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

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Maddage Semapala,
School Lane,
Labugama, Haltota.

SC Appeal No. 154/2012

S.C.SPL.LA/ No. 26/2011

C.A. No. 564/96(F)

D.C. Horana Case No. 3006/P

Plaintiff

Vs.

1. Devika Weerakoon,
   No.42A, Anadarawatta Road,
   Polhengoda, Kirulapone, Colombo 05.
2. Wijaya Weerakoon,
3. Ratiyalage Don Aron Perera,
4. Kalubowilage Salinona,
5. Ratiyalage Anula,
6. Ratiyalage Dona Matilda Ariyawathi,
7. Lokuge Georgiana Perera,
8. Thambawitage Gunaratne,
9. Ratiyalage Gunaseeli Perera,
10. Patrick Ranaweera Mannapperuma,
11. Dilani Kalpani Mannapperuma,
12. Sooriyaarachchige Munasinghe,
    All of Labugama, Halthota.

Defendants

And

Maddage Semapala,
School Lane,
Labugama, Haltota.

Plaintiff – Appellant

Vs.

1. Devika Weerakoon,
   No.42A, Anadarawatta Road,
   Polhengoda, Kirulapone, Colombo 05.

2A. W.A.Mallika Weerakoon,

3. Ratiyalage Don Aron Perera,

4. Kalubowilage Salinona,

5. Ratiyalage Anula,

6A. P.D. Premawardena,

6B. P.D. Kusumalatha,

7. Lokuge Georgiana Perera,

8. Thambawitage Gunaratne,

9. Ratiyalage Gunaseeli Perera,

10. Patrick Ranaweera Mannapperuma,

11. Dilani Kalpani Mannapperuma,

12. Sooriyaarachchige Munasinghe
    All of Labugama, Halthota.

Defendant – Respondents

AND NOW BETWEEN

Maddage Semapala,
School Lane,
Labugama, Haltota. (deceased)

Maddage Aruna Shantha,
School Lane,
Labugama, Haltota.

Substituted 1A Plaintiff-Appellant
-Appellant

Vs.

1. Devika Weerakoon,
   No.42A, Anadarawatta Road,
   Polhengoda, Kirulapone, Colombo 05.

2A. W.A. Mallika Weerakoon,

3. Ratiyalage Don Aron Perera,

4A. Ratiyalage Anula,

5. Ratiyalage Anula,

6A. P.D. Premawardena,

6A1. P.D. Kusumalatha,

6B. P.D. Kusumalatha,
All of Labugama, Halthota.

7A1. Dilani Kalpani Mannapperuma,
Labugama, Halthota.

7B. Dilani Kalpani Mannapperuma,
Labugama, Halthota.

8A. Thambawitage Upul Indika,
Labugama, Halthota.

9. Ratiyalage Gunaseeli Perera,
Labugama, Halthota.

10A. Dilani Kalpani Mannapperuma,
Labugama, Halthota.

11. Dilani Kalpani Mannapperuma,
Labugama, Halthota.

12. Sooriyaarachchige Munasinghe
Labugama, Halthota.

Defendant – Respondent
-Respondents

Before: **Murdu N.B. Fernando, PC. CJ.,**

Janak De Silva, J. and

K. Priyantha Fernando, J.

Counsel: Manohara de Silva, PC with Hirosha Munasinghe, Buddhika Gamage Instructed by Nimal Hippola for the Appellant.

Ranil Premathilake for the 1st and 2A Defendant-Respondent-Respondents.

Argued on: 12.11.2024

Decided on: 23.07.2025

Murdu N.B. Fernando, PC. CJ.,

This is an Appeal from the judgment of the Court of Appeal dated 17th January 2011.

Introduction

The Plaintiff-Appellant-Appellant ("the Plaintiff"/ "the Appellant") instituted a Partition Action in the District Court of Horana in May 1986 against the Defendant-Respondent-Respondents and moved for partitioning of the land 'Indigahagodalla' in the village of Labugama, in extent 4A 0R 29P depicted in the schedule to the plaint. The plaint bears out that the original owner became entitled to the said land upon a Crown Grant dated 12th September 1883.

