GL-G.2 5,1961

No. 22 of 1959

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN

MRS. CECILY HARRIET MATILDA PEIRIS of No. 66, Campbell Place, Colombo — Plaintiff-Appellant

and

1. MRS. CHARLOTTE MARY CLARA FERNANDO of "Credon", 18, Castle Street, Colombo
2. MRS. REINEE MARY PHYLLIS PERERA, Wife of Dr. A.F.S. Perera of Colombo

— Defendants-Respondents

CASE FOR THE APPELLANT

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1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon dated the 11th May, 1956, allowing an appeal from a Judgment and Decree of the District Court of Kegalla dated 31st March, 1953, whereby the Plaintiff was declared to be entitled to certain lands and the Defendants were ordered to pay damages and to be ejected from the said lands. pp.194-206 pp.177-189

2. The principal question which arises for determination on this appeal is whether the Supreme Court was justified in reversing the judgment of the District Court which consisted essentially of findings of facts, following a lengthy trial of about 20 days spread over a period of nearly 16 months. It will be the Appellant's submission that the Judgment of the Supreme Court discloses no good reason, and in particular no sufficient or satisfactory analysis of the evidence, to justify a reversal of the Judgment of the court of first instance; and that the Supreme Court Judgment itself is erroneous having regard to the evidence.

*
(Footnote)
The marginal references are to Part I of the Record unless otherwise indicated, thus "Pt.II", "Pt.III", "Supp"

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p.16 3. The suit was commenced against the 1st Defendant by a Plaint in the District Court dated the 16th August, 1949. The said Plaint was Amended p.25 on the 13th July, 1950, adding the 2nd Defendant as a p.45 party, and was further Amended on the 23rd July, 1951. The Plaintiff's case was pleaded as follows:-

pp.19-23 (a) The lands claimed are set out in two schedules to the Plaint, Schedule A containing 18 lots and Schedule B P.48, 1.12 containing 10 lots. The estimated extent of the said lands is about 60 acres and the estimated value Rs.39,100/-.

p.45, 1.22 (b) The original owners of the lands (as far as the Plaintiff's title was concerned) p.48, 1.15- were two persons, T.B. Boyagoda and H.W. p.50, 1.14 Boyagoda. Their title was pleaded in detail.

p.45, 1.25 (c) The title to the lands was traced from p.47, 1.17 T.B. and H.W. Boyagoda through a number Pt.II, p.412 of transactions, all of which were pleaded, and the Plaintiff claimed that the title had thereby (in two alternative ways) devolved upon her.

p.45, 1.25 The first of these transactions was a mortgage to Palaniappa and Caruppen Chettiars, who put the Mortgage Bond in suit in the District Court of Colombo, obtained a decree therein and themselves bought in the land.

The particular transactions whereby the title vested in the Plaintiff were the following:-

p.46, 1.26 (i) By deed dated the 11th June, 1929, the owner of 15/72 shares (C.W. Peiris, the Plaintiff's husband) sold and transferred the same to the Plaintiff.

p.47, 1.1 (ii) By deed dated the 25th and 27th September, 1946, the co-owners of 52/72 shares sold and transferred the same to the Plaintiff.

p.47, 1.13 (iii) By deed of exchange dated the 25th September, 1946, the Plaintiff acquired the remaining 5/72 shares from the co-owners thereof.

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(d) The Plaintiff also pleaded title by prescription. p.47, l.18

(e) The 1st Defendant was the owner of premises called Uduwewala Group or Estate which adjoins Utuwankanda Estate of which the lands in Schedules A and B form part. The 2nd Defendant (who is the daughter of the 1st Defendant) appears now to be the owner of an undivided one half share of the said Uduwewala Estate, upon an unregistered Deed of Gift dated the 9th August, 1936. p.47, l.20 p.47, l.23

(f) Of the lands set out in Schedule A about 43 acres are a Tea plantation which was made from the year 1927. p.47, l.31

(g) The lands set out in Schedule B were always in jungle or chena and unplanted until the year 1947, when the Defendant (sic) began planting the same in spite of the protest of the Plaintiff. p.47, l.36

(h) The Defendants are in wrongful possession - p.47, l.40

(i) of the lands set out in Schedule A, ever since the Plaintiff's purchase in the year 1946.

(ii) Of the lands set out in Schedule B, from the year 1947.

The Plaintiff alleged loss and damage of Rs.11,739/- for the two years up to the date of the commencement of the suit, and a continuing loss at the estimated rate of Rs.5,869/- per annum thereafter p.47, l.43

(i) The Defendants, particularly the 1st Defendant, have committed a series of frauds by suppressing important materials and facts and falsely representing to Government officials that the lands in Schedules A and B were owned by the 1st Defendant and by producing certain fictitious survey plans and by making wrongful and illegal use of them to the serious damage and detriment of the Plaintiff. The Plaintiff claimed that any deed, grant, conveyance, order or settlement obtained by the Defendants are of no avail against the Plaintiff, not having been obtained according to law. p.48, l.1 p.48, l.9

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p.50, l.15 (j) The Plaintiff further pleaded that the deeds relied on by her are duly registered and obtain priority over the deeds relied on by the Defendants, by virtue of due and prior registration.

