PREMASIRI AND OTHERS
v.
KODIKARA AND ANOTHER

COURT OF APPEAL.
ANANDA COOMARASWAMY, J.
AND EDUSSURIYA, J.
C.A. NO. 428/82 (F)
D.C. RATNAPURA NO. 3405/L
MARCH 02, 05,15 AND 24 AND MAY 04 AND 25, 1993.

Declaration of Title – Prescription – 'Paper' title –

Held:

In addressing the question of "paper" title the judge had failed to address his mind to the importance of the altered inventories and other material before Court; also the plaintiff's failure to produce extracts from the Paddy Lands Register.

The judge has also overlooked the fact that under Kandyan Law the 2nd plaintiff (daughter) could have got title subject to a life interest in the 1st plaintiff (widow) only if the land was the acquired property of the deceased.

Further, the 2nd plaintiff could not have acquired prescriptive title subject to the life interest of the 1st plaintiff. In fact neither the 1st plaintiff nor the 2nd plaintiff had acquired prescriptive title to the land.

APPEAL from the judgment of the District Judge of Ratnapura.

H. L. de Silva, P.C. and *D.S. Wijesinghe, P.C.* with *N. M. Musafer* for the appellants.

N. R. M. Daluwatte, P.C. with P. Kirthisinghe for the respondents.

Cur. adv. vult.

July 30, 1993.
EDUSSURIYA, J.

The Plaintiffs/Respondents have instituted this action seeking a declaration that the 2nd Plaintiff/Respondent is entitled to the land described in the schedule to the amended plaint subject to a life interest in favour of the 1st Plaintiff/Respondent on the basis that one Nandasena Pulasinghe the father of the 2nd Plaintiff/Respondent and the husband of the 1st Plaintiff/Respondent and who was subject to the Kandyan Law had acquired prescriptive title to the said land

during his life time had died leaving his daughter the 2nd Plaintiff/Respondent and his widow the 1st Plaintiff/Respondent

The Plaintiffs/Respondents had also pleaded that they and their predecessor in title had acquired prescriptive title to the said land.

At the trial the Plaintiffs/Respondents had framed the following issues;

1) Is the 2nd Plaintiff entitled to the land described in the schedule to the plaint subject to a life interest in the 1st plaintiff as set out in the plaint?

2) Have the Plaintiffs and their predecessors in title acquired prescriptive title thereto by being in possession for a period of ten years?

3) Did the 1st to 3rd defendants on or about 1/6/1973 object to the issue of a licence to 1st Plaintiff by the State Gem Corporation to mine for precious stones on the said land by claiming an "unlawful" title to the said land?

4) If issues 1 and/or 2 and 3 are answered in favour of the Plaintiffs, are the Plaintiffs entitled to the reliefs claimed in the prayer to the plaint?

Learned District Judge in his judgment has held that Nandasena Pulasinghe has not acquired prescriptive title to the land in question, but had answered issue No: 1 above in the affirmative and added that he accepts that the 2nd Plaintiff had acquired prescriptive title subject to a life interest in the 1st Plaintiff.

Needless to say that in view of the learned District Judge's finding that Nandasena Pulasinghe had no title to the land in question, the affirmative answer to issue 1 is incorrect.

When one examines issue No: 2 it is seen that therein there is a reference to the "predecessors in title of the Plaintiffs". Although according to the plaint, Nandasena Pulasinghe was the 2nd Plaintiff's predecessor in title, the learned District Judge has held that

Nandasena Pulasinghe had no title and therefore he was not a predecessor in title of the 2nd Plaintiff.

In cases where Plaintiffs claim "paper" title on the basis of a devolution of title either by inheritance or purchase from a person who had title in order to support that title, often a plea of prescriptive title by virtue of possession by the Plaintiff and his predecessor in title is also pleaded and in consequence of such a plea an issue on the lines of issue 2 above is raised or framed.

In this case the Plaintiffs have not put in issue the question whether the 2nd Plaintiff if not the 1st Plaintiff had acquired prescriptive title by their adverse possession. On the other hand if the Plaintiffs relied on whatever adverse possession Nandasena Pulasinghe has together with a period of adverse possession by the 1st Plaintiff to make up the 10 years required to acquire prescriptive title, then the issue should have been framed in that manner, that is, Did Nandasena Pulasinghe and thereafter either the 1st Plaintiff or the 2nd Plaintiff (as the case may be) by adversely possessing the said land for a period of over 10 years acquire prescriptive title thereto?

