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

In the matter of an appeal under and in terms of Section 5C(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended

SC Appeal No. 25/2012
SC/HCCA/LA/18/2011
SP/HCCA/RAT/100/2008(FA)
DC Embilipitiya Case No. 7875/P

Wattewa Kankanamge Siripala,
No. 242, Pahala Andaluwa,
Kolambage Ara.

PLAINTIFF

- Vs –

(1) Wattewa Kankanamge Sirisena,
Kekunagoda, Halwinna, Godakawela.

(2) J M Ranmenike,
Pahala Andaluwa, Kolambage Ara.

(3) Wattewa Kankanamge Renuka,
Pahala Andaluwa, Kolambage Ara.

(4) Wattewa Kankanamge Ramani,
Pahala Andaluwa, Kolambage Ara.

(5) Wattewa Kankanamge Deepika,
Pahala Andaluwa, Kolambage Ara.

(6) Wattewa Kankanamge Lalith,
Pahala Andaluwa, Kolambage Ara.

(7) Wattewa Kankanamge Chaminda,
Pahala Andaluwa, Kolambage Ara.

DEFENDANTS

And between

Wattewa Kankanamge Sirisena,
Kekunagoda, Halwinna,
Godakawela.

1ST DEFENDANT – APPELLANT

- Vs –

Wattewa Kankanamge Siripala,
No. 242, Pahala Andaluwa,
Kolambage Ara.

PLAINTIFF – RESPONDENT

(2) J M Ranmenike,
Pahala Andaluwa, Kolambage Ara.

(3) Wattewa Kankanamge Renuka,
Pahala Andaluwa, Kolambage Ara.

(4) Wattewa Kankanamge Ramani,
Pahala Andaluwa, Kolambage Ara.

(5) Wattewa Kankanamge Deepika,
Pahala Andaluwa, Kolambage Ara.

(6) Wattewa Kankanamge Lalith,
Pahala Andaluwa, Kolambage Ara.

(7) Wattewa Kankanamge Chaminda,
Pahala Andaluwa, Kolambage Ara.

2ND – 7TH DEFENDANTS – RESPONDENTS

And now between

Wattewa Kankanamge Sirisena,
Kekunagoda, Halwinna, Godakawela.

1ST DEFENDANT – APPELLANT – APPELLANT

Wattewa Kankanamge Dayawansha Kumarasiri,
Kekunagoda, Halwinna, Godakawela.

SUBSTITUTED 1ST DEFENDANT – APPELLANT – APPELLANT

- Vs -

Wattewa Kankanamge Siripala,
No. 242, Pahala Andaluwa,
Kolambage Ara.

PLAINTIFF – RESPONDENT – RESPONDENT

(2) J M Ranmenike,
Pahala Andaluwa, Kolambage Ara.

(3) Wattewa Kankanamge Renuka,
Pahala Andaluwa, Kolambage Ara.

(4) Wattewa Kankanamge Ramani,
Pahala Andaluwa, Kolambage Ara.

(5) Wattewa Kankanamge Deepika,
Pahala Andaluwa, Kolambage Ara.

(6) Wattewa Kankanamge Lalith,
Pahala Andaluwa, Kolambage Ara.

(7) Wattewa Kankanamge Chaminda,
Pahala Andaluwa, Kolambage Ara.

2ND – 7TH DEFENDANTS – RESPONDENTS – RESPONDENTS

Before:	**Yasantha Kodagoda, PC, J** **Arjuna Obeyesekere, J** **Sobhitha Rajakaruna, J**
Counsel:	Navin Marapana, PC with Uchitha Wickremasinghe for the Substituted 1st Defendant – Appellant – Appellant
	J M Wijebandara with Dimitri Pandiwita and Milindu Sarathchandra for the Plaintiff – Respondent – Respondent
Argued on:	10th February 2025
Written Submissions:	Tendered by the Substituted 1st Defendant – Appellant – Appellant on 12th March 2012 and 23rd March 2025
	Tendered by the Plaintiff – Respondent – Respondent on 5th July 2012, 15th December 2023 and 10th March 2025
Decided on:	8th July 2025

