

the Anuradhapura District, by virtue of Deed bearing No. 6165 (P1), the 1st Appellant asserted prescriptive title to a land described as “Nilattu Patti Wayal” falling within LD 2 Ela in the village of Pandiyankulama in Nachchadoova Tulana of Ulagalla Korale in Hurulu Palata in extent 3 acres 2 roods and 26 perches.

In the schedule to the petition filed by the Respondents, which closely followed the schedules to the deeds marked P1 to P6, there was no reference to any survey plan and the four acre land claimed by the Respondents was described in the following manner:-

All that field called Palugaha Kumbura situated in the Pahala Bagaya of the Mahawela at Nachchaduwa Pandiankulama in Nachcha Tulana of Ulagalla Korale in Hurulu Palata in the District of Anuradhapura of the North Central Province, bounded on the North by the field of Nawuran Lebbe Mohiyadeen Pitcha and Others, East presently by Welle and the property of Yusoof Lebbe one of the vendors hereof, South by the property of Ali Tamby Lebbe Sharibu and the Others and West presently by the property of Sultan Unus containing in extent Four Acres (4A-0R-0P) more or less together with the paddy crops that are growing now on the land.

In the schedule to the answer filed by the Appellants, which too made no reference to any survey plan, the land claimed by the 1st Appellant was described as follows:-

The land known as Nilattu Patti Wayal, in extent 3 acres, 2 roods and 26 perches (A3-R2-P26) situated within the LD 2 Ela of the village of Pandiyankulama in Nachchadoowa Tulana of Ulagalla Korale in Hurulu Palata in the District of Anuradhapura of the North Central Province, bounded on the North by the paddy fields belonging to Y. M. Ismail and M. P. Kairun Nisa, on the East by the LD 2 Ela on the South by the paddy field of D. C. M. Wijesinghe and on the West the paddy field of U. Cader Beebee and T. C. M. Munesinghe, together with all things from therein.

It was perhaps in view of the differences in extent and description of the lands claimed by the contending parties, and the circumstance that neither the schedule to the petition nor the schedule to the answer described the land in suit by reference to a survey plan, that the District Court issued a commission on D. M. G. Dissanayake, Licensed Surveyor, to survey the land referred to in the schedule to the petition filed by the Respondents as well as the land described in the schedule to the answer filed by the Appellants, and report whether they were the same. Plan bearing No. 1176 dated 10th October 1990 and the accompanying report prepared by Surveyor Dissanayake after the survey of a land pointed out by the contending parties as the land in dispute, showed that the land which the parties were contending for was only 2 acres, 3 roods and 07.5 perches in extent and was situated in the village of Madawalagama (Final Village Plan 520) within the Nachchadoova GS Division in Kandu Tulana of Kanadara Korale in Nuwaragam Palata, in the Anuradhapura District, which according to the Surveyor Dissanayake, was an altogether different locality from the area where the land described in the respective schedules to the petition and the answer was situated.

It was in these circumstances, that the District Court issued a further Commission on K. V. Somapala, Licensed Surveyor, to survey the land claimed by the two contending parties to the case. Surveyor Somapala prepared Plan No. 2025 dated 16.04.1991, which revealed that the land surveyed by him, the boundaries of which had also been pointed out by the contending parties, was in extent 2 acres 3 roods and 31 perches