So that, according to the pleadings it was never the Plaintiffs/Respondents case that the 1st Plaintiff or the 2nd Plaintiff had by adverse possession acquired prescriptive title. Be that as it may, even if it was held that either the 1st Plaintiff or the 2nd Plaintiff acquired prescriptive title, and issue 2 had been answered accordingly, issue 4 could not still have been answered in the affirmative since the relief prayed for is that the Court declares that the 2nd Plaintiff is entitled to the land subject to a life interest in the 1st Plaintiff.

Therefore issue 4 should be answered in the negative, especially in view of there being no definite finding by the learned District Judge regarding who had prescribed, (to which I will refer later.)

However it was contended by Counsel for the Respondent that since there is a finding of prescriptive possession even though the relief granted may be incorrect this Court should grant the correct relief. But the relief prayed for also shows that the Plaintiffs were

relying solely on Pulasinghe's prescriptive title. In fact the 1st Plaintiff/Respondent has stated so clearly in her evidence.

Learned District Judge has answered issue 7 in the negative and stated that the 2nd Plaintiff, has acquired prescriptive title.

Issue 7 is based on "paper" title of the 1st to 3rd Defendants (vide issues 5 and 6). So that the learned District Judge should have first answered issue 7 and then, if the answer was in the affirmative gone on to state that however the 1st or the 2nd Plaintiff had acquired prescriptive title.

In fact he has answered issue 7 in the negative without a finding on the paper title of the Defendants.

I may add that even though there is a finding by the learned District Judge that Nandasena Pulasinghe had no title, learned District Judge has held that the 2nd Plaintiff has title subject to a life intrest in the 1st Plaintiff. This cannot be, since under the Kandyan Law the 2nd Plaintiff (daughter) could have got title subject to a life interest in the 1st Plaintiff (widow) only if the land was the acquired property of the deceased. One cannot understand how on a finding by the learned District Judge that the 2nd Plaintiff had acquired prescriptive title the learned District Judge could have held that the 1st Plaintiff had a life interest therein.

In any event, even the finding by the learned District Judge that the 2nd Plaintiff had acquired prescriptive title is confusing since at page 168 of the brief the learned District judge has contradicted himself by first holding that the 1st Plaintiff had acquired prescriptive title and then holding that the 1st Plaintiff had possessed for a period of 17 years on behalf of the 2nd Plaintiff and thus the 2nd Plaintiff has acquired prescriptive title and then going on to state that the parties are subject to Kandyan Law and therefore the 2nd Plaintiff (daughter) is entitled to the land subject to a life interest in the 1st Plaintiff (widow). At this point the learned District Judge appears to have lost sight of his finding that he had held that Nandasena Pulasinghe had not acquired title by prescription.

Since, the learned District Judge has not answered the issue relating to the paper title of the Defendants, I will first deal with that and then examine the finding of the learned District Judge on prescriptive title by the 2nd Plaintiff/Respondent.

The paddy field in question and another Ranhotiyage Kumbura had been settled by the Crown on Jayasekera Appuhamy, the father-in-law of the 1st Plaintiff, by D12. Jayasekera Appuhamy had left the field to his widow, Lizzie Harriet by his last will and testament D13, admitted to probate, in case No: D.C. Kalutara 2944, D14. The inventory filed in Jayasekera Appuhamy's testamentary case refers to two Ranhotiyage Kumburas, the 1st in extent 0 A. – 1 R. – 0 P., and the second, in extent 0 A. – 1 R. – 3 P. These extents are incorrect. As to how this mistake in the extents occurred is not known. Lizzie Harriet had then by P20 of 30/11/1953 gifted Ranhotiyage Kumbura depicted in T.P. 366683 to the 1st Plaintiff's husband Pulasinghe (extent 1 A. – 0 R. – 5 P.). Pulasinghe died in 1956 and his estate was administered in District Court Colombo, case No: 17210/T. The inventory filed in that case has been produced marked P4 and item 99 reads as follows:- "all that land called Ranhotiyage Kumbura T.P. 366683 and 366684 situated at Nugadanda, Talagama in extent 2A. – 1R. – 12P."