Obeyesekere, J

The Plaintiff – Respondent – Respondent [the Plaintiff] and the 1st Defendant – Appellant – Appellant [the 1st Defendant] are brothers. It is admitted that, (a) the father of the Plaintiff and the 1st Defendant was **Wattewa** Kankanamlage Podi Appuhamy, (b) their mother was Baby Hamy, and (c) in addition to the Plaintiff and the 1st Defendant, Podi Appuhamy and Baby Hamy had three daughters, namely W.K. Missynona, W.K. Karunawathie and W.K Siriyawathie and another son, W. K. Seetin. The 2nd Defendant – Respondent – Respondent [the 2nd Defendant] is the wife of Seetin, and the 3rd – 7th Defendants – Respondents – Respondents [the 3rd – 7th Defendants] are the children of the 2nd Defendant and Seetin. I must observe that the words, 'Kankanamge' and 'Kankanamlage' have been used interchangeably by both parties.

The case of the Plaintiff

The Plaintiff states that the land that is the subject matter of this action morefully referred to in the schedule to the plaint – i.e. Sub lot No. 268 in Lot No. 85 of Village Plan No. 888 in extent of 1A 3R 3P – was settled in the name of his father in terms of the Settlement Order [**P1**] made in his favour under the Land Settlement Ordinance, No. 20 of 1931, as amended [the Ordinance], and that title to the said land vested in his father by virtue of such Order.

In terms of P1, the above lot has been settled in favour of **Watta** Kankanamlage Podi Appuhamy, and not in the name of **Wattewa** Kankanamlage Podi Appuhamy, which the 1st Defendant claims is the name of their father. The Plaintiff however claims that their father was also known by the name, **Watta** Kankanamlage Podi Appuhamy. Whether Wattewa Kankanamlage Podi Appuhamy and Watta Kankanamlage Podi Appuhamy are one and the same person is one of the principal issues in this case, for the aforementioned reason that while the Settlement Order P1 published in 1996 carries the name Watta Kankanamlage Podi Appuhamy, all other documents including the death certificate of Podi Appuhamy refers to him as Wattewa Kankanamlage Podi Appuhamy.

According to the Plaintiff, pursuant to the death of Podi Appuhamy in 1967, ½ share of the land had devolved on his wife, and the other ½ share on his six children. The Plaintiff states that with the death of Baby Hamy, her share had devolved in equal proportion among the six children and with the death of Karunawathie, her share had devolved on the remaining five children, thus leaving each surviving child of Podi Appuhamy and Baby Hamy with 1/5th share of the said land. The Plaintiff states further that Missy Nona and Siriyawathie sold their 1/5th share in the land to the Plaintiff and that the Plaintiff holds 3/5th share of the land, with the 1st Defendant holding 1/5th share and the other 1/5th share being held by the 2nd – 7th Defendants pursuant to the demise of Seetin.

Partition action

On 23rd December 2002, the Plaintiff filed action in the District Court of Embilipitiya [the District Court] against the 1st – 7th Defendants on the basis that title that Podi Appuhamy had derived in terms of P1 had devolved on his heirs and seeking to partition the said land among the Plaintiff, the 1st Defendant and the 2nd – 7th Defendants on the basis of the aforementioned share ratio. An amended plaint was filed on 30th July 2004. The 2nd – 7th Defendants did not file a statement of claim and the trial proceeded against them *ex parte*.

In his statement of claim, the 1st Defendant, having admitted the situation of the land, stated that he has been in exclusive possession of the land since 1969, a claim which has been rejected by the Plaintiff, and that he has cultivated the land since then. The 1st Defendant raised two principal defences in his statement of claim. The first is that the said land had been settled in favour of Watta Kankanamlage Podi Appuhamy and not in favour

of their father, Wattewa Kankanamlage Podi Appuhamy, and for that reason, neither the Plaintiff nor the 2nd – 7th Defendants are entitled to any share in the land by virtue of the Settlement Order. The second was that in any event, the Settlement Order has been published in the Gazette pursuant to the death of Podi Appuhamy and hence, Podi Appuhamy does not acquire any rights over the said land and *afortiori* neither the Plaintiff nor the 2nd – 7th Defendants.

Judgment of the District Court and the High Court

Trial commenced in the District Court on 21st May 2005. The Plaintiff gave evidence and led the evidence of four other witnesses. The 1st Defendant too gave evidence. By its judgment delivered on 25th August 2008, the District Court held with the Plaintiff and allowed the said land to be partitioned on the basis of 3/5th share to the Plaintiff, 1/5th share to the 1st Defendant and the balance 1/5th share to the 2nd – 7th Defendant.

