Hardwicke that a bill dropped for want of prosecution is never to be pleaded as a decree of dismissal in bar to another bill. The view I have taken of section 207 of the Code is in accord with the basic concepts of *Res Judicata*. A decree of dismissal under section 84 of the Civil Procedure Code does not in my opinion operate as *Res Judicata* and the learned District Judge is right in so holding.

I shall now discuss the meaning of the words "no plaintiff shall hereafter be non-suited". Non-suit is an old English common law procedure no longer in force in England. When the plaintiff failed to make out a legal cause of action or renounced it owing to the discovery of some error or defect in it or failed to support his pleadings by any evidence after the matter has so far proceeded when the stage of the verdict had been reached the Judge ordered a non-suit. A

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non-suited plaintiff might on paying all costs recommence his action. A procedure somewhat akin to non-suit is to be found in section 406 which reads as follows :—

(1) It, at any time after the institution of the action, the Court is satisfied on the application of the plaintiff (a) that the action must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the action or to abandon part of his claim with liberty to bring a fresh action for the subject-matter of the action, or in respect of the part so abandoned, the court may grant such permission on such terms as to costs or otherwise as it thinks fit. 10

(2) If the plaintiff withdraw from the action, or abandon part of his claim, without such permission he shall be liable for such costs as the court may award, and shall be precluded from bringing a fresh action for the same matter or in respect of the same part.

I now come to the explanation to section 207. According to it for a matter to be *res adjudicata* the previous action which is pleaded as a bar to the subsequent action must be—

- (a) for the same cause of action, and
- (b) between the same parties. 20

In the "same cause" is included every right to property, or to money, or to damages, or to relief of any kind which *can* be claimed, set up or put in issue between the parties upon the cause of action for which the action is brought. The instant case and the Kandy case are not between the same parties. The relief now claimed could not have been claimed in the Kandy case and the matters in issue except one are not the same.

Before I conclude I wish to observe that I find myself unable to appreciate the attitude of the Crown in raising the plea of *res judicata* in the instant case. In the amended answer in the Kandy case the officers of the Crown who were represented by the Crown Proctor and who must undoubtedly have acted on the advice of the Crown legal adviser took the plea that the Court had no jurisdiction to hear and determine the action. If the legal advisers of the Crown were satisfied of the soundness of that plea, and I must assume that they were so satisfied, then the decree of dismissal of the action was made without jurisdiction. It is settled law that a judgment or decree of a Court acting without jurisdiction does not operate as *res judicata*. Why then did the Crown being satisfied that the Court had acted without jurisdiction raise the plea of *res judicata* in the instant case? We have had no explanation from the learned counsel appearing for the Attorney-General. In this connexion I wish to repeat the remarks of the Lord Chief Baron in the case of 30 40

Deare v. Attorney-General (1 Y. & C. Ex. p. 208) quoted by me in the citation from the judgment of Farewell L. J. in *Ladamuttu's* case (*supra*):

No. 13.
Judgment of the
Supreme Court.
6.3.58—*contd.*

It has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of proceedings for the purpose of bringing matters before a Court of Justice when any real point of difficulty that requires judicial decision has occurred.

10 As this is the fourth appeal in which we have been called upon to decide whether a statutory functionary has acted within the ambit of his powers I wish to state that where statutory functionaries are vested with extraordinary powers such as those granted under the Land Redemption Ordinance they should show the greatest care in exercising such powers entrusted to them by the legislature in the faith that they would regard them as a sacred trust and show the greatest consideration to the rights of the citizen. They should always give close attention and due consideration to the representations of those affected by the exercise of such powers, ever mindful of the fact that it is not every citizen that has the means to assert his rights in the Courts if the functionary does not treat their representations with the considerations they deserve. In the instant case it would seem that in establishing his claim the plaintiff has had to spend more than the compensation he has been offered. The greater the powers entrusted to a statutory functionary the greater should be the care with which they are exercised.

I allow the appeal with costs and direct that decree be entered as prayed for with costs.

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

30 DE SILVA, J.

I agree.

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

S. C. No. 152

D. C. Colombo No. 7184/L.

PULLE, J.

40 Three distinct matters have been raised in this appeal and the decision of any one of them in favour of the defendants, who are the respondents, would conclude the appeal in their favour. The learned trial Judge held that although the 2nd defendant was the *paraveni nilakaraya* of the lands in question he was none the less the owner for the purpose of satisfying the requirements of section

3 (1) (b) of the Land Redemption Ordinance, No. 61 of 1942. He also held that a declaration made by the Minister of Agriculture and Lands dated the 10th May, 1951, under the provisions of the First Schedule to the Land Redemption Ordinance, as amended by section 62 (1) of the Land Acquisition Act, No. 9 of 1950, ruled out even the possibility of challenging the proceedings taken to acquire the lands on the ground that the Land Commissioner had exceeded his powers under section 3 (1) (b) of the Land Redemption Ordinance. He did not, however, uphold the plea raised by the Crown that the decree in D. C. Kandy case No. 3632 dismissing an action instituted by the plaintiff in 1952 operated as *res judicata*.

10

In the case of *Appuhamy et al. v. Menike et al.* (19 N. L. R. 361) a Bench of three Judges held that a *paraveni nilakaraya* claiming an undivided share in a panguwa of a nindagama was not entitled under the Partition Ordinance, No. 10 of 1863, to bring a suit for the partition of the land. Section 2 which lays down the prime condition for the institution of a partition action reads :

“ When any landed property shall belong in common to two or more owners, it is and shall be competent to one or more of such owners to compel a partition of the said property ; ”

20

The submission on behalf of the appellants in that case was that, although they and the defendants were *paraveni nilakarayas*, the panguwa “ belonged ” in common to them and that the appellants came within the description of “ one or more of such owners . ” The reasons for holding against the appellants are stated differently in the three judgments. Nevertheless, I am compelled to come to the conclusion that the only basis on which the decision can be interpreted is that the *paraveni* tenants could not bring themselves within the scope of section 2, whatever each of the learned Judges thought was a good ground for denying their claim to be owners. I fail to see why if they were owners they should have been, in the face of the clear provisions of the section, refused the right to put an end to the common ownership and why two of the Judges should regard the indivisibility of the services due to the overlord as the only obstacle to a physical division of a panguwa or to a sale. I have had the advantage of reading in advance the judgment of my Lord, the Chief Justice, and I fully concur in the reasons given by him that a *paraveni nilakaraya* cannot for the purposes of section 3 (1) (b) of the Land Redemption Ordinance, be regarded as an “ owner ”.

30

If it be correct that the 2nd defendant cannot bring himself under section 3 (1) (b) of the Land Redemption Ordinance, then I see no difficulty in holding that the steps taken to acquire the lands and vest title thereto in the Crown are of no avail in law. The preamble to the modified form of section 5 of the Land Acquisition Act, No. 9 of 1950, which is incorporated as an amendment to the First Schedule to the Land Redemption Ordinance reads,

40

“Where the Land Commissioner determines that any land shall be acquired for the purposes of the Land Redemption Ordinance, the Minister shall make a written declaration”

No. 15.
Judgment of the
Supreme Court.
6.3.58—contd.

To my mind a valid declaration by the Minister is dependent on a valid determination by the Land Commissioner and that an invalid determination vitiates the steps taken thereafter to put in motion the machinery of acquisition for the ultimate vesting of title to the lands in the Crown.

10 On the issue of *res judicata* the facts are fully set out in the judgment of my Lord, the Chief Justice, and I need not repeat them. It is common ground that at the time D. C. Kandy case No. 3632 was filed title to the lands in question was in the plaintiff. The plaintiff alleged in effect that two statutory functionaries one the Land Commissioner and the other Assistant Government Agent had done acts, purporting to act under the law, which were not within their powers and the plaintiff asked for a declaration that the lands were not liable to be acquired under the Land Redemption Ordinance and for an injunction restraining the 2nd defendant who was the acquiring authority from taking further steps to acquire the lands. The two 20 defendants denied the allegations of illegality and in paragraph 6 of their joint answer they stated,

“Further answering these defendants state that the Court has no jurisdiction to hear and determine this action.”

The occasion to formulate issues did not arise as the action was dismissed for default of appearance. That the dismissal of the action was a bar to a fresh action against one or other of the parties on the same cause of action, assuming that the District Judge had jurisdiction to try case No. 3632 on its substantive merits, is plain enough. If the court had no jurisdiction to grant relief to the plaintiff as 30 against the defendants in case No. 3632 I fail to see how the decree in that case can operate as *res judicata*, if the plaintiff afterwards seeks relief against the proper parties in the proper forum.

In my opinion the plea of *res judicata* fails substantially for the reason that the parties in the two actions are different. I cannot bring myself to hold that the defendants in case No. 3632 defended it as agents of the Crown. The complaint against them was that under colour of office they were doing or had done acts unwarranted by law. It was open to the Attorney-General to have got himself substituted in place of the Land Commissioner or the Assistant 40 Government Agent. Had he done so his position in the present case would have been almost impregnable. I agree with the learned District Judge that the plea of *res judicata* fails.

In the result the appeal should be allowed with costs both here and below,

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

Decree of the Supreme Court

D.C. (F) 152/L
1956

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

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON

R. B. Herath of No. 52, Malabar Street, Kandy *Plaintiff.*

vs.

The Attorney-General of Ceylon, Hultsdorf, Colombo, and 10
another *Defendants.*

R. B. Herath of No. 52, Malabar Street, Kandy .. *Plaintiff-Appellant.*

vs.

The Attorney-General of Ceylon, Hultsdorf, Colombo, and
another *Defendants-Respondents.*

Action No. 7184/L

DISTRICT COURT OF COLOMBO

THIS cause coming on for hearing and determination on the 5th,
9th, 10th, 11th, 13th, 19th and 20th December, 1957 and 6th March,
1958, and on this day, upon an appeal preferred by the Plaintiff- 20
Appellant before the Hon. Hema Henry Basnayake, Q.C., Chief
Justice, the Hon. M. F. S. Pulle, Q.C., Puisne Justice and the
Hon. K. D. de Silva, Puisne Justice of this Court, in the presence of
Counsel for the Plaintiff-Appellant and 1st and 2nd Defendants-
Respondents.

It is considered and adjudged that this appeal be and the same is
hereby allowed and it is directed that decree be entered declaring
the plaintiff-appellant entitled to the land and premises described
in the schedule hereto,

It is further ordered that the plaintiff-appellant be restored to and quieted in possession of the said land and that the 2nd defendant-respondent be ejected therefrom.

No. 14.
Decree of the
Supreme Court.
8.3.58—contd.

And it is further ordered that the defendants-respondents do pay to the plaintiff-appellant his taxed costs both in this Court and in the Court below.

(Vide copy of judgment attached)

THE SCHEDULE ABOVE REFERRED TO

10 1. All that field called Wallivelakumbura of Five Pelas paddy sowing extent situate at Hanguranketha in Diyatilake Koralo of Udahevalheta in the District of Nuwara Eliya, Central Province and bounded on the East by the stone fence of Mr. Soysa's garden South by Ela separating Huludorawatte West by Gansabawa Road now Road Committee Road and North by stone fence of Potgul Vihare.

20 2. All that land called Huludorawatte of One Pela paddy sowing in extent situated at Damunumeya in Diyatilake Koralo aforesaid and bounded on the East by the stone fence of Mr. Soysa's land South by the stone fence of the Gederawatte and Devale Iura West by Gansabawa Road and North by Walliwalakumbura Ela together with the buildings and everything thereon.

And which said lands are also described as lots 1, 2, 3, 4, 5 and 6 in Preliminary Plan No. A 1684 ; land called Walliwalakumbura (lots 1-3) and Huludorawatta (lots 4, 5, 6) in extent Acres 2 Roods 1, Perches 27.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 19th day of March, in the year One thousand Nine hundred and fifty-eight and of Our reign the Seventh.

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

No. 15
Application for
Conditional
Leave to
Appeal to the
Privy Council.
25.3.58

No. 15

**Application for Conditional Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

R. B. Herath of No. 52, Malabar Street, Kandy *Plaintiff.*

S. C. (Final) 152 of 1956 *vs.*

(1) Attorney-General of Ceylon, Hultsdorf, Colombo, (2) P. B.
Attanayake of Dumunumeeya, Hanguranketa *Defendants.*

D. C. Colombo No. 7184/L and

R. B. Herath of No. 52, Malabar Street, Kandy
..... *Plaintiff-Appellant.* 10

vs.

(1) Attorney-General of Ceylon, Hultsdorf, Colombo, (2) P. B.
Attanayake of Dumunumeeya, Hanguranketa
..... *Defendants-Respondents.*

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

The Attorney-General of Ceylon .. *Defendant-Respondent-Appellant.*

vs.

R. B. Herath of No. 52, Malabar Street, Kandy
..... *Plaintiff Appellant-Respondent.* 20

and

P. B. Attanayake of Dumunumeeya, Hanguranketa
..... *Defendant Respondent-Respondent.*

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

On this 25th day of March, 1958.

The humble petition of the Attorney-General of Ceylon, the Defen-
dant Respondent-Appellant abovenamed appearing by Abdul
Hameed Mohamed Sulaiman, his Proctor states as follows :—

1. Upon an appeal preferred to the Supreme Court by the Plaintiff
Appellant Respondent abovenamed, the Supreme Court delivered
judgment thereon on the 6th day of March 1958 allowing the said
appeal with costs. The said appeal bears No. 152 (Final) of 1956-
D. C. Colombo Case No. 7184/L. 30

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

3. That (a) the said judgment is a final judgment in a civil action and the matter in dispute on the appeal is of the value of Rs. 10,000.

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

10

4. That notice of the intended application for leave to appeal was given to the Plaintiff Appellant-Respondent on the 15th day of March 1958 and to the Defendant-Respondent-Respondent on the 16th day of March 1958 in terms of Rule 2 of the Rules in the Schedule to the appeals (Privy Council) Ordinance, Chapter 85. Affidavit in proof of the said fact is annexed hereto marked "X".

Wherefore the Defendant Respondent-Appellant prays for leave to appeal to Her Majesty the Queen in Council against the said judgment of this Court dated the 6th day of March 1958.

20

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

Settled by
(Sgd.) Illegible.
Senior Crown Counsel.

No. 15.
Application for
Conditional
Leave to Appeal
to the Privy
Council.
25.3.58—contd.

No. 16.
Decree of the
Supreme Court
granting
Conditional
Leave to
Appeal to the
Privy Council.
28. 4. 58.

No. 16

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

S. C. Application No. 114.

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

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

In the matter of an application dated 25th March, 1958, for 10
Conditional Leave to Appeal to Her Majesty the Queen in Council
by Defendant-Appellant against the decree dated 6th March, 1958.

The Attorney-General of Ceylon *Defendant-Respondent*
APPELLANT

vs.

R. B. Herath of No. 52, Malabar Street, Kandy
..... *Plaintiff-Appellant*
RESPONDENT

and

P. B. Attanayake of Dumunumeeya, Hanguranketa
..... *Defendant-Respondent* 20
RESPONDENT

Action No. 7184/L (S. C. 152—Final).

DISTRICT COURT OF COLOMBO

THIS cause coming on for hearing and determination on the 28th
day of April, 1958, before the Hon. M. C. Sansoni and the Hon.
T. S. Fernando, Q.C., Puisne Justices, of this Court, in the presence
of Counsel for the Petitioner.

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

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

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

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

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

No. 10.
Decree of the
Supreme Court
granting
Conditional
Leave to
Appeal to the
Privy Council.
28.4.58—contd.

No. 17.
Application for
Final Leave to
Appeal to the
Privy Council.
20. 5. 58.

No. 17

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

R. B. Herath of No. 52, Malabar Street, Kandy *Plaintiff.*

S. C. (Final) 152 of 1956 vs.

(1) The Attorney-General of Ceylon, Hultsdorf, Colombo, (2)
P. B. Attanayake of Dumunumeeya, Hanguranketa .. *Defendants.*

D. C. Colombo No. 7184/L and

R. B. Herath of No. 52, Malabar Street, Kandy
. *Plaintiff-Appellant.* 10

S. C. Application No. 114 of 1958 vs.

(1) The Attorney-General of Ceylon, Hultsdorf, Colombo,
(2) P. B. Attanayake of Dumunumeeya, Hanguranketa
. *Defendants-Respondents.*

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

The Attorney-General of Ceylon *Defendant-Respondent, Appellant.*

vs.