This extent of 2A. – 1R. – 12P. is the total extent of both Ranhotiyage Kumburas. However, by P20 Lizzie Harriet had not gifted the subject matter of this action to Nandasena Pulasinghe, her son.

Lizzie Harriet died in September 1958 leaving her immovable property to her daughter Sumitra Menike the 4th Defendant in this case. Lizzie Harriet's last will was admitted to probate in District Court Kalutara 1026/T and the inventory filed in that case P9 sets out as item 7 a Ranhotiyage Kumbura situated at Nugadanda in extent 1R – 3P.

It appears that this extent may have been taken from the inventory filed in Jayasekera Appuhamy's testamentary case, 2944 D.C. Kalutara. However, another inventory D4 has been produced as an

inventory filed in that case, which gives the extent of item 7 as 1A. -1R. -7P.

Much has been said about D4. Even the learned District Judge has made certain adverse observations about it. However, it is a document which was found in the case record of testamentary by 2944 D.C. Kalutara and I will deal with this fully later, when I deal with the finding on prescriptive title. The 4th Defendant had then conveyed the subject matter of this action to the 1st to 3rd Defendants by D19 and D11.

Although there is no specific finding on the "paper title" of the 1st to 3rd Defendants/ Appellants, it can be safely inferred that the 1st to 3rd Defendant's/Appellant's "paper title" has been accepted by the learned District Judge, since, learned District Judge has held that Lizzie Harriet had title to the field in question and also that, that title devolved on the 4th Defendant Sumitra Menike and according to evidence Sumitra Menike had sold and conveyed the field in question to the 1st to 3rd Defendants/Appellants by D19 and D11. Besides, that tile was not challenged by the Plaintiffs/Respondents at the hearing of this appeal. In any event on the evidence placed before Court the 1st to 3rd Defendants/Appellants have "paper" or documentary title to the field in dispute.

Learned District Judge has, as I have hereinbefore mentioned held at one stage of his judgment that the 1st Plaintiff/Respondent has acquired prescriptive title to the paddy field in question and then again held that the 1st Plaintiff/Respondent has prescribed on behalf of the 2nd Plaintiff/Respondent her daughter, and then gone on to hold that since the Plaintiffs/Respondents are governed by Kandyan Law that the 2nd Plaintiff/Respondent has acquired prescriptive title subject to a life interest in the 1st Plaintiff/Respondent.

At this stage, the learned District Judge appears to have been confused.

However, I will now proceed to examine the evidence on which the learned District Judge held with the Plaintiffs/Respondents on prescription, and also the submissions made by the Counsel for the Plaintiffs/Respondents at the hearing of this appeal.

Learned District Judge's finding on prescription is based on 1) that Nandasena Pulasinghe possessed this field during his lifetime in the belief that this field had been gifted to him by P20 by his mother Lizzie Harriet, 2) that Pulasinghe had entrusted this field to Wijesinghe for cultivation in 1952, 3) that Pulasinghe had obtained licence to mine for precious stones on this field in 1955, 4) that Lizzie Harriet the mother did not in her petition and affidavit filed in Pulasinghe's testamentary case object to the inclusion of this field in the inventory filed in that case because she herself believed that she had gifted this field to her son Pulasinghe, 5) it was also contended that Sumitra Menike had not included this field in the inventory filed in Lizzie Harriet's testamentary case and what was included therein was a Ranhotiyage Kumbura of 1R. – 3P. in extent, because Sumitra Menike herself believed that this field had been gifted to Pulasinghe her brother.

Learned District Judge has held that Pulasinghe had commenced possessing this field as his own and after his death his widow the 1st Plaintiff/Respondent had continued to possess it and took the landlord's share of each harvest from Wijesinghe the tenant cultivator till the 1st to 3rd Defendants/Appellants started disputing the 1st Plaintiff's rights. Wijesinghe too stated that he started cultivating this field under Pulasinghe in 1952 and gave the landlord's share first to Pulasinghe and then to Pulasinghe's widow the 1st Plaintiff.

I will now proceed to deal with the matters I have set out above.

Firstly, even if Pulasinghe had possessed this field in the belief that it had been gifted to him by P20 such possession would have commenced after 30/11/1953 the date of P20. Therefore if Pulasinghe instructed Wijesinghe to cultivate this land in 1952, such instructions would have been given on behalf of his mother Lizzie Harriet.