The Plaintiff pleaded, the partitioning of the said land was necessitated in view of the 2nd Defendant-Respondent-Respondent ("the 2nd Defendant" / "the Respondent") disturbing the possession of the land enjoyed by the Plaintiff and pleaded that the Plaintiff is entitled to 87/288 shares of the land (80 perches) whilst the 2nd Defendant is only entitled to 24/288 shares of the land described above.

The case of the Plaintiff was that one Arnolis, son of the original Crown grantee became entitled to 7/12 shares of the instant land. This position is admitted by the Defendants. The Defendants' challenge is to the share devolvement thereafter.

The said Arnolis by a Deed bearing No. 19977 dated 03.01.1906 **P15** conveyed his interest to three others, which conveyance will be discussed in detail later in this judgement.

In brief, the matter in issue, is whether Arnolis by the aforesaid deed **P15**, conveyed to each recipient, 1/3 of his share or 1/3 of his total entitlement which is 7/12 shares of the land referred to in the plaint (the contention put forward by the 2nd Defendant) OR whether all three recipients in common were conveyed 1/3 of his share or 1/3 of Arnolis's entitlement of 7/12 shares, leaving 2/3 of his share unallotted (the contention put forward by the Plaintiff).

The pedigree filed of record indicates that undivided portions of the land referred to above had been conveyed, to the Plaintiffs, 1st and 2nd Defendants and others by notarial conveyances.

The Plaintiff claims title, mainly through two chains of title.

- *First*, through Abaya Weerakoon, a sibling of the 2nd Defendant. It's on a notarially executed deed dated 30-05-1977 **P18**. This chain of title is not challenged (although there is no clarity in respect of the extent said to have been conveyed, *i.e.,* 80 perches); and

- *Secondly*, the Plaintiff claims title, purportedly emanating from the inheritance rights of Arnolis's descendants by two deeds **P16** and **P17** executed on 20-04-1980. (This chain of title is contentious and is disputed by the Defendants).

In order to substantiate the position pertaining to the inheritance rights of Arnolis and the chain of title derived from **P16** and **P17**, the Plaintiff is relying on the construction of the deed **P15** referred to earlier. *i.e.*, only 1/3 share was conveyed by Arnolis through **P15**, leaving an unalloted 2/3 share with Arnolis, which was conveyed by inheritance rights. This is the pivotal issue before this Court for determination in this Appeal.

The learned trial judge did not accept the Plaintiff's contention and gave judgement endorsing the interpretation favourable to the 2nd Defendant and held, that by deed **P15** each of the three recipients respectively, became entitled to 1/3 each of Arnolis's total entitlement, which is 7/12 share of the land in extent 4A 0R 19P, more fully referred to in the schedule to the plaint, leaving no residue to pass down though inheritance. Hence, no rights devolved on the Plaintiff, through **P16** and **P17** the two deeds executed in the year 1980. Therefore, the learned trial judge did not allocate shares based upon such pedigree and chain of title to the Plaintiff.

The Court of Appeal affirmed the trial court judgment and the construction adopted by the trial judge regarding the deed **P15**. The learned Judge of the Court of Appeal noted that the scope of the Petition of Appeal filed by the Plaintiff before the Court of Appeal, was limited to the alleged misconstruction of the deed **P15.** Therefore the Court of Appeal judgement, only considered and dealt with the legal provisions relating to the construction of **P15** executed in the year 1906. The Court of Appeal did not examine the share devolution.

Being aggrieved by the said decision of the Court of Appeal, the Plaintiff is before this Court having obtained Leave to Appeal on the following matters as referred to *in verbatim* in sub paragraphs (b), (c), (d) and (e) of paragraph 14 of the Petition of Appeal.