With regard to the discrepancy in the name of Podi Appuhamy, the District Court acted upon the evidence of the Plaintiff, the 1st Defendant, their sister, Missy Nona and the other witnesses in arriving at the conclusion that Watta Kankanamlage Podi Appuhamy and Wattewa Kankanamlage Podi Appuhamy are one and the same person and therefore P1 has been settled in favour of the father of the Plaintiff and the 1st Defendant.

On the question of the validity of P1, the District Court took into consideration the evidence of the witness from the Land Settlement Department that the Settlement Order P1 has been made in favour of the person with whom an agreement has been entered into in terms of Section 5(4)(c) of the Ordinance and that the death of the person in whose favour the settlement has been made does not affect the validity of the Settlement Order.

Aggrieved by the judgment of the District Court, the 1st Defendant invoked the appellate jurisdiction of the Civil Appellate High Court of the Sabaragamuwa Province holden in Ratnapura [the High Court]. The appeal was dismissed by judgment delivered on 7th December 2010, with the High Court taking the view that the death of Podi Appuhamy did not affect the validity of P1 for the reason that the Ordinance did not contain any specific provision in this regard. The High Court relied on the judgment of the Court of Appeal in **Fernando v De Silva and others** [(2000) 3 Sri LR 29] in arriving at its conclusion that, "*there is no provision in the Ordinance which enacts that a settlement order to be*

valid the person in favour of whom it is made must necessarily be alive. This Court is not expected to act upon the principle that every act is to be taken as prohibited unless it is expressly provided for by the Ordinance but on the converse principle that every act to be understood as permissible till it is shown to be prohibited by the Ordinance."

Questions of Law

The 1st Defendant thereafter sought and obtained leave to appeal from this Court on 30th January 2012 on the following questions of law:

(1) Did the High Court err in law in interpreting the provisions of the Land Settlement Ordinance, No. 20 of 1931, as amended, and in particular, Section 8 thereof?

(2) Did the High Court err in law in interpreting the decision in Fernando v De Silva and others [(2000) 3 Sri LR 29]?

(3) Did the High Court err in law in agreeing with the learned trial judge on the following points of contest:

   (a) Has Watta Kankanamlage Podi Appuhamy alias Wattewe Kankanamlage Podi Appuhamy derived ownership to the said land by virtue of the Settlement Order P1?

   (b) Has Wattewe Kankanamlage Podi Appuhamy derived any rights in terms of the Settlement Order P1?

   (c) Does any title flow to a person who has passed away by the time the Settlement Order is published in the Gazette?

(4) Did the High Court err in law in interpreting the legal validity of the Settlement Order published in the Gazette P1

There is an overlap in the above questions of law, and for better clarity, the said questions can be condensed as follows:

(1) Has the land been settled in favour of the father of the Plaintiff and the 1st Defendant?

(2) What is the effect and validity of the Settlement Order P1 published after the death of Podi Appuhamy?

I shall first consider the background relating to land settlement and the scheme set out in the Ordinance and thereafter consider the above two questions.

Land Settlement – background

In order to give context to the first question, it is important to understand the origins of the concept of land settlement. With Ceylon, as we were known at that time, becoming a colony of the British, the system that prevailed with regard to land ownership was replaced with the Prevention of Encroachments upon Crown Lands Ordinance, No. 12 of 1840. In terms of this Ordinance, all lands were declared as Crown land until any claim of ownership to a particular land was established by way of deeds, grants and/or such other documentary evidence. Through this process of land settlement arose the presumption that all lands within the Country belonged to the Crown unless the contrary was established.

