JINAWATHIE AND OTHERS

v.

EMALIN PERERA

SUPREME COURT.
SHARVANANDA, C.J., WANASUNDERA, J., RANASINGHE, J., ATUKORALE, J. AND TAMBIAH, J.
S.C. APPEAL No. 62/84.
D.C. KURUNEGALA No. 260/L.
JANUARY 21, 22, 23 AND 24, 1986.

Land Reform Law No. 1 of 1972 ss. 2, 3, 7, 18, 19, 20, 21, 27B (Amending Act No. 39 of 1981), 29, 32–Land Reform Commission–Statutory declaration–Statutory determination–Statutory lessee–Undivided interests–Deeming provisions–Rule of eiusdem generis–Land Reform (Special Provisions) Act No. 39 of 1981 s. 19 (5)–Ownership–Vindicatory action..

The object of the Land Reform Law was to impose a ceiling on land ownership restricting a person's holding to a maximum of 50 acres.

Upon the coming into operation of the Land Reform Law No. 1 of 1972 on 26.08.1972 all agricultural land in excess of 50 acres became vested in the Land Reform Commission in absolute title free from all encumbrances and the former owner became a statutory lessee who had to make a statutory declaration within the specified period on the prescribed form of the total extent of the agricultural land held by him as such statutory lessee. In the declaration the required particulars had to be furnished along with a plan or sketch plan. The portion which the statutory lessee would prefer to retain could also be indicated.

Thereafter the Land Reform Commission makes a statutory determination specifying the portion or portions of the land which the statutory lessee is allowed to retain. On the publication of the statutory determination in the Gazette the Commission disentitles itself to any right or interest in the agricultural land specified in the statutory determination from the date of such publication.

Where any agricultural land is co-owned, each co-owner was deemed by a statutory fiction to own his share in the co-owned land as a distinct and separate entity for the purposes of the Land Reform Law. Where a person or thing is deemed to be something it only means that whereas such person or thing is not in reality that something the law requires him or it to be treated as if he or it were with all the attendant consequences and incidents. The rule of *eiusdem generis* does not operate to impose any limitation on the notional situation arising from the application of the deeming provision as the enumerated classes are exhaustive of the genus.

Once the statutory determination is made the person in whose favour it was made becomes owner of the land specified in the determination with all the incidents of ownership. The land does not then cease to be a distinct and separate entity and it does

not become once again an undivided portion of the larger land from which such specified portion was carved out. By virtue of the Amending Act No. 39 of 1981 any encumbrance which subsisted over and in respect of the undivided shares the recipient of the statutory determination held in the larger land would however be revived. Subject to this such recipient is absolute owner of the portion of land specified in the statutory determination vested with the *jus utendi* the *jus fruendi* and (so far as the law does not prohibit) the *jus abutendi*, the right of alienation and the right to vindicate his title in an action at law.

Cases referred to:

(1) *East End Dwellings Co., Ltd. v. Finsbury Borough Council–[1952] A.C. 109, 132.*

(2) *Abeykoon Hamine v. Appuhamy–(1950) 52 NLR 49.*

(3) *De Silva v. Goonetilleke–(1931) 32 NLR 21.*

(4) *Peeris v. Saunhamy–(1955) 54 NLR 207.*

(5) *Pathirana v. Jayasundera–(1951) 58 NLR 169, 177.*

(6) *Palisena v. Perera–(1954) 56 NLR 407.*

APPEAL from judgment of the Court of Appeal.

E. S. Amerasinghe, P.C. with *K. N. Choksy, P.C., S. S. Ratnayake, Miss D. Guniyangoda, A. L. Britto Muttunayagam, Miss I. R. Rajepakse* and *Nihal Fernando* for defendants-appellants.

Dr. H. W. Jayewardene, Q.C. with *L. C. Seneviratne, P.C., Laksman Perera* and *Miss T. Keenawinne* for plaintiff-respondent.

Cur. adv. vult.

March 19, 1986.

RANASINGHE, J.

In the village of Digama, in the Kurunegala District, lies the land called Flensberg Estate *alias* Bebilawatta. It was about 234 acres in extent. It was purchased in February 1961, upon deed No. 226 dated 28.2.1961, and attested by T. D. M. Samson de Silva, N.P., by the plaintiff-respondent, the 2nd defendant-appellant's wife the 1st defendant-appellant, the 4th to the 6th defendants-appellants and the wife of the 3rd defendant-appellant for a sum of Rs. 160,000. Whilst the plaintiff-respondent and the 1st defendant-appellant became entitled to an undivided 1/3 share each, the balance 1/3, it is common ground, belonged, at the time material to these proceedings, equally to the 4th to the 6th defendants-appellants, who are all brothers, and to the wife of the 3rd defendant-appellant who is also a brother of the 4th to the 6th defendants-appellants. The 2nd defendant-appellant had, from January 1970, with the consent of them all managed the said estate for and on behalf of all the co-owners referred to above.

On 17.10.77 the plaintiff-respondent commenced these proceedings before the District Court against the 1st to the 6th defendants-appellants praying for a declaration of title to, and the ejectment of the defendants-appellants from the distinct and separate extent of 50A. OR. 21P.– depicted as Lot 6 in Plan No. 2525 dated 15.10.1977 made by W.D.B. Reginald, L.S., and produced as P8 at the trial in the District Court–from and out of the larger land of Flensberg Estate *alias* Bebilawatta of about 234 acres in extent, referred to above, on the ground: that the plaintiff-respondent is entitled to the sole and exclusive possession of the said distinct and separate extent so depicted in Plan P8 upon the Order dated 25.9.1974–which was produced at the trial as P6–made under the provisions of sec. 19 of the Land Reform Law No. 1 of 1972: and that the defendants-appellants are wrongfully and unlawfully disputing her exclusive title to the said distinct and separate portion of land and are keeping her out of possession from the said parcel of land.

