

year 1988 the description of the land was changed to “Nilattu Pattiya” in extent 4 acres, under Serial No. 19/459 in the same Cultivation Officer Division. Of course, the surveys conducted on commissions issued by court disclosed a much smaller land, the earlier plan bearing No. 1176 depicting an extent of 2 acres, 3 roods and 7.5 perches, which was less than the land extent shown in Plan No. 2025 prepared by Surveyor Somapala by approximately 24.5 perches, possibly due to the shifting of the northern boundary due to some encroachments.

In these circumstances, in my opinion, the learned District Judge was justified in concluding that the lands claimed by the contending parties are one and the same and is substantively depicted in the survey plan prepared by Surveyor Dissanayake, a finding which has been affirmed by the Court of Appeal. However, what the lower courts have failed to realize is that this does not necessarily mean that the land depicted by Surveyor Dissanayake, in his Plan No. 1176 is identical with the land described in the schedule to the petition and the title deeds P1 and P3 to P6. Such identification is vital to a vindicatory action such as this in which a declaration of title and ejectment of the Appellants has been sought by the Respondents by virtue of the said title deeds. It is unfortunate that neither the learned District Judge nor the Court of Appeal has taken into consideration the inconsistencies fully outlined above, that exist in identifying the boundaries of the land described in the schedule to the petition with the land actually surveyed by the two surveyors on commissions issued by the court.

The learned District Judge was not helped by the obvious confusion in issue 6 which, as already noted, sought to describe the land claimed by the Respondents by reference to the schedule to the petition filed by them as well as by reference to Plan No. 1176 depicted by Surveyor Dissanayake. The learned District Judge uncritically answered the issue in the affirmative, causing great ambiguity in identifying the land, with respect to which a declaration of title was sought by the Respondents. The learned District Judge had in his judgement purported to make an express order of ejectment, based no doubt, on an implicit declaration of title to land claimed by the Respondents, ignoring the fact that the schedule to the petition referred to in the said issue 6, placed the land in the village of Pandiankulama in Nachcha Tulana in the Ulagalla Korale in Hurulu Palata of the Anuradhapura District, while Plan No. 1176 dated 10th October 1990 prepared by Surveyor Dissanayake placed it in the village of Madawalagam in Kandu Tulane within the Kanadara Korale in Nuwaragam Palata of the same District. The learned District Judge has also failed to make any finding pertaining to the extent of the land described in the schedule to the petition, which was four acres according to the schedule to the petition, while it was only 2 acres, 3 roods and 7.5 perches according to Surveyor Dissanayake’s Plan No. 1176. He has also not arrived at any finding in regard to which of the two survey plans that had been prepared on commissions issued by court, depicted the land described in the schedule to the petition accurately, particularly in the context that Plan No. 2025 was more in accord with the location of the land as set out in the schedule to the petition, but depicted a slightly larger land in extent 2 acres, 3 roods and 31 perches.

The learned District Judge has come to the conclusion that the bone of contention between the contending parties is the same as the land described in the schedule to the petition of the Respondents as well as the schedules to the title deeds marked P1 and P3 to P6. In doing so, he has totally lost sight of Section 187 of the Civil Procedure Code, which provides that the judgement “shall contain a concise statement of the