R. B. Herath of No. 52, Malabar Street, Kandy
. *Plaintiff-Appellant, Respondent.* 20

and

P. B. Attanayake of Dumunumeeya, Hanguranketa.
. *Defendant-Respondent, Respondent.*

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

On this 20th day of May 1958.

THE humble petition of the Defendant-Respondent Appellant 30 abovenamed appearing by Abdul Hamed Mohamed Sulaiman, his Proctor states as follows :—

1. That the Defendant-Respondent Appellant on the 28th day of April 1958 obtained conditional leave from this Honourable Court

to appeal to Her Majesty the Queen in Her Privy Council against the judgment of this Court pronounced on the 6th day of March 1958.

2. That the Defendant Respondent-Appellant has in compliance with the condition on which such leave was granted deposited on the 14th day of May 1958 in terms of the provisions of Section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar of this Court a sum of Rupees three hundred (Rs. 300) in respect of fees mentioned in Section 4 (b) and (c) of Ordinance 31 of 1909 (Chapter 85).

10 Wherefore the Defendant Respondent-Appellant prays that he be granted final leave to appeal against the said judgment of this Court dated 6th March 1958 to Her Majesty the Queen in Her Privy Council.

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

No. 17.
Application for
Final Leave to
Appeal to the
Privy Council.
20.5.58—*contd.*

No. 18.
Decree of the
Supreme Court
granting
Final Leave
to Appeal to
the Privy
Council.
27.6.58.

No. 18

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

S. C. Application No. 178

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

IN THE SUPREME COURT OF THE ISLAND
OF CEYLON

In the matter of an application by the Defendant Respondent-
Appellant dated 20th May, 1958, for Final Leave to Appeal to Her
Majesty the Queen in Council against the judgment and decree of
this Court dated 6th March, 1958, in S. C. 152 (F)'56—D. C. Colombo
7184/L. 10

The Attorney-General of Ceylon *Defendant-Respondent.*
APPELLANT

against

R. B. Herath of No. 52, Malabar Street, Kandy
..... *Plaintiff-Appellant.*
RESPONDENT 20

P. B. Attanayake of Dumunumeeya, Hanguranketa.
..... *Defendant-Respondent.*
RESPONDENT

THIS cause coming on for hearing and determination on the 27th
day of June, 1958, before the Hon. M. F. S. Pulle, Q.C., and the
Hon. N. Sinnatambay, Puisne Justices of this Court, in the presence
of Counsel for the Appellant.

The appellant has complied with the conditions imposed on him
by the order of this Court dated 28th April 1958, granting Conditional
Leave to Appeal. 30

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

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice
at Colombo, the 4th day of July, in the year One thousand Nine
hundred and fifty-eight and of Our Reign the Seventh.

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

PART II
EXHIBITS

Deed No. 1112 attested by E. D. W. Siebel, Notary Public

P 27.
Deed No. 1113
attested by
E. D. W. Siebel,
Notary Public.
9.12.1909.

(Conveyance Rs. 3,000)

Previously registered see
Search result No. 3066 of 1.12.1909.

No. 1112

Know all men by these presents that we (1) Attanayaka Kapugedera Walalawela Yahalamuthugedera Mantilaka Mudiyanse-
Appuhamy Kapurala and (2) Athanayake Kapugedera Loku Ram
10 Menika Pathini Amma husband and wife both of Damunumeeya
in Diyatilaka Korale of the Udahehaheta Division of the Nuwara
Eliya District of the Central Province of the Island of Ceylon for
and in consideration of the sum of three thousand Rupees (Rs. 3,000)
of lawful money of Ceylon paid to us at and before the execution of
these presents by Athanayake Kapugedera Mantilaka Mudiyanse-
Punchi Banda Kapurala also of Damunumeeya aforesaid (the receipt
whereof we do and each of us doth hereby admit and acknowledge)
have granted, bargained, sold, assigned, conveyed, assured and set
over by these presents do grant bargain sell assign convey assure
20 and set over unto the said Athanayake Kapugedera Mantilaka
Mudiyanse- Punchibanda Kapurala his heirs executors adminis-
trators and assigns all and singular the land and premises in the
schedule hereto fully described and set out together with all the
buildings plantations and everything thereon and all rights ways
liberties privileges easements servitudes and appurtenance what-
soever to the said several premises belonging or in any wise apper-
taining or usually held used occupied or enjoyed therewith or
reputed or belong or be appurtenant thereto and all the estate
right title interest property claim and demand whatsoever in to
30 upon or out of the said several premises and every part and portion
thereof.

To have and to hold the said lands and premises hereby conveyed
or intend so to be with their and every of their appurtenance unto
him the said Athanayake Kapugedera Mantilaka Mudiyanse-
Punchibanda Kapurala his heirs executors administrators and
assigns absolutely and for ever and we do and each of us doth
hereby for ourselves our heirs executors and administrators covenant
with the said Athanayake Kapugedera Mantilaka Mudiyanse-
Punchi Banda Kapurala his heirs executors administrators and
40 assigns absolutely and for ever and we do and each of us doth

P 27.
Deed No. 1112
attested by
E. D. W. Siebel,
Notary Public.
9. 12. 1909—
contd.

thereby for ourselves our heirs executors and administrators covenant with the said Athanayake Kapugedera Mantilaka Mudiyansele Punchi Banda Kapurala and his aforesaid that the said several premises are free from any encumbrances whatsoever and that we shall and will always warrant and defend our title to the same unto him and them against any person or persons whosoever.

THE SCHEDULE REFERRED TO

All that field called Wallewella Kumbura of five pelas in paddy sowing extent situate at Hanguranketa in Diyatilake Korale of the Udahehaheta Division of the Nuwara Eliya District aforesaid and bounded on the east by the stone fence of Mr. Soysa's garden on the south by ela on the west by Gansabawa road and on the north by the stone fence of the vihare. 10

2. The Daranda one ammunam paddy sowing out of Wadanapaya-kumbura of two amunams paddy sowing in the whole and the adjoining one and a half kurunies paddy sowing out of the wanati both adjoining each other and forming one property called Wadanpaya Kumbura and wanata of one ammunam and one and a half kurunies paddy sowing in extent situated at Dammunumeeya aforesaid and bounded on the east by the old road in Mr. Soysa's garden and stone fence on the south by the Kaduru on the west by the stone limit of the portion of Dingiri Amma and on the north by stone limit of the portion of Dingiri Amma and Mala Kandura with everything thereon. 20

3. All that field called Wewaliyadde Kumbura of twelve lahas in paddy sowing extent situate at Dammunumeeya aforesaid and bounded on the east by stone fence on the south by stone fence of Kotuwegederawatte west by the arecanut fence and Wewaliyadde-watte and on the north by road with everything thereon.

4. All that land called Gederawatte of three pelas paddy sowing in extent situate at Dammunumeeya aforesaid and bounded on the east by stone fence of Mr. Soysa's garden South by Koralakabella tree and live fence on the west by Gansabawa road and on the north by stone fence of the Dewala and stone fence of Hunudorawatta with everything thereon. 30

5. All that land called Huludorawatte of one pela paddy sowing in extent situate at Dammunumeeya aforesaid and bounded on the east by the stone fence of Mr. Soysa's garden on the south by stone fence of Gederawatta and embankment of the dewala on the west by the Gansabawa road and on the north by Walliwellakumbura ela with everyting thereon. 40

6. All that land called Wewelliyadawatte of fifteen lahas paddy sowing in extent situate at Damunumceya aforesaid and bounded on the east by Welliyaddo Kumbura on the south by stone limit of Kotuwa Gederawatte and live fence on the west by stone fence and on the north by Karanda tree and stone fence and everything thereon.

P 27.
Deed No. 1112
attested by
F. D. W. Siebel,
Notary Public.
9.12.1909—
contd.

10 7. All that land called Bulatgamwatte of two kurunies kurakkan sowing extent situate at Madanwala in Diyatilake Korale of Udahewatte aforesaid and bounded on the east by the Petihayakumbura on the south by C. L. Soysa's hena on the west by the stone fence of Tennehena and on the north by the stone limit of Subchamy Baas' garden with everything thereon.

8. All that land called Gallengawatta of three kurunies kurakkan sowing extent situate at Madanwala aforesaid and bounded on the east by stone limit of hamy's hena and stone fence on the south by Mahagala on the west by stone limit and on the north by limit of C. L. Soysa's hena with everything thereon.

20 9. All that field called Agalakumbura of one ammunam paddy sowing in extent and the adjoining land called Agalakumbura of five lahas kurakkan sowing in extent both forming one property of one ammunam paddy sowing and five lahas kurakkan sowing in extent in the whole situate at Dammunumeeya aforesaid and bounded in its entirety on the east by the limit of Lekammahatmaya's garden on the south by live fence Gederakumburakumbukgaha and imminiyara on the west by oya and on the north by ditch of Simon Naide's chena and imminiyara of Agalamullakumbura with everything thereon.

30 10. The northern two ammunams and two pelas paddy sowing out of Wattegederakumbura of five ammunams paddy and the appurtenant wanatta of three lahas paddy sowing both adjoining each other and forming one property called Wattegederakumbura and wanata of two ammunams two pelas three lahas paddy sowing in extent in the whole situate at Ambanwala in the Udapalata Korale of the Walapane Division of the Nuwara Eliya District aforesaid and bounded on the east by Bandara ela on the south by the limit of Soysa's field on the west by crown land and ela and on the north by ditch of Ginikatuwarawa and oya with everything thereon.

40 11. All that northern portion of one ammunam and two pelas paddy sowing out of Gallanakumbura of three amunams paddy sowing in extent in the whole situate at Ambanwala aforesaid the said northern one portion of one ammunam and two pelas paddy sowing being bounded on the east by Bandara ela on the south by the limit of Medapotha on the west by Gallenahena and ela and on the north by the limit of the field of Tunpitihiyawaaratchi with everything thereon.

P 27.
Deed No 1112
attested by
E. D. W. Siebel,
Notary Public.
9. 12. 1909—
contd.

In witness whereof we the said Athanayaka Kapugedarawalalawela Yahala Mullagedera Manitilaka Mudiyanseleage Appuhamy Kapurala and Athanayaka Kapugedera Loku Ram Menike Pathiniamma have set our respective hands hereunto and to two others of the same tenor and date as these presents at Kandy in the said Central Province on the 9th day of December one thousand nine hundred and nine.

In the presence of the subscribing witnesses to the foregoing instrument do hereby declare that we are well acquainted with the two executants above named and know their proper names and place of residence and occupation of the executant.

10

(Sgd.) (In Sinhalese)
(Sgd. Illegibly.) This is the signature of Appuhamy Kapurala.
(Sgd. Illegibly.) × This is the mark of Loku Ran Menika Pathini Amma.

(Sgd.) E. D. W. SIEBEL,
N. P.

I, Edmund Daniel Wendt Siebel of Kandy aforesaid Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary unto the two vendors therein named both of whom are not known to me in the presence of Don Haramanis Abeygunasekera Karunaratne Dissanayake of Talwatta in Kandy aforesaid and Attanayake Mudiyanseleage Kapugedera Rajapaksa-Wickremasinghe Wasala Mudiyanseleage Appuhamy of Hanguranketa in the Diyatilake Korale of Uda Hewaheta aforesaid the subscribing witnesses thereto both of whom are known to me and whom declared that the said two vendors were known to them the same was signed the said two vendors (the first of whom signed as Appuhamy Kapurala in Sinhalese characters and the second with her mark) and also by the said witnesses (the first of whom signed as D. H. A. Gunasekera and the second as A. Wickremasinghe) and by me the said Notary in my presence and in the presence of one another all being present at the same time at the aforesaid on the ninth day of December one thousand nine hundred and nine.

20

30

I do hereby also further certify and state two stamps of the value of Fifteen Rupees are affixed to the duplicate of this instrument and one of one rupee to the original thereof the same being supplied by me the said notary that in the original page 1 line 10 duplicate page 1 line 8 amount of the consideration (Two Thousand Rupees Rs. 2000) was altered to read Three Thousand Rupees (Rs. 3000)

40

original page 4 line 19 and duplicate page 3 line twenty-six words Karanda tree was substituted for "Kandwa" original page 4 line 10 Soysas were rectified page 5 line twenty seven lahas were substituted for two pelas page six line three the words of the limit same page line 14 everything were struck out respectively and the duplicate page 2 line 6 words hereby convey or intended so to be were interpolated before the foregoing instrument was read over and explained as aforesaid and that no consideration was paid in my presence but the two vendors declared and acknowledged that they
 10 had received the same (Rs. 3000) from the vendor previously.

P 27.
 Deed No. 1112
 attested by
 E. D. W. Siebel,
 Notary Public.
 9.12.1909—
contd.

All which I attest.

(Sgd.) E. D. W. SIEBEL,
Notary Public.

Date of Attestation :

9th December, 1909.

1 D 4.
Mortgage Bond
No. 25814
attested by
B. A. Illanga-
tiloke,
Notary Public in
Sinhalese.
28. 5. 28.

1 D 4

**Mortgage Bond No. 25814 attested by B. A. Illangatiloke,
Notary Public, in Sinhalese**

111

Copy Appl. No. _____
4.6.45.

Prior Registration R $\frac{2}{142}$

No. 25814

10

ඉඩම 2

උකස්කරය.

රුපියල් 1500.00

විෂි එක්වා දහස් නවසිය විසිහයක් වූ මැයි මස විසිහය වෙනි දින හඟුරන්කෙකදී ලියවා දෙන උකස්කර ඔප්පුවේ විගන්තම :—

මෙහි පහත අත්සන් කරණ උඩහේවා හැටේ දියකිලකේ කෝරළේ දමුණුමායේ පදිංචි අත්තනායක කපුගෙදර මන්කිලක මුදියන් සේලාගේ පුත්චි බණ්ඩා අත්තනායක කපුරාල වන මම වස 1909 ක්වූ දෙසැම්බ්‍ර මස 9 වෙනි දින දරන තොම්මර 1112 හේ ඉලක්කම ලකුණු කර ඊ. ඩී. ඩබ්ලිව්. පීබ්ල් නොතාරිස් මහත්මයා විසින් ලියා සහතික කරන ලද

G $\frac{83}{255 \text{ to } 263}$ O $\frac{16}{338 \ \& \ 339}$ මේ ප්‍රකාර රෙජිස්ට්‍ර කර තිබෙන මීට යාකර නොදෙන සිත්තක්කර 20
ඔප්පුව පිට මිලයට ගෙන බුක්ති විදින ලංකාවිපයේ මධ්‍යම දිසාවේ කුවරඑළි දිස්ත්‍රික්කේ

1. උඩහේවාහැටේ දියකිලකේ කෝරළේ හඟුරන්කෙක තිබෙන වල්ලිවෙල කියන කුඹුර වී පස්පැලක පමණ වපසරියට මායිම් නැගෙණහිරට සොයිසා මහත්මයාගේ වත්තේ ගල් වැටද දකුණට ඇලද බස්නාහිරට ගම්පහා පාරද උතුරට විහාරේ ගල් වැටද මෙකී මායිම් තුල කුඹුර සහ එහි තුල තිබෙන සියල්ලද,