The learned District Judge, by his judgment dated 18.12.1979, entered judgment for the plaintiff as prayed for; and, upon an appeal lodged by the defendants-appellants, the Court of Appeal affirmed the judgment of the District Court and dismissed the said appeal of the defendants-appellants. The defendants-appellants have now come before this Court to have the aforementioned judgments set aside.

The position taken up by the defendants-appellants, who pray that the plaintiff-respondent's action be dismissed, briefly is that the Order, P6, relied on by the plaintiff-respondent, does not convey any title to the plaintiff-respondent, and that, in the absence of dominium in the plaintiff–respondent in and over the extent of 50A. 21P. described in the schedule to the plaint and also depicted as Lot 6 in the plan P8, the plaintiff-respondent cannot have and maintain the action as presently constituted.

The Land Reform Law No. 1 of 1972, which is the very first Law enacted under the Constitution of 1972 by the National State Assembly of the Republic of Sri Lanka, came into operation on 26.8.1972. In its Long Title the said Law was stated to be-

"A Law to establish a Land Reform Commission to fix a ceiling on the extent of agricultural land that may be owned by persons, to provide for the vesting of lands owned in excess of such ceiling in

the Land Reform Commission and for such land to be held by the former owners on a statutory lease from the Commission, to prescribe the purposes and the manner of disposition by the Commission of agricultural lands vested in the Commission so as to increase productivity and employment, to provide for the payment of compensation to persons deprived of their lands under this Law and for matters connected therewith or incidental thereto."

Sec. 2 of the said Law also proceeds to spell out the purposes of the said Law to be–

"to establish a Land Reform Commission with the following objects:-

(*a*) to ensure that no person shall own agricultural land in excess of the ceiling; and

(*b*) to take over agricultural land owned by any person in excess of the ceiling and to utilize such land in a manner which will result in an increase in its productivity and in the employment generated from such land."

Sec. 3(1) sets out the maximum extent of agricultural land, referred to as the "ceiling which could be owned by a person on and after the date–which as set out earlier, was the 26th August 1972–on which the said Land Reform Law comes into operation, as being, in the case of land which does not consist exclusively of paddy land, fifty acres. Sub-section (2) of sec. 3 states that any agricultural land owned by any person in excess of the "ceiling" on the 26th August 1972 shall as from that date "be deemed to vest in the Commission; and be deemed to be held by such person under a statutory lease from the Commission"

Sec. 4 of the said Law deals with disputes which arise between parties as to the ownership of any agricultural land which has, by operation of sec. 3(2), vested in the Commission, and the manner in which such disputes are to be resolved. Special provisions are set out in sec. 5 to deal with persons who became owners of agricultural lands in excess of the ceiling after the date of commencement of the provisions of the Land Reform Law.

Under and by virtue of the provisions of sec. 6, the Commission gets absolute title, free from all encumbrances, to any agricultural land which becomes vested in the Commission in terms of the provisions of

secs. 3 and 5. Sec. 7 enacts that, "for the purposes of this Law" which, as stated, is spelt out in sec. 2, where any agricultural land is co-owned, each such co-owner shall be deemed to own his share in such co-owned land "as a distinct and separate entity". Sec. 12 makes provisions in regard to mortgages, leases, usufructuaries and holders of life interest who have interests in such agricultural land.

In the case of agricultural land which is owned by private companies or co-operative societies the shareholders are for the purposes of the "ceiling" set out in sec. 3, deemed to own such land in proportion to the shares held by each shareholder of such company or society.

Every person who becomes, in terms of sec 3(2) above, a statutory lessee, is required by sec. 18(1) to make, within the period specified therein, a declaration, referred to as the "statutory declaration", in the prescribed form, of the total extent of the agricultural land held by him as such statutory lessee. The declaration, which is so made, must not only furnish the particulars required by paragraphs (*a*) to (*f*) of sub-sec. (2), but also be accompanied by a survey plan, or sketch map depicting the boundaries of the lands so declared, and also of the portion or portions, if any, which the declarant expresses a preference to retain. Encumbrances, if any, which are attached to such land are also required to be set out in such declaration. A failure to make such declaration or the making of a false declaration are made offences.

Upon the receipt of such declaration the Commission is required to make what is called a "statutory declaration". Clause (*a*) of sub-section (1) of sec. 19 requires the Commission to make as soon as practicable, such a statutory determination specifying the portion or portions of the agricultural land owned by the statutory lessee which such lessee shall be allowed to retain. In making such determination the Commission has to take into consideration the preferences, if any, expressed by the statutory lessee as to the portion or portions of such land that he may be allowed to retain. The Commission is empowered, before making such statutory determination, to create any class of servitude on or over such land, to survey such land, and is also required to pay such sum, as the Commission considers reasonable, to the statutory lessee to fence such land—sub-sec. (2) of sec 19. Such statutory determination so made is also required: to specify the extent of the agricultural land which the Commission permits the statutory lessee to retain: to refer to a survey plan, made by the

Survey-General or under his direction, of the extent of such agricultural land so permitted to be retained by the statutory lessee: and to specify any servitude or encumbrance attaching to such land – sec. 21 (*a*), (*b*) and (*c*). Once a statutory determination has been so made by the Commission, the Commission is required to publish it in the Gazette and to send a copy of it to the statutory lessee by registered post – sec. 19 (1) (*b*). A statutory determination so made and published shall come into operation from the date of such publication – sec. 20, and "shall be final and conclusive and shall not be called in question in any court, whether by way of writ or otherwise" – sec. 19 (1) (*b*). Once such statutory determination so comes into operation, "the Commission shall have no right title or interest in the agricultural land specified in the statutory determination from the date of such publication" – sec. 20.

