IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended by Act No. 54 of 2006.

SC Appeal No: 67/2019
CA No. 891/97(F)
DC Maho Case No: 3314/L

1. Ranabahu Mudiyanselage Dingiri Banda
2. Herath Mudiyanselage Ukku Amma

Metiyanagama, Karambe, Maho

PLAINTIFFS

- Vs -

Ranabahu Mudiyanselage Sirimalhamy,
Metiyanagama, Karambe, Maho.

DEFENDANT

And between

Ranabahu Mudiyanselage Sirimalhamy,
Metiyanagama, Karambe, Maho.

DEFENDANT – APPELLANT

Ranabahu Mudiyanselage Ranjith Jayatissa,
Metiyanagama, Karambe, Maho.

SUBSTITUTED DEFENDANT – APPELLANT

- Vs -

1. Ranabahu Mudiyanselage Dingiri Banda

2. Herath Mudiyanselage Ukku Amma

PLAINTIFFS – RESPONDENTS

Ranabahu Mudiyanselage Senarath Bandara Ranabahu,
Metiyanagama, Karambe, Maho.

SUBSTITUTED PLAINTIFF – RESPONDENT

And now between

Ranabahu Mudiyanselage Senarath Bandara Ranabahu,
Metiyanagama, Karambe, Maho

SUBSTITUTED PLAINTIFF – RESPONDENT – APPELLANT

- Vs -

Ranabahu Mudiyanselage Ranjith Jayatissa,
Metiyanagama, Karambe, Maho

SUBSTITUTED DEFENDANT – APPELLANT – RESPONDENT

Before: **S. Thurairaja, PC, J**
Arjuna Obeyesekere, J
K. Priyantha Fernando, J

Counsel: Shiraz Hassan for the Substituted Plaintiff – Respondent – Appellant

S. K. Dahanayake for the Substituted Defendant – Appellant – Respondent

Argued on: 20th October 2023

Written Submissions: Tendered on behalf of the Substituted Plaintiff – Respondent – Appellant on 12th June 2015

Tendered on behalf of the Substituted Defendant – Appellant – Respondent on 18th November 2019

Decided on: 23rd October 2025

Obeyesekere, J

1) This is an appeal against the judgment of the Court of Appeal delivered on 29th June 2018. Leave to appeal was granted on 18th March 2019 on three questions of law which are set out in paragraph 20 of this judgment.

The position of the parties

2) The Plaintiffs – Respondents – Appellants [the Plaintiffs] filed action in the District Court of Maho on 3rd November 1990. In their plaint, they stated as follows:

   (a) The 1st Plaintiff was issued Permit No. 48445 dated 7th August 1963 under the provisions of the Land Development Ordinance in respect of a paddy land in extent of 2A morefully referred to in Schedule 'A' to the plaint;

   (b) The 2nd Plaintiff was issued Permit No. 63161 dated 25th June 1970 under the provisions of the Land Development Ordinance in respect of a land in extent of 3A 2R 5P morefully referred to in Schedule 'B' to the plaint;

   (c) The said lands were situated adjoining each other and the Plaintiffs have been in continuous possession of the lands referred to in the said permits for a period of over 25 years;

   (d) In November 1989, the Defendant – Appellant – Respondent [the Defendant] had forcibly entered the southern portion of their land and commenced cultivating the said extent of land;

   (e) Pursuant to a complaint made by the Plaintiffs, the Defendant had been directed by the Divisional Secretary to vacate the land encroached by him;

   (f) The Defendant had once again forcibly entered the said land in September 1990 and cultivated the said land;

   (g) Notwithstanding a directive by the Land Commissioner to vacate the said land, the Defendant is attempting to forcibly enter the land and cultivate the said land.