2. එසේම ඉහත කී දියකිලකේකෝරළේ දමුණුමායේ තිබෙන හුළුදෙරවත්ත කියන වී පැලක පමණ වපසරියට මායිම්, නැගෙණහිරට සොයිසා මහත්මයාගේ වත්තේ ගල් වැටද දකුණට ගෙදර වත්තේ ගල්වැට සහ දේවාලේ ඉවුරද බස්නාහිරට ගම්පහා පාරද උතුරට වල්ලි වෙල කුඹුරේ ඇලද මෙකී මායිම් තුල ඉඩම සහ එහි තුල තිබෙන සියල්ලද යන මෙකී දේපල 30
උඩහේවාහැටේ මතුරට පල්ලේ ගම්පහ කෝරළේ මුත්තේතේ පදිංචි උඩවත්තේගේ දෙන් අල්ලිය පේරා අප්පුහාමි වෙත උගස්කර තබා ලංකාවේ වලංගු වෙත මුදලෙන් රුපියල් එක්දහස් පන්සියයක් (Rs.1500) ණයට ඉල්ලා බාරගන්නට යෙදුනාය. ඉන්තිසා මෙම මුදලේ පොලී වෙනුවට මෙවක් පටන් ගෙවා තීන්දු කරනතුරා පසු යන කල් ගණට එනම් මාසේකට රුපියල් දහයට ගත දෙලහමාර ගණනේ මුළු මුදලට වැටගෙන පොලී මාස තුණකට වරක් මිල හිමියාට භාරදී ඒ ඒ වතාවලදී ඊට නිසි කුවිතාන්සි ලබා ගන්නා ලෙසට සහ මුල් මුදල මිල හිමියාට ඕනෑවී ඉල්ලාපු වීටක ගෙවා තීන්දු කර උකස් කිරීමේ කර ගන්නා ලෙසට ද එසේ ගෙවා තීන්දු කර ගන්නට නොයෙදුනොත් මෙම උගස්තේ සහ වෙනත් ණයකාර පුංචිබණ්ඩා අත්තනායක කපුරාල වන මා සන්තකීන් එවකට නිදහස්ව තිබෙන නිශ්චලවංචලාදී දේපලටලිත් එක්කෝමගේ උරුමක් කාර බාරකාර බලකාරදීන්ගෙන්වත් ඉහතකී මුල් මුදල සහ මතු කී ප්‍රකාර එවකට නොගෙවා හිඟ 40
හිටිය පොලීන් මුදල් හිමි දෙන් අල්ලිය පෙරේරා අප්පුහාමිට නොහොත් ඒ වෙනුවේ උරුමක් කාර බාරකාර බලකාරදීන්ටවත් හිඟ නැතුව නඩු මාර්ගයේ ප්‍රකාර අය කර ගන්නට පුළුවන් ලෙසටද තවද මෙයින් උගස්කල දේපල මෙසේ උගස් තැබීමට නිසි ප්‍රකාර නිසි අයිතිවාසිකම

සා බලය මට ඇති බවද මෙම උග්‍ර සම්පන්නතාවක් නොමොත් නිසි ප්‍රකාර නිදහස් කරණ ලෙස
මීට වරද්ධව මෙය අවලංගු වීමට හෝ අනිසි මට්ටමට හෝ මෙයින් උග්‍ර සේවක දේපලවල අගය
අඩුවීමට හෝ හේතුවන සම්ප්‍රදායික ක්‍රියාවක් ඉහත කී ණයකාර මා වසින් නොකරන බවද මෙයින්
ප්‍රකාශ කරමින් මට සාක්ෂි පිණිස මෙම උග්‍ර සේවකවලට මා මා මෙම ප්‍රකාර ලියාපු තව දෙනෙකුට
මතුකී ණයකාර අත්තනායක කපුගෙදර මත්තිලක මුදියන්සේලාගේ පුංචිබණ්ඩා අත්තනායක
කපුරාල වන මගේ පුරුදු අත්සන කබය ලදී.

I D 4.
Mortgage Bond
No. 25814
attested by
B. A. Illanga-
tiloko, Notary
Public, in
Sinhalese,
20. 5. 20—
cont'd.

මේ

පුංචිබණ්ඩා,
පුංචිබණ්ඩා අත්තනායක කපුරාලගේ අත්සන.

10

(Sgd.) P. B. ATTANAYAKE,

සාක්ෂි.

මීට සාක්ෂිකාරයන් වන අප වසින් මෙම ඔප්පුව 1. (Sgd.) : දෙන් හෙන්දික් අප්පුහාමි
සාදවා අත්සන් කළ ඉහත කී ණයකාරයා හොඳාකාර 2. (Sgd.) : බී. එච්. ඩී. සර්නේලිය
අදුනන බවද ඔහුගේ පදිංචියද තරාතිරම නොමොත් අප්පුහාමි.
රක්ෂාවද සම්පූර්ණ කාමයද හොඳාකාර දන්නා බවත්
මෙයින් ප්‍රකාශ කරමි.

3. (Sgd.) B. A. ILLANGANTILAKE,
N. P.

No. 25814

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ලංකාවට මධ්‍යම දිශාවේ මහනුවර සහ නුවරඑළි දිස්ත්‍රික්කේ ප්‍රසිද්ධ නොතාරිස් නිලය
කරණ හඟුරන්කෙක පදිංචි බෝදණ්ඩ අරාවෙගෙදර ඒබ්‍රහම් ඉලන්ගන්තිලක වන මම මෙයින්
සහතික කරන්නේ නම් මෙහි නම පේන මම අදුනන ණයකාර ඉංග්‍රීසි අකුරුවලින් අත්සන්කර
තිබෙන අත්තනායක කපුගෙදර මත්තිලක මුදියන්සේලාගේ පුංචිබණ්ඩා අත්තනායක කපුරාලට
සහ ඔවුනොවුන් හොඳාකාර අදුනන වාස කිව මමත් අදුනන මීට සාක්ෂි වූ උඩහේවාතුවේ
දියතිලකන් කෝරළේ හඟුරන්කෙක විදියේ පදිංචිකාරයන්වූ වික්‍රමපතිරණගේ දෙන් හෙන්දික්
අප්පුහාමි සහ බී. එච්. ඩී. සර්නේලිය අප්පුහාමි කියා අත්සන් කළ තිබෙන බොහෝ සහතිකයන්
දෙන් සර්නේලිය අප්පුහාමිද යන දෙන්නා ඉදිරිපිටදී ණයකාර පුංචිබණ්ඩා කපුරාල සහ මිලහිමි
දෙන් අල්ලිය පෙරේරා අප්පුහාමි ඉදිරිපිටදීත් මෙහි ලියා තිබෙන විගවාසගම එළිදරව් ලෙස
කියවා තේරුම්කර දුන් පසු එකී ණයකාර පුංචිබණ්ඩා අත්තනායක කපුරාල සහ සාක්ෂි
කාරයෝත් එකවිට සියලුදෙනාම එක්ව සිටිද්දී මා ඉදිරිපිට සහ ඔවුනොවුන් එකිනෙකා ඉදිරි
පිටදීත් ඉහත කී වර්ෂ එක්දහස්නවසිය විසිහයක්වූ මැයි මස විසිහය වෙනි දින හඟුරන්කෙක
නොතාරිස් කන්තෝරුවේදී අත්සන් කළ බව සැබෑකොට සහතික කරමි.

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තවද මෙම ඔප්පුවේ පෙණෙන මුදල ආණ්ඩුවේ නෝට්ටුකොළ වලින් ණයකාරයා මා ඉදිරි
පිටදී බාරගත් බවද ඔප්පුව කියවාදීමට පෙර මෙම දෙවන පිටපතේ 18 වේ 6 පෙළේ "අත්තනායක
යනු උඩින් යෙදූ බවද 3 පිට 5 පෙළේ "ල" යන්න කවුහාපු බවද 11 පෙළේ "අත්තනායක"
යනු උඩින් යෙදූ බවද 13 පෙළේ පොලීක් යනුත් කවුහාපු බවද 21 පෙළේ "අත්තනායක"
යනු උඩින් යෙදූ බවද මෙම ලියවිල්ලේ දෙවෙනි පිටපතට මාවිසින් සපයාගත් රුපියල්
පහලොවක් වටිනා මුද්දර තුණක් සහ අත් ඔප්පුවට රුපියලක් වටිනා මුද්දර එකතුක් අලවා
ලිව් බවත් වැඩිදුරටත් සහතික කරමි.

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සහතික කෙළේ වර්ෂ 1926 ක්වූ මැයි මස 26 වෙනි (Sgd.) : බී. ඒ. ඉලන්ගන්තිලක.
දින දිස.

(Sgd.) B. A. ILLANGANTILAKE,
N. P.

SEAL

1 D 4.
Mortgage Bond
No. 25814
attested by
B. A. Illanga-
tileka,
Notary Public,
in Sinhalese.
26. 5. 26—*contd.*

I, D. J. de Mel, Registrar of Lands, N' Eliya, do hereby certify that the foregoing is a true copy of a deed of mortgage made from the duplicate filed of record in this office and the same is granted on the application of P. B. Attanayake Esqr. of Hanguranketa.

Land Registry,
N' Eliya, 30th June, 1945.

(Sgd.) _____,
Registrar of Lands.

1 D 4.
English
Translation of
Mortgage Bond
No. 25814
attested by
B. A. Illanga-
tileka,
Notary Public.
26. 5. 26.

**1 D 4—English Translation of
Mortgage Bond No. 25814 attested by
B. A. Illangatilleke, Notary Public**

Prior Registration R2/142.
Mortgage Rs. 1500.
Lands 2.

10

No. 25814

The deed of Mortgage caused to be written and granted at Hanguranketa on the 26 day of May 1926 is as follows to wit:—

I the undersigned Athanayaka Kapugedera Nantilaka Mudiyanse-lage Punchi Banda Athanayake Kapurala of Damunumeeiya in Diyatilaka Korale of Udahehaheta by right of purchase upon the annexed deed of transfer No. 1112 dated 9th December 1909 and attested by E. D. W. Siebel Notary Public (Bearing Registration References G 83/255-263 O 16/338, 339) being in possession of (1)

20

All that field Walliwela Kiyana kumbura of about five pelas in paddy sowing extent in the whole situate at Hanguranketa Diyatilaka Korale of Udahehaheta in the District of Nuwara Eliya Central Province which said entire field being bounded on the East by the Galwela of Mr. Soysa's garden South by Ela West by Gansabawa Road and North by vihare galwala together with every-thing thereon.

2. All that land called Huludorawatta of about one pela in paddy sowing extent in the whole situate at Dumunumeeya in Diyatilaka Korale aforesaid which said entire land being bounded on the West by the Galawela of Mr. Soysa's garden South by Galwela of Gederawatta and devale Ivura on the West by Gansabawa road and North by the Ela of Walliwela Kumbura together with everything thereon all which said premises I have mortgaged unto Udawattege Don

30

Allis Perera Appuhamy Munwatto in Pallegampaha Koralo in Matu-
rata of Udahewaheta and borrowed from him a sum of Rupees
One thousand five hundred (Rs. 1500) of lawful money of Ceylon.

1 D 4.
English
Translation
of Mortgage
Bond No. 25814
attested by
B. A. Illanga-
tilleke, Notary
Public
28.5.20—
Contd.

10 Therefore I the said debtor Punchi Banda Attanayako Kapurala
do hereby promise and agree to pay interest thereon unto the said
creditor Don Allis Perera Appuhamy at the rate of twelve and half
cents per rupee per month and to pay such interest once in three
months and obtained receipts thereof and redeemed this bond and to
pay the same at any time on demand and that in failure to pay the
said amount the said creditors Don Allis Perera Appuhamy or his
heirs and assigns shall be able to recover the said principal and interest
there remain unpaid from me the said debtor Punchi Banda Atta-
nayako Kapurala or from my heirs and assigns or by means of the
property movable and immovable belonging to me by due process
of law without deficiency.

20 And I do hereby covenant and declare that I have a legal right
to mortgage the same in all and aforesaid and that during the
continuance of this mortgage and until the same is lawfully dis-
charged I will not nor will at any time hereafter do any act matter
or thing whatsoever whereby or by means whereof to reduce the
value thereof.

In witness whereof I the said Debtor Punchi Banda Attanayako
Kapurala have caused this deed of Mortgage to be written and to
which and another two copies written likewise set my usual signature.

Witnesses :

30 We declare that we are well }
acquainted with the executants } (Sgd.) P. B. ATTANAYAKE
hereof and that we know }
his proper name residence and }
occupation. }

(Sgd.) DON HENDRICK APPUHAMY

(Sgd.) B. H. D. APPUHAMY

(Sgd.) B. A. ILLANGATILLEKE

(Sgd.) B. A. ILLANGATILLEKA,
Notary Public.

I Bodanda Abraham Illangatilleke of Hanguranketa Notary
Public do hereby certify and attest that the foregoing Instrument
having been read over and explained by me unto the said Attanayake
Kapugedera Mantilaka Mudiyanseleage Punchi Banda Attanayake

1 D 4
 English
 Translation of
 Mortgage Bond
 No. 25814
 attested by
 B. A. Illang-
 tilleke, Notary
 Public.
 26. 5. 26—*contd.*

Kapurala who is known to me in the presence of Wickremapathirana Don Hendrick Appuhamy and Bentara Habakkalage Don Sarnelis Appuhamy both of Hanguranketa Weediya the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and by the said witnesses in my presence and in the presence of one another all being present at the same time at my office at Hanguranketa on the 26th day of May 1926.

And that the consideration hereof was paid in my presence in currency notes and that the duplicate of this and bears 3 stamps of the value of Rs. 15 and the original a stamp of Re. 1 which were supplied by me. 10

(Sgd.) B. A. ILLANGATILLEKE,
Notary Public.

Date of attestation :
 26th May 1926.

1 D 5

Mortgage Bond No. 1357 attested by K. B. Karunaratne, Notary Public, in Sinhalese

1 D 5
Mortgage
Bond No. 1357
attested by
K. B. Karuna-
ratne, Notary
Public, in
Sinhalese
6. 3. 31

Copy

Applic. No. 85
30.4.45

ඉඩම 2 වී

R 22
166,167.

No. 1357

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විකුණුම්කරය. — Rs. 2,400.00

සියලු දෙනාට මෙයින් දැනගත යුතුයි. උඩහේවාහුවේ දියතිලකේ කෝරළේ දුමුණුමායේ පදිංචි අත්තනායක කපුගෙදර මන්නිලක මුදියන්පේලාගේ පුංචිබන්ඩා අත්තනායක කපුරාල වන මට ඊ. ඩී. ඩබ්ලිව්. සිබ්ල් ප්‍රසිද්ධ නොකාරිස් මහත්මයා සහතික කළ අංක 1112 දරණ සිත්තක්කර ඔප්පුව පිට අයිතිව තිරවුල්ව භුක්ති විඳගත එන මෙහි පහත සඳහන් උපලෙඛනයෙහි විස්තර කරන දේපල සහ ඊට අයිති සියලු දේත් ලංකාවේ වලංගුවෙන මුදලෙන් රුපියල් දෙසූ භාරසියයකට උඩහේවාහුවේ පල්ලේගමපහ කෝරළේ මුංවත්තේ පදිංචි උඩ වත්තේගේ දොන් අල්ලිය් පෙරේරා අප්පුහාමිට මෙයින් සිත්තක්කර විකුණ අයිතිකර හිමිකර පවරා භාරදී එම මුදල සමපූර්ණයෙන් ගැණ භාර ගනිමි.