There are two other sections in this Law, which were referred to by learned counsel at the hearing of this appeal before this Court. One is section 29 which requires the Chairman of the Commission to notice, by publication in the Gazette and in any other manner as may be determined by him, "every person, who was interested in such land immediately before the date on which such land was so vested" in the Commission, to make within a period of one month a written claim to the whole or any part of the compensation payable in respect of such land specifying the particulars set out in paragraphs (*a*) to (*d*) of the said section. The other is section 64 which provides that the provisions of the Land Reform Law shall have effect notwithstanding anything to the contrary in the two Acts – the Rubber Estates (Control of Fragmentation) Act 2 of 1958, and the Estates (Control of Transfer and Acquisition) Act of 1972 – "or in any other law, custom or usage".

A careful consideration of the provisions of the Land Reform Law (hereinafter referred to as "this Law") which have been set out at length earlier, in their proper sequence shows: that, with the coming into operation of the said provisions, on 26.8.1972, the entirety of the agricultural land owned by a person, who is entitled to more than fifty acres, has to be deemed to vest immediately in the Commission; that what is so deemed to vest, vests absolutely free from all encumbrances; that thenceforth the person who owned such land is deemed to be a statutory lessee of the Commission upon the terms and conditions set out; that in the event of a dispute arising between such statutory lessee and another as to the ownership of any such

land, the Commission has the power to make an interim order as to which of them is to possess such land and the interim order so made is to remain in operation until such time as a final order is made by a competent court to which the Commission is required to refer such dispute. Thereafter such statutory lessee has to make a "statutory declaration" within a specified time setting out the particulars required to be set out, including a survey plan or sketch map depicting the boundaries of the portion or portions of the land which has so vested and which such lessee prefers to retain. Upon the receipt of such statutory declaration the Commission is required to make as soon as practicable a "statutory determination" specifying the portion or portions of the agricultural land that the statutory lessee shall be allowed to retain. Before making such a determination the Commission: shall take into consideration the preferences, if any, expressed by the statutory lessee as to the portion of land which he desires to retain; may create any class of servitude on or over such land; shall have the right to survey such land; shall pay the statutory lessee a reasonable sum for fencing such portion of land. Such statutory determination should: specify the extent of the agricultural land which the Commission permits the statutory lessee to retain; refer to a survey plan made by the Survey-General or under his direction depicting the portion of agricultural land which the statutory lessee is so permitted to retain; specify the servitudes or encumbrances, if any, which attach to such portion of land. The statutory determination so made must be published in the Gazette, and a copy must be sent to the statutory lessee under registered cover. Once it is so published, the statutory determination will become effective from the date of such publication, and the Commission shall, from such date, have no right, title, or interest in the agricultural land so specified in such statutory determination.

An examination of the provisions of this Law shows that there is no difficulty or ambiguity in the application of such provisions to a case where the entire extent of agricultural land was owned by one person. That is where one person, as defined in section 66 of this law, alone owned the entirety of the agricultural land which is deemed to vest in the Commission upon the provisions of the said law coming into operation. Disputes, such as have arisen in this case, are said to have arisen mainly, if not wholly, because the agricultural land, which has given rise to these proceedings, was owned, immediately prior to the date on which the said Law came into operation, in common by

several co-owners only some of whom were entitled to agricultural land above the "ceiling" whilst the extents held by the other co-owners fell well below such ceiling.

A consideration and a determination, at the outset, of the purpose and the object for which the Legislature promulgated this Law will be not only extremely helpful but also very necessary to resolve the issues which arise in this case. A careful perusal of the Long Title of this Law and also the provisions of section 2 of this Law leave no room for any conjecture or doubt whatever in regard to this matter. Sec. 2, which is an enacting provision of this Law, sets forth, as set out earlier, very lucidly and categorically that the purpose is to set up a land Commission. The objects are stated to be twofold: to ensure that no person shall, from and after the commencement of this Law, own any agricultural land in excess of the ceiling fixed by this Law: to take over the excess land owned by a person and to utilize such land in such a manner as to increase both its productivity and its capacity to generate employment. The clear and unambiguous language of section 2, which is in complete harmony with that in which the Long Title itself is couched, heralds the primary and dominant object to be that, henceforth, no person shall, in the Republic of Sri Lanka, own more than fifty acres of agricultural land. The taking over of the excess land and using it is a direct and necessary consequence of the imposition of the ceiling. The utilization of the excess so taken over in a meaningful manner would in itself be a very important object of this piece of legislation. Even so, it seems to me that the unquestionable principle and the predominant object sought to be achieved by the Legislature in promulgating this Law was to confine the holding of agricultural land by a person to a maximum extent of fifty acres, and fifty acres alone. The object and policy of an Act are often the basis of interpretation of its provisions – *Craies: Statute Law* (7th Ed.) p. 92.

The statutory process so expressed is quite straightforward and simple in its application to a person who is the sole owner of the entirety of an agricultural land which is deemed to have vested in the Commission on 26.8.1972 – the date on which the provisions of the Land Reform Law came into operation.