(k) The Plaintiff claimed compensation at the rate of Rs. 1,000/- per acre in the event of the Defendants being declared entitled to any portion of the lands in Schedule A.

p.50, l.21 The prayer was for a declaration of title (alternatively, as regards the lands in Schedule A, compensation at Rs.1,000/- per acre), damages, ejection, costs and other and further relief.

p.2, l.4 Pt.II, p.639 4. On the 31st January, 1950, a commission was issued by the District Court to one A.J. Frugtniet a Surveyor to survey the lands set out in the Plaintiff's Schedules. In due course the Pt.II, p.644 Surveyor made a Report and produced three Plans which were numbered 1077, 1078 and 1079:-

p.88, l.15 Pt.II, p.691 (i) Plan No. 1078 (referred to in the proceedings, and hereinafter, as Plan X) contains the lands in Schedule A except lots 3, 16 and 18.

p.88, l.16 Pt.II, p.699 (ii) Plan No. 1077 (referred to in the proceedings and hereinafter, as Plan Y) is a plan of lot 18 in Schedule A.

p.88, l.17 Pt.II, p.693 (iii) Plan No. 1079 (referred to in the proceedings and hereinafter as Plan Z) contains the lands in Schedule B except lots 1 and 8 which were not surveyed.

p.23 p.30 p.51 p.30; l.30 p.30, l.33 5. The Answer of the 1st Defendant was dated the 20th December, 1949. After the 2nd Defendant was added as a party, an Amended Answer was filed dated the 21st November, 1950, and the same was further Amended on the 14th August, 1951. The Defendants, in addition to putting the Plaintiff to proof of her claim, pleaded their case as follows:-

p.31, l.1 (a) They say that as the Plaintiff has not pleaded by reference to the Plans X, Y and Z, the Defendants are unable to file a full Answer.

p.31, l.8 (b) They deny that the Plaintiff is entitled by prescription to the lands depicted in the Plans.

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(c) They claim that the lands depicted in the Plans, except a certain lot B in Plan Z, have been planted in tea by the Defendants, who have been in possession of the lands depicted in the Plans ut domini for a period of about 20 years prior to this action by a title adverse to and independent of the Plaintiff and all others and the Defendants deny that their possession was wrongful or unlawful. p.31, l.12

(d) They deny the frauds alleged. p.31, l.22

(e) They deny that the Plaintiff has any title to the lands depicted in the Plans or any right to possession or to recover damages. p.31, l.24

(f) They ask the Plaintiff to prove that the Plans filed depict the lands described in the Schedules A and B. p.31, l.29

(g) They say that some of the lands claimed have not been surveyed and depicted in any of the plans. In particulars, lot 16 in Schedule A has not been depicted in the Plans. p.31, l.32 p.31, l.35

(h) They admit that by deed dated the 9th August, 1936, the 1st Defendant gifted a half share of certain lands to the 2nd Defendant and say that the 2nd Defendant now claims the same and is in possession thereof. p.31, l.38

(i) The lands depicted in Plan X are claimed by the Defendants on the basis that the Crown was the owner thereof and by grant dated the 7th August, 1930, sold and conveyed those lands to the 1st Defendant. p.31, l.42 p.32, l.1

(j) By way of alternative title to the land called Aradana Elahena, included in Plan X, the Defendants claim the same by virtue of inter alia, a conveyance to the 1st Defendant dated the 23rd August, 1934, and say that the rights of the 1st Defendant in respect of the said land were recognised and decreed in D.C. Kegalla Case No. 9555. p.32, l.8 p.32, l.23 p.32, l.25

(k) The Defendants refer to a land called Dangollehenyaya which they say is depicted in a Plan No. 3775 and claim to be in possession of a divided allotment of the said land by virtue of Final Partition Decree in D.C. Kegalla Case No. 9230. p.32, l.27

(l) They refer also to a land called p.32, l.30

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Taradenitennehena. (This is the name of lot 18 in Schedule A but the Defendants' description of the boundaries is not the
p.32, 1.30 same as that given in Schedule A). The Defendants admit that this land, as described by them, is depicted in
p.32, 1.35 Plan Y, and claim title thereto by
p.33, 1.18 virtue of a series of transactions, the last being a conveyance dated the 18th January, 1928, from H.W. Boyagoda and one D.A.R. Senenayake to the 1st Defendant.

p.33, 1.19 (m) A portion of the land depicted in Plan X, said to be covered by a Plan 312359, and to be the subject of a Crown grant to one K. Sendiya, is claimed by the Defendants by prescriptive title.

p.33, 1.26 (n) The Defendants admit being in possession of the lands depicted in Plan Z, state the alleged names of the said lands (these do not coincide exactly with the names set out in the Plaintiff's Schedule B, lots 1 to 8, and indeed the Defendants' list contained only 5 lots), and claim that
p.33, 1.30 the said lands are the property of the 1st Defendant.