The 1st Plaintiff's evidence is that she married Pulasinghe in 1955 and came to reside at the Karandana Walauwwa and that in the seventh month of her pregnancy she left for her mother's house at Panadura. That on 4th March 1956 her husband was on his way to bring the 1st Plaintiff/Respondent and the 2nd Plaintiff/Respondent (the new born child) home from Panadura, shortly after the 2nd Plaintiff/Respondent's birth, met with an accident and died. It was her

evidence that since her mother-in-law Lizzie Harriet made life difficult for her that she left the Walauwwa 3 months after her husband's death and did not return to the Walauwwa for three (3) years. Having said this perhaps realising that she had got herself into a difficulty with regard to the collection of the landlord's share of the harvest during that three year period, since it was her position that she possessed the field after her husband's death, she then attempted to convince Court that she came to the Walauwwa during that period, although she has stated quite definitely in the course of her evidence that she did not return to the Walauwwa till some time after Lizzie Harriet's death which was in September, 1958 (page 56 of the brief: – "Because of harassment I left the village. I kept away from the village for about three years."). Learned District judge himself has stated in the judgment, that the 1st Plaintiff/Respondent did not return to the village for three years, but has gone on to state that during that period Wijesinghe may have been directed to give the landlord's share of the harvest to the 4th Defendant Sumitra Menike. In this connection, I must not fail to mention that neither the 1st Plaintiff/Respondent nor Wijesinghe has spoken of such an arrangement. Therefore even her evidence that she mined for precious stones on this field immediately after her husband's death cannot be accepted. How could she do so? She left in June 1956 and returned to the village only in 1959 whereas the licence to mine for precious stones lapsed at the end of November1956.

Further, the 1st Plaintiff had married a second time in 1957. Would Lizzie Harriet who was known not to be over fond of her daughter-in-law and who in fact made life at the Walauwwa intolerable for her welcome her at the Walauwwa after Pulasinghe's death and a second marriage so shortly thereafter? Besides, for what ever it was worth Lizzie Harriet purported to revoke the deed of gift P20 to her son after his death. Would a person in such a frame of mind allow the 1st Plaintiff/Respondent to mine for precious stones on the field in question or take a share of the harvest of that field or any field in fact?

The 1st Plaintiff/Respondent even goes to the extent of saying that Wijesinghe gave her 1/3 of the harvest even in 1955. Is she claiming to have collected the landlord's share of the harvest even when her

husband was alive and during her pregnancy and during the few months she was at the Walauwwa in 1955?

Therefore on her own evidence it was obvious that her evidence that she collected 1/3 share of the harvest and mine for precious stones on this field during that period must necessarily be false.

Even though she claims to have mined for precious stones on this paddy field and collected the landlord's share of the harvest for 17 years, it is clear from her evidence, that as Sirisena said in evidence, the 1st Plaintiff does not even know where this paddy field is situated. In her evidence at page 61 of the brief she admitted that she does not know whether the two Ranhotiyage fields were adjacent fields. However, in re-examination she claimed that she knew the situation of both fields and then went back on that evidence and stated that she has gone to one field but did not say which one and went on to say that she has heard that the other field was across the water way. This is the type of evidence she has given. The 1st Plaintiff/Respondent claims both Ranhotiyage fields. But it is clear that even though she claims to have mined for precious stones she does not know their location. It is difficult to accept this evidence that even after this dispute arose she did not attempt to ascertain their location.

As mentioned before it has been contended that Lizzie Harriet had not objected to the inclusion of this field in the inventory filed in Pulasinghe's testamentary case.

The Record Keeper of the District Court of Colombo, one H. D. Fernando, giving evidence with reference to the original case record in 17210/T, Pulasinghe's testamentary case, has stated that two inventories had been filed in that case. The 1st dated 18th July, 1956 and the 2nd, dated 30th August, 1961 and that in both inventories the second line of the entry as against item 99 had been erased and the numbers of the two title plans typed over the erasure. It is therefore obvious that these alterations had been done sometime after both inventories were filed in Court, since, if the erasure had been done during the preparation of the inventory of 18th July, 1956 and before it was filed in Court, then, since the error which resulted in the