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එහෙයින් මෙයින් අයිතිකර දුන් එකී දේපල, ඒ ගැන ඉහතකී විකුණුම්කාර මට ඇතුළු කිලිඹු සියලුම අයිතිකම් හිමිකම් සහ බලපූර්වත්කමුත් සමග එකී දොන් අල්ලිය් පෙරේරා අප්පුහාමිට සහ ඔහුගේ උරුමක්කාර පොල්මා; අද්මිනිස්ත්‍රාසිකාර බලකාර ලැබුම්කාරයන්ටත් අද පවත් අයිතිව යදකාලයටම තිරවුල් ලෙස භුක්ති විඳීමට හෝ කැමැත්තක්කර ගැණීමට පුළුවන් මුළු බලය මෙයින් සලස්වා දුනිමි. තවද මෙයින් අයිතිකර දුන් එකී දේපල මෙසේ අයිතිකරදීමට නීතිප්‍රකාර අයිතිකම් හා නිසි බලය මට ඇති බවද එම දේපලවත් ඉන්සම් කොටසක්වත් එහි පලප්‍රයෝජනාදියක්වත් මෙම විකිණීමට විරුද්ධව අත්සකුවීමට හේතු වූ යම්කිසි ක්‍රියාවක් මින් පෙර නොකළ බවද මෙයින් එලිදරව් කරමින් මෙම විකිණීම සියලු ආකාරයෙන්ම සවිකර දෙන හැටියටද මීට විරුද්ධව යම්කිසි විසඳුමක් පැමිණියොත් එහිදී වගඋත්තර උත්තර කියා තිරවුල්කර දෙන හැටියටද එකී දේපල සම්බන්ධව මීට අදාල වූ මෙය වඩා ස්ථිරවීමට හේතු වූ යම්කිසි ඔප්පු කිරිප්පු ආදියක් ඉහතකී ගැණුම්කාරයා විසින් හෝ ඔහුගේ උරුමක්කාරයන් විසින් ඔවුන්ගේ වියදමින් සාදවා දෙන ලෙස කරුණු සහිතව ඉල්ලා සිටියොත් එබඳු ඔප්පු කිරිප්පු ආදිය සාදවා දෙන හැටියට ද ඉහතකී විකුණුම්කාර මම මා වෙනුවට සහ මගේ උරුමක් කාර පොල්මා; අද්මිනිස්ත්‍රාසිකාරයන් වෙනුවටත් එකී ගැණුම්කාරයා සහ ඔහුගේ උරුමක්කාර පොල්මා; අද්මිනිස්ත්‍රාසිකාර බලකාර ලැබුම්කාරයින් සමග මෙයින් වැඩිදුරටත් පොරොන්දුව බැඳුනෙමි.

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ඉහතකී උපලෙඛනය

මධ්‍යම පලාතේ නුවරඑලි දිස්ත්‍රික්කයේ උඩහේවාහුවේ දියතිලකේ කෝරළේ හඟුරන්කොත කිබෙන

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1. වල්ලිවෙල කියන කුඹුර වී පස්පැලක වැපසරියට මායිම් නැගෙනඉරට සොයිසා මහත්මයා ගේ වත්තේ ගල්වැට්ද දකුණට ඇලද, බස්නාහිරට ගම්පහා පාරද, උතුරට විහාරේ ගල්වැට්ද මෙහි තුළ කුඹුරද

1 D 6
Mortgage
Bond No. 1357
attested by
K. B. Karuna-
ratne, Notary
Public, in
Sinhalese
5.3.31—contd.

2. එකී දියකිලකේ කෝරලේ දමුණුමායේ තිබෙන පුලුදොරවත්ත වී පැලක වසසරියට මායිම නැගෙනුණු ඉරට සොයිසා මහත්මයාගේ වත්තේ ගල්වැවද දකුනට ගෙදර වත්තේ ගල්වැව සහ දේවාලේ ඉවුරුද බස්නාඉරට ගම්සභාසාරද උතුරට වල්ලිවෙල කුඹුරේ ඇලද මෙහි තුල ඉඩම සහ ඊට අයිති සියල්ලද වෙති

ඊට සාක්ෂි පිණිස ඉහතකී අත්තනායක කපුගෙදර මත්කිලක මුදියන්සේලාගේ පුංචිබන්ධා අත්තනායක කපුරාල වන මම මීටත් මෙම වාසගම සහ දිනක ධරන තවත් ලියවිලි දෙකකටත් වර්ෂ එක්දහස් නවසිය තිස් එකක් වූ මාර්තු මස පස්වෙනි දින හඟුරන්කෙතදී මගේ අත්සන තැබුවෙමි.

සාක්ෂි :—

මීට සාක්ෂිකාරයන් වන අපි, මෙහි අත්සන් කල විකුණුමකාරයා හොඳාකාර අදුනන බවද ඔහුගේ සම්පූර්ණ නම රක්ෂාව, සහ පදිංචි සටානයන් මෙ පුංචිබන්ධා අත්තනායක කපුරාලගේ හොඳින් දන්නා බවද මෙයින් සහතික කොට අත්සන ප්‍රකාශ කරමු.

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(Sgd.) P. B. ATTANAYAKA,

(Sgd.): ඩිනිගිරිබන්ධා

(Sgd.): පුත්චිබන්ධා.

(Sgd.) K. B. KARUNARATNE,
N. P.

නුවරඑලි දිස්ත්‍රික්කේ හඟුරන්කෙත පදිංචි ගල්ලන්රාල්ලාගේ කිරිබන්ධා කරුනාරත්න ප්‍රසිද්ධ නොතාරිස් වන මව්සින් අදුනක ගහපලාක කෝරලේ උඩවත්තේ පදිංචි දිසානායක මුදියන්සේලාගේ නාරංගස් මුල්ලේ ගෙදර ඩිනිගිරිබන්ධා සහ ඉහතකී දමුණුමායේ පදිංචි බෝදන්ඩ අරාවේ ගෙදර ඉලන්ගන්කිලක මුදියන්සේලාගේ පුත්චිබන්ධාද යන සාක්ෂිකාරයන් ඉදිරිපිට දී ඉහත පෙනෙන ඔප්පුව එකී සාක්ෂිකාරයෝ අදුනකිසි කියන එහි නම සඳහන්වූ ඉංග්‍රීසියෙන් අත්සන්කල අත්තනායක කපුගෙදර මත්කිලක මුදියන්සේලාගේ පුංචිබන්ධා අත්තනායක කපුරාලට එකී නොතාරිස් තැන වන මා විසින් කියවා තේරුම්කර දුන් පසු ඔහු විසින්ද ඉහත සඳහන් කල සාක්ෂිකාරයන් විසින්ද එකී නොතාරිස්වන මා විසින්ද එකවිට සියලු දෙනාම එක්ව සිටිද්දී මා ඉදිරිපිටදීත් ඔවුනොවුන් ඉදිරිපිට දීත් වර්ෂ එක්දහස් නවසිය තිස් එකක් වූ මාර්තු මස පස්වෙනි දින හඟුරන්කෙතදී එහි අත්සන්කල බව මෙයින් සැබෑකොට සහතික කරමි.

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තවද ඉහත පෙනෙන ඔප්පුවේ සඳහන් මුදලෙන් රුපියල් දෙදස් තුන්සිය හතළිස් අටකුත් ගත හැට අටක් බී. ඒ. ඉලන්ගන්කිලක නොතාරිස් මහත්මයා සහතික කල අංක 25814 දරණ ණය උගස්කරයට තිලවිකල බවද ඉතිරි මුදල මා ඉදිරියෙහි ගෙවී බවද මෙහි දෙවෙනි පිටපතට මා විසින් සපයාගත් රුපියල් හතළිහක් වටිනා මුද්දර දහසයක් සහ මුල් පිටපතට රුපියලක මුද්දරයකුත් ඇලෙවූ බවද මෙයින් වැඩිදුරටත් සැබෑකොට සහතික කරමි.

(Sgd.): කේ. ඩී. කරුනාරත්න

(Sgd.) K. B. KARUNARATNE.

සහතිකකලේ වර්ෂ 1931 ක්වූ මාර්තු මස 5 වෙනි දින දිසා ප්‍රසිද්ධ නොතාරිස්තැන.

SEAL

I, D. J. de Mel Registrar of Lands of Nuwara Eliya do hereby certify that the foregoing is a true copy of a deed of transfer made from the duplicate filed of record in this office and the same is granted on the application of L. B. Kolugala Esqr. Proctor S. C. of Kandy.

Land Registry,
Nuwara Eliya, 23rd May 1945.

(Sgd.) _____,
Registrar of Lands.

1 D 6
Mortgage
Bond No. 1357
attested by
K. B. Karuna-
ratne, Notary
Public,
in Sinhalese
5.3.31—contd.

1 D 5.
English
Translation of
Mortgage Bond
No. 1357
attested by
K. B. Karuna-
ratne, Notary
Public.
5.3.1931.

1 D 5

English Translation of Mortgage Bond No. 1357 attested by
K. B. Karunaratne, Notary Public

1 D 5

R 22

166,167.

Transfer : Rs. 2400.00

Lands 2

No. 1357

Know all men by these presents that I Attanayaka Kapugedara Mantilaka Mudiyansele Puchi Banda Attanayaka Kapurala of Damunumeya in Diyatilake Korale of Uda Hewaheta for and in consideration of the sum of Rupees Two Thousand Four Hundred (Rs. 2400/-) of lawful money of Ceylon well and truly paid to me by Udawattege Don Allis Perera Appuhamy of Munwatta in Palle Gampaha Korale of Uda Hewaheta (the receipt whereof is hereby acknowledged) do hereby sell assign transfer set over and assure unto the said vendee the premises described in the schedule hereto held and possessed by me uninterruptedly upon the Deed of Transfer No. 1112 and attested by M. D. W. Siebel Notary Public. 10 20

To have hold possess and enjoy the same with their and every of their appurtenances and things whatsoever unto and to the use of the said vendee his heirs executors administrators and assigns absolutely and for ever.

And I the said vendor for myself my heirs executors and administrators covenant with the said vendee and his aforewritten that I have and possess a lawful authority to sell the same in manner aforesaid and that heretofore I have not made done any act matter or thing whatsoever so as to alienate the same or any part or portion thereof and that I have a lawful right to sell the same and that hereafter I and my aforewritten shall warrant and defend the same and the title thereof unto the said vendee and his aforewritten against any person or persons whomsoever and further shall at the request costs and charges of the said vendee and his aforewritten make do and execute all such further and other the acts deeds matters and things whatsoever for the further and more perfectly assuring the same by way of conveyance unto the said vendee and his aforewritten as by him or them shall or may be reasonably required. 30

THE SCHEDULE ABOVE REFERRED TO.

1. All that field called Walliwelakumbura of five pelas in paddy sowing extent in the whole situate at Hanguranketa in Diyatillake Korale of Udahewaheta in the District of Nuwara Eliya Central Province and which said entire field being bounded on the east by the Galweta of Mr. Soysa's garden south by Ela, West by Gansabaha Road and North by Viharegalweta.

1 D 5.
English
Translation of
Mortgage Bond
No. 1357
attested by
K. B. Karunaratne, Notary
Public.
5.3.1931.
—contd.

10 2. All that land called Huludorawatte of one pela in paddy sowing extent in the whole situate at Damunumeya in Diyatillake Korale aforesaid and which said entire land being bounded on the east by the Galweta of Mr. Soysa's garden south by the Galweta of Gedarawatte and Dewale Ivura west by Gansabaha Road and north by the ela of Walliwela Kumbura together with everything thereon.

In *witness* whereof I the said vendor do hereunto and to two others of the same tenor as these presents set my hand at Hanguranketa on this 5th day of March 1931.

Witnesses :

20 We declare that we are well acquainted with the executant hereof and know his proper name residence and occupation. } (Sgd.) P. B. Attanayaka

(Sgd.) DINGIRI BANDA

(Sgd.) PUNCHI BANDA

(Sgd.) K. B. KARUNARATNE,
Notary Public.

30 I Gallath Rallage Kiri Banda Karunaratne of Hanguranketa Notary Public do hereby certify and attest that the foregoing instrument having been read over and explained by me unto the said Attanayaka Kapugedara Mantilaka Mudiyanseleage Punchi Banda Attanayake Kapurala in the presence of Dissanayaka Mudiyanseleage Harangasmullegedera Dingiri Banda of Udawatta in Ganga Palata Korale and Bodanda Arawegedera Illangantilaka Mudiyanseleage Punchi Banda of Damunumeya the subscribing witnesses thereto both of whom are known to me the same was signed by the said executant and by the said witnesses in my presence and in the presence of one another all being present at the same time at Hanguranketa aforesaid on the 5th day of March 1931.

1 D 5.
 English
 Translation of
 Mortgage Bond
 No. 1357
 attested by
 K. B. Karuna-
 ratne, Notary
 Public.
 5.3.1931—*contd.*

And I further certify and attest that out of the consideration hereof a sum of Rs. 2348/68 was set off against the amount due upon mortgage bond No. 25814 and attested by B. A. Illangantilaka Notary Public and that the balance was paid in my presence and that the duplicate of this deed bears 16 stamps of the value of Rs. 40 and the original a stamp of Re. 1 supplied by me.

(Sgd.) K. B. KARUNARATNE,
Notary Public.

Date of Attestation :
 5th March, 1931.

Sinhalese Deed No. 2332 attested by
A. M. K. Tillekeratne, Notary Public

P 26.
Sinhalese Deed
No. 2332
attested by
A. M. K.
Tillekeratne,
Notary Public.
30.8.42.

Application No. 53
25.3.47

Prior registration Search dispensed with R 22
166 & 167

No. 2332

ඉඩම 2යි

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කෑගි ඔප්පුව Rs. 2400/-

සියලුදෙතාම මෙයින් දැනගත යුතුයි

උඩහේවාතුවෙ පල්ලේගමපහ කෝරලේ මුංවත්තේ පදිංචි උඩවත්තේගේ දෙන් අල්වස් පෙරේරා අප්පුහාමි යන මට කේ. බී. කරුණාරත්න ප්‍රසිද්ධ නොතාරිස් කැන 1931 වැනි වර්ෂයේ ඔර්තු මාසයේ 5 වෙනි දින සහතික කළ අංක 1357 දරණ මේ සමගදෙන විකුණුම්කරය පිට මට අයිති මෙහි පහත උපලේඛනයෙහි වස්තර කරණු ලබන දේපල සහ ඊට අයිති සියලුදේක් ලංකාවේ වලංගු මුදලෙන් රුපියල් දෙදසහාරය (Rs. 2,400.00) කට වටිනාකම නියම කළ එකී මගේ පුය දියනියටු උඩපලානේ ගහපහළ කෝරලේ ගමපල ග්‍රේස්ටන් නිවසේ පදිංචි පෙල්රන්ස් ලැවිසියා ප්‍රේමවතී ගුණසේකර කෙරෙහි මා පින්කුල පවතින සාමාන්‍ය ආදර කරුණාව සහ වෙනත් විවිධ යහපත් කාරණයන් කරනකොට ගෙනද ඉහතකී දේපල එකී පෙල්රන්ස් ලැවිසියා ප්‍රේමවතී ගුණසේකරට මෙයින් කෑගිකර අයිතිකර හිමිකර පවරා භාර දුනිමි.

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එහෙයින් මේ කෑගිදීම කරණකොට ගෙන ඉහතකී පෙල්රන්ස් ලැවිසියා ප්‍රේමවතී ගුණසේකරට සහ ඇගේ උරුමකර පොල්මා අද්මිනිස්ත්‍රායිකාර ලැබුම්කාරයන්ටත් එකී දේපල සහ ඊට අයිති සියලුදේක් අද පටන් අයිතීන්ට සදාම නිරවුල්ව බුක්ති විදීමට හෝ වෙන ඕනෑ මනාපයක් කර ගැනීමටත් පුළුවන් වුළු බලය මෙයින් සලස්වා දුනිමි.

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තවද මෙයින් කෑගිකරුන් එකීදේපල මෙයේ කෑගිදීමට නීතිප්‍රකාර අයිතිකම් හා නිසිබලය මට ඇති බවද එකී දේපලවත් එයින් යමකිසි කොටසක්වත් එහි පලප්‍රයෝජනාදියක්වත් මේ කෑගිදීමනාවට විරුද්ධව අත්සතුවීමට හේතුවූ යමකිසි ක්‍රියාවක් මින්පෙර නොකළ බවද මෙයින් එළිදරව් කරමින් මේ කෑගිදීම සියලු ආකාරයෙන්ම පරිකර දෙන හැටියටද මේ සම්බන්ධව මීට අදාල වූ මෙයවඩා ස්ථිරවීමට හේතුවූ යමකිසි මප්පු තිරප්පු ආදියක් යාදවාදී ම අවශ්‍ය බැව් පෙනී ගියේ නම් එබඳු මප්පු තිරප්පු ආදිය යාදවා දෙන හැටියටද ඉහතකී කෑගි දීමනාකාර මම මා වෙනුවට සහ මගේ උරුමකර පොල්මා අද්මිනිස්ත්‍රායිකාරයන් වෙනුවටත් මෙයින් වැඩි දුරටත් පොරොන්දුව බැඳුනෙමි.