p.33, 1.31 This claim of ownership is based upon a
p.34, 1.32 number of transactions, pleaded by the Defendants, including certain conveyances to the 1st Defendant.

p.34, 1.33 (o) The Defendants plead that the deeds relied upon by them obtain priority over the deeds relied upon by the Plaintiff, by virtue of due and prior registration.

p.34, 1.38 (p) They also plead prescriptive title to all the lands depicted in Plans X, Y and Z.

p.34, 1.43 (q) They claim that they have made the plantations on the lands depicted in the three Plans in bona fide belief in their title and that in the event of the Plaintiff being declared entitled to any portion thereof the Defendants are entitled to compensation for improvement, which they claim at the rate of Rs. 1,500/- per acre, and to the jus retentionis until payment.

pp. 39-41 6. Issues were framed. Certain of these were,

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after a consideration of the evidence, answered by the learned District Judge (N. Sivagnanasundram D.J.) as follows:- pp. 42-43

Issue	Answer	pp. 39-41
(1) Were T.B. and H.W. Boyagoda at one time, the owners of the lands in Schedules A and B of the amended plaint?	Yes.	p. 183
(2) Had the title to the said lands on the deeds pleaded in the amended plaint devolved on the plaintiff?	Yes.	
(3) Prescriptive rights of parties.	In favour of the plaintiff.	
(4) Were the lands in Schedule A planted and improved by the plaintiff's predecessors in title?	Yes.	
(5) Were the lands in Schedule B unplanted at the date of the plaintiff's purchase?	Yes.	
(6) Have the defendants encroached on the lands in Schedules A and B, in extent 43 acres, ever since the purchase in 1946 by plaintiff?	Yes.	
(7) What damages if any is plaintiff entitled to?	As prayed for.	
(8) Have the defendants, and particularly the 1st Defendant committed a series of frauds: (a) by suppressing important and material facts from Government Officials in order to prove that the lands in Schedules A and B belonged to the 1st Defendant. (b) by producing certain fictitious survey plans which had no application and making wrongful and illegal use of them and thereby cause damage and detriment to the plaintiff?	Yes, but only the 1st defendant	

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	Issue	Answer
(9)	Do the plans filed of record depict the lands described in Schedules A and B to the amended plaint?	Yes.
(10)	Was the Crown at all material times the owner of the lands depicted in plan No. 1078?	No.
(11)	Did the Crown by Grant dated 27th August, 1930, sell, convey grant and assign the said lands to the 1st Defendant?	No.
(12)	Did the 1st defendant plant the same in tea and other plantations and improve the same?	No.
(13)	Are the defendants entitled to the entirety of the lands shown in plan No. 1077 on the deeds pleaded by them in their answer?	No.
(14)	Does the title pleaded by the defendants in paragraphs19 and 25 of the amended answer apply to any of the lands in Schedule B of the plaint?	No.
(15)	Does the title pleaded by the defendants in paragraph 19 and 25 of the amended answer apply to the lands depicted in Plan No. 1079?	No.
(16)	Can the defendants rely on the decree in D.C. Kegalla case No. 9555 as against the plaintiff?	No.
(17)	Does Dangollehenaya referred to in paragraph 15 of the amended answer fall within any of the plans Nos. 1077, 1078 or 1079 made for the purpose of this case?	No.

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Issue	Answer	
(18) Have the plantations and improvements on the lands depicted in the plans filed of record been made by defendants in bona fide belief that they were the owners of the lands?	No.	
(19) (a) If so, what compensation are the defendants entitled to? (b) Are the defendants entitled to a jus retentionis until such compensation is paid?	Do not arise.	
(20) Does the title of the defendants to the lands in question gain priority over the title, if any, of the plaintiff by virtue of due and prior registration of the deeds in favour of the defendants?	Do not arise.	
(21) Did T.B. Boyagoda and H.W. Boyagoda mortgage the lands in Schedules A and B of the amended plaint to Palaniappa and Caruppen Chettiars?	Yes.	pp.42-43 p.183
(22) Did Palaniappa and Caruppen Chettiars put the said bond in suit in case No. 8477, D.C. Colombo and obtain a decree therein?	Yes.	
(23) Were the said lands in Schedules A and B of the amended plaint sold in pursuance of the said decree and purchased by the said Palaniappa and Caruppen Chettiars?	Yes.	
(24) Does the title of Palaniappa and Caruppen Chettiars pleaded in the plaint, namely in deed No. 306 of 1925 pass title to the plaintiff of the lands in the Schedules to the amended plaint?	Yes.	