The above Ordinance, as expected, resulted in many Ceylonese having to forgo ownership to their lands. Owing to the dissatisfaction that ensued, the Government of that time had introduced the Waste Lands Ordinance, No. 1 of 1897, in terms of which, all uncultivated lands were declared as Crown land. The harsh manner in which the new law was implemented and the injustice caused to the People by the said law has been well documented and was even the subject matter of debate in the House of Lords where Lord Stanley of Alderly had implored upon "*the necessity of an independent inquiry into the working of the Ceylon Waste Lands Ordinance, and to the injustice caused …*". [Debates of 17th July 1899 - https://api.parliament.uk/historic-hansard/lords/1899/jul/17/ceylon-waste-lands-ordinance]

The indiscriminate manner in which the presumption that all uncultivated lands are State lands was applied in practice was referred to by Chief Justice Bertram in **Hamina Etena v The Assistant Government Agent, Puttalam** [23 NLR 289; at page 290], when he stated that, "*According to that presumption, all forests, waste, unoccupied, or uncultivated lands, and all chenas are presumed to be the property of the Crown unless the contrary thereof is proved. It is hardly contested that, if the presumption applies, the evidence adduced on behalf of the complainant is not sufficient to displace it*."

The Land Settlement Ordinance – the provisions

It is in this background that the Land Settlement Ordinance was introduced for the settlement of lands. The scheme laid down in the Ordinance comprised of three stages, they being (1) the publication of a Settlement Notice specifying the lands that the State wished to settle, (2) the acceptance of claims in respect of the lands referred to in such Settlement Notice, and an inquiry into such claims, and finally (3) the making of a Settlement Order followed by its publication in the Gazette.

I shall now consider these three stages in detail.

In terms of Section 4(1), whenever it appears to the Settlement Officer that any land (a) is forest, waste, unoccupied, or uncultivated land, or (b) is cultivated or otherwise improved land but was forest, waste, unoccupied, or uncultivated land in the preceding twenty five years, he may publish a Settlement Notice containing details of such lands and specifying that, "*if no claim to such land or to any share of or interest in such land is made to him within a period of three months from a date to be specified in such notice the land to which or to any share of or interest in which no claim has been made as aforesaid* ***will be declared under Section 5 (1) to be the property of the State*** *and will be dealt with on account of the State*."

In terms of Section 5(1), "*If no claim is made within a period of three months …, the Settlement Officer shall make a declaration in writing, which shall be deemed for the purposes of this Ordinance to be* ***a settlement in favour of the State****, that such land to which or to any share of or interest in which no claim has been made is the property of the State*".

If however a claim is made within such period, Section 5(2) requires the Settlement Officer to proceed to hold an inquiry into such claim. At the conclusion of the inquiry, the Settlement Officer may do one of the following specified in Section 5(4):

(a) Make a declaration in writing [which shall be deemed to be a settlement] that any land specified in the Settlement Notice is not claimed by the State;

(b) Make a declaration in writing [which shall be deemed to be a settlement] that some person unascertained is entitled to a particular share of or interest in any land specified in the Settlement Notice;

(c) "*Enter with the claimant, upon such terms and conditions as may appear fit to the Settlement Officer, into an agreement in writing signed by the Settlement Officer and by the claimant, providing …, that the said claimant … **shall be declared by Settlement Order** under subsection (5) **to be entitled either wholly or in part, … to any land** or to any share of or interest in any land specified in the settlement notice, and make a settlement of such land or share or interest in pursuance of such agreement*:"

Section 5(5) requires the Settlement Officer to thereafter embody such settlement under (a), (b) or (c) above in a Settlement Order.

The process of land settlement culminates with Section 8 in terms of which:

> "*… every settlement order shall be published in the Gazette, and every settlement order so published shall be judicially noticed and shall be conclusive proof, so far as the State or any person is **thereby declared** to be entitled to any land or to any share of or interest in any land, **that the State or such person is entitled to such land** or to such share of or interest in the land free of all encumbrances whatsoever other than those specified in such order and that subject to the encumbrances specified in such order **such land** or share or interest **vests absolutely** … in such person to the exclusion of all unspecified interests of whatsoever nature …*".

Thus, the scheme laid down in the Ordinance seeks to achieve two objectives. The first is to identify lands that belong to private parties within the area specified in the Settlement Notice and **for the State to recognise the interests and/or entitlement of such persons** to a particular land referred to in such Notice. The second is to determine and declare the lands that belong to the State which are situated within such Settlement Notice. Once this process is completed and the Settlement Order is published in the Gazette, such Order becomes conclusive proof of the status of the lands referred to in the Order and wipes out all encumbrances that existed upto that point in respect of such lands. This is reflected in the stipulation in Section 8 that a Settlement Order shall be conclusive proof that the

State or such person is **entitled** to such land free of all encumbrances whatsoever other than those specified in such order and that **the land shall vest absolutely in such person or the State,** as the case may be.