තවද එකී පෙල්රන්ස් ලැවිසියා ප්‍රේමවතී ගුණසේකර යන මම මගේ එකී ආදර ගෞරවනීය පියානන් විසින් මට කරනලද ඉහත සඳහන්වූ පරික්‍රමය ආදර බුහුමන් පෙරදැවි මෙහි අත්සන් කිරීමෙන් ස්තූතියෙන් පිළිගනිමි.

ඉහත කී උපලේඛනය

P 26
Sinhalese Deed
No. 2332
attested by
A. M. K.
Tillekeratne,
Notary Public.
30.8.42—contd.

මධ්‍යම පළාතේ කුවර එලි දිස්ත්‍රික්කේ උඩහේවාහැටේ දියතිලක කෝරලේ හහුරන් කෙත පිහිටි චල්ලිවෙල කියන නැගෙනහිරට යොයිසා මහත්මයාගේ වත්තේගල්වැටද දකුණට (හුලුදෙර වත්ත වෙන්වන) ඇලද බස්නාගුරට ගමපහාපාර (දූතට රෝඩ් කොමිටිපාර්) ද උතුරට පොත්ගල්විහාරේ ගල්වැටද මායිම්වූ වී පැල් පහක වපසරිය ඇති කුඹුර හා ඊට අයිති සියලු දේ සහ.

2. එකී කෝරලේ දඹුණුමායේ පිහිටි හුලුදෙරවත්ත කියන නැගෙනහිරට යොයිසා මහත්මයා ගේ වත්තේ ගල්වැටද දකුණට ගෙදරවත්තේ ගල්වැට පහ දේවාලේ ඉවරද බස්නාගුරට ගමපහා පාර (දූතට රෝඩ් කොමිටි පාර) ද උතුරට චල්ලිවෙල කුඹුරේ ඇලද මායිම් වූ වී පැල් එකක වපසරිය ඇති ඉඩම හා ඊට අයිති ගහකොල පලතුරු ගොඩනැගිලි ආදී සියලුදේද යන දේපල වේ. ඊට පාක්ෂි පිණිස ඉහතකී කෑගි දීමනාකාර උඩවත්තේගේ දෙත් අල්විස් පෙරේරා අප්පුහාමි සහ කෑගි ලැබුම්කාර පෙල්වරත්ස් ලැට්ටියා ප්‍රේමවතී ගුණසේකරද යන අපි—මීටත් මෙම වාසගම සහ දිනත් ධරන තවලියවිලි දෙකකටත් එක්දහස් නවසිය හතලිස් දෙවන වර්ෂයේ අගෝස්තු මාසයේ කීස්වැනි දින මුංවත්තේදී අපගේ අත්සන් තැබුවෙමු.

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සාක්ෂි

මීට සාක්ෂිකාරයන්වන අපි මෙහි අත්සන් කල අය හොඳාකාර අඳුනන බවද ඔවුන් ගේ සම්පූර්ණ නම තත්ත්වයත් සහ පදිංචි යත් හොඳින් දන්නා බවද මෙයින් සහතික කොට ප්‍රකාශ කරමු.

මේ. උ. දෙත් අල්විස් පෙරේරා අප්පුහාමිගේ අත්සන.
මේ පෙල්වරත්ස් ලැට්ටියා ප්‍රේමවතී ගුණසේකරගේ අත්සන.

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මේ. පී. ලොකු අප්පුහාමිගේ අත්සන.
(Sgd.) LOKUAPPUHAMY

(Sgd.) F. L. P. GUNASEKERA

මේ. පී. පොඩි අප්පුහාමිගේ අත්සන.
(Sgd.) PODIAPPUHAMY

(Sgd.) A. M. K. TILLEKERATNE,
N. P.

හහුරන්කෙත පදිංචි අදිකාරි මුදියන්සේලාගේ ඇල්පඩි මාරාවිට කරුණානායක තිලකරත්න කුවරඑලි දිස්ත්‍රික්කේ ප්‍රසිද්ධ නොකාරිස්වන මා අඳුනන උඩහේවාහැටේ පල්ලේ ගමපහ කෝරලේ මුං වත්තේ කරද මඩිත්තේ කඩේ පදිංචිකාරයන්වූ පිටියේ ගෙදර ලොකු අප්පුහාමි සහ එමගෙදර පොඩි අප්පුහාමිද යන සාක්ෂිකාරයන් ඉදිරිපිටදී ඉහත පෙනෙන ඔප්පුව එහිතම සඳහන්වූ මා අඳුනන උඩවත්තේගේ දෙත් අල්විස් පෙරේරා අප්පුහාමි සහ මා නාදුනන පෙල්වරත්ස් ලැට්ටියා ප්‍රේමවතී ගුණසේකරද යන දෙදෙනාට එකී නොතාරිස්වන මා කියවා තේරුම්කර දුන් පසු එම දෙදෙනා විසින්ද ඉහත සඳහන් කල සාක්ෂිකාරයන් විසින්ද මවිසින්ද එකවිට සියලුදෙනාම එක්ව ශ්‍රීවිසිටදී මා ඉදිරිපිටදීත් ඔවුනොවුන් ඉදිරිපිටදීත් එක් දහස් නවසිය හතලිස් දෙවන වර්ෂයේ අගෝස්තු මාසයේ කීස්වැනි දින මුංවත්තේදී එහි අත්සන් කරන ලද බව මෙයින් සාදාකොට සහතික කරමි.

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නවද මෙහි දෙවෙනි පිටපතට රුපියල් හතළිහක් වටිනා මුද්දර හතරක් සහ මුද්දරවලට
රුපියල්ක් වටිනා මුද්දර එකකුත් ඇමුණු බවද මෙයින් වැඩිදුරටත් සැබෑ උකාරට සහතික කරමි.

සහතික කළේ 1912 වන වර්ෂයේ
අඹේකු මාසේ 30 වෙනි දින දීය.

ඒ. ඇම. කේ. පිලකරත්න,
ප්‍රසිච්ඡිත නොතාමයි.

P 24.
Sinhalese Deed
No. 2332
attested by
A. M. K.
Tillakaratne,
Notary Public.
30.8.42—contd.

(Sgd.) A. M. K. TILLEKERATNE,
N. P.

10 I, J. A. do Silva, Registrar of Lands, Nuwara Eliya, do hereby
certify that the foregoing is a true copy of a deed of gift made from
the duplicate filed of record in this office and the same is granted
on the application of Messrs. Leisching & Lee, Proctors and Notaries,
of Kandy.

Land Registry,
Nuwara Eliya.
1st April, 1947.

(Sgd.) _____,
Registrar of Lands.

P 26.
English
Translation of
Deed No. 2332
attested by
A. M. K.
Tillakaratne,
Notary Public.
30. 8. 42.

English Translation of Deed No. 2332 attested by
A. M. K. Tillakaratne, Notary Public

No. 2382.

Deed of Gift—Rs. 2,400/-

Lands 2.

Know all men by these presents that I, Udawattege Don Alwis Perera Appuhamy of Munwatte in Pallegampaha Korale Uda Hewaheta and held and possessed by virtue deed No. 1357 dated the 5th day of March, 1931 and attested by K. B. Karunaratne, Notary Public, free of dispute the following of the value of Rs. 2400/- of lawful money of Ceylon in consideration of the natural love and affections which I have and thereunto my daughter Florence Laticiya Premawathie Gunasekera of Graceton Nivasa in Gampola in Ganga-pahala Korale of Uda Palata do hereby donate and convey by way of gift the following premises unto her and authorise her and her heirs executors administrators and assigns to hold and possess the said premises from the date hereof free of dispute for ever, or to deal with the same at will and pleasure and I further covenant that I have not done any act prior to this and that in the event if any such dispute occurring the same shall be settled and that in the event of the said donee or her aforesaid reasonably requiring the execution of any further acts or deeds for better assuring the said premises to make and execute such acts or deeds at the request and costs of the said donee or her aforesaid.

I, the said Florence Laticiya Premawathie Gunasekera have accepted this donation with due respect and thanks.

THE SCHEDULE ABOVE REFERRED TO

The field called Waliwela of five pelas paddy sowing in extent situate at Anguranketa in Diyatillaka Korale of Uda Hewaheta in the District of Nuwara Eliya in the Central Province and bounded on the East by the Stone Fence of Mr. Soysa's Garden South by Ela separating Huludorawatte West by Gansabawa Road now Road Committee Road and on the North by the Stone Fence of Pothgul Vihare with everything thereon.

The land called Huludorawatte of one pela paddy sowing extent situate at Damunumeya of the said Korale and bounded on the Stone Fence of Soysa's garden South by Stone Fence of Gederawatte and the Bank of Devale West by Gansabawa Road now Road Committee Road and on the North by Walliwela Kumbura Ela together with the buildings plantations everything standing thereon.

In witness whereof we the said donor and donee have set our signatures to this and to two others at Munwatto on this 30th day of August 1942.

(Sgd.) U. DON ALWIS PERERA APPUHAMY.
 (Sgd.) FLORENCE LATICIA PREMAWATHIE
 GUNASEKARA.

P 26.
 English
 Translation
 Deed No. 2332
 attested by
 A. M. K.
 Tillekeratne,
 Notary Public.
 30.8.42—contd.

Witnesses :

(Sgd.) LOKU APPUHAMY.

(Sgd.) PODI APPUHAMY.

10

(Sgd.) A. M. P. TILLEKERATNE,
Notary Public.

I, A. M. P. Tillekeratne, Notary Public of Hangu ranketa, do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said executants in the presence of Pitiyagedera Lokuappuhamy and Podiappuhamy of the same gedera both of Karandamadithekade in Munwatta in Palle Gampaha Korale Uda Howaheta set their signatures in my presence and in the presence of one another all being present at the same time at Munwatta on this 30th day of August 1942 and the duplicate bears the value of Rs. 40 and the original a Rupee One which stamps were supplied by me.

20

(Sgd.) A. M. P. TILLEKERATNE,
Notary Public.

Date of attestation :

30th August 1942.

P 25.
Deed of Sale
No. 1566
attested by
A. Godamune,
Notary Public,
7.2.45—contd.

Deed of Sale No. 1566 attested by A. Godamune, Notary Public

Prior Registration
Nuwara Eliya R 48/299 22/167
Registered R 48/299 ; 22/167
Lands 2

Deed of Sale

Rs. 5000·00

No. 1566

Know all men by these presents that I Florence Leticia Premawathie Gunasekera of Greystone Gampola in the District of Kandy Central Province of the Island of Ceylon hereinafter called and referred to as the vendor for and in consideration of the sum of Rupees five thousand (Rs. 5000) lawful money of Ceylon well and truly paid to me by Daluwattege Solomon Sumanaweera of Hailapitiya in Hewawisse Korale of Lower Hewaheta in the District of Kandy aforesaid hereinafter called and referred to as the vendee the receipt whereof I do hereby expressly admit and acknowledge do hereby grant bargain sell assign convey transfer set over and assure unto the said vendee his heirs executors administrators and assigns the premises in the schedule hereto fully described together with all rights liberties privileges easements servitudes and appurtenances whatsoever to the said premises belonging or held used occupied or enjoyed or reputed or known as part and parcel thereof or be appurtenant thereto and all the estate right title interest property claim and demand whatsoever of me the said vendor of in to upon or out of the said premises and every part thereof and together with all deeds writings and muniments of title therewith held or relating thereto and which said premises have been held and possessed by me the said vendor upon deed of gift No. 2332 dated the 30th day of August 1942 and attested by A. M. K. Tillekeratne of Hanguranketa Notary Public.

To have and to hold the said premises hereby sold and conveyed expressed or intended so to be with all and singular the appurtenances thereunto belonging to the said vendee and his heirs executors administrators and assigns for ever, and I the said vendor do hereby for myself and my heirs and executors and administrators covenant and declare with and to the said vendee his heirs and executors and administrators assigns that I have good right and full power and lawful and absolute authority to grant and convey the said premises in manner aforesaid and that the same are free from all encumbrances and that I have not at any time heretofore made done or

committed or been party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof the said premises or any part thereof are or is can shall or may be impeached or encumbered in title charge estate or otherwise however and that I and my aforewritten shall and will at all times hereafter warrant and defend the title to the said premises and every part thereof unto him the said vendee and his aforewritten against any person or persons whomsoever and that I the said vendor shall and will from time to time and at all times hereafter at the request cost and expense of the said vendee and his aforewritten do and execute or cause to be done and executed all such further and other acts deeds and assurances as the said vendee or his aforewritten shall or may reasonably require for more perfectly and effectually conveying and assuring the said premises with their appurtenances unto the said vendee and his aforewritten.

P 25.
Deed of Sale
No. 1568
attested by
A. Godamunne,
Notary Public.
7.2.45—contd.

In witness whereof I the said vendor do hereunto and to two others of the same tenor and date as these presents set my hand at Kandy on this Seventh day of February One thousand nine hundred and forty five.

20

THE SCHEDULE ABOVE REFERRED TO

1. All that field called Walliwelakumbura of five pelas paddy sowing in extent situated at Hanguranketa in Diyatilaka Korale of Uda Hewahota in the District of Nuwara Eliya Central Province and bounded on the East by the Stone fence of Mr. Soysa's garden South by the Ela separating Huludorawatta West by Gansabawa Road now Road Committee Road and North by Stone Fence of Potgul Vihare.

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2. All that land called Huludorawatta of one pela paddy sowing in extent situated at Damunumeeiya in Diyatilaka Korale aforesaid and bounded on the East by the Stone Fence of Mr. Soysa's garden South by the Stone Fence of Gederawatta and Dewale Euwara, West by Gansabawa Road and North by Walliwela Kumbura Ela together with buildings and everything thereon.

We hereby declare that we are acquainted with the executant and know her proper name occupation and residence } (Sgd.)
F. L. P. GUNASEKERA.

1. D. D. D. GUNASEKERA.

2. (Sgd.) Illegibly.

(Sgd.) A. GODAMUNNE.
Notary Public.

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P 25.
Deed of Sale
No. 1566
attested by
A. Godamunne,
Notary Public,
7.2.45—contd.

I Albert Godamunne of Kandy of the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been read and explained by me the said Notary to the said executant Florence Laticia Premawathie Gunasekera (who signed as F. L. P. Gunasekera in English) and who is not known to me in the presence of Don David Dissanayake Gunasekera of Greystone Gampola and Ratnayake Mudiyanseelage Ukku Banda of Pavilion Street Kandy (who signed as D. D. Gunasekera and R. M. U. Banda respectively in English) the subscribing witnesses hereto both of whom are known to me the same was signed by the said executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time on the Seventh day of February One Thousand Nine hundred and forty five at Kandy. 10

And I further certify and attest that out of the consideration hereof a sum of Rs. 1000 was acknowledged to have been received upon a receipt dated 21st January 1945 and the balance sum of Rs. 4000 was paid in cash before me. On the original page 2 lines 31 and 34 the letter "1" was rectified and in the duplicate page 2 line 29 the word "Kandy" was altered to Nuwara Eliya before the foregoing instrument was read and explained as aforesaid by me to the said executant and the duplicate of this instrument bears four stamps to the value of Rs. 80 and the original a stamp Re. 1. 20

(Sgd.) A. GODAMUNNE,
Notary Public.

Date of attestation :
7 February 1945.

Sinhalese Deed No. 6032 attested by
A. M. K. Tillekeratne, Notary Public

A. M. K. TILLEKERATNE,
Notary Public.

P 21.
Sinhalese
Deed No. 6032
attested by
A. M. K.
Tillekeratne,
Notary Public.
28.10.46.

ඒ. ඇම්. කේ. තිලකරත්න,
ප්‍රසිද්ධ නොකාරිස් තැන.

Registered R $\frac{48}{299}$ $\frac{93}{12}$

10 Nuwara Eliya, 4th November, 1946.

Prior Registration : Search dispensed with R $\frac{48}{299}$ & $\frac{22}{167}$

No. 6032

ඉඩම 2 යි.