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p.183, 1.35 — In view of the above answers to the Issues Nos. (1) to (24) the learned Judge found it unnecessary to
pp.55-57 — answer the remaining issues, numbered (25) to (45).

pp.41-44, pp.57-105, pp.109-111, pp.115-121, pp.122-158 — 7. The parties adduced evidence in support of their respective cases. The Defendants did not challenge the Plaintiff's title to the lands referred to in the deeds relied upon by her, and the principal issues between the parties were as to the identification of the lands in dispute and as to whether these lands or any of them, were part of the lands admittedly owned by the Plaintiff. On both sides the evidence was lengthy and detailed.

pp.41-44, pp.57-83, p.43; 1.29, p.43, 1.16 Supp., p.43, 1.25, p.44; 1.7, p.43, 1.12, p.43, 1.11 — 8. The evidence called for the Plaintiff included that of her husband, C.W. Peiris who gave the history of the title to the lands claimed, referring to the relevant title deeds, and identified the lands by reference to the Plans X, Y and Z and a survey plan (P.17) which he stated he had had made by one Thiedeman in 1925. He stated that the lands in Schedule A were all planted in Tea in 1927, but the lands in Schedule B were not planted even in 1947. He said that all the lands referred to in the two Schedules are in the Ambulugala division of the Kempitikanda Group, also known as Utuwankanda Estate; Ambulugala contains 150 acres tea.

pp.60-62, p. 83, 1.28, p.95; 1.43 - p.96; 1.1, p.61, 1.27, Pt.II, p.382, p.62, 1.6, Pt.II, p.446, p.61, 1.37, Pt.II, p.392 — The witness referred to a number of documents prepared by Lewis Brown & Co. Ltd. and Messrs. Bois Bros. both of which firms had acted as agents of Kempitikanda Group and to certain reports made in relation to the lands, one a Tea Assessment Report P.79, dated the 19th July 1934, by one William Hermon, a Valuation Report P.83 made by the said Hermon, dated the 1st February, 1942, and a Valuation Report P.164 dated the 12th January, 1936, made by one George Fellowes.

p.63, 1.6, Pt.II, p.485 — Peiris stated that after about 1932 or 1933 the estate was looked after by one Rodale until the Plaintiff purchased it, and produced a letter dated 5th June 1944, addressed by the said Rodale to the Plaintiff P.84.

pp.84-88, p.84, 1.12 Supp. — Thiedeman, Surveyor and Valuer, gave evidence for the Plaintiff and stated that he made the survey plan P.17 (same as P.151) in 1925/1926 on information given to him by Mr. Boyagoda and others acting on his behalf.

pp.88-93 — Frugtniet, the Surveyor who made Plans X, Y and Z on a commission from the District Court, was

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also called by the Plaintiff. He identified the lands in Schedule A and B as shown in the three Plans prepared by him (as set out above, in paragraph 4) and also in relation to the survey plan P.17 made by Thiedeman. p.88, l.15 p.88, l.21

A director of Messrs. Bois Bros. one L.J. Montgomerie, stated that his firm were the agents of the Kempitikanda Group from 1931 to 1946, (he agreed that his firm were concerned with the financial aspect of the running of the estate) and produced numerous documents including the correspondence his firm had with A.P. Craib who acted as the Superintendent of Kempitikanda Group, at that time, P.155, P.156, P.176, P.175, the report made by George Fellowes P.164, and a report made by one A.D. Ditmus P.171. pp.95-102 p.95, l.43 p.99, l.26 p.96, l.5 – p.102, l.18 p.96, ll.19-20 Pt.II, p.347 Pt.II, p.352 p.102, l.17, l.6 Pt.II, p.346-347 p.97, l.22 p.98, l.7 Pt.II, p.392 Pt.II, p.389

In the last mentioned two reports P.164 and P.171, there are two very important and significant passages: In P.164, Mr. George Fellowes has stated that Ambulugala Estate is "situated between Laukka and Karandupona Estates". This statement is demonstrably correct and it can be seen on reference to the Plaintiff's Estate Plan of Utuwankande Estate P.151 or D.50 printed in the Supplement. Laukka is a Tea Estate and Karandupona (at the boundary) is a Rubber Estate. Pt.II, p.392 l.29 Supp.

In P.171, Mr. Ditmus has stated

> "This District is at present experiencing a severe drought. Tea belonging to another Estate on the boundary had been somewhat affected but Ambulugala had scarcely suffered at all, no doubt owing to the richness of the soil." Pt.II, p.389 l.22

The only Tea Estates on the boundary of Ambulugala Division (Utuwankanda Estate) are Uduwewela Estate belonging to the Defendants and Laukka Estate both of which immediately adjoin the lands 1 to 17 in Schedule A of the Plaint, as can be seen on reference to the Plans D.50 or P.151.

A witness called by the Defendants, one N.W. Perera, confirmed this point when he said:-

> "Leuke Estate is adjoining the portion marked in blue (in D.50) on the south." p.155, l.2

The last witness for the Plaintiff was William pp.103-105

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Pt.II, pp.382 446 Hermon, planter, who made the reports in respect of Ambulugala in 1934 and 1942 (P.79 and P.83). In each of these reports there is a reference to Ambulugala containing 150 acres planted in tea in 1927; the witness stated in cross-examination that he did not check the acreage, but added that the extent in his report was put down on a statement made to him by Mr. Craib (one of the Plaintiff's predecessors in title). He also stated in cross-examination that in 1938 he inspected the Uduwewela Estate belonging to the 1st Defendant and made a report (D.12) and that the land which he inspected as Uduwewela Estate was a different land from that which he inspected as Ambulugala division.