1. Deed No. 19977 of 03.01.1906 has not been correctly construed by the District Court and the Court of Appeal.
2. Due to the misinterpretation of Deed No. 19977 of 03.01.1906 the District Court and the Court of Appeal have erred in allocating the correct shares to the parties concerned.
3. The District Court judgment is erroneous since it is stated that Abaya Weerakoon's sale of 80 perches out of the 7/48 shares he got on Deed P18 proves the contention that Arnolis had sold all his rights on P15 and not only 1/3. However, the fact that Abaya Weerakoon has got shares not only from Willy Weerakoon on Deed 2V3 but also on Deed 1V2 which enabled him to sell 80 perches to the Plaintiff has not been considered.
4. The District Court erred in not answering the issues raised by parties.

Whilst the aforesaid 1st, 2nd and 3rd questions relate to the interpretation of a clause in the deed **P15**, the 4th question relates to a legal issue.

Thus, I wish to consider Deed No. 19977 dated 03.01.1906 **P15** pertaining to the 1st, 2nd and 3rd questions of law in the first instance.

In order to understand the matter in issue with clarity, let me refer to the pedigree and share devolvement first.

Factual Matrix

A

- The original owner was bestowed the Crown Grant in 1883 and conveyed his title to his two sons, Arnolis and Thegis in equal shares. Thegis who was unmarried conveyed his entitlement to third parties by way of deeds. Upon Thegis's death, the balance unconveyed entitlement to the land devolved on Arnolis, entitling Arnolis to 7/12 shares of the land referred to in the schedule to the plaint. These matters are not in dispute;
- in 1906, Arnolis who had title to 7/12 share of the land in extent 4A 0R 29P, upon the afore stated deed **P15**, conveyed his interest, to three parties, namely, Nomis, Themis and Liveris. The recitals of the deed **P15** narrate, that Nomis was Arnolis's minor son, whereas Themis and Liveris were Arnolis's nephews;
- Thereafter in the year 1937, two of the said parties, Nomis and Themis by Deed No. 11835 dated 05-08-1937 **2V1** conveyed their shares to Liveris. Thus, Liveris became entitled to the full share originally held by Arnolis and which devolved upon Nomis, Themis and Liveris by the deed **P15**;
- On the same date by Deed No. 283 **2V2**, Liveris gifted his entitlement to his daughter Piyaseeli Premalatha and to Willy Weerakoon betrothed to her;
- The 1st Defendant claims title through Piyaseeli Premalatha (Liveris's daughter) and such title is not challenged in this appeal;
- Willy Weerakoon (Piyaseeli Premalatha's husband) conveyed his title to his sons, Wijaya Weerakoon and Abaya Weerakoon by way of two deeds **2V3** and **2V4**. Wijaya Weerakoon is the 2nd Defendant before the trial court and on whose favour the learned trial judge construed the deed **P15**; and
- Abaya Weerakoon transferred part of his share to the Plaintiff by **P18** and part to the 1st Defendant. That chain of title is also not challenged in this appeal.

B

- While the Plaintiff claimed title to a block of land through Liveris as stated above, the Plaintiff also claimed title to two other lots, upon another chain of title, which chain of title is the principal issue in this appeal;
- The contention of the Plaintiff before the trial court was that the interpretation given by the trial court relating to **P15** *i.e.,* the total entitlement of Arnolis devolved on the three grantees mentioned therein was erroneous. Factually it was not the full

entitlement, but only 1/3 of Arnolis's entitlement that devolved upon the said grantees since, Arnolis's descendants as described by the Plaintiff below, purportedly became entitled to 2/3 shares of Arnolis's entitlement;

- The Plaintiff's contention was that Arnolis had a daughter Manchi Nona, and that independent to the conveyance of land through the above referred deed **P15** which the Plaintiff contends is only 1/3 share, the balance 2/3 shares of Arnolis's total 7/12 share entitlement, was conveyed to Arnolis's daughter Manchi Nona and Arnolis's son Nomis in equal shares upon Arnolis's death;
- That Manchi Nona's grandchildren who inherited rights conveyed their share to the Plaintiff by deeds **P16** and **P17**;
- Therefore the Plaintiff claims title to a total of three lots of land, one lot through **P15** and two lots through inheritance rights of Arnolis;
- Based upon the said contention, the Plaintiff filed the instant Partition Action claiming 87/288 shares (80 perches), and noting that the 1st Defendant is entitled to 72/288 shares; and
- The Plaintiff also stated that the 2nd Defendant is entitled to only 24/288 shares of the corpus though the 2nd Defendant is claiming more land and disturbing the Plaintiff's possession. It is noted that the 1st and 2nd Defendants are the only contesting Respondents before this Court.