erasure had been detected and corrected at the time of the preparation of that inventory, it is highly unlikely that the same error would occur in the preparation of the 2nd inventory of 30th August, 1961. Further, the two Ranhotiyage fields are situated at two different places and are not adjacent fields. Thus there is no reasons why two distinct and separate fields shown in two different title plans should be consolidated and referred to as one item merely because they had the same name. Besides, the field in question also had an alias namely Gorokgaha Kumbura. Therefore it is obvious that only one Ranhotiyage Kumbura, namely, the field that had been gifted by P20 had been included in both inventories filed in Court in that case, but later, the second line had been erased and the numbers of both title plans typed thereon, to make it appear that both Ranhotiyage Kumburas were included under item 99 of both inventories. For these reasons the contention that Lizzie Harriet in her petition and affidavit filed in that case did not object to the inclusion of this field in the inventories filed in Pulasinghe's testamentary case pales into insignificance since, at the time Lizzie Harriet filed her petition and affidavit only one Ranhotiyage Kumbura, that gifted by P20 had been included in the inventories filed in Court. The same position applies to the contention that the 4th Defendant, Sumitra Menike did not, after Lizzie Harriet's death object to the inclusion of this field in the inventory filed in Pulasinghe's testamentary case.

The next contention is that Sumitra Menike did not include this field in the inventory D18 filed in Lizzie Harriet's testamentary case 1026/T, District Court, Panadura, because she believed that this field had been gifted to her brother Pulasinghe. It was also contended that the second inventory marked D4 which gave the correct extent of the Ranhotiyage Kumbura in question as 1A-1R.-7P. is not a document filed in that case.

Item 7 of the inventory D18 is a Ranhotiyage Kumbura in extent 1R.-3P. It is possible that this extent was taken from the inventory D14 filed in Jayasekera Appuhamy's testamentary case, which gave a wrong extent.

The proceedings P10 of 13th February, 1979, in case 1026/T District Court, Panadura (Lizzie Harriet's testamentary case) is clear

evidence of the fact that the inventory D4 had been accepted by Court. Item 7 of D4, as I have stated earlier, refers to a Ranhotiyage Kumbura alias Gorokgaha Kumbura, 1A.-1R.-7P. in extent and it is ownership of that field and not of a Ranhotiyage Kumbura of 1R.-3P. referred to in D18 that was in dispute in those proceedings. According to the proceedings of 13th February, 1979 the 4th Defendant in this case Sumitra Menike and the 1st Plaintiff/Respondent who was the intervenient in that case agreed to have the ownership of the field referred to as item 7 of the inventory decided in a case to be instituted in the District Court, and it is in pursuance of that agreement that this case came to be instituted by the 1st Plaintiff/Respondent. The subject matter of this action is Ranhotiyage Kumbura alias Gorokgaha Kumbura 1A.-1R.-7P. in extent as described in the schedule to the Plaint. Besides, the 1st Plaintiff/Respondent does not claim rights in a field 1R.-3P. in extent and therefore it is needless to say that, if only the inventory D18 had been filed in Court the 1st Plaintiff/Respondent would not have claimed item 7 of the inventory as a land which belonged to her husband Pulasinghe by her petition P9 filed in that case. Thus it is seen that it was item 7 of inventory D4 that the parties referred to in the settlement arrived at on 13th February 1979 and not item 7 of D18 which was Ranhotiyage Kumbura in extent 1R.-3P. I may add that although learned District Judge has stated that D4 is a document which has been prepared for the purpose of assisting the Defendants in this case, D4 is in fact a certified copy of that inventory issued in 1973 according to the date stamp of the District Court of Panadura thereon which was six years prior to the institution of this action.

For the above mentioned reasons it is clear that D4 was a document accepted by Court in 2026/T District Court, Panadura and therefore formed part of the record in that case.

Wijesinghe who claimed to have acknowledged the 1st Plaintiff/Respondent as his landlord has stated, that on being told by the 1st to 3rd Defendants/Appellants that they had purchased the field in dispute he signed D10 consenting to the 1st to 3rd Defendants/Respondents mining for precious stones on the field without even so much as examining the deed which the Defendants/Appellants had shown him or even without inquiring from