විකුණුම්කරය: Rs. 5000-00

සියලුදෙනාම මෙයින් දැනගත යුතුයි

20 පාහේවාහුටේ හේවාටියේ කෝරළේ මයිලපිටියේ පදිංචි දැවුණේගේ සලලොත් පුමනවිර යන මම ඇල්බර්ට් ගොඩමුත්තේ නොකාරිස්තැන 1945 වැනි වර්ෂයේ පෙබරවාරි මාසයේ 7 වැනි දින සහතික කළ අංක 1566 දරණ මේ සමග දෙන සිත්තකර ඔප්පුව පිට මට අයිති මෙහි පහත උප ලේඛනයෙහි විස්තර කරනු ලබන දේපළ සහ ඊට අයිති සියලුදේත් ලංකාවේ වලංගු මුදලෙන් රුපියල් පන්දහ Rs. 5000.00 කට උඩ හේවා හැටේ දියකිලක කෝරළේ දුමුණු මැයේ පදිංචි සිරිමල්වත්තේ හේරත් මුදියන්සේලාගේ රත්බත්ධාර හේරත් මහත්මයාට මෙයින් සිත්තකර විකුණ අයිතිකර හිමිකර පවරා භාරදී එකී මුදල සම්පූර්ණයෙන් ගැණ භාරගනිමි.

එහෙයින් මෙයින් අයිතිකර දුන් එකී දේපළ, ඒ ගැණ ඉහතකී විකුණුම්කර මට ඇතුළු කිවුණ සියලුම අයිතිකම් හිමිකම් සහ බලපූර්වත්කමුත් සමග, එකී සිරිමල්වත්තේ හේරත්මුදියන්සේලා ගේ රත්බත්ධාර හේරත් මහත්මයාට සහ උන්නාහේගේ උරුමක්කාර පොල්ම: අද්මිනිස්ත්‍රාසි කාර බලකාර ලැබුම්කාරයන්ටත් අද පටන් අයිතිව සදකාලයටම නිරවුල් ලෙස බුක්ති විඳිමට හෝ ඕනෑ කැමැත්තක් කර ගැනීමට හෝ පුළුවන් මුළු බලය මෙයින් සලසා දුනිමි.

30 තවද මෙයින් අයිතිකර දුන් එකී දේපළ මෙසේ අයිතිකරදීමට නීති ප්‍රකාර අයිතිකම් හා නිසි බලය මට ඇති බවද එම දේපළවත් ඉන් යම් කොටසක්වත් එහි ඵලප්‍රයෝජනාදියක් වත් මෙම විකිණීමට විරුද්ධව අත්සතු වීමට හේතු වූ යම්කිසි ක්‍රියාවක් මින් පෙර නොකළ බවද මෙයින් එළිදරව්කරමින් මෙම විකිණීම සියලු ආකාර යෙන්ම සම්කරදෙන භාවිසටද මට විරුද්ධව යම් කිසි විසඳුමක් පැමිණියොත් එහිදී වග උත්තර කියා නිරවුල් කරදෙන භාවිසටද එකී දේපළ සම්බන්ධව මීට අදාල වූ මෙය වඩා ස්ථිරවීමට හේතුවූ යම්කිසි ඔප්පු තීරණ ආදියක් ඉහතකී ගැණුම්කර මහත්මයා විසින් හෝ උන්නාහේ ගේ උරුමක්කාරාදීන් විසින් හෝ ඔවුන්ගේ වියදමින් සාදවාදෙන ලෙස කරුණු සහිතව ඉල්ලා සිටියොත් එබඳු ඔප්පු තීරණ ආදිය සාදවාදෙන භාවිසටද ඉහතකී විකුණුම්කර මම මා වෙනුවට සහ මගේ උරුමක්කාර පොල්ම: අද්මිනිස්ත්‍රාසිකාරයන් වෙනුවටත් එකී ගැනුම්කර මහත්මයා සහ උන්නාහේ ගේ උරුමක්කාර පොල්ම: අද්මිනිස්ත්‍රාසිකාර බලකාර ලැබුම්කාරයන් සමග මෙයින් වැඩිදුරටත් පොරොන්දුව බැඳුණෙමි.

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ඉහතකී උපලේඛණය

P 21.
Sinhalese
Deed No. 6032
attested by
A. M. K.
Tillekeratne,
Notary Public.
28.10.46—
contd.

මාදපලානේ නුවරඑලි දිසාවේ උඩහේවා හැටේ දියතිලක කෝරළේ හඟුරන්කෙත පිහිටි වල්ලිවෙල කුඹුර නමැති නැගෙනඉරට සොයිසා මහත්මයාගේ වත්තේ ගල්වැට ද දකුණට හුලුදොරවත්ත වෙන්වන ඇළ ද බස්නාඉරට රෝඩකොමිටි පාර ද උතුරට පොත්ගල් විහාරේ ගල්වැට ද මායිම් වූ වී පැල් පහක වපසරිය ඇති සමපූර්ණ කුඹුර හා ඊට අයිති සියලු දේ සහ,

2. එකී කෝරළේ දමුණුමායේ පිහිටි හුලුදොර වත්ත නමැති නැගෙනඉරට සොයිසා මහත්මයාගේ වත්තේ ගල්වැට ද දකුණට (කපු) ගෙදරවත්තෙ ගල්වැට සහ පත්තීනි දේවාලේ ඉවුර ද බස්නාඉරට ගමසභා පාර (දැනට රෝඩකොමිටි පාර) ද උතුරට වල්ලිවෙල කුඹුරේ ඇළ ද මායිම් වූ වී එක පැලක වපසරිය ඇති සමපූර්ණ ඉඩමද එහි තිබෙන ගොඩනැගිලි හා ඊට අයිති සියලු දේද යන දේපල වේ.

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ඊට සාක්ෂි පිණිස ඉහතකී විකුණුම්කාර දඳුවත්තේ ගේ සලමොන් සුමනචීර යන මම මීටත් මෙම වාසගව දරණ තව ලියවිලි දෙකකටත් එක්දහස් නවසිය හතළිස් හය වැනි වර්ෂයේ ඔක්තෝබර් මාසයේ විසි අට වැනි දින හඟුරන්කෙත දි මගේ අත්සන් තැබුවෙමි.

සාක්ෂි.

මීට සාක්ෂිකාරයන් වන අපි මෙහි අත්සන් කළ විකුණුම්කාරයා හොඳාකාර අඳුනන බවද ඔහු ගේ සමපූර්ණ නම රක්ෂාව සහ පදිංචි ස්ථානයන් හොඳින් දන්නා බවද මෙයින් සහතික මේ ද ස. සුමනචීර මහත්මයාගේ කොට ප්‍රකාශ කරමු. අත්සන.

(Sgd.) D. G. P. SUMANAWEERA 20

මේ බී. දොන් ජේම්ස් මහත්මයාගේ අත්සන.

(Sgd.) JAMIS

මේ කී. මු. මුතුබන්දා තිලකරත්න ආරච්චි මහත්මයාගේ අත්සන.

(Sgd.) M. B. TILLEKERATNE

(Sgd.) A. M. K. TILLEKERATNE,
N. P.

උඩ හේවාහැටේ දියතිලක කෝරළේ හඟුරන්කෙත පදිංචි අදිකාරි මුදියන්සේලාගේ ඇල්ප්‍රඨි මාරාවට කරුණානායක කිලකරත්ත නුවරඑලි දිස්ත්‍රික්කයේ ප්‍රයිද්ධ නොතාරිස් වන ම විසින් අඳුනනු ලබන එකී හඟුරන්කෙත පදිංචි කාරයන්වූ මිහභවත්තේගේ දොන් ජේම්ස් මහත්මයා සහ තිලකරත්ත මුදියන්සේලාගේ මුතුබන්දා කිලකරත්ත ආරච්චි මහත්මයා ද යන සාක්ෂිකාර යන් ඉදිරිපිටදී ඉහත පෙණෙන ඔප්පුව එහි නම සඳහන්වූ ම විසින් අඳුනන ලබන දඳුවත්තේ ගේ සලමොන් සුමනචීර මහත්මයාට එකී නොතාරිස් තැන වන මා විසින් කියවා තේරුම්කර දුන් පසු ඔහු විසින්ද ඉහත සඳහන් කළ සාක්ෂිකාරයන් විසින්ද මා විසින්ද එකවිට සියළුදෙනාම එක්වසිටිද්දී මා ඉදිරිපිටදීත් ඔවුනොවුන් ඉදිරිපිටදීත් එක්දහස් නවසිය හතළිස් හය වන වර්ෂයේ ඔක්තෝබර් මාසයේ විසිඅට වැනිදින හඟුරන්කෙත දි එහි අත්සන් කළ බව මෙයින් සැබෑකොට සහතික කරමි.

30

English Translation of Deed No. 6032

Registered R 48/299 93/12,
Nuwara Eliya,
4th November, 1946.

TRANSLATION

No. 6032—Bill of Sale Rs. 5,000/-

KNOW ALL MEN BY THESE PRESENTS

I, Daluwattege Salamon Sumanaweera of Mailapitiya in Hewawisse Korale Pathahewaheta do hereby sell and transfer unto Sirimalwatte Herath Mudiyanalage Ranbanda Herath Mahatmaya of Dammumeya in Diyathilaka Korale Uda Hewaheta in consideration of the sum of Rs. 5000.00 well and truly paid to me all that the premises described in the schedule hereto and held and possessed by under and by virtue of Deed No. 1566 dated 7th February 1945 attested by Albert Godamune Notary Public. 10

THE SCHEDULE ABOVE REFERRED TO

1. All that the entire field called Walliwela Kumbura situated at Hanguranketha in the Diyathilaka Korale Uda Hewaheta in the District of Nuwara Eliya Central Province and bounded on the east by the stone fence of the estate of Mr. Soysa south by the canal which separates Hulidolawatta west by road committee road and north by the stone fence of Pothgul Vihare containing in extent five pelas paddy sowing. 20

2. All that the land called Huludorawatta situated at Dambunumeeya in the said Korale and bounded on the east by the stone fence of the land of Mr. Soysa, south by the stone fence of Kapugedarawatta and the bund on Pathini Dewala west by Gansabawa road, now road committee road and north by Malliwela Kumbura ela containing in extent one pala paddy sowing together with the buildings and everything thereon. 30

TO HAVE AND TO HOLD the said premises together with all the right title and interest of me the said vendor unto the said vendee his heirs executors administrators and assigns absolutely for ever.

And I the said Vendor for myself my heirs executors and administrators do hereby covenant and declare with and to said vendee and his aforewritten that I have full rights and authority to sell the said premises in manner aforesaid that I shall confirm these presents in every manner that I have not at any time heretofore made done or committed any act whereby the said premises any part or produce thereof are is can shall or may be impeached or encumbered that I 40

will warrant and defend the title to the same against any person or persons whomsoever and further also shall and will at the request and cost of the said vendee and his aforewritten do and execute or cause to be done and executed all such further and other acts deeds matters and things whatsoever for further more perfectly and satisfactorily granting and assuring the same as by the said vendee or his aforewritten shall may be reasonably required.

P 21.
English
Translation of
Dood No. 6032.
28. 10. 46.—
contd.

10 In witness whereof I the said vendor do set my hand hereto and to two others of the same tenor and date as these presents at Hanguranketa on this 28th day of October 1946

Witnesses :—

We the witnesses hereto do hereby } (Sgd).
declare that we are well acquainted with } D. S. C.
the executant of this deed and know his } SUMANAWEERA
proper name occupation and residence.

(Sgd.) E. N. D. JAMES

(Sgd.) M. B. THILAKARATNE

(Sgd.) A. M. K. THILAKARATNE,
Notary Public.

20 Date of attestation :
28th October 1946.

30 I Adicari Mudiyanseilage Alfred Marawita Karunanayake Tillakaratne of Nuwara Eliya Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me to the within-named executant in the presence of the witnesses Meeegahawattage Don James and Tilakaratne Mudiyanseilage Muthubanda Tilakaratne Aratchi both of Hanguranketa who are known to me the same was signed by him and the witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Hanguranketa this Twenty Eighth day of October 1946.

I also certify that out of the within mentioned consideration a sum of Rupees four thousand in cash and the remaining Rupees one thousand by cheque number 119461 of 28. 10. 46 drawn on the Bank of Ceylon was given, that the duplicate of this instrument bears sixteen stamps of the value of Rupees Eighty and the original a stamp of one rupee and that the said stamps were supplied by me.

(Sgd.) A. M. K. TILLEKARATNE,
Notary Public.

40 Date of attestation :
28th October 1946.

SEAL

P 7.
Letter from
Public Trustee
to Plaintiff.
21.12.1946.

Letter from Public Trustee to Plaintiff

*Land forming part of the Paraveni Pangu subject to
Services to Temple*

To : Sirimalwatte Heratmudiyanselage Ranbanda Herat, Damunumeeya, Hanguranketa.

The receipt is hereby acknowledged of your notice dated 19th November 1946 under section 27 of the Buddhist Temporalities Ordinance Chapter 222 relating to the transfer in your favour subject to services to the Hanguranketa Pathini Devale of the paraveni pangu tenant's interest in the land called Walliwela situated at Hanguranketa in the District of Nuwara Eliya. 10

(Sgd. Illegibly)
K. S. DE SILVA,
for Public Trustee.
Colombo, December 21, 1946.

P 8.
Letter from
Public Trustee
to Plaintiff.
21.12.46.

Letter from Public Trustee to Plaintiff

No. BT 15 G.

*Land forming part of the Paraveni Pangu subject to
Services to Temple* 20

To : Sirimalwatte Heratmudiyanselage Ran Banda Herat, Damunumeeya, Hanguranketa.

The receipt is hereby acknowledged of your notice dated November 19, 1946, under section 27 of the Buddhist Temporalities Ordinance Chapter 222 relating to the transfer in your favour subject to services to the Hanguranketa Pathini Devale of the Paraveni Pangu tenant's interest in the land called Huludorawatta situated at Dammunumeeya in the District of Nuwara Eliya.

(Sgd. Illegibly) 30
for Public Trustee.

Colombo, December 21, 1946.

Directions issued by the Assistant Land Commissioner to Plaintiff

P 1.
 Directions
 issued by the
 Assistant Land
 Commissioner
 to Plaintiff.
 14. 3. 47.

My No. L. R. O/A. P. L. 1736.

Land Commissioner's Office,
 New Secretariat Building,
 Colombo, 14. 3. 47.

To : Mr. R. B. Herath *alias* Ananda Mudalali, Hanguranketa.

10 You are hereby directed under section 7 (1) of the Land Redemption Ordinance No. 61 of 1942 to furnish to the Land Commissioner before the 29th day of March 1947 a return on the form sent herewith in respect of the land known as

- (1) Walliwela Kumbura and
- (2) Huludorawatte

situated in the village of Hanguranketa in Diyatilleka Korale of the Uda Howaheta in the District of Nuwara Eliya, Central Province

2. Please attach to the return a plan of the land to enable the verification of such extent of the land as may be mentioned in the return.

20 3. If the space in the form sent herewith is found to be insufficient the entry of the particulars should be continued in an annex.

4. The return should be sent to the abovementioned office in an envelope addressed to the Land Commissioner and marked with the letter L. R. O.

30 5. It should be noted that section 7 of the aforesaid Ordinance provides that any person who when required to furnish a return or any information or explanation or any evidence under that section fails or refuses to furnish such return, information, explanation or evidence or knowingly furnishes a return containing any particulars which are false or any information or explanation which is false, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred rupees.

6. If you have any objection to the acquisition of the said land, please state your objection in writing.

(Sgd. Illegibly)
 Assistant Land Commissioner.

P 2.
Letter from
Plaintiff to the
Assistant Land
Commissioner.
22. 3. 47.

P 2

Letter from Plaintiff to the Assistant Land Commissioner

R. B. Herath,
Ananda Transport Service,
Hanguranketa,
22nd March, 1947.

The Assistant Land Commissioner,
New Secretariat Building,
Colombo.

Sir,

10

With reference to your letter No. L. R. O/A. P. L. 1736 of the 14th instant I return herewith the form in duplicate sent therewith duly completed together with a copy of the registers of the encumbrances and rough sketch showing the position of the lands as I possess no other plans.