If I may recapitulate the point of contention in this Appeal, it could be summarized as follows: Did Arnolis's total 7/12 share, devolve solely on Nomis, Themis and Liveris, the three grantees referred to in the deed of gift **P15** or was it only 1/3 share of the entitlement of 7/12 shares of Arnolis that devolved on Nomis, Themis and Liveris, leaving the balance 2/3 shares to devolve on inheritance, upon Arnolis's purported grandchildren, from whom Plaintiff is claiming title to 87/288 shares or a larger portion of the land identified to be partitioned.

The Trial

Docket bears out that the Partition Action had been filed in the year 1986. The trial commenced in the year 1995 and the evidence of only two witnesses *i.e.*, the Plaintiff and the 2nd Defendant had been led. The 2nd Defendant Wijaya Weerakoon, is a great grandson of Arnolis and he gave evidence regarding Arnolis's entitlement to shares and distribution and devolvement of shares through notarially executed deeds.

The learned trial judge, considering the evidence led, accepted the contention that the total share allotment of Arnolis, devolved upon Nomis, Themis and Liveris, upon deed **P15** based on the submissions and the interpretation offered by the 2nd Defendant, and delivered judgement accordingly.

Furthermore, the learned trial judge, examined and analysed the entitlement, distribution and devolvement of shares and determined that the Plaintiff was entitled only to

537/8640 shares and 80 perches, whereas the 1st Defendant was entitled to 3780/8640 shares less 80 perches and the 2nd Defendant to 1260/8640 shares of the land to be partitioned.

Deed P15

This handwritten Deed of Gift in old Sinhala script was executed in the year 1906, more than a century ago. By this deed many properties have been gifted by Arnolis to three parties, namely Nomis his minor son, and his nephews Themis and Liveris.

The contention of the learned President's Counsel for the Appellant before this Court was that the learned trial judge and the Judge of the Court of Appeal have misinterpreted a single sentence of this eleven page deed **P15**.

The said sentence reads thus,

"[…] මට අයිති නොබෙදෙපු තුනෙන් පංගුවද"

The Appellant argues, that by the above sentence it is clear that only "තුනෙන් පංගුව" or 1/3 was gifted, whereas the 2nd Defendant's contention is, if only 1/3 was gifted, the words used would have been " මගේ අයිතියෙන් තුනෙන් පංගුවක්ද" and therefore, the deed should be read as a whole to understand the true meaning of the grantor.

The learned Counsel for the Respondent also relies on the evidence of the 2nd Defendant before the trial court. The 2nd Defendant is seen as a direct descendent of Arnolis, as opposed to the Plaintiff who is a third party and not a direct descendant of Arnolis. The 2nd Defendant in his evidence specifically admits that Arnolis's total entitlement of 7/12 shares of the land described in the schedule to the plaint in extent 4A 0R 29P devolved upon the grantees by **P15**.

Furthermore, the Respondent relied on another deed to substantiate his contention *i.e.*, Deed **2V1** executed in the year 1937. By this deed as discussed earlier, two of the three original grantees, Arnolis's son Nomis and Arnolis's nephew Themis, conveyed their 1/3 shares respectively to Liveri, (the third grantee, the nephew of Arnolis), entitling Liveris to the entire share entitlement *i.e.,* 7/12 of the land described in the schedule to the plaint.