The Scheme – sequence of events

It is admitted that:

(1) Settlement Notice No. 2855 was published in Gazette No. 10,526 dated 15th May 1953 in respect of Village Plan No. 888;

(2) The father of the Plaintiff and the 1st Defendant lodged a claim in response to the said Notice;

(3) An Agreement was executed on 23rd July 1954 [**P7**] in terms of which "***Wetta*** *Kankanamlage Podi Appuhamy of Kumburugamuwa"* was declared entitled to Sub Lot No. 268 in Lot No. 85 in Village Plan No. 888 in extent of 1A 3R 3P;

(4) Podi Appuhamy passed away on 31st January 1967;

(5) The Settlement Order under Section 5(5) was made on 23rd April 1993;

(6) The said Settlement Order was published in Gazette No. 934/20 dated 1st August 1996 [**P1**], with Sub Lot No. 268 of Lot No. 85 being settled in favour of "***Watta*** *Kankanamlage Podi Appuhami of Kumburugamuwa*".

Is it Watta Kankanamlage or Wattewa Kankanamlage?

This brings me to the first issue that needs to be determined in this case. It is admitted that P7 refers to "***Wetta*** *Kankanamlage*" and P1 to "***Watta*** *Kankanamlage*" whereas the name of the father of the Plaintiff and the 1st Defendant is "***Wattewa*** *Kankanamlage*". It is in this factual scenario that the 1st Defendant took up the position that the land has not been settled in favour of their father, and hence, the Plaintiff cannot have and maintain any claim to such land.

The evidence of the Plaintiff was that his father was known as Watta Kankanamlage Podi Appuhamy as well as Wattewa Kankanamlage Podi Appuhamy and that the person referred to in P1 is his father. The fact that the father of the Plaintiff was also known as Watta Kankanamlage is not supported by any documentary evidence. Thus, on the face of it, P1 and P7 may not be a reference to the father of the Plaintiff and the 1st Defendant.

However, the Plaintiff stated that his parents were in occupation of the land that is the subject matter of this case, his father took part at an inquiry held by the Land Commissioner, and that the said land was settled in favour of his father. This evidence went unchallenged. Missy Nona, the sister of the Plaintiff too stated that the impugned land had been owned by her father. The Grama Niladhari of the area stated that he made inquiries and found that there was no such person by the name of *"Watta Kankanamlage"*. The Officer from the Land Settlement Department stated that except for the discrepancy in the first name, the balance part of the name and the address of the beneficiary was one and the same. He stated further that when it came to handing over a copy of P1, he had made inquiries regarding the heirs of Podi Appuhamy and that P1 was handed over to the 1st Defendant on the basis that he is the son of the person on whom the land had been settled.

The most important evidence was perhaps that of the 1st Defendant. Having stated that, (a) he, together with his parents and siblings were resident on the said land, (b) he commenced cultivating the land at the request of his father, and (c) after the death of his father, he cultivated the land on his own, the 1st Defendant stated as follows:

> "පියාගේ මරණින් අනතුරුව මම මෙම දේපළේ වගා කරගෙන හිටියා ... රජය ඊට අවුරුදු විස්සකට පසු දේපළ නිරවුල් කරලා තියෙනවා නිරවුල් කිරීමේ ආඥා පනතේ 5(4) යන වගන්තිය යටතේ වත්තේ කංකානම්ලාගේ පොඩි අප්පුහාමි කියන මාගේ පියාගේ නමට."

The following questions posed to the 1st Defendant during cross examination and the answers thereto puts the issue to rest:

"**Q -** තමා දන්නවද 1996 තමයි තමාගේ පියා මේ ඉඩම නිරවුල් කළේ

A - ඔව්

Q - ගැසට් එකේ තියෙන්නේ 1996 වර්ෂයේ තමාගේ පියාට නිරවුල් කළා කියලා

A - ගැසට් එක දුන්නේ 1996

Q - නිරවුල් කළේ තමාගේ පියාට

A - ඔව්"

The 1st Defendant also admitted that the lot number of the land that was settled in favour of his father was 268, which is the number specified in P1 and P7 in respect of Watta/Wetta Kankanamlage Podi Appuhamy.