It is, however, necessary in this case to consider the operation of the provisions detailed above in regard to a person, whose extent of agricultural land over and above the said ceiling of 50 acres does not constitute a distinct and separate entity but comprises only undivided

interests in a larger land, which he is entitled to only in common with several other persons, all or several of whom, however, do not own interests over and above the said ceiling. Sec. 7 of this Law is the provision which has to be resorted to in such a situation. The provision of this section requires, by the use of a statutory fiction, the interests of a co-owner, which would, at the time this Law comes into operation be only an undivided share of a larger land owned in common, to be treated as a distinct and separate entity. Such an assumption is only "for the purposes of this Law". The purpose, as already stated, is primarily to determine the extent of the holding of such a person so that such holding could thereafter be restricted to an extent of only 50 acres. The moment this Law comes into operation the undivided share of a co-owner, whether he be one whose interests are over fifty acres or not, becomes, in the eye of the law, a distinct and separate entity, equal to the undivided extent he was earlier entitled to in the common land. Such entity is, at that time, still not identified or located on the ground, as distinct from the larger land. It is, at that stage, as learned Counsel submitted, only notional, and only confined to paper. By the use of this fiction undivided interests are treated as divided, and a co-owner is treated as the sole owner of a distinct entity, in order to set the provisions of this Law in motion. The effect of the operation of the provisions of sec. 7 is to bring about a separation or partition of the undivided share of a person, who, at the time this Law comes into operation, owns such interests in common with several others, and transform such undivided share into a distinct and separate portion. Even though still only notional and only existing on paper, yet, the law requires the extent of land such person is entitled to, to be treated as a distinct and separate entity. The combined operation of the provisions of sec. 2 and sec. 7 of this Law would result, in the case of a person, coming within sec. 3 (2), but whose interests in agricultural land comprise, either wholly or partly, undivided share or shares of land, in such undivided shares being converted, albeit notionally, to a distinct and separate entity, and such distinct and separate entity then being treated as vesting in the Commission. The undivided share of a person would thus, in law, be considered as having ceased to exist as an undivided share, and being separated off from the undivided shares of the other co-owners, and becoming a distinct and separate entity. The undivided shares of the other co-owners, though they were also considered, by virtue of sec. 7, as having a distinct and separate existence, would, where they do not come within the operation of sec. 3 (2), thereafter cease to be considered as having any longer a

separate existence and would continue to be recognized as having their original character of undivided shares held in common. The distinct and separate entity brought into being, though at that stage only notionally and confined to paper without any identification of its existence on the ground, will become identified and located on the ground once the provisions of sec. 18, 19 and 21 have run their operational course.

As has been set out above, where an agricultural land becomes subject to the provisions of this Law in consequence of its owner being one who is entitled to land over and above the ceiling, such agricultural land is "deemed" to vest in the Commission, and its owner is "deemed" to be a statutory lessee of such land. It is, therefore, necessary to examine the nature and scope, in law, of such a deeming provision as section 3 (2) of this Law. In statutes the expression "deemed" is commonly used for the purpose of creating a statutory function so that the meaning of a term is extended to a subject matter which it properly does not designate. Thus where a person is "deemed to be something" it only means that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. When a thing is deemed to be something, it does not mean that it is that which it is deemed to be, but it is rather an admission that it is not what it is deemed to be, and that notwithstanding it is not that particular thing it is nevertheless deemed to be that thing. Where a statute declares that a person or thing shall be deemed to be or shall be treated as something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding – vide *Bindra: Interpretation of Statutes* (6th Ed.) pp. 912-914. In such a case it has also to be so treated as that something else with the attendant consequences – *Stroud* – Vol. 2 – (4th Ed.) *Words and Phrases*, p. 716. So too:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

–per Lord Asquith in the case of *East End Dwellings Co., Ltd. v. Finsbury Borough Council* (1). Thus where, in pursuance of a statutory direction, a thing has to be treated as something which in reality it is not, or an imaginary state of affairs is to be treated as real, then not only will it have to be treated so during the entire course of the proceeding in which such assumption is made, but all the attendant consequences and incidents, which, if the imagined state of affairs had existed, would inevitably have flowed from it, have also to be imagined or treated as real.

The separation off of the undivided interests of one co-owner alone from the larger land whilst the undivided interests of the other co-owners remain in common and undivided is a process which was possible under the law as it existed at the time this Law came into operation. Such a course was possible under the written law–sec. 26 (2) (*d*) of the Partition Act 16 of 1951–and also by common consent of the co-owners. Under the Partition Law the process by which a division or separation off was effected had to be initiated by one of the co-owners. This Law seeks to bring about such division or separation off by the operation of its express provisions, by express provisions of law independent of the voluntary act of one or more of the co-owners.

Sec. 64 of this Law, as set out earlier, states that the provisions of this Law are to prevail over the provisions of the two Acts specifically set out therein and also of "any other law, custom or usage". "Law" would, in view of the provisions of the Interpretation Ordinance (Chap. 2) include both the written and the unwritten law.

It has been contended that the words "any other law" should be given a restricted meaning *eiusdem generis* with the two proceeding Acts, and not a wide and general interpretation which could even cover the common law principles relating to co-owners, and co-owned properties. The rule of *eiusdem generis* is that, where particular words are followed by general words, the general words should not be construed in their widest sense but should be held as applying to objects, persons or things of the same general nature or class as those specifically enumerated, unless of course there is a clear manifestation of a contrary purpose. It is only a rule of construction which enables a court to ascertain the intention of the Legislature when the intention is not clear. It should not be resorted to, for the purpose of defeating the intention of the Legislature but for the purpose of elucidating the words and giving effect to its intention.