The learned Counsel for the Respondent also submitted the language in the said deed executed in 1937, **2V1**, the transfer of 2/3 shares *i.e.,* Nomis's and Themis's entitlement of 1/3 each to Liveris, further established that Arnolis conveyed his full entitlement to the three grantees by the deed of gift **P15.**

The Respondent specifically refers to the fact that the 2nd Defendant Wijaya Weerakoon and his sibling Abaya Weerakoon received title to their share of the land through this chain of title via Liveris. Further, the 2nd Defendant's sibling Abaya Weerakoon conveyed a share of his entitlement to the Plaintiff by **P18** also through this chain of title via Liveris. Therefore, it was the submission of the Respondent, the Plaintiff after receiving title through **P18**, which deed is admitted by all parties, cannot now challenge the initial devolvement of share

entitlement of Arnolis *i.e.*, (7/12 shares to the three grantees Nomis, Themis and Liveris) which was made in the year 1906, through **P15** a century back. Therefore, it was argued by the Respondent, that the contention of the learned President's Counsel for the Appellant, is not tenable in law and is erroneous and thus, should be rejected.

I see merit in the said submissions of the Respondent. I also have no hesitation to accept the contention of the Respondent that the words " මට අයිති නොබෙදපු තුනෙන් පංගුව" and the evidence of the 2nd Defendant referred to earlier, which was not challenged by the Plaintiff in cross examination, clearly denotes that Arnolis's intention by **P15**, was to convey his full entitlement of shares, to the three grantees referred to therein. Thus, no shares or share entitlement was left over, to be devolved on inheritance rights as alleged by the Appellant.

Moreover, there was no evidence led before, the trial court by the Plaintiff to establish that Arnolis had a daughter or 2/3 shares of Arnolis's purported share entitlement devolved on Arnolis's daughter Manchi Nona or her descendants on inheritance rights. It was only Plaintiff's surmise and conjecture before this Court. In any event, the Plaintiff when he obtained title to a particular lot of land by **P18** accepted and admitted that the genesis of the chain of title in the said deed flows from the fact that Arnolis transferred his entire share entitlement to the three grantees therein, by **P15** in the year 1906. Thus, in my view the Plaintiff cannot approbate and reprobate, claiming title to one lot of land on **P18** upon the basis of a chain of title that recognize Arnolis's entire share entitlement was conveyed by **P15** and, claim title to two other lots of land by **P16** and **P17** upon the purported basis of inheritance rights through Manchi Nona, when in fact such a chain of title is not in existence nor established by evidence.

I also observe, the learned trial judge has given much weightage and considered the words, " මට අයිති නොබෙදපු තුනෙන් පංගුව" in **P15.** He has also examined the admissions recorded by the Plaintiff and the 2nd Defendant before the trial court that Arnolis had 7/12 shares of the land referred to in the schedule to the plaint, in coming to his finding on the devolvement of shares.

The learned judge of the Court of Appeal too, categorically held that the language employed by the grantor in **P15** clearly establishes that the grantor was dealing with his total share entitlement and not a specific proportion of his entitlement and the learned trial judge's construction of **P15** is absolutely rational and logical and involves no error or misdirection.

Thus, I see no reason to interfere with the said findings of the Court of Appeal and the trial court regarding the factual matrix.

Legal submissions

The learned President's Counsel for the Appellant drew the Courts attention to the following paragraph in **Odger's Construction of Deeds and Statutes**;

> "I am disposed to follow the rule of construction which was laid down […]. They said that in construing instruments you must have regard not to the presumed intention of the parties, but to the meaning of the words which they have used […]"

On the other hand the learned Counsel for the Respondent relied on the legal proposition enumerated by E.R.S.R. Coomaraswamy in **"The Conveyancer and Property Lawyer"** at pages 423 and 424, under the heading "Interpretation of Deeds."

It reads as follows:

> "We may know what the terms of a contract are and yet not be able to ascertain the exact meaning of these terms. To ascertain their true meaning we must have recourse to certain canons of construction. Vander Linden gives the following rules:
>
> The Intention Rule: In the interpretation of a deed, the expressed intention of the parties must be discovered. [Jinaratne Thero Vs Somaratne Thero (1946) 32 CLW 11]
>
> In Money Penny V. Money Penny (1861) 9 H.L.C. 114 at 146, Lord Wensleydale said "The question is not what the parties intended to do by entering into the deed, but what is the meaning of the words used in the deed; a most important distinction in all cases of construction and the disregarded of which often leads to erroneous conclusions."
>
> "Again in Layton Vs. Glengal (1841) 1 Dr. and W.I., Lord Denman C.J. said: It is not the function of the judge to decide whether the words used by the parties do not possess some hidden meaning different from their true meaning. The surest method of arriving at the true meaning of the parties is to assume that they intended their word to have their ordinary grammatical meaning."
>
> "This intention must be gathered from the words of the document."