The District Court has very carefully analysed the above evidence and acted thereon in arriving at the conclusion that, (a) even though there is a discrepancy in the name, Watta Kankanamlage and Wattewa Kankanamlage are one and the same person, and (b) the land referred to in P7 and P1 has been settled in favour of the father of the Plaintiff and the 1st Defendant. The High Court has not considered this issue, probably for the reason that the reference in P1 to "Watta Kankanamlage" was an obvious error. I am of the view that the conclusion reached by the District Court is not only logical but correct, and I am therefore in agreement with the finding of the District Court.

<u>The legal validity of the Settlement Order</u>

The second question in this case is with regard to the validity of P1. The argument of the learned President's Counsel for the 1st Defendant with regard to the validity of the Settlement Order was twofold. The first was that "*title would devolve*" upon a person only once the Settlement Order is published in the Gazette. The second is that since Podi Appuhamy had passed away by the time the Settlement Order was published, the said Order made in favour of Podi Appuhamy is a nullity, and therefore no title passes to Podi Appuhamy and the title in the land "reverts back" to the State. It was therefore argued that since P1 does not confer any title on Podi Appuhamy, the Plaintiff cannot rely on P1 to derive title to the land referred to in P1 and hence, there is no legal basis for the Plaintiff to have filed the partition action since he is neither an owner nor a co-owner of the said land.

The purpose of entering into an agreement as provided for in Section 5(4)(c) is to recognise the claim of the person who responds to a Settlement Notice and is proof that the claimant shall be declared by a Settlement Order to be made under Section 5(5) at the end of the statutory scheme to be entitled either wholly or in part to any land specified in the settlement notice. Thus, there is a nexus that is established between such agreement and the Settlement Order that is to be made and published on a future date, with the Settlement Order having the ultimate force of law.

This nexus was considered in **Hethuhamy v Boteju** [(1941) 43 NLR 83], where Nihill, J having referred to Section 8, stated as follows:

> "*Now, the intention of this section seems to be clear; it excludes the unspecified interest and seeks to achieve finality. It only does so, however, so far as the Crown or any person is thereby declared to be entitled to any land or to any share of or interest in any land that is to say, "declared" by the terms of the Settlement Order. The word "thereby" must mean that."* [Page 85]
>
> *"…a Settlement Order drawn up according to Form 2 is meant to be and can be implied to be a declaration. I have no doubt, as I think a study of the wording used in section 5 of the Ordinance will show. This section, inter alia, provides that a Settlement Officer may enter into an agreement with a claimant whereby a claimant or any other person shall be declared by Settlement Order under sub-section (5) of the section to be entitled either wholly or in part to any land specified in the Settlement Notice [subsection (4)(c)] and sub-section (5) says that the Settlement Officer shall embody any such settlement in a Settlement Order which shall be substantially as set out in Form No. 2 in the First Schedule. That seems to me to make it reasonably certain that the Legislature meant Form No. 2 to be declaratory for proceedings initiated under the Land Settlement Ordinance*" [Page 86]
>
> "*Under section 8 it is the Settlement Order "so published", that is in the Ceylon Government Gazette, that shall be judicially noted as conclusive proof of title. Can it be said that title passes from the Crown at the date of the agreement although it is the published Settlement Order which ultimately provides the title holder with conclusive proof of his title?*

> *I do not think that the wording of sub-section (4) (c) of section 5 of the Land Settlement Ordinance supports such a view.* ***The essence of the agreement is the undertaking by the Crown to settle land subsequently on the claimant by the procedure provided for by sub-section (5).*** *"* [page 86-87; emphasis added]

Thus, the entitlement of a claimant to a particular land which is recognised through an agreement is formalised by the publication of a Settlement Order, vesting such land absolutely in such claimant, with such Order receiving the legal sanctity referred to in Section 8.

In **Periacaruppen Chettiar v Messrs Proprietors and Agents Ltd and others** [(1946) 47 NLR 121; at page 125] Chief Justice Howard, having considered the precise effect of an order under Section 8 of the Land Settlement Ordinance stated that, "*In my opinion the order of October 27, 1933, is conclusive proof of the title of Gunasekera. The order vests the title in Gunasekera subject to any encumbrances specified in the order.* ***All unspecified interests are excluded****. … The settlement order, therefore, wiped out and destroyed all previous titles to the property and vested it in Gunasekera*." [emphasis added]

Thus, Chief Justice Howard proceeded on the basis that a deed executed prior to the Settlement Order cannot be classified as an encumbrance since no reference has been made in the Settlement Order to the said deed and therefore accepted the position laid down in Section 8 that the effect of the publication of a Settlement Order is that it shall be conclusive proof that the person referred to in a Settlement Order is entitled to such land free of all encumbrances whatsoever other than those specified in such order.