It will not apply where the specific words do not come under a class or category; nor where the whole scheme of the enactment and the object and the mischief of the enactment do not require such a restricted meaning to be attached to the words of the general import. There must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which must be called a class, or kind of objects. Further, if the particular words exhaust the whole genus, as for instance, where the specific words embrace all the persons or objects of the class designated by the enumeration, the general words take on a meaning beyond the class–*Bindra*: (6th Ed.) pp. 273, 280, 282, 285-6.

The Estates (Control of Transfer and Acquisitions) Act No. 2 of 1972 is an Act "to control the transfer or ownership of Estates and to provide for the acquisition of Estates in the national interest". An "Estate" is defined as a land or group of lands, which is not less than 100 acres and is cultivated or used for purposes of husbandry and which constitutes a distinct and separate property whether owned by one or more persons, and declares null and void the transfer of such Estates without the consent of the Minister. The Tea and Rubber Estates (Control of Fragmentation) Act No. 2 of 1958 is an Act "to control the Fragmentation" of tea and rubber estates, which have been defined to mean rubber and tea estates of not less than 100 acres in extent. It prohibits not only the transfer of ownership of such estates but also the partition, whether by deed of agreement between the co-owners or under the provisions of the Partition Act through Court, of such estates without a certificate of consent from the relevant authority specified in the Act. These two Acts deal with the transfer and the partition of estates, which are 100 acres and over in extent. The definitions given therein of "transfers" exhausts all methods and kinds of alienation. Similary, the definitions of an "estate" exhaust all types and kinds of agricultural lands used for the benefit of the community. It would, therefore, seem that there is no room for the application of the rule of *eiusdem generis*, and that the general words "any other law" must be given the widest possible meaning. Even if the rule has to be applied, then the general term would take in laws dealing with the partition of co-owned lands. Hence, if there is any provision of this Law which is inconsistent with any existing provision of law dealing with the partitioning of co-owned lands, then, such existing provisions will have to give way, to the extent necessary to give effect to such express provision contained in this Law. The

provisions of sec. 64 of this Law cannot and must not be construed to wipe out the entirety of the existing law, relating to the common ownership of lands and the partition of such co-owned lands, which was in existence on 26.8.1972.

It must also be observed that there is in this Law provision for the determination of any disputes which may be raised by a co-owner in regard to the title of another co-owner, who becomes a statutory lessee, to the distinct and separate entity which, in terms of sec. 7 of this Law, would represent the undivided share which such co-owner owned up to 26. 08. 1972. Even in regard to the determination of the specific portion to be given over to a statutory lessee, who was once a co-owner, the other co-owners would not be without an opportunity of making representations to the Commission if their interests are affected. Even though there is no express provision granting an affected co-owner an opportunity of being heard before a statutory determination is made, yet, as the concept of determination connotes a hearing of affected parties, "the justice of the common law" will step in and provide him with such opportunity. In terms of sec. 27 B (1) of this Law, as amended by Act No. 39 of 1981, any encumbrance, which attached to the statutory lessee's undivided share in the common land immediately prior to the date on which the distinct and separate entity, brought into existence by the provisions of sec. 7 as representing the undivided share of such statutory lessee in the common land, vested in the Commission, would be revived from the date on which the statutory determination is made under sec. 19 specifying the extent of land such statutory lessee is permitted to retain. Any such encumbrance will indeed be specified in the statutory determination itself—vide sec. 21 (*c*).

It has been contended on behalf of the defendants-appellants: that the effect of a statutory determination published in terms of sec. 19 of this Law is only as set out in sec. 20: that P6, which is the statutory determination relied on by the plaintiff-respondent in this case, amounts only to a disclaimer on the part of the Commission: that it does not vest any dominium in respect of the portion of land described in the schedule to the plaint: that P6 cannot in law be relied on as conferring any title, much less a title superior to that of the defendants-appellants, which could be vindicated by the plaintiff-respondent as against the defendants-appellants: that the words of sec. 20 are plain and clear and call for no interpretation.

In regard to the interpretation of statutes, it is useful to recall that: there is no place for interpretation unless the words of a statute admit of two meanings: in case of ambiguity interpretation becomes necessary as the courts have to attach an intelligible meaning to confused and unintelligible sentences–*Craies:* p. 64: the primary duty of a court of law is to find the natural meaning of the words used in a statute in the context in which they occur: where the language of an Act is clear and explicit the court must give effect to it whatever may be the consequences as the words of a statute speak the intention of the Legislature–*Craies Statute Law* (7th Ed.) pp. 64-65: the provisions of an Act of Parliament should not be so construed as to reduce it to rank absurdity: a meaning should not be attributed to the general language used by the Legislature which would not carry out its object and would produce consequences which to the ordinary intelligence are absurd; and it must be given a meaning as will carry out its objects–*Craies,* p. 85: if there are two interpretations of the words in an Act which are possible, then the Court should adopt that which is just, reasonable and sensible rather than which is none of those things: Courts will not lightly impugn the wisdom of the Legislature, and if an alternative construction, although not the most obvious, will give a reasonable meaning to the Act and obviate the absurdities or inconveniences of an absolutely literal construction the courts would adopt such alternative construction–*Craies,* pp. 86, 90: if possible the words of an Act of Parliament must be construed so as to give a sensible meaning to them, and the words must be construed *ut res magis valeat quam pereat* so that the intention of the Legislature may not be treated as vain or be left to operate in the air–*Craies,* pp. 69, 95, 103: construction is to be made of all the parts together, and not of one part only by itself–*Bindra* (6th Ed.) p. 42, *Craies,* p. 127: there is a presumption against alterations of the common law, and it is presumed that the Legislature does not intend to make any changes in the existing law beyond that which is expressly stated in, or follows by necessary implication from, the language of the statute itself–*Maxwell* (12 Ed.) p. 116.