p.103, l.33
p.103, l.34
p.104; l.1
Pt.II, p.420

pp.109-110
pp.115-117
p.109; l.39
Pt.II; p.311
p.110; l.15
Pt.II; p.303
Pt.II; p.337
Pt.II, pp.321-324
p.116; l.4
Pt.II; p.307
p.116; l.6
Pt.II; p.689
p.109, l.41

9. The evidence called on behalf of the Defendants began with that of one Ratwatte, who as Headman made a report (D.14) on the 1st Defendant's application for a settlement of Crown land (P.117) which resulted in a Crown grant to the 1st Defendant (D.17) to which certain plans (D.17 a to d) were attached. In cross-examination this witness identified another report (P.177) which he made in relation to the 1st Defendant's application and said that he could not identify the land therein reported on, or fix it in the preliminary plan (D.15) which he said had been made in relation to the application.

p.116, l.36
p.116, l.41

In re-examination the witness admitted that the statements in his report D.14 do not tally with those in his report P.177 in regard to the plantations, and said that the blocks of land referred to in P.177 are not the same as the blocks referred to in D.14.

Pt.II; p.303
Pt.II, p.304, l.11
Pt.II, p.307, l.31
Pt.II, p.276
Pt.II, p.285

The application by the 1st Defendant (P.117) (which, judging from the form used in this connection, and from what is stated in the report P.177, may have been only an application for a Certificate of Quiet Possession), was based upon, and referred to, a deed of transfer dated the 20th January 1928 (P.116; same as D.29) transferring certain lands from A.R. Senanayake and H.W. Boyagoda to the 1st Defendant. The application did not disclose however, a deed of rectification dated the 8th February, 1928 (P.119) whereby the description of the boundaries of the lands as set out in P.116 were varied. Nor did the application disclose

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the fact that by the deed of rectification it was specifically stated that in describing the land in P.116 boundaries in a Plan (which is P.148) had been referred to "through an inadvertence" and that in fact the lands transferred by P.116 "are outside the said boundaries". If the application had disclised these facts, it would have appeared that the lands dealt with in P.116 are not the lands depicted in the Plan - as admitted by the 2nd Defendant in evidence. Pt.II, p.285 1.14 p.128; 1.40-p.130, 1.26

In this connection, it is to be observed that the 2nd Defendant also admitted that in the application (P.117) on page 2 thereof, there is a sketch which is the same as the Plan P.148, and that in P.117 the applicant recites title only on P.116 (D.29). p.129, 1.21

The Appellant submits that by thus failing to disclose the deed of rectification P.119 and by attaching to her application P.117 a sketch of the Plan P.148, which the deed of rectification had indicated does not apply in relation to P.116, the 1st Defendant committed a fraud and thereby caused damage and detriment to the Plaintiff, and that the learned trial Judge's answer to Issue No. (8) was correct.

The principal witness for the Defendants was Mrs. Perera, the 2nd Defendant. She stated that she knows the land depicted in Plan Y called Taradenitennehena which is lot 18 in the Plaintiff's Schedule A, and referred to the relevant title deeds on the bases of which she claims title. p.111 pp.117-121 pp.123-149 p.111

The 2nd Defendant stated that she claims on the basis of the Crown grant (D.17) the whole of the lands depicted in Plan X except a portion called Aradana Ela Hena. As regards the last mentioned portion of land, she referred to the relevant title deeds on the basis of which she claims title. She stated that the 1st Defendant was declared entitled to the land Aradana Ela Hena in D.C. Kegalla Case 9555 (in 1932) and that the 1st Defendant also claimed all the lands in Plan Z. p.111; 1.29 p.117, 1.20 p.117, 1.28 p.117, 1.38 p.117, 1.40

The 2nd Defendant later stated that the lands claimed by virtue of the Crown grant (D.17) are lots 1 to 17 on Schedule A. p.119, 1.2

The witness stated that the lands in Schedule A were in the possession of the 1st Defendant and first planted by the witness' father about 1928 p.119-120

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and that planting commenced on the lands in Plan Z about 1938. But in cross-examination she agreed
p.133, l.29 that lots 1 to 17 on Schedule "A" would seem to have been planted some time in 1927, in the following extract from her evidence:-

p.133, ll.26-33 "Q. If P.177 refers to the land shown in Plan D.15, then it refers to the lands A1 to A17 in dispute?

"A. Yes.

"According to that letter, A1 to A17 would seem to have been planted some time in 1927. My mother's purchase of those lands was in 1928. If P.177 is correct, the lands must have been planted before my mother's purchase. In P.117 my mother does not state anything about the lands being planted in tea."

p.123 Pt.II,pp.280-284 Certain accounts were produced by this witness including a pay-list (D.51) parts of which she alleged referred to Taradenitenna.

