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*. At the trial, no issue was formulated which could justify an order for ejectment, but the learned District Judge by his judgement dated 5th October 1994 ordered ejectment without any express declaration of title in favour of the Respondents. After the Appellants lodged their appeal to the Court of Appeal, the District Court proceeded to issue writ pending appeal for the ejectment of the Appellants from the land described in the schedule to the petition, which order and the subsequent orders reissuing writ of possession made by the District Court, have been stayed by the Court of Appeal from time to time in connected revisionary and appellate proceedings.

The affinity between the action for declaration of title and an action *rei vindicatio* has been considered in several landmark decisions in Sri Lanka and South Africa, which seem to suggest that they are both essentially actions for the assertion of ownership, and that the differences that have been noted in decisions such as *Le Mesurier v. Attorney General* (1901) 5 NLR 65 are differences without any real distinction. In the aforementioned case, Lawrie, J., at page 74 compared an action for the recovery of land in the possession of the Crown to the English prerogative remedy of petition of rights, and observed that-

> I call the action one for declaration of title which, I take it, is not the same as an action *rei vindicatio*.

Similarly, in *Pathirana v. Jayasundara* (1955) 58 NLR 169 where a plaintiff sued an over-holding lessee by attornment for ejectment, and upon the defendant pleading that the land was sold to him by its real owner who was not one of the lessors, the plaintiff moved to amend the plaint to add a prayer for declaration of title, in refusing such relief in circumstances where this could prejudice the claim of the defendant to prescriptive title, Gratiaen, J., observed at page 173 that-

> A decree for a declaration of title may, of course, be obtained by way of additional relief either in a *rei vindicatio* action proper (which is in truth an action *in rem*) or in a lessor's action against the over-holding tenant (which is an action *in personam*). But, in the former case, the declaration is based on proof of ownership; in the latter, on proof of contractual relationship which forbids a denial that the lessor is the true owner.

The above quoted *dictum* does not, of course, mean that a lessor or landlord is confined to the contractual remedy against an over-holding lessee or tenant or that he cannot sue *in rem* to vindicate his title and recover possession. All it means is that if he chooses the latter remedy, he cannot succeed just because the over-holding lessee or tenant fails to prove his right to possess, or simply rely on the rule of estoppel that a tenant cannot contest the title of his landlord, and must be able to establish his title against the whole world.

Clearly, the action for declaration of title is the modern manifestation of the ancient vindicatory action (*vindicatio rei*), which had its origins in Roman Law. The *actio rei vindicatio* is essentially an action *in rem* for the recovery of property, as opposed to a mere action *in personam*, founded on a contract or other obligation and directed against the defendant or defendants personally, wherein it is sought to enforce a mere personal right (*in personam*). The *vindicatio* form of action had its origin in the *legis actio* procedure which symbolized the claiming of a corporeal thing *(res)* as property