That, once the statutory determination, under sec. 19, is made, the portion of land, which is the subject-matter of such determination, ceases to have a distinct and separate existence, and becomes once again part and parcel of the larger common land and becomes subject to the common ownership of all the co-owners, and that the compensation, which becomes payable, in terms of sec. 29 of this

Law, in respect of that portion of land which has vested in the Commission as being the statutory lessee's land in excess of the ceiling, has to be shared proportionately by all the co-owners of the larger co-owned land, is a submission which was strongly put forward on behalf of the defendants-appellants. Whilst this submission was being considered it became clear, during the hearing itself, that this proposition would entail two somewhat startling consequences–which learned President's Counsel for the defendants-appellants himself accepted and described as two "oddities" –viz. that the statutory lessee, the plantiff-respondent, whose holding, under and by virtue of this Law, should be fifty acres and fifty acres only, would still be left–on the basis that the extent of the larger common land, Flensberg Estate referred to earlier, was 234 acres, and that the undivided shares of the respective co-owners were as set out above, and also on the footing that the 1st defendant-appellant herself became a statutory lessee and her extent of 78 acres also vested in the Commission and she herself was thus left only with the ceiling of 50 acres–with 59 acres: that, on the other hand the four co-owners, the 4th to the 6th defendants-appellants and the wife of the 3rd defendant-appellant, who were jointly entitled to the balance undivided 1/3 share, or 78 acres (with each one being entitled to an undivided 1/12 share of 19 1/2 acres),–the total holdings of none of whom exceeded the "ceiling", and none of whom admittedly came within the purview of this Law – would together lose about 19 acres (each one losing about 4 1/2 acres), having to content themselves, in return, with only a proportionate share of the compensation payable in terms of sec. 29 of this Law. Learned President's Counsel explained this anomalous situation as being an inevitable consequence of the express provisions of this Law and urged that such consequences should not deter the Court from giving effect to the plain and natural meaning of the provisions–particularly secs. 20, 29–of this Law. If, in the situation detailed above, a statutory lessee, such as the 1st defendant-appellant, had also been entitled to agricultural land other than the co-owned land and he was to accept the entirety of the fifty acres, which he is allowed to retain, from such other land, then the position of the other co-owners, such as the 4th to the 6th defendants-appellants, would upon the basis of the said contention, be worse as they would then be deprived of an even larger extent of land; but such statutory lessee himself would be left with an even larger extent, well above the ceiling.

The compensation payable under sec. 29 of this Law would be poor consolation to a person whose land is taken away by the State. It would be more so to one who owns only a few acres, well below the "ceiling". The blow would be most cruel and oppressive where the person is one whom it was not the purpose and object of the Legislature to touch in any way, and the person on whom it was primarily intended to impose a ceiling is, on the other hand, found to be able to add to his upper limit. The only wrong committed by each of such small-holders for such unexpected predicament they would find themselves in, would be to have owned a land in common with a large land-owner whom the State intended, by such legislation, to affect adversely. A consequence such as this could and would never have been in the contemplation of the Legislature when it enacted this law. It would clearly negative the purpose and object of this Law which has been clearly and categorically proclaimed by the legislature. If another interpretation, which would obviate such an untoward result is reasonably available, it is the duty of the Court to come down on the side of such an interpretation as would operate to promote the avowed purpose and object of the Legislature, and suppress and cure the mischief aimed against.

Sec. 29 of this Law, which is relied on strongly by the defendants-appellants, provides for a notice calling upon "every person who was interested in such land immediately before the date on which such land vested" to claim "the whole or any part of the compensation payable under this Law in respect of such land". Hence it has been contended that, in the case of an agricultural land such as Flensberg Estate, which was co-owned by the plaintiff-respondent and the defendants-appellants immediately prior to 26.8.1972, each one of such co-owners would come within the category of "Every person who was interested in such land" and as such each one of them could claim a proportionate share of the compensation payable by the Commission in respect of the land which has vested in the Commission. The agricultural land, which is vested in the Commission and in respect of which compensation is payable under this section, is the entirety of the agricultural land which the statutory lessee owned on the day preceding the 26th August 1972, less the extent of fifty acres which the Commission permits such lessee to retain. Applying the provision of this section to the facts and circumstances of this case, the land, in respect of which such compensation is payable, would be the extent of 78 acres, which the plaintiff-respondent was