Pt.III, pp.22-81 In this connection it is submitted that among the blocks of land comprising Uduwewela Estate, the Defendants appear to have owned a land called Taradenitenna, and that land is referred to in the document D.52 in which it is stated as follows:-

Pt.II, p.292 ll.21-26 "Mr. Marcus surveyed the land and he will give the plan this week. The total land cleared is 34 acres. This includes the 29 acres the adjoining block and the tea seed bearing block. The block that is called 11 acres is only one of 8 acres. It is said that there is slightly more than four acres in the new clearing at Taradeniya tenna."

Thus according to D.52, the total extent of the Defendant's property was about 46 acres including the land called Taradenitenna or at most 47½ acres.

Giving evidence on D.51 and the planting done by the Defendants, the 2nd Defendant has stated:-

p.142, ll.41-43 "In D.51 there is nothing to show that any planting has been done in 1929 season.

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Any planting that is referred to in D.51 is what has been planted in 1928."

"It is possible to have planted the extent of land bought on D.29 during 1928, as D.51 shows. I admit that D.51 refers to the planting of 47½ acres in 1928, whereas in D.9 my father has claimed 86¾ acres. D.51 is the only book I have in respect of the planting done by my father." p.143, ll.1-5

The extents and figures shown in the pay-list and accounts in D.51 were supplied by one Dharmaratne Wereke Unnanse, an ex-Buddhist Priest whom the Defendants had employed to plant their tea estate, and who is referred to in the document D.61 in which it is stated as follows:- p.123, l.30 p.116, l.15

"I received your letter. I went to the land on Saturday ..... What has been written about the Priest cannot be entirely false. Quite a lot of it must be true. When the contracts are given in future this may be avoided. Our accounts cannot be wrong. Please obtain what the priest says in writing and send it to me. Yours truly, sgd. D.G. Fernando." Pt.II, p.293 ll.5-20

The following passages appear in D.51 as expenditure incurred during the month of June, 1928, as shown on page 39 of Part III of the Record:- Pt.III, p.39

(D.51) "Account Book Page 21"
June, 1928

"1928.
"June 1/30.

"25. To 124 days for hoeing Taradenitenna -/43 Rs.53-54 Pt.III, p.39 ll.28-30
"26. " 256½ days for hoeing Taradenitenna 11 acre block -/43 110-29
"27. " 395½ days for hoeing Taradenitenna 29 acre block -/43 170-70."

One Juanis, a Superintendent on Uduwewela Estate, who said that he had been on the estate since November, 1929, gave evidence in support of the Defendant's case. pp.149-154

The 1st Defendant did not give evidence.

10. In the District Court the learned Judge pp.177-183

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found in favour of the Plaintiff and answered the Issues in the suit as set out above. He stated his conclusion on the evidence in the following terms:-

p.183, l.9

> "The evidence and the documents in the case clearly establish that the Plaintiff has proved title and possession from 1928 till she was ousted from the lands in suit and has identified the lands in suit, and that the defence has failed on all these points. Questions of prior registration do not refer or apply to the same lands".

The principal stages whereby the learned Judge arrived at his said conclusion were as follows:-

p.179, l.31 (i) He observed that the Plaintiff's title was not challenged. (It is submitted that on the face of the judgment the learned Judge plainly meant that the Plaintiff's title to the lands referred to in the deeds relied upon by her was not challenged).

p.180; l.1
p.177, l.29 (ii) He found that the Plaintiff had proved that her title deeds apply to the lands claimed in the suit, by the evidence of C.W. Peiris, Thiedeman and Frugtniet.

p.180, l.17 (iii) He held that the Crown grant had been obtained by the 1st Defendant without the true facts being set out in the application and further held that the Crown grant did not apply to
p.178; l.41 the lands A.1 to A.17. He observed that the two
p.180, l.20 reports (D.14 and P.177) were conflicting.

(iv) As regards the Defendants' claim to have been in possession and to have made plantations, the
p.181, l.42 learned Judge held that they did not possess or plant the lands A.1 to A.18 and that their possession of some of the lands in Schedule B began only in 1947.

pp.194-206
p.206, l.7 11. In the Supreme Court (Basnayake C.J. and Pulle J.) the principal judgment was delivered by Pulle J., and Basnayake C.J. concurred. The learned Judge made certain adverse comments upon the Judgment of the District Court and stated his conclusion in the following terms:-

p.206, l.1

> "I am quite satisfied that on the evidence the learned Judge should have held in favour of the defendants."

Save to the extent that the learned Judge in the

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Supreme Court commented upon the way in which the learned trial Judge had dealt with the evidence and expressed disagreement on a number of points, he did not specify what the evidence was upon which he reached his said conclusion.