the 1st Plaintiff/Respondent whether she had sold the field to the Defendants/Appellants. According to Wijesinghe, it is only after signing D10 that he inquired from the 1st Plaintiff/Respondent. Wijesinghe has also denied that Sirisena was present and signed as a witness to D10. Quite apart from anything else, is it likely that the 1st to 3rd Defendants/Appellants did not tell Wijesinghe that they purchased the field from Sumitra Menike?. Even if the Defendants/Appellants did not tell Wijesinghe from whom they purchased it, can it be accepted that Wijesinghe did not ask them from whom they purchased it and at the same time tell the 1st to 3rd Defendants/Appellants that the 1st Plaintiff/Respondent had not told him that she had sold it. The only inference that can be drawn from this evidence is that Wijesinghe signed D10 because he was well aware that Sumitra Menike the 4th Defendant was the owner of the field and it was she who collected the landlord's share of the harvest. Needless to say that if Wijesinghe considered the 1st Plaintiff/Respondent to be the owner he would never have signed D10 without inquiring from her.

On the other hand Sirisena's evidence is that he had looked after the properties of Lizzie Harriet and after her death, the properties of Sumitra Menike the daughter and that he collected the landlord's share of this field from Punchi Ukkuwa the father-in-law of Wijesinghe up to about 1963 and then thereafter from Wijesinghe and sent it to Sumitra Menike. Sirisena has also said in evidence that Wijesinghe has given false evidence since he was displeased that Sumitra Menike sold the field to the 1st to 3rd Defendants/Appellants after returning the Rs. 500/- advance which he had paid Sumitra Menike for the purchase of this field, and that the 1st Plaintiff/Respondent started disputing the ownership of this field only after the 1st to 3rd Defendants/Appellants found a precious stone worth about Rs. 40,000/- on this field. Though Sirisena also said that Pulasinghe mined for precious stones in the other Ranhotiyage Kumbura and that about twenty-five to thirty "Gem pits" were sunk on that field the licence of 1955 refers to this field.

I will now refer to a very interesting piece of evidence given by Wijesinghe. When Wijesinghe was asked in cross-examination

whether Sirisena was at the Walauwwa, his answer to that question was that Sirisena did not come to this field. This answer of Wijesinghe's is in my view very revealing.

This question was put to Wijesinghe long prior to Sirisena giving evidence and in fact when Sirisena gave evidence, it was suggested in cross-examination that although he (Sirisena) says that he looked after this field, not a single question had been put to the 1st Plaintiff/Respondent in cross-examination on that basis. But, here we have Wijesinghe, when asked whether Sirisena was at the Walauwwa, replying that Sirisena did not come to this field, obviously in an attempt to contradict any evidence that Sirisena may give to the effect that he came to the field and collected the landlord's share. How did Wijesinghe know that Sirisena would say in evidence that he came to the field and collected the landlord's share of the harvest? The obvious answer is that Wijesinghe knew before hand that Sirisena would say in evidence that he went to this field and collected the landlord's share of the harvest, because it in fact was the truth. Wijesinghe could not bring himself to say "no" in answer to the question I have referred to earlier and so he deftly avoided answering the question and said that Sirisena did not come to the field, without in fact realising that he revealed the truth in his anxiety to suppress it.

Learned District Judge has commented that Sumitra Menike did not give evidence. The burden of proving prescriptive title is on the Plaintiffs/Respondents. In any event what more could Sumitra Menike have said than Sirisena, the man at the scene?

Quite apart from this, although the 1st Plaintiff/Respondent claims to have been the landlord of this field and collected the landlord's share for a period of seventeen years, she has not produced a single extract from the Paddy Lands' Register relating to that period, to show that her name had been registered as the landlord of the field in dispute. If produced, it may have been unassailable evidence of possession. When questioned about this her reply was that she had got herself registered as the landlord in 1973, after this dispute arose. However, even that extract has not been produced.

For the above mentioned reasons, we are of the view that the learned District Judge has failed to consider the evidence before Court and has also failed to address his mind to the importance of altered inventories and other material before Court, and has thereby misdirected himself on the facts.

We therefore hold, that the 1st to 3rd Defendants/Appellants have "Paper title" to the land described in the schedule to the plaint. We also hold that neither the 1st Plaintiff/Respondent nor the 2nd Plaintiff/Respondent has acquired prescriptive title to the land in question.

We therefore set aside the judgment of the learned District Judge and dismiss the Plaintiff's action with costs, whilst declaring the 1st to 3rd Defendants/Respondents entitled to the land described in the schedule to the amended answer.

This appeal is therefore allowed with costs.

ANANDA COOMARASWAMY, J. – I agree.

Appeal allowed.