deemed to own as a distinct and separate entity from and out of Flensberg Estate, less the extent of 50A.OR.21P. depicted as Lot 6 in plan P8. The said extent of 78 acres, treated as distinct and separate entity, was taken away from the plaintiff-respondent on the basis that the plaintiff-respondent was the owner of the said entity. No dispute had been raised by any of the other co-owners, the defendants-appellants and the wife of the 3rd defendant-appellant, to the title of the plaintiff-respondent to the said extent of 78 acres. The 50 acres, which is described in P6 and which by then has been actually demarcated on the ground, within the said Flensberg Estate, is an extent carved from and out of the aforesaid extent of 78 acres, and given to the plaintiff-respondent as the maximum extent of land the plaintiff-respondent will thenceforth be permitted to hold. That being the basis upon which the Commission has to act under this Law, the Legislature cannot be said to have intended that the compensation in respect of the balance extent of 28 acres, which continues to remain vested in the Commission, be paid by the Commission to anyone other than the person from whom the entire extent of 78 acres was taken over, though only notionally at that stage, as a distinct and separate entity, and to whom subsequently an extent of 50 acres, carved out on the ground after a survey, done by the Surveyor-General or under his directions and depicted in a plan, and to fence which said extent the Commission had to give the plaintiff-respondent a sum which was considered by the Commission to be reasonable for such purpose, was handed back by the Commission to be retained by him. Persons, who had a lien, as set out in sec. 12, or other similar claims, in law, in and over such land, could put forward their claims under sec. 29. Any claims to such land on the basis of title would have been resolved long before the section 29-stage is reached. Such claims, if any, would have been resolved at the stage of sec. 4, long before the stage of the statutory determination, under sec. 19, is reached.

Sec. 32(1) of this Law, which relates to the actual payment of compensation, states that, if in response to the notice sent out in terms of sec. 29, no claim to the compensation payable is received from any person, other that "the former owner" of such land, the Chairman of the Commission shall cause compensation to be paid to "such former owner". The "former owner" so contemplated is obviously the person, from whom the land, in respect of which compensation is to be paid, was taken over, as an entity, on the basis that he is the owner of such land and who was thereafter treated as the statutory lessee of such land. Where the entirety of an entity,

which was distinct and separate immediately prior to the commencement of this Law, belonged only to one person there can be no doubt. In the case of land, which was commonly owned immediately prior to the commencement of this Law, the "former owner" contemplated must, in order to advance the purpose and object of the Law, be construed to mean the person, in whose hands the land, treated as a distinct and separate entity, was deemed to vest in the Commission, and who was subsequently permitted to retain an extent of fifty acres from and out of the said land. That person in this case, now before this Court, would be the plaintiff-respondent.

In the process of achieving the primary object set out in this Law which, as set out earlier, was "to ensure that no person shall own agricultural land in excess of the ceiling", the very first step taken is to consider, as vested in the Commission, the agricultural lands "owned" by a person in excess of the ceiling of fifty acres on the specified date. The whole process begins on the basis that the person from whom the land is so taken over is the owner of such land. If any one disputes the title of the person, so treated as the owner, such disputes, as already set out, would be gone into, and the question of the title to the said land would be settled before the stage of the sec. 18 declaration is reached. Thereafter, when the Commission makes a statutory determination under sec. 19, it does so once again on the footing that the statutory lessee was, in law, the owner of such land immediately prior to 26.8.72. It is on the same basis that the Commission thereafter permits the statutory lessee to retain the extent of 50 acres specified in the statutory determination, and itself retains the balance extent of land which had already been vested in it, the Commission. The fifty acres so given back to the statutory lessee is given to him as the maximum the statutory lessee could retain under this law. This law also, if not expressly, at least impliedly, assures to the statutory lessee that no further reduction of such extent could and would take place by the operation of the provisions of this Law. At the time the said extent of 50 acres, along with the other land then held by the statutory lessee, vested in the Commission it vested absolute title in the Commission, wiping out not only the existing title of the statutory lessee but also, where the land had, immediately prior to 26.8.72, been commonly owned, the title of the other co-owners as well. In P6, the only person referred to is the plaintiff-respondent, the statutory lessee who is "allowed to retain" – the legal significance of which said words will be considered later – the specific extent more fully described in the schedule thereto.

Sec. 27B of this Law, as inserted by the amending Act No. 39 of 1981, states that, when a person is allowed to retain any agricultural land in consequence of a statutory determination made under sec. 19, any encumbrance, which subsisted over that land on the day immediately preceding the date on which that land vested in the Commission, shall be revived from the date of such determination. Thus an encumbrance which subsisted over and in respect of the plaintiff-respondent's undivided shares in the larger land would, from and after the date on which P6 came into operation, be revived and attach to the land described in P6.

In this view of the matter, I am of opinion that the land, referred to in P6, did not, once the said determination P6 was made, cease to be a distinct and separate entity and become once again a part of the larger land called Flensberg Estate, of which it had formed a part prior to 26.8.72 and which had also been subject to common ownership.

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

What then is the effect, in law, of the plaintiff-respondent being "allowed to retain" the land described in the schedule to P6 – which is also, as set out already, the land more fully described in the schedule to the plaint – and further referred to as a portion of agricultural land "owned" by the statutory lessee? The order embodied in P6 is made as the final act in the process of "ensuring that no person (plaintiff-respondent) shall own agricultural land in excess of the ceiling (50 acres)" – vide sec. 2(*a*). This process had started with the take over of agricultural land owned by the plaintiff-respondent. The land so handed back to the plaintiff-respondent had also, prior to that, been

surveyed and fenced at the expense of the Commission. The Commission has renounced all claims in respect of it. No one else has been granted any rights whatsoever either to, in or over such land. Against this backdrop of facts and circumstances there cannot be any doubt but that the provisions of this law intended that the plaintiff-respondent alone should possess and take the income from the said land. Sec. 19 (5) of the Land Reform (Special Provisions) Act No. 39 of 1981 proceeds on the basis that the consequence of a statutory determination, under sec. 19 of this Law, was to make such person the owner of such agricultural land. The selfsame sub-section (5) of sec. 19 of the said Act No. 39 of 1981, also implies that a person, in whose favour such a statutory determination under sec. 19 is made, had the right to sell such land; for, restrictions are placed by this sub-section on the right of such person to sell such land.

