

described in the schedule to the joint petition filed by them. They claimed title by virtue of the Deed bearing No. 6165 dated 9th February 1987 (P1) and attested by Lionel P. Dayananda, Notary Public. The said Deed was executed by one Ibrahim Lebbe Noor Lebbai, the purported Attorney for Meydeen Sadakku Mohideen Abdul Cader, under the Power of Attorney bearing No. 7598 dated 30th October 1981 (P7), attested by S.M.M Hamid Hassan, Advocate & Notary Public in the Ramanathapuram District in Tamil Nadu, India. The Respondents alleged that they had purchased the said property for a sum of Rs. 20,000/-, but the 1st and 2nd Defendant-Appellant-Appellants (hereinafter referred to as the "Appellants") disputed their title and attempted to prevent their *ande* cultivator from working on the said paddy land. The Respondents sought a declaration of title in their favour and a permanent injunction to restrain the Appellants and their servants or agents from disturbing the Respondents, their *ande* cultivators and/or servants or agents from working on the paddy field which formed part of the said land. It is significant that the petition filed by the Respondents in the District Court did not contain a prayer for the ejectment of the Appellants or for damages.

In the joint answer filed in the District Court by the Appellants, it was expressly denied that they disturbed or obstructed the Respondents in the enjoyment of their land or cultivation carried out thereon. From the said answer it appears that while the 2nd Defendant-Appellant-Appellant did not make any claim to the land in question as owner, the 1st Defendant-Appellant-Appellant (hereinafter also referred to as the "1st Appellant") laid claim to a land named "Nilaththu Patti Wayal" in extent 3 acres 2 roods and 26 perches, which was alleged to have been possessed without interruption by the predecessors-in-title to the said Appellant for a period exceeding fifty years. It is also stated therein that although the said property was gifted by the said Appellant to his wife Noor Nisa, he had continued to be in uninterrupted possession thereof. In their joint answer, the Appellants prayed that the action be dismissed, and a sum of Rs. 22,000/- be awarded as damages for the loss of 200 bushels of paddy, but they have not prayed for a declaration of title to the land claimed by them, or that they be placed in possession thereof.

Although, as already noted, neither the Respondents nor the Appellants had sought any order of ejectment in their respective petition and answer, in paragraph 5 of the replication filed by the Respondents, it was averred as follows:

- 5 . වත්තිකරුවන් විසින් පැමිණිලිකරුවන්ට අයිති කුඹුරු ප්‍රමාණය වැරදි සහගතව සහ නීති විරෝධීව භුක්ති විඳිමින් සිටින හෙයින්, පැමිණිලිකරුවන්ට 1989/90 මහ කන්නය සඳහා රු. 33,000/- ක අලාභයක් සිදුවී ඇති අතර, එකී මුදල සහ පැමිණිලිකරුවන්ට පැමිණිල්ලේ උපලේඛනයේ සඳහන් කුඹුරු ප්‍රමාණය සාමකාමී භුක්තිය දෙනතුරු සෑම කන්නයකට පවතින අලාභය වශයෙන් රු. 33,000/-ක් වත්තිකරුවන්ගෙන් අයකර ගැනීමට පැමිණිලිකරුවන්ට නඩු නිමිත්තක් උපයවී ඇත.

On the basis of the above averment, the Respondents have in payers (1) and (2) of the replication prayed for damages in a sum of Rs. 33,000/- for every cultivation season (කන්නය), until the quiet and peaceful possession of the land described in the schedule to the petition is restored to the Respondents. I quote below the relevant prayers (1) and (2) of the replication:

- (1) පැමිණිල්ලේ දුල්ලා ඇති සහනයක් සහ මෙම ප්‍රති උත්තරයේ දුල්ලා ඇති පරිදි 1989/90 මාස කන්නය සඳහා රු. 33,000/- ක අලාභයක් වත්තිකරුවන් විසින් සාමූහිකව සහ වෙන්, වෙන්ව පැමිණිලිකරුවන්ට ගෙවන මෙන් නඩු නීත්‍යානුකූලව ලබාදෙන ලෙසද,