While Section 8 is clear with regard to the effect of a Settlement Order, what a Settlement Order does is twofold. The first is, there is recognition by the State that the private party who claimed the land pursuant to the publication of a Settlement Notice has an entitlement in respect of such land and for that reason, declares that the State has no claim over such land. The second is a Settlement Order confers conclusive proof that such person is entitled to such land free of all encumbrances whatsoever other than those specified in such order, and that the said land shall vest absolutely in such person.

In this case, pursuant to the Settlement Notice being published, Agreement P7 was executed on 23rd July 1954 which recognised and declared that Podi Appuhamy is entitled to 1A 3R 3P in Sub Lot No. 268 in Lot No. 85 in Village Plan No. 888. Thus, the interest of Podi Appuhami to the said land has been recognised as far back as 1954, and the Settlement Order published in 1996 is a formal recognition of the entitlement of Podi Appuhamy to such land to the exclusion of all others including the State.

The Settlement Order P1 was published 43 years after the publication of the Settlement Notice specifying the names of the persons on whom lands referred to in Village Plan No. 888 have been settled. The claim of Podi Appuhamy has been duly recognised in 1954, the land has been settled in his favour in 1993, and there is formal recognition by the publication of P1 in 1996 that title has vested absolutely in Podi Appuhamy. As expected, most of the persons on whom lands have been settled since the publication of the Settlement Notice in 1953, including Podi Appuhamy had passed away by the time P1 was published. Keeping in mind the objective that is sought to be achieved by the system of land settlement that I have referred to, I am of the view that Podi Appuhamy, and since he had passed away by the time of the publication of the Settlement Order, his heirs, are entitled to the land referred to in P1. The death of Podi Appuhamy does not vitiate his title to the said land nor does the land '*revert*' to the State but the land shall devolve on his heirs and they shall be entitled to claim such land. To say that the right of the heirs of Podi Appuhamy to claim the benefit of such settlement has been extinguished by the passing away of Podi Appuhamy does not stand to reason. Accordingly, the Plaintiff, being a son of Podi Appuhamy is entitled to a share of such land upon the death of Podi Appuhamy.

The High Court stated that:

> "*P7 goes to show that a decision has been taken to settle the land in favour of Podi Appuhami in that both Lots 85 and 268 have been mentioned. It is clear by perusing P1 that what has been settled in favour of Podi Appuhamy is Sub division No. 268 of Lot No. 85, which has been registered at the Land Registry in Volume No. G136 and Folio No. 180. It is also significant to note that in the Gazette P1, it is mentioned that Settlement Notice under Section 4 of the Land Settlement Ordinance was duly published in the Gazette No. 10526 of 15th May 1953 and all claims received in*

pursuance of the said Notice were duly dealt with prior to making that Settlement Order.

Hence, it is abundantly clear that despite the fact that the Settlement Order has been published after the death of Podi Appuhamy the matter had been set in motion at least since 1953 when Podi Appuhamy was very much alive. Therefore it is apparent that the provisional decision reflected in P7 is a consequential step taken after the publication of the Settlement Notice in 1953."

I am in agreement with the view taken by the High Court. The settlement process that commenced in 1953 culminated in 1996. The fact that Podi Appuhamy passed away prior to the publication of the Settlement Order does not make P1 a nullity nor does the land revert to the State. Instead, his title devolves on his heirs. In these circumstances, I am of the view that the Plaintiff was entitled to file a partition action.

Conclusion

In the above circumstances, I answer the questions of law Nos. 1, 3 and 4 in the negative. The necessity to consider question of law No. 2 does not arise. The judgments of the District Court and the High Court are hereby affirmed and this appeal is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J

I agree

JUDGE OF THE SUPREME COURT

Sobhitha Rajakaruna, J

I agree

JUDGE OF THE SUPREME COURT