12. The main reasons why the Supreme Court disagreed with the conclusion of the learned Judge appear to be as follows:-

(i) It was pointed out that the learned trial Judge, when considering the question of possession (as to which he said - "For evidence of possession it will be seen that both parties rely on documents relating to estate management"), he referred to Lewis Brown & Co. Ltd. and Messrs. Bois Bros. as having been "managing agents" of the Kempitikanda Group. The Judgment in the Supreme Court observes that Lewis Brown and Co. were not "Managing agents" in the sense in which that expression is usually understood, and that these firms were merely "agents" or "financial agents." The conclusion drawn from this suggested misdescription is that the learned trial Judge attached undue weight to documents prepared by the agents of the Kempitikanda Group.

p.198, l.9
p.199, l.6
p.179, l.35

(ii) A submission made on behalf of the Defendants that the learned trial Judge misdirected himself as to the contents of the two reports made by William Hermon in 1934 and 1942 (P.79 and P.83) and the report made by George Fellowes in 1936 (P.164) was accepted by the Supreme Court. The alleged misdirection appears to be that the learned trial Judge gave undue weight to references in these reports to the Ambulugala division being 150 acres in tea planted in 1927.

p.199, l.7
p.200, l.7
Pt.II;pp.382,446
Pt.II, p.392

(iii) The view was expressed that a certain part of William Hermon's evidence "has not received in the judgment the attention it merited." The evidence in question was that relating to the report (D.12) made by Hermon in 1938 to the Tea Controller in relation to the Uduwewela Estate; the plans referred to in this report appear to include the lands in Plan X. It was pointed out in the Supreme Court judgment that Hermon also visited and reported on Ambulugala, belonging to the Plaintiff, in 1934 and 1942, and that he stated in evidence that the land which he inspected in 1938 as the Uduwewela Estate, belonging to the 1st Defendant, was different land from that which he was shown as Ambulugala in 1934. The inference which the Supreme Court drew from this evidence was that in

p.200, l.8
p.201, l.24
Pt.II, p.420
p.104, l.18

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1934 and 1942 the land depicted in Plan X was not claimed as part of Ambulugala.

p.201, l.28 (iv) The Supreme Court considered that it was "difficult to imagine" by what process the Plaintiff lost the lands depicted in Plans X and Y by encroachment, and observed that the p.201, l.44 production figures for Ambulugala since the alleged encroachment had not been placed before the Court.

p.201, l.46 (v) As regards the Crown grant of 1930 p.202, l.8 (D.17) the Supreme Court observed that in 1930 Pt.II, p.337 the Crown was in a position to give a perfect title to the lands mentioned in the grant. If the Plaintiff's predecessors in title were in possession since 1927 it was said, then "it is incredible" that the Defendants should not have asserted their title on the Crown grant and that they resorted to an act of trespass long after the grant had become useless owing to the acquisition by the Plaintiff's predecessors of an independent title by possession.

p.202, l.9 (vi) The finding of the learned trial Judge that the Crown grant does not apply to the lands A.1 to A.17 was rejected by the Supreme Court on the ground that "three large Pt.II, pp.321-323 areas in X" are identical with the plans expressly covered by the grant. (D.17a, b, and c).

p.202, l.15 - p.204, l.13 (vii) The finding of fraud in relation to the application for the Crown grant was also rejected and the judgment contains the following passages:-

p.202, ll.15-34 "I must confess that I am wholly unable to understand the reasons suggested by the learned Judge for the view that the Grant must be regarded as inoperative... The (Defendants') chain of title is undoubtedly as speculative as the Plaintiff's ...

The fact, however, is indisputable that by deed marked D.29 of 18th January, 1928, one A.R. Senanayake and H.W. Boyagoda (two persons who figure in plaintiff's chain of title as well) purported to sell a number of allotments of land of which Uduwewela Estate of 85 odd acres, depicted in Plan No. 1340 of 22nd July, 1927, and another called Taradenitenna of 18A. 18P. depicted in Plan No. 1342."

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"One recalls these were the plans which were produced by the 1st Defendant at Mr. Hermon's inspection in 1938 - D12".

"The fact to be remembered is that these plans were in existence in 1929 when the 1st Defendant made the application P.117 for settlement of lands depicted in the sketch attached to it".

"I do not see how any adverse comment on that application could be made for the reason that a deed of rectification D.30 of the 8th February, 1928, was not mentioned in it."

The Judgment inter alia rejected the learned trial Judge's critical comments regarding the reports (D.14 and P.177) and evidence of Ratwatte. p.204; l.18 p.205, l.44

(viii) Reference was made to two portions of land in Plan X said to be excluded from the Crown grant and as to these the Court held - p.204, ll.14-30

(a) As to the first, that Hermon's evidence corroborated the Defendant's contention that they were all along in possession of this land, and

(b) As to the second, the 1st Defendant was declared entitled thereto in D.C. Kegalla Case No. 9355 in 1932, and it was "inconceivable" that she should have vindicated her title without having had possession, or that after obtaining the decree she did not continue in possession. Accordingly the Court "ruled out" the possibility of the Plaintiff's and her predecessors in title having had possession "before or since 1932".