I strongly object to the acquisition of these lands on the following grounds :

1. Though these lands are purchased in my name they are held by me in trust for my brother W. B. Herath. Half of the purchase money was supplied by him. On receipt of the balance I have to transfer the land to him. At present all the members of my family are resident together in my house. After my brother marries in the near future he wishes to live separately by putting up a house on these lands. My said brother owns no other immovable property.

20

2. According to the encumbrances I do not think that the original owner is capable of maintaining these properties.

In the event of a compulsory acquisition I claim on behalf of my said brother Rs. 5,000 at which the lands were purchased plus all costs incurred up to date.

Yours faithfully.

30

Notice of Survey to Plaintiff

My No. LRO/APL 1736.

*Notice of survey of a land for the purposes of the
Land Redemption Ordinance*P 3,
Notice of
Survey to
Plaintiff.
16. 1. 50.

10 To : Mr. R. B. Herath, Ananda Transport Service, Hanguranketa,
present owner for the redemption of the land called and known as
Walliwela and Huludorawatte Hanguranketa situated at Hanguran-
keta in the Diyatilake Korale of the Udahewaheta in the District
of Nuwara Eliya, Central Province.

I, P. Arampu, being a person acting under the written authority
of Mr. A. C. L. Aboysundera, Assistant Land Commissioner, do here-
by give notice that I shall on the 25th day of January 1950 at 8 a.m.
enter the abovementioned land together with servants and workmen
and do all such acts as may be necessary for the purpose of making
a survey of that land. I therefore request you or your representative
to be present at the survey of the land and to make to me such repre-
sentations regarding the survey of the land as you may desire.

20 You are requested to meet me at the above-mentioned land at
8 a.m. on the said date to point out the land to me.

(Sgd. Illegibly.)
Government Surveyor.
16. 1. 1950.

P 4.
Letter from
Plaintiff to the
Land
Commissioner.
28.2.50.

P 4

Letter from Plaintiff to the Land Commissioner

W. H. Bus Co., Limited.
Incorporated in Ceylon.
Liability of Members is Limited.
Date: 28th February 1950.

The Land Commissioner,
Land Commissioner's Office,
Secretariat Buildings,
Colombo.

10

(Walliwela Cumbure and Huludorawatte)

Dear Sir,

With reference to your memo No. LRO/APL 1735 of the 14th March 1947 I beg to lay the following facts for your kind and sympathetic consideration.

The forms, in duplicate, referred to in in the above memo of yours were duly perfected and forwarded to your address together with the Register of Encumbrances, a rough sketch of the property and my objection to the acquisition of the said land under registered post on the 22nd March 1947. But no acknowledgment has been made.

20

Further in 1948 I interviewed your honour and explained that this property belongs to "Pathini Dewale" of Hanguranketha which is subject to the "Rajakariya" of the Buddhist Temporalities Society, which is clearly proved by the two documents I handed over to your honour at the interview.

On the consultation with my counsel he too advised me that the Redemption Ordinance does not apply on the properties of the Buddhist Temporalities Society.

Furthermore let me mention you Sir, that this claimant is owning some more properties of his own.

30

It was not queried up this date and on the 16th of January last the said land was surveyed by a Government Surveyor named Mr. P. Arampu.

I shall be very much grateful to you if you will kindly cause an investigation and enlighten me on the subject as to why it was surveyed.

Thanking you in anticipation of an early reply.

P 4.
Letter from
Plaintiff to the
Land
Commissioner.
28.2.50—contd

I am Sir,
Your obedient Servant,

(Sgd.)

H. B. Herath,
No. 52, Malabar Street,
10 Kandy.

P 5.
Letter from the
Acting Land
Commissioner
to Plaintiff.
24.3.50.

P 5

Letter from the Acting Land Commissioner to Plaintiff

My. No. LRO/APL. 1736.

Land Commissioner's Office,
Colombo, 24th March, 1950.

LAND REDEMPTION ORDINANCE : No. 61 of 1942

Sir,

With reference to your letter dated 28. 2. 50 I have the honour to inform you that the land in question has been surveyed for acquisition for the purposes of the Ordinance.

10

2. Please furnish detailed particulars of the properties which belong to the applicant.

I am Sir,
Your Obedient Servant,
(Sgd. Illegibly)
for Actg. Land Commissioner.

Mr. H. B. Herath
No. 52, Malabar Street,
Kandy.

123

P 6

Letter from Land Commissioner to Plaintiff

P 6.
Letter from
Land
Commissioner
to Plaintiff.
21.6.50.

My No. LRO/APL. 1736.

Land Commissioner's Office,
Colombo, 21st June, 1950.

LAND REDEMPTION ORDINANCE No. 61 of 1942

Sir,

10 With reference to your letter dated 17. 6. 50 I have the honour
to return herewith the two letters of authority in respect of
Rajakiriya.

I am Sir,
Your Obedient Servant,
(Sgd. Illegibly)
for Land Commissioner.

Mr. H. B. Herath,
No. 52, Malabar Street,
Kandy.

P 9.
Letter
addressed to
the Land
Commissioner
by the
Plaintiff's
Proctor.
15.11.50.

Letter addressed to the Land Commissioner
by the Plaintiff's Proctor

L. B. Kolugalle,
Proctor and Notary,
15th November '50.

The Land Commissioner,
Colombo.

L. R. O/A. P. L. 1736

Sir,

10

With reference to your letter of the above number dated the 11th instant, I have been instructed by my client Mr. R. B. Herat to inform you that he objected to the acquisition of the lands claimed by the applicant on the ground that the applicant is the owner and is possessed of the following lands.

1. Weuliyaddewatte in which the applicant resides at present.
2. Weuliyadde Kumbura which adjoins land No. 1.
3. Weuliyaddemullewatte which the applicant's son now resides.
4. Yathakalpekumbura of 2 pelas.
5. Dambuyaddehena situate at Karaliyadde. 20
6. Shares in the paddy fields known as Kotagepitiyaya and Mapana Kumburayaya.
7. Weuliyaddawatte.

The applicant has also transferred a number of lands to his children and has also disposed of several other lands to outsiders.

He is the trustee of Hanguranketha Potgul Vihare and has furnished security for the due performance of his services as such trustee in land.

The applicant is not a person who is in need of any assistance and is in receipt of a considerable income which is quite sufficient or more 30 than is necessary for the maintenance of himself and his family.

I shall therefore thank you to kindly stay all further proceedings in this matter.

I am Sir,
Your obedient Servant,
(Sgd. Illegibly.)

LD—B49/50

**Declaration under Section 5 of the Land Acquisition
Act No. 9 of 1950**

1 D 1.
Declaration
under § 5 of
the Land
Acquisition
Act No. 9 of
1950.
10.5.51.

LRO/APL. 1736/J/AL/1140.

*Declaration under Section 5 of the
Land Acquisition Act, No. 9 of 1950*

10 WHEREAS the Land Commissioner has determined that the land described in the Schedule hereto shall be acquired for the purposes of the Land Redemption Ordinance, No. 61 of 1942.

Now, therefore I, Dudley Shelton Senanayake, Minister of Agriculture and Lands, do hereby declare under section 5 (1) of the Land Acquisition Act, No. 9 of 1950, (read with section 3 (5) of the said Ordinance as amended by section 62 of that Act) that the said land is needed for a purpose which is deemed to be a public and will be acquired under that Act.

(Sgd.) DUDLEY SENANAYAKE,
Minister of Agriculture and Lands.

Colombo, 10th May, 1951.

20

SCHEDULE

Preliminary Plan No. P. P. A 1684. Village—Hangurankota

Lot	Name of Land	Description	Name of Claimant	Extent		
				A.	R.	P.
1	Walliwelakumbura Assessment No. 105	Paddy field	R. B. Herat, Ananda Transport Service, Hanguranketa	1	2	31
2	Do.	do.	do.	0	0	4
3	Do.	do.	R. B. Herat, Ananda Transport Service, Hanguranketa, and Hanguranketa Pattini Dewale (Trustee: A. B. Pannanwela Basnayake Nilame, Talatu Oya)	0	0	16
4	Huludorawatta Assessment No. 106	Chena	R. B. Herat, Ananda Transport Service, Hanguranketa	0	0	8
5	Huludorawatta Assessment No. 106	Chena	R. B. Herat, Ananda Transport Service, Hanguranketa and Hanguranketa Pattini Dewale (Trustee: A. B. Pannanwela Basnayake Nilame, Talatu Oya)	0	0	13
6	Do.	do.	do.	0	1	35
				<u>2</u>	<u>1</u>	<u>27</u>

40

True copy

(Sgd.) _____

for *Permanent Secretary, Ministry of
Lands and Land Development.*

Colombo, 29.6.55.

Gazette Notification

Extract from the *Ceylon Government Gazette*
No. 10,285 of August 24, 1951

Reference No. LD. 1051 (LRO/APL 1736) J/AL/1140

*Declaration under Section 5 of the Land
Acquisition Act, No. 9 of 1950*

WHEREAS the Land Commissioner has determined that the land described in the Schedule hereto shall be acquired for the purposes of the Land Redemption Ordinance No. 61 of 1942. 10

Now, therefore, I, Dudley Shelton Senanayake, Minister of Agriculture and Lands, do hereby declare under Section 5 (1) of the Land Acquisition Act, No. 9 of 1950 (read with Section 3 (5) of the said Ordinance as amended by section 62 of that Act), that the said land is needed for a purpose which is deemed to be a public purpose and will be acquired under that Act.

DUDLEY SENANAYAKE,
Minister of Agriculture and Lands.

Colombo, May 10, 1951.

SCHEDULE

Preliminary Plan No. P. P. A. 1,684. Village—Hanguranketa 20

Lot	Name of Land	Description	Name of Claimant	Extent	
				A.	R. P.
1	Walliwelakumbura Assessment No. 105	Paddy field	R. B. Herat, Ananda Transport Service, Hanguranketa	1	2 31
2	Do.	do.	do.	0	0 4
3	Do.	do.	R. B. Herat, Ananda Transport Service, Hanguranketa, and Hanguranketa Pattini Dewale (Trustee: A. B. Pannawela Basnayake Nilame, Talatu Oya)	0	0 16
4	Huludorawatta Assessment No. 106	Chena	R. B. Herat, Ananda Transport Service, Hanguranketa	0	0 8
5	Huludorawatta Assessment No. 100	Chena	R. B. Herat, Ananda Transport Service, Hanguranketa, and Hanguranketa Pattini Dewale (Trustee: A. B. Pannawela, Basnayake Nilame, Talatu Oya)	0	0 13
6	Huludorawatta Assessment No. 106	Chena	do.	0	1 35
				2	1 27

30

40

Notice under Section 7 of the Land Acquisition Act, No. 9 of 1950

(Extract from the *Ceylon Government Gazette* No. 10,285
of August 24, 1951)

LD 1051 (LRO/APL. 1736) J/AL/1140.

*Notice under Section 7 of the Land Acquisition
Act, No. 9 of 1950*

P 11.
Notice under
Section 7 of
the Land
Acquisition
Act, No. 9 of
1950.
24.8.51.

I, Eardley Godfrey Goonewardene, Assistant Government Agent of
the Nuwara Eliya District, do hereby give notice under section 7
10 of the Land Acquisition Act, No. 9 of 1950, that—

- (1) it is intended to acquire under the said Act, for the purposes
of the Land Redemption Ordinance No. 61 of 1942 the
land described in the schedule hereto.
- (2) claims for compensation for the acquisition of such land
may be made to me, and
- (3) every person interested in such lands shall—

(a) appear, personally or by agent authorised in writing,
before me at the Nuwara Eliya Kachcheri on
October 4, 1951, at 10.30 a.m. and

20

(b) notify to me in writing, on or before September 27,
1951, the nature of his interest in the land, the
particulars of his claim for compensation, the
amount of compensation and the details of the
computation of such amount.

(Sgd.) E. G. GOONEWARDENE,
*Assistant Government Agent of the
Nuwara Eliya District.*

Kachcheri, August 15, 1951.

SCHEDULE

Preliminary Plan No. P. P. A 1,684. Village—Hanguranketa

P 11.
Notice under
Section 7 of
the Land
Acquisition Act,
No. 9 of 1950.
24. 8. 51—contd.

Lot	Name of Land	Description	Name of Claimant	Extent A. B. P.	
1	Walliwelakumbura Assessment No. 105	Paddy field	R. B. Herath, Ananda Transport Service, Hanguranketa	1 2 31	
2	Do.	do.	do.	0 0 4	
3	Do.	do.	R. B. Herath, Ananda Transport Service, Hanguranketa and Hanguranketa Pattini Dewale (Trustee A. B. Pannanwela Basnayake Nilame, Talatu Oya)	0 0 16	10
4	Huludorawatta Assessment No. 106	Chena	R. B. Herath, Ananda Transport Service, Hanguranketa	0 0 8	
5	Do.	do.	R. B. Herath, Ananda Transport Service, Hanguranketa and Hanguranketa Pattini Dewale (Trustee A. B. Pannanwela Basnayake Nilame, Talatu Oya)	0 0 13	
6	Do.	do.	do.	0 1 35	20
Total				2 1 27	

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P 10

Letter from Assistant Government Agent, Nuwara Eliya,
to Plaintiff

P 10.
Letter from
Assistant
Government
Agent, Nuwara
Eliya, to
Plaintiff.
30.8.51.

No. LD. 1051.
The Kachcheri,
Nuwara Eliya,
30.8.51.

Sir,

10

*Acquisition of land for the purposes of the
Land Redemption Ordinance No. 61 of 1942*

I have the honour to forward herewith in Sinhalese, Tamil and English a *Gazette* extract of my notice under section 7 of the Land Acquisition Act No. 9 of 1950 published in the *Government Gazette* No. 10,285 of 24.8.51 in the above connection.

I am Sir,
Your obedient Servant,
(Sgd. Illegibly,
for *Assistant Government Agent*.)

20 Mr. R. B. Herath,
Ananda Transport Service,
Hanguranketa.

P 22.
Plaint in
D. C. Kandy
Case No.
L 3632.
23. 6. 52.

Plaint in D. C. Kandy Case No. L 3632

IN THE DISTRICT COURT OF KANDY

R. B. Herath of Ananda Transport Service of Hanguranketa *Plaintiff.*

No. L. 3632 *vs.*

(1) The Land Commissioner, Colombo, (2) E. G. Goonawardene, Assistant Government Agent, Nuwara Eliya *Defendants.*

On this 23rd day of June 1952.

The plaintiff of the plaintiff abovenamed appearing by his Proctor Loku Banda Kolugala states as follows :— 10

1. The lands which are the subject matter of this action are situate within the jurisdiction of this Court.

2. The 2nd defendant abovenamed who is the Assistant Government Agent of Nuwara Eliya had at the request of the 1st defendant abovenamed published in *Government Gazette* No. 10285 of the 4th October 1951 a notice to the effect that he was taking steps to acquire the lands and premises more fully described in the schedule at foot thereof and which are reasonably worth the sum of Rs. 10,000. 20

3. The plaintiff pleads that the said lands do not fall within any of the categories of lands that are liable to be acquired under the said Ordinance and that the acquisition of them in excess of the powers unlawful and is and a denial of the rights of the plaintiff who holds the said lands by payment of dues and/or performance of services to the Pattini Devale at Hanguranketa.

4. The continuance of the proceedings for acquisition will cause loss and damage to the plaintiff.

5. A cause of action has therefore accrued to the plaintiff to sue the defendant for a declaration that the said lands are not liable to be acquired under the provisions of the Land Redemption Ordinance and for an injunction prohibiting the 2nd defendant from carrying on any further the proceedings to acquire the said lands. 30

6. Notice of this action was given to the defendants in terms of section 461 of the Civil Procedure Code.

7. Wherefore the plaintiff prays :—

- (a) for a declaration that the lands and premises more fully described in the schedule at foot hereof are not liable to be acquired under the provisions of the Land Redemption Ordinance.
- (b) for an injunction restraining the 2nd defendant abovenamed from proceeding any further with the said acquisition until the final determination of this action.
- (c) for costs and for such further and other relief as to this Court shall seem meet.