Ownership is the right which a person has in a thing to possess it, to use it and take the fruits, to destroy it, and to alienate it. These rights have been described by the text writers as: *jus utendi, jus fruendi,* and *jus abutendi–Grotius 2.3.9; Voet 6.1.1.* Wille, in his book on the *Principles of South African Law* (3rd Ed.) discusses at page 190 the "Legal Effects of Ownership" as follows:

"The absolute owner of a thing has the following rights in the thing:–

(1) to possess it;

(2) to use and enjoy it; and

(3) to destroy it; and

(4) to alienate it";

and, in discussing the right to possession, states, also at page 190:

"the absolute owner of a thing is entitled to claim the possession of it; or, if he has the possession he may retain it. If he is illegally deprived of his possession, he may by means of *vindicatio* or *reclame* recover the possession from any person in whose possession the thing is found. In a vindicatory action the claimant need merely prove two facts, namely, that he is the owner of the thing and that the thing is in the possession of the defendant"

At page 193, Wille states, in regard to the Right of Use and Enjoyment:

"The owner of a thing has a right to use and enjoy it, including the right to take the fruits of it. Such use, however, is subject.....to legislative restrictions in many cases, and also subject to the rule that an owner of property may not infringe the legal rights of other persons, *sic utere tuo ut alienum non laedas*. If an owner's right of use or enjoyment are infringed he has appropriate legal remedies".

The Right of Destruction is discussed by Wille, at page 201, as:

"An owner has the right of altering and destroying his property for he has the jus abutendi. The right of destruction, however, exists only if not forbidden by law". In regard to the right of alienation, Wille states at page 202: "the absolute owner of a thing is entitled to alienate, that is, transfer the dominium in it; or he may grant to another person any lesser real right in it, and consequently he may let it, or mortgage it, or grant a praedial or personal servitude over it"

Having regard to what has been stated earlier, and having regard also to the circumstances that the Commission renounces all rights it had in respect of such land it seems to me that the person, in whose favour a statutory determination, such as P6, is made, would, upon the making of such a determination, become possessed of those attributes–viz: the right to possess, to take the income, and to deal with it in any way, including alienation and even destruction, so long as it is not illegal,–which are, in law, the essence of ownership.

The nature and the scope of an action *rei vindicatio* has been considered and clarified in several decisions of the Supreme Court of this Island. In the case of *Abeykoon Hamine v. Appuhamy* (2), Dias, S. P. J. quoted with approval the decision of a Bench of four judges in *De Silva v. Goonetilleke* (3) where Macdonell, C.J. said:

"There is abundant authority that a party claiming a declaration of title must have title himself. 'To bring the action *rei vindicatio* plaintiff must have ownership actually vested in him'–1 Nathan p.362, s. 593..... This action arises from the right of *dominium*..... The authorities unite in holding that plaintiff must show title to the corpus in dispute, and that if he cannot, the action will not lie".

In the following year Dias, S. P. J., once again affirmed this principle in the case of *Peeris v. Savunhamy* (4) when he stated that, in an action for declaration of title, where the defendants are in possession, the burden lies on the plaintiff to prove that he has *dominium* to the land in dispute. Gratiaen, J. too reiterated this principle, in the case of *Pathirana v. Jayasundera* (5) in this way:

> "In a *rei vindicatio* proper the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation. 'The plaintiff's ownership of the thing is of the very essence of the action'. Maasdrop's Institutes (7th Ed.) Vol. 2, 96".

This principle was re-affirmed once again by Gratiaen, J., in the case of *Palisena v. Perera* (6) where the plaintiff came into court to vindicate his title based upon a permit issued under the provisions of the land Development Ordinance (Chap. 320). In giving judgment for the plaintiff, Gratiaen, J. said:

> "..... a permit-holder who has complied with the conditions of his permit enjoys, during the period for which the permit is valid, a sufficient title which he can vindicate against a trespasser in civil proceedings. The fact that the alleged trespasser had prevented him from entering upon the land does not afford a defence to the action....."

In a vindicatory action the plaintiff must himself have title to the property in dispute: the burden is on the plaintiff to prove that he has title to the disputed property, and that such title is superior to the title, if any, put forward by the defendant in occupation. The plaintiff can and must succeed only on the strength of his own title, and not upon the weakness of the defence.

On a consideration of the foregoing principles – relating to the legal concept of ownership, and to an action *rei vindicatio* – it seems to me that the plaintiff-respondent did, at the time of the institution of these proceedings, have, by virtue of P6, "sufficient" title which she could have vindicated against the defendants-appellants in proceedings such as these.

Although reference was also made, during the hearing before this Court, to the provisions of sec. 8 of this Law, the issues arising in these proceedings can, however, be decided without having recourse to the provisions of sec. 8, which said section could more appropriately be considered in proceedings directly connected with agricultural land owned by a private company.

For the foregoing reasons, I am of opinion that the plaintiff-respondent's action is entitled to succeed.

The appeal of the defendants-appellants is, accordingly, dismissed with costs.

SHARVANANDA, C.J. – I agree.

WANASUNDERA, J. – I agree.

ATUKORALE, J. – I agree.

TAMBIAH, J. – I agree.

Appeal dismissed.