(ix) Comment was made about the learned trial Judge's observation that the entries in the Defendant's account book (D.51) must apply to a portion of land of 45 or 46 acres stated by the 2nd Defendant to be south of the A lands in Plan X and not to the 43 acre block which C.W. Peiris stated was in the possession of the Defendants. The Supreme Court Judgment states that "it is difficult to comprehend" how the learned Judge regarded this as supporting the Plaintiff's case that she was at all materials times in possession of the land depicted in Plan Y. p.204; l.31 p.181, ll.10-20 p.204, l.44

(x) With regard to the evidence of Thiedeman, p.205, ll.1-10

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Supp: the view was expressed that the Plaintiff's deeds together with the plan prepared by him (P.17) do not raise a presumption of title.

p.205,ll.12-18 (xi) The Supreme Court expressed the view that the learned Judge was wrong in stating that the Plaintiff's title was not challenged.

p.205, l.19 (xii) The Court also expressed the view that the pre-action correspondence does not support the Plaintiff's case.

p.205,ll.27-40 (xiii) Finally, the Supreme Court indicated that they accepted the evidence called by the Defendants to prove that they did not come into possession of the Schedule A lands by encroachment in 1946 but that since 1928 they had planted them with tea and taken the produce without any challenge to their title until 1947, and indicated other evidence which they considered strongly supported this contention.

13. The Appellant submits that the reasons indicated by the Supreme Court for reversing the Judgment of the District Court are erroneous and that upon a proper analysis of the evidence, the Judgment of the Supreme Court is wrong and that of the District Court is right. In particular, it is submitted that the expression of opinion in the Judgment delivered in the Supreme Court that the Defendants did challenge the Plaintiff's title indicated a misunderstanding both of the true nature of the defence and of the relevant passage in the Judgment of the learned trial Judge.

It is further submitted that the passages in the Judgment delivered in the Supreme Court, quoted above in paragraph 12 sub-paragraph ~~12~~ 7 hereof indicate that the learned Judges in the Supreme Court have failed to appreciate the salient facts in the Plaintiff's case so far as concerns the allegations of fraud. They have failed to observe that as from 8th February, 1928, the date of the deed of rectification P.119, the Plan No. 1340 (P.148), referred to in the 1st Defendant's deed of transfer P.116 (D.29), ceased to have any relevance to that transfer and that any use made of that Plan thereafter was (as the Plaintiff submits) fraudulent. The view expressed in the said passages in the Judgment in the Supreme Court are furthermore inconsistent with what the 2nd Defendant herself stated in her evidence. pp.128-130

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14. Final leave to appeal to Her Majesty in Council was granted on the 10th August 1956. p.211

15. The record in this appeal has been prepared and printed in Ceylon. During the course of the preparation thereof there have been four applications in the Supreme Court, and orders as to costs have been made on the said applications, as follows:-

(i) Application by the Defendants No. 177 dated the 24th May, 1958, that certain specified omissions should be supplied and certain alterations made in the printed record and for a direction that the original record in the case be despatched to the Privy Council. Counsel for the Plaintiff agreed to the omissions being supplied and the alterations being made, but the Court did not direct that the original record be despatched to the Privy Council. The Supreme Court ordered and directed that the Plaintiff should pay the Defendants' costs of the application.

(ii) Application by the Plaintiff No. 234 dated the 25th June, 1958, for further extention of time for delivering prints to the Registrar for examination and certification. The said application was not opposed. The Court allowed the extension asked for and made no order as to costs.

(iii) Application by the Defendants No. 509/58 dated the 10th December, 1958, for an order that the originals of certain specified exhibits should be despatched to the Privy Council together with the printed record. By consent the said application was ordered to be withdrawn.

(iv) Application by the Plaintiff No. 510/58 dated the 10th December, 1958, for an order for the transmission of the printed copy of the record to the Privy Council, under Rule 12 of the Appellate Procedure (Privy Council) Order, 1921. The application was not opposed. The Supreme Court made the order applied for and ordered the Plaintiff to pay the costs of the Defendants.

16. The Plaintiff respectfully submits that this

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appeal should be allowed with costs, and that such costs should include the costs of the said applications referred to in paragraph 15 hereof and the costs ordered to be paid by the Plaintiff to the Defendants in respect of the first and fourth of the said applications, for the following, among other -

R E A S O N S

1. BECAUSE the Judgment of the District Court for the reasons therein stated and other good and sufficient reasons, is right.

2. BECAUSE the findings of the learned trial Judge in the District Court and his answers to the Issues framed in the suit are correct having regard to the evidence.

3. BECAUSE on the evidence the Plaintiff has proved her title to, and the right to possession of, the lands in dispute.

4. BECAUSE the Defendants have no right or title in respect of any of the lands in dispute.

5. BECAUSE the Judgment of the District Court consists essentially of findings of fact and there is no good reason shown in the Judgment of Pulle J. in the Supreme Court why the said findings should be reversed.

6. BECAUSE the Judgment of the Supreme Court is wrong having regard to the evidence.

7. BECAUSE the Crown grant dated the 7th August, 1930, was obtained by fraud and by means of other irregularities and is invalid and of no effect and in any event does not apply, and has not been proved to apply, to any of the lands in dispute.

STEPHEN CHAPMAN

RALPH MILLNER

No. 22 of 1959

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N

MRS. C.H.M. PEIRIS
of No. 66, Campbell Place,
Colombo ... Plaintiff-Appellant

- and -

1. MRS. C.M.C. FERNANDO
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Colombo
2. MRS. R.M.P. PERERA,
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