P 22.
Plaint in
D. C Kandy
Case No.
L. 3032.
23.6.52—contd.

10

(Sgd.) L. B. KOLUGALA,
Proctor for Plaintiff.

P 22.
Amended
answer of the
Defendants in
D. C. Kandy
case No. 3632.
8.7.53.

Amended Answer of the Defendants in D. C. Kandy Case No. 3632

IN THE DISTRICT COURT OF KANDY

R. B. Herath of Ananda Transport Service, Hanguran-
keta Plaintiff.

No. 3632 vs.

(1) The Land Commissioner, Colombo, (2) E. G. Goonewardene,
Assistant Government Agent, Nuwara Eliya Defendants.

On this 8th day of July 1953.

The amended answer of the defendants abovenamed appearing by 10
their Proctor Alfred Fernando states as follows :—

1. The defendants admit the averments in paragraph 1 of the
plaint.

2. Answering to paragraph 2 of the plaint, the defendants state
that the date of the *Government Gazette* referred to is 24th August
1951 and not 4th October 1951 as averred in the said paragraph. The
value of the lands referred to in the said paragraph is Rs. 3,330 after
commutation for Rajakariya rights. These defendants admit that
they are taking steps to acquire the said lands.

3. These defendants deny all and singular the averment in para- 20
graph 3 of the plaint and state that the said lands are subject to
performance of services to the Pattini Devale of Hanguranketa.

4. These defendants deny the averments in paragraphs 4 and 5
of the plaint.

5. These defendants deny the averments in paragraph 6 of the
plaint.

6. Further answering these defendants state that the Court has no
jurisdiction to hear and determine this action.

7. The lands in question are comprised of Lots 1-6 in P. P. A. 1684.
The said lands were formerly owned by Attanayaka Kalugedera 30
Mantillaka Mudiyanse Lage Punched Banda Attanayaka who upon
Mortgage Bond No. 25814 dated 26th May 1926 attested by B. A.
Illangantillake Notary Public mortgaged and hypothecated the said
lands to Udawatta Don Allis Perera and thereafter upon Deed
No. 1357 dated 5th March 1931 attested by K. B. Karunaratne the
said Punched Banda Attanayaka the Mortgagor transferred the said

lands to the said Allis Perera the mortgagee in satisfaction of the mortgage debt due on the said mortgage bond. It is pleaded that hence the defendants have acted as they lawfully might under the provisions of the Land Redemption Ordinance No. 61 of 1942.

Wherefore these defendants pray that this action be dismissed with costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) ALFRED FERNANDO,
Proctor for Defendants.

P 22.
Amended
Answer of the
Defendants in
D. C. Kandy
Case No. 3032.
8.7.53—*contd.*

P 12.
Letter from
Assistant
Government
Agent, Nuwara
Eliya, to
Plaintiff.
12.1.53.

P 12

**Letter from Assistant Government Agent, Nuwara Eliya,
to Plaintiff**

No. LD 621.
The Kachcheri,
Nuwara Eliya,
January 12, '53.

Sir.

*Acquisition of Land under the L. R. O.
Lots 1-6 P. P. A. 1684*

10

I have the honour to forward herewith a Notice in accordance with Section 10 (1) (a) of the Land Acquisition Act No. 9 of 1950 in connection with the above acquisition.

I am Sir,
Your obedient Servant,
(Sgd. Illegibly,
*Assistant Government Agent,
Nuwara Eliya.*

Mr. R. B. Herath,
Ananda Transport Service,
Hanguranketa.

20

Notice under Section 10 (1) (a) of Land Acquisition
Act, No. 9 of 1950

P 13.
Notice under
§ 10 (1) (a) of
Land
Acquisition Act.
No. 9 of 1950.
12.1.53.

The Land Acquisition Act, No. 9 of 1950
Notice under Section 10 (1) (a)

10 I, Victor Alexander Justin Senaratne, Assistant Government Agent of the Nuwara Eliya District, do hereby give notice under Section 10 (1) (a) of the Land Acquisition Act, No. 9 of 1950, that in respect of your claim or dispute relating to any right, title or interest to in or over the land described in the schedule hereto which is to be acquired or over which a servitude is to be acquired my decision is as follows :—

Mr. R. B. Herat, Ananda Transport Service, Hanguranketa, is declared entitled to the land subject to the kapu services which are due on all the lots in schedule below to the Trustee of the Hanguranketa Pattini Devale.

20 I hereby declare that unless you make a written application to me within fourteen days of the receipt of this notice for reference of your claim or dispute for determination to the District Court my decision shall be final.

(Sgd.) V. A. J. SENARATNA,
A. G. A.

Date : 12.1.1953.

SCHEDULE

Lots 1, 2, 3, 4, 5 and 6 in Preliminary Plan No. A. 1684 land called Walliwalakumbura (lots 1-3) and Huludorawatta (lots 4, 5, 6) in extent Acres 2 Roods 1 Perches 27.

P 14.
Letter from
Assistant
Government
Agent, Nuwara
Eliya, to
Plaintiff.
19.3.53.

P 14

**Letter from Assistant Government Agent, Nuwara Eliya,
to Plaintiff**

Kachcheri,
Nuwara Eliya,
March 19, '53.

Sir,

*Acquisition of Land under the
L. R. O. 1-6 PPA. 1684*

I have the honour to forward herewith my Notice of Award 10
made under Section 16 of the Land Acquisition Act No. 9 of 1950
in connection with the acquisition of the above land for the purposes
of the Land Redemption Ordinance No. 61 of 1942.

I am Sir,
Your obedient Servant,
(Sgd. Illegibly,
*Assistant Government Agent,
Nuwara Eliya.*

Mr. R. B. Herath,
Ananda Transport Services,
Hanguranketa.

20

Award under Section 16 of Land Acquisition
Act, No. 9 of 1950

Reference No. LD 1051

The Land Acquisition Act, No. 9 of 1950

AWARD UNDER SECTION 16

I, Victor Alexander Justin Senaratne, Assistant Government Agent of the Nuwara Eliya District in the Central Province of the Island of Ceylon make the following award.

- 10 1. Every person referred to in column I hereunder shall be entitled to the interest specified in the corresponding entry in column II.

<i>I</i>	<i>II</i>
<i>Name and address of person entitled to compensation</i>	<i>Nature of interest in land is to be acquired</i>
1. Mr. R. B. Herat, Ananda Transport Services Hangurankota	By right of Purchase
2. Trustee, Hanguranketa Pattini Devale (Mr. A. B. Pananwala, Bsnsaya Nilama, Tolatu Oya)	By kapu services (Rajakariya) due to the devale

- 20 2. *The total amount of the claims for compensation for the acquisition of the land or servitude is Rupees fifteen thousand only.*

3. The sum of Rupees Three thousand three hundred and thirty only shall be paid by the Government of the said Island for the acquisition of the land by way of compensation to the said persons each person to be paid the amount specified below against his name :—

Names of persons entitled to compensation

1. R. B. Herat :

Amount of compensation : Rs. 3,108·50

- 30 2. Trustee, Hanguranketa Devale :

Rs. 221·50

In witness whereof I do hereunto set my hand at Nuwara Eliya in the said Nuwara Eliya District this 19th day of March, 1953.

(Sgd.) V. A. J. SENARATNE,
A. G. A., Nuwara Eliya.

P 15.
Award under
§ 16 of Land
Acquisition
Act, No. 9 of
1950.
10.3.53.

Decree Nisi in D. C. Kandy Case No. L 3632

*Decree Nisi dismissing the action in default of
appearance of plaintiff*

IN THE DISTRICT COURT OF KANDY

R. B. Herath of Ananda Transport Service of Hanguran-
keta *Plaintiff.*

No. 3632/L *vs.*

10 (1) The Land Commissioner of Colombo, (2) E. G. Goonewardene,
Assistant Government Agent, Nuwara Eliya *Defendants.*

This action coming on for disposal before L. W. de Silva, Esquire,
District Judge of Kandy on the 13th day of October 1953 being the
day fixed for the hearing of this action and the defendants appearing
with their counsel Mr. T. A. Dunuwille, Advocate, instructed by
Mr. Alfred Fernando, Proctor, and the Plaintiff not appearing either
in person or by Proctor or by Counsel, it is decreed that this action
be dismissed and that the plaintiff do pay to the defendants their
costs thereof ; unless sufficient cause be shown to the contrary within
fourteen days from the date hereof.

20

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

The 13th day of October, 1953.

P 24.
Journal
entries in
D. C. Kandy
Case No. L 3632.
21.10.53 to
26.10.53.

Journal Entries in D. C. Kandy Case No. L 3632

IN THE DISTRICT COURT OF KANDY

No. L. 3632 R. B. Herath of Hanguranketa *Plaintiff.*
Class : IV
Amount : Rs. 10,000 *vs.*
Nature : Land (1) The Land Commissioner, (2) The
Procedure : Regular A. G. A., Nuwara Eliya *Defendants.*

JOURNAL

21.10.53 10
Messrs. L. & Lee file appointment from the plaintiff-petitioner together with his petition and affidavit and for reasons stated therein move (a) that the order dismissing plaintiff's action on 13.10.53 be set aside and (b) that trial be fixed on any terms that will be imposed on him.
Mr. A. Fernando for defendants-respondents takes notice for 22.10. Mention on 22.10.53

(Intd.) L. W. DE SILVA,
D. J.

22.10.53 20
Messrs. L. & Lee for plaintiff-petitioner.
Mr. A. Fernando for defendants-respondents.
J. E. dated 21.10.53 mentioned Inquiry on 26.10.53.

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

23.10.53
Plaintiff-petitioner's list of witnesses filed.

26.10.53. Inquiry. 30
Messrs. Liesching and Lee for plaintiff-petitioner.
Mr. A. Fernando for defendants-respondents.
Vide proceedings.
The application of the plaintiff-petitioner is dismissed with costs.

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

1 D 3.
Gazette
Notification
Order under
§ 36 of the
Land
Acquisition Act
No. 9 of 1950.
19.1.54.

1 D 3

Gazette Notification Order under Section 36 of the
Land Acquisition Act No. 9 of 1950

(Extract from the *Ceylon Government Gazette*
No. 10,634 of January 29, 1954)

The Land Acquisition Act, No. 9 of 1950

Order under Section 36

Order No. 50 of 1954

Reference No. LD 1051/J/AL/1140.

By virtue of the powers vested in me by section 36 of the Land Acquisition Act, No. 9 of 1950, I, Punchi Banda Bulankulame, Minister of Lands and Land Development, do hereby direct the Government Agent, Assistant Government Agent or other officer authorized in that behalf by such Government Agent or Assistant Government Agent and referred to in column I of the Schedule hereto, to take possession of the land specified in the corresponding entry in column II of that Schedule. 10

P. B. BULANKULAME,
Minister of Lands and Land Development.

Colombo, January 19, 1954.

20

SCHEDULE

<i>I</i>	<i>II</i>
<i>Government Agent, Assistant Government Agent or other authorized officer</i>	<i>Description of Land</i>
The Acquiring Officer, Nuwara Eliya District	Lots 1, 2, 3, 4, 5, and 6 in preliminary plan A 1,684

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P 16

Letter from Divisional Revenue Officer, Uda-Hewaheta,
to Plaintiff

Copy

My No. LC. 142/52.

R. B. Herath,
52, Malabar Street,
Kandy.

Acquisition of Lots 1-6 in P. P. A. 1684

10 Sir,

This is to inform you that I have handed over lots 1 and 6 in P. P. A. 1684 acquired under the L. R. O. to the applicant Mr. P. B. Attanayake of Damunumeya today.

2. In this connection your reference is requested to to my letter of even number dated 13.2.54.

I am, Sir,

Your obedient Servant,
(Sgd.) D. R. O., Uda Hewaheta.

Hanguranketa,
March 8, 1954.

P 16.
Letter from
Divisional
Revenue Officer
Uda Hewaheta,
to Plaintiff.
8.3.54.

P 17

20 Letter from Assistant Government Agent, Nuwara Eliya,
to Plaintiff

REGISTERED

No. LD 1051

The Kachcheri,
Nuwara Eliya,
March 23, 1954.

Sir,

*Acquisition of Land for the Purposes of the Land
Redemption Ordinance No. 61 of 1942
Lots 1-6 in P. P. A. 1684*

30 With reference to my letter No. LD 1051 dated 19.3.1953 forwarding my notice of Award under Section 16 of the Land Acquisition Act No. 9 of 1950 I have the honour to request you to receipt the annexed voucher for Rs. 3,108.50 on a 6 cents stamp duly witnessed by a responsible person and to return same early to enable me to tender you the amount of my Award, by cheque.

I am Sir,

Your obedient Servant,
(Sgd. Illegibly)
for A. G. A., Nuwara Eliya.

40 Mr. R. B. Herath,
Ananda Transport Services,
Hanguranketa.

P 17.
Letter from
Assistant
Government
Agent, Nuwara
Eliya, to
Plaintiff.
23.3.54.

P 19.
Letter from
Plaintiff to
Land
Commissioner.
9.4.54.

P 19

Letter from Plaintiff to Land Commissioner

Kandy, 9th April, 1954.

The Land Commissioner,
The Office of the Land Commissioner,
Bambalapitiya,
Colombo.

*Acquisition of the land for the purpose of the
Land Redemption Ordinance No. 61 of 1942
Lots No. 1-6 in PPA. 1684 No. LD. 1051*

10

Dear Sir,

I have the honour to inform you that I am instructed by my lawyers to file action for the recovery of the property known as Walliwela Cumbura in the above acquisition for the purpose of the Land Redemption Ordinance No. 61 of 1942 Lots 1-6 in PPA. 1684 No. LD. 1051.

I understand that the A. G. A. Nuwara Eliya has given instructions to the D. R. O. Udahehaheta to harvest the crop of the above property referred to.

As the property is under litigation I wired the A. G. A. Nuwara Eliya to suspend the Paddy pending the decision of the action. Further I beg to state that I will hold you responsible for damages for the value of the Paddy harvested.

20

Please acknowledge the receipt of this letter and take immediate steps.

Yours faithfully,
(Sgd). R. B. HERATH

Copy to—
Assistant Government Agent,
Nuwara Eliya.

P 20

P 20.
Letter from
Land
Commissioner
to Plaintiff.
26.4.54.

Letter from Land Commissioner to Plaintiff

30

No. LRO/APL. 1736.
Land Commissioner's Department,
Colombo, 26th April, 1954.

Sir,

Land Redemption Ordinance No. 61 of 1942

With reference to your letter of 9. 4. 54, I have the honour to inform you that I regret that your request cannot be complied with.

Mr. R. B. Herath,
52, Malabar Street,
Kandy.

I am, Sir,
Your Obedient Servant,
(Sgd). — — —
for Land Commissioner.

40

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P 18

Voucher for Rs. 3,108.50

P 18.
Voucher
for
Rs. 3,108.50.

General 35
(N 4) 2/41

Payable within 30 days from the date of issue.

CEYLON

Voucher No.

Station : Nuwara Eliya
Head : Part II, L. F. E.
Sub-head : 49

10

Payable to : Mr. R. B. Herath, Ananda Transport Services,
Hanguranketa.

Date	Detailed description of service rendered, work executed or goods supplied	Rate	Amount Rs. c.
	Being the amount due to him in full as compensation for the acquisition lots 1-6 in P. P. A. 1684 under the Land Redemption Ordinance. (Kachchori Case No. LD 1051/LP 541)		3,108 50
Authority : G/W 1953/54		Total..	3,108 50

20

I certify that the above account amounting to Rupees Three thousand One hundred and eight and cents fifty only is correct, and was incurred under the authority quoted, and that the rate charged is according to regulation.

for A. G. A., Nuwara Eliya.

Signature { of Officer
 { incurring
 { expenditure

Date : _____, 19____

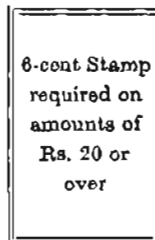
Title

30

Received this _____ day of March, 1954, in payment of the above account, the sum of Rupees Three Thousand One hundred and eight and cents fifty only.

Witnesses :—

Signature of



Receiver