

hand only. Deeds in the sense in which the word is used in English Law do not exist in Ceylon, and the English Rule cited applies in England to deeds only.

Mr. Dayaratne also stressed that in *Pathumma v. Rahimath Bertram*, C.J., at page 160 referred to the decision in *Meera Saibo's* case and observed that “that was decided more than 20 years ago, and, I think, it must be taken to be now settled law”, a view that has been endorsed by Justice Dr. C.G. Weeramanty, in his *Law of Contracts*, Vol. I page 184.

Mr. Musthapha who appears for the Appellants, has submitted that logic and policy demanded a more cautious approach, and contended that a power of attorney by virtue of which a person such as Noor Lebbai claims that he had the power to execute any writing, deed, or instrument for effecting the sale or transfer of any land or other immovable property such as Deed No. 6165 dated 9th February 1987 (P1), should be executed in the same manner in which such writing, deed or instrument is required to be executed. He also drew attention to the decision of the Supreme Court in the case of *Dias v. Fernando* (1888) 8 SCC 182 which supported his submission, and I quote below a passage from the judgement of Burnside, C.J., in this case which I consider very pertinent:-

Now it is manifest that the object of the (Prevention of Frauds) Ordinance was to secure the most solemn proof of the contract, and not to let it depend upon the very fallible proof which parol evidence would, more especially in this country, afford. It would be, in the language of Lord Eldon, the most mischievous evasion of the Ordinance, if, whilst the instrument of lease itself must be of the solemn character prescribed, yet the authority to execute it and thus bind a party to it might depend upon the weakest and most unsatisfactory of all proof. The English statute requires a mere writing: our Ordinance requires a most solemn writing, which has all of, and more than, the solemnity of the execution of a deed by English Law, and in this material particular the two enactments differ, and open the way to a decision based on the well recognized principle of English Law, that the authority to execute a deed must be by deed.

Of course, the opinion of Burnside, C.J., was not followed by the Supreme Court in *Meera Saibo's* case and the subsequent decisions, but the Chief Justice's hindsight in decrying the possibility of authorizing execution of a deed by a non-notarial conferment of power as “the most mischievous evasion” of the Prevention of Frauds Ordinance, can be more readily appreciated in the context of changing circumstances and developments of the law in Sri Lanka and abroad. In particular, it is necessary to consider the rapid increase in land related frauds in Sri Lanka, which have generally contributed to a sense of lawlessness and social instability leading to murder and other serious crimes.

It is necessary to stress that Withers, J., in his judgement in *Meera Saibo*, quoted the above *dictum* of Burnside, C.J., with some concern, but was persuaded to follow the reasoning of Mr. Berwick, the much celebrated and long standing District Judge of Colombo, set out in his judgement in *Nama Sivaya v. Cowasjee Eduljee* (DC Colombo Case No. 61, 545 decided on 21st January 1873), which he chose to add as an attachment to his judgement in its entirety and has been reproduced in 4 NLR pages 232 to 235.