Referring to the above, the contention of the Respondent was that a reading of the words in **P15** and the pedigree **P2** relied upon by the Appellant himself, certainly showcases the intention of Arnolis, which was to transfer the entirely of his ownership on the grantees of **P15**.

In the instant Appeal, this Court is called upon to construe a deed executed in the year 1906, a century ago. By this deed, as discussed earlier, Arnolis the grantor transferred his entitlement of 7/12 shares on a Crown Grant to three of his close relatives. (Admittedly, in 1906 the balance 5/12 shares were held by the grantor Arnolis's sibling and he conveyed it to 3rd parties and their families and it devolved upon them who are also Respondents before this

Court. The trial judge allotted shares to the said parties too, and such allotment is not a fact in dispute in this appeal.)

The 7/12 share entitlement of Arnolis passed on to the three grantees, Nomis, Themis and Liveris by **P15** and such *status-quo,* continued for 30 years *i.e.,* from 1906 to 1937. In the year 1937, two of the grantees (Nomis and Themis) by deed **2V1** transferred their shares to Liveris, the third grantee in **P15,** entitling Liveris, an original grantee, and a newphew of Arnolis, to the full contingent of 7/12 share entitlement or rights held by the original grantor Arnolis.

Liveris as discussed earlier conveyed his shares to Piyaseeli Premalatha and Willy Weerakoon by deed **2V2**. They are the parents of the 1st and 2nd Defendants. Thus, it is clearly seen that the rights accrued to the 1st and 2nd Defendant's being the direct descendants of the grantor Arnolis and also the rights devolved on the Plaintiff from 2nd Defendant's, sibling through **P18** all flow from the same point. *i.e.,* this chain of title, which is admitted and accepted by all parties and especially the Plaintiff and the 2nd Defendant.

The challenge of the Defendant is only to the purported rights, the Plaintiff is claiming, based upon the other alleged chain of title. As discussed earlier, this chain of title purports to flow through Manchi Nona alleged to be a daughter of Arnolis, but about whom or of such fact, no evidence whatsoever (documentary or oral) was led at the trial.

It's a matter of concern and I say ironic, that the only recital in the two deeds **P16** and **P17** executed on 10-04-1980 (from which the Plaintiff claims title through inheritance rights) does not refer to Arnolis or to the Crown Grant. It does not indicate the manner upon which the rights were bestowed upon the conveyor or the transferors or the grantors of **P16** and **P17**. It's silent on the 2/3 share as alleged by the Plaintiff, which was purported to be the remainder, after 1/3 share was transferred through **P15**. It does not state the grantors relationship to Arnolis. It does not refer to a single notarially executed deed or deed of declaration. Recitals are plain, bare and devoid of any material information. The grantors named therein, only states 'rights which we receive through maternal and paternal inheritance', which in my view is sparce and insufficient to claim a right.

Paradoxically in 1995, (the Plaintiff who is said to have received title to a portion of land through **P16** and **P17** discussed above), in his evidence states that Arnolis had a daughter and that 2/3 shares of Arnolis's share entitlement, devolved through the daughter to the grantors of **P16** and **P17**. It's observed this evidence relating to Arnolis, is given ninety years after execution of **P15** by a third party, who is not a relative nor a direct descendent of Arnolis whereas, the 2nd Defendant, a direct descendent of Arnolis, specifically gives evidence that the total 7/12 shares devolved on Liveris, his grandfather. The learned judge after weighing the evidence led, at the trial, held that the Plaintiff's version cannot be accepted in so far as the 2nd chain of title is concerned and, refrained from granting shares based on such chain of title.

Coincidentally, the Plaintiff by one chain of title admits that Arnolis transferred his entire share entitlement to the three grantees referred to in **P15**, namely, Nomis, Themis and

Liveris and by another purported chain of title, the Plaintiff claims that Arnolis had a daughter *et al* and since only 1/3 share of Arnolis's entitlement passed through **P15,** the descendants of the daughter *et al* who received 2/3 share, conveyed their shares to the Plaintiff by deed **P16** and **P17**. As discussed earlier these two deeds do not refer to Arnolis nor to Crown Grant nor to Arnolis's 2/3 share entitlement. Thus, the Plaintiffs version is not established by evidence and appears to be conjecture only.

Therefore, in my view, the findings of the learned trial judge based on a balance of probability of the evidence led, is correct and justified. Thus, the version of the Plaintiff in the context of the surrounding facts is inconsistent, absurd, illogical and unbelievable.

In our law, when interpreting a deed, the duty of court is to interpret it as was understood at the time of execution by the parties concerned. The deed has to be read as a whole and the spirit of it should be taken note of when arriving at its interpretation.

In a deed, if the words are clear and precise, such literal and ordinary meaning should be given. If such literal meaning leads to absurdity and inconsistency, an interpretation to avoid such absurdity and inconsistency should be given.

When applying the aforestated principles to the Appeal before this Court, it is apparent that the learned trial judge has categorically considered the words in the deed **P15** and the evidence led and based on a balance of probability has not accepted the version of the Plaintiff, with regard to the second chain of title.

The learned trial judge nevertheless, having examined the chain of title and being satisfied of same, allotted shares correctly, as morefully disclosed in the judgement.

It is also observed that the learned trial judge, though he did not re-produce the issues or answer the issues one by one, in a twelve page judgement, has considered each and every link of the pedigree and thereby answered all points of contention in the body of the judgement. Based upon such entitlement, the learned trial judge referred the distribution and devolment of the shares, on all parties entitled to the shares in partitioning the land referred to in the plaint.

The learned judge of the Court of Appeal considered the question raised as regard to the interpretation of a deed and being satisfied that the trial judge has investigated the title to the land, properly and correctly, came to the conclusion that the trial judge's construction of **P15** is absolutely rational and logical.

In the said circumstances, I answer the 1st, 2nd and 3rd questions in the negative and in favour of the 2nd Defendant-Respondent.

Non answering of issues

The Learned President's Counsel for the Appellant raises the question that non-answering the issue can be considered as a lapse on the part of the learned judge and relies upon the following judgements, to substantiate his stand.

Ref: **Warnakula v Ramani Jayawardena (1990) 1 SLR 206; Horagalage Sopinona v Pitipanaarachchi and two others (2010) 1 SLR 87; The Bank of Ceylon Jaffna v ChelliahPillai 64 NLR 25 (PC)** and **Peiris v Municipal Council, Galle 65 NLR 555**

There is no doubt that this Court has time and time again has emphatically held, that non answering of issues, causes prejudice to the substantial rights of the parties.

Ref: **Dona Lucihamy v Ciciliyanahamy 59 NLR 214; Somawathie v Evgin SC/App/ 162/2012 - S.C.M. 29-06-2017** and **Acland Insurance Services Limited v P.B. Jayasundara SC/CHC/App 44/2012 S.C.M. 07.07.2025**.

Whilst I appreciate the judicial dicta laid down in the above referred judgements, that it is the duty of the judge to answer all issues raised at the trial and that bare answers to issues without reasons are not in compliance with the requirements of Section 187 of the Civil Procedure Code, upon reading of the instant trial court judgement, it is evident that the learned trial judge, has reviewed and examined the eleven points of contention. These points of contention are all in connection with the pedigree and devolution of title and share distribution. In the light of the totality of evidence led, the trial judge has considered each and every deed marked and produced. Thus, in my view, the learned trial judge has come to a correct finding in relation to share devolution.

If I am very specific, there were no legal issues raised at the trial. All issues were based on facts. Whilst issues one to four were raised by the Plaintiff, issues five to eleven were raised by the 2nd Defendant. If I may refer to the issues individually, issues one and two relate to the deeds **P15** and **P18**. Issue three, refers to inheritance rights and issue four to the Plaintiff's rights through inheritance.

Similarly, of the issues raised by the 2nd Defendant, issues five and six pertain to deed **P15**. Issues seven and eight relate to the **2V1** and **2V2**. Issue nine relates to deeds **2V3** and **2V4**. Issue ten refers to rights to devolve on the 2nd Defendant and issue eleven pertains to cultivation and improvements which also have been granted by the trial judge in the share devolution. Thus, all issues refer to deeds which have being exhaustively dealt within the body of the judgement of the trial court and the consequential issues, pertains to the Plaintiff's and the 2nd Defendant's entitlement.

It is also noteworthy to state that the Plaintiff went before the Court of Appeal only in respect of the misinterpretation of the deed **P15**, executed in the year 1906 and not in respect of non answering of issues, which is the 4th question of law raised before this Court.

As discussed earlier, the misinterpretation of the deed **P15** as alleged by the Plaintiff, gave rise to the 1st, 2nd and 3rd questions of law, which I have answered in favour of the Respondent and against the Appellant.

This Court in **Mary Nona v. Don Justin and others SC/App 174/2010, S.C.M. 08.06.2016** categorically held that in view of the responsibility bestowed upon a trial judge in

a Partition Action, the onus of the judge is somewhat different than any other kind of case, *viz.*, money recovery, divorce, rent and ejectment, debt recovery, contractual, delictual etc., especially in instances in which the judge is expected to sort out shares of the land to be granted to the parties and calculate the share entitlement.

In the aforesaid circumstances, although it is apparent that the trial judge did not answer the eleven issues raised between parties, when reading the judgement, it's seen that all the points of contention have been answered in the body of the judgement.

Moreover, considering that the appeal revolves around the interpretation of the deed **P15**, I am of the view that prejudice has not been caused to the Appellant by non - answering of issues, specifically in the given circumstances of this case. Further, on the facts of this appeal, non answering of issues can be distinguished from the norm, especially in view of the fact, that this is a Partition Action and the onus of the judge is somewhat different to the other kinds of cases, that usually come before a civil court, as held by this Court in **Mary Nona case** referred to earlier.

In any event, upon perusal of the judgement, it is evident that the learned trial judge has examined and analysed the share devolvement in great detail, which has not been challenged by any of the parties except the Plaintiff. In the said circumstances, non answering of issues itself, cannot be considered a ground to allow this Appeal and to set aside the judgement of the trial court and the Court of Appeal. I wish to emphasise at this juncture, that when the Plaintiff went before the Court of Appeal, by the Petition of Appeal itself, the scope of the appeal was limited to the interpretation of the deed **P15** only, although before this Court, the scope of challenge has been expanded.

In the aforesaid circumstances, I answer the 4th question of law also in favour of the Respondent.

Conclusion

I have considered the facts of the instant case, the evidence led, the devolvement of shares, **P15** the deed in issue, and the submissions of the learned Counsel made before this Court. For reasons adumbrated in this judgement, I am of the view that the Appellant has failed to establish his contention before this Court. Thus, I hold that the Appellant's Appeal has no merit and should be dismissed with costs.

In the aforesaid circumstance, I answer all four question of law in favour of the Respondents. I affirm the judgement of the Court of Appeal dated 17th January 2011 and the judgement of the District Court of Horana dated 3rd July, 1996.

The Appeal of the Substituted Plaintiff-Appellant-Appellant is dismissed with costs fixed at Rs. 100,000.00 payable by the Substituted Plaintiff-Appellant-Appellant to the 1st and 2nd Defendant-Respondent-Respondent in equal amounts forthwith.

Appeal is dismissed.

Chief Justice

Janak De Silva, J.
I agree

Judge of the Supreme Court

K. Priyantha Fernando, J.
I agree

Judge of the Supreme Court