3) The Plaintiffs had accordingly sought the following relief:

ඇ. ඉහත සඳහන් ඉඩම් මෙම නඩුවේ **පැමිණිලිකරුවන්ට අයිති බවට** තීන්දු, ප්‍රකාශයක්

ආ. පැමිණිලිකරුවන්ට අයිති මෙහි පහත උපලේඛණයේ විස්තර කෙරෙන ඉඩම් විත්තිකරු සහ ඔහු යටතේ සිටින සේවකයින්, නියෝජිතයින් බලහත්කාරයෙන් සහ නීති විරෝදි ලෙස ඇතුල් වීම වලක්වාලීමට ඔවුන්ට විරුද්ධව අතුරු තහනම් නියෝගයක් සහ වාරණ නියෝගයක්

ඇ. විත්තිකරුට මෙම ඉඩමට ඇතුල්වීමට කිසිම අයිතිවාසිකමක් නොමැති බවට තීන්දු, ප්‍රකාශයක්

4) The Defendant denied that he has forcibly entered the land of the Plaintiffs and stated that he has been in occupation of the land that he is alleged to have encroached for over 25 years. He stated further that he has been issued a permit in 1980 in respect of the said land, in extent of 2A, morefully set out in the Schedule to the answer. This permit was an annual permit in that it was valid only for a period of one year, and had not been extended.

5) Pursuant to the filing of action, the Plaintiffs claimed that the Defendant had forcibly entered the said land and was in permanent occupation of the said land. The Plaintiffs thereafter filed an amended plaint on 5th July 1993 to reflect the above position and prayer (අ) of the plaint was amended to read as follows – "ඉහත සඳහන් ඉඩම් මෙම නඩුවේ **පැමිණිලිකරුවන්ට අයිති බවට** සහ **මෙම ඉඩම් බුක්ති විඳීමේ අයිතිවාසිකමක්** ඇති බවට තීන්දු, ප්‍රකාශයක්"

Issues and the trial before the District Court

6) The case proceeded to trial on the amended plaint with the Plaintiffs raising *inter alia* the following issues, numbered as 1, 2, 3 and 16, respectively:

(1) 1993.07.05 වෙනි දින සංශෝධිත පැමිණිල්ල අනුව 'ඒ' උපලේඛනයේ විස්තර කර තිබෙන බක්මිගහමුල්ල හේන නමැති ඉඩම, ඉඩම් සශ්‍රීක කිරීමේ ආඥා පනත යටතේ බලපත්‍රයක් මත 1 වෙනි පැමිණිලිකරුට ලැබී ඇද්ද?

(2) සංශෝධිත පැමිණිල්ලේ "බී" උපලේඛනයේ සඳහන් කර තිබෙන ඉඩම පැමිණිලිකරුගේ භාර්යාව වන 2 වෙනි පැමිණිලිකාරියට ලැබී තිබේද?

(3) විත්තිකරුවන් 1989 නොවැම්බර් මාසයේ සිට මෙම ඉඩම් දෙක බලහත්කාරයෙන් සහ නීතිවිරෝධී ලෙස බුක්ති විඳිද?

එසේ නම් පැමිණිලිකරුට **පැමිණිල්ලේ ආයාචනය අනුව** නඩු තීන්දුවක් ලැබේද?

(16) විත්තිකරුවන් එම කැබලි වලින් ඉවත් කිරීමට සහනයක් ලැබිය යුතද?

7) Thus, even though in the prayer to the plaint, the Plaintiffs had only sought to be declared as the owner of the lands referred to in the permits, and did not seek an order to eject the Defendant, prayer (e) had been amended in the aforementioned manner seeking a declaration that the Plaintiffs are entitled to the possession of the said lands. The first two issues raised by the Plaintiffs drew a nexus to the permits issued to them, and with Issue No. 16, made it clear that the ejectment of the Defendant was being sought in accordance with the rights conferred on the Plaintiffs by the said permits. The flaw in the prayer to the plaint had been rectified by raising issues having a nexus to the rights of the Plaintiffs under the permits and their consequential right to the ejectment of the Defendant. As pointed out by G.P.S. De Silva, J [as he then was] in **Hanaffi v. Nallamma** [(1998) 1 Sri LR 73], "*Once issues are framed the case which the court has to hear and determine becomes crystallized in the issues and the pleadings recede to the background.*"

8) The 1st Plaintiff, the Surveyor who prepared Commission Plan No. 4393, an officer from the Land Commissioner's Department and two Grama Niladhari Officers gave evidence on behalf of the Plaintiffs. The Defendant gave evidence on his behalf and led the evidence of two persons who had worked for the Defendant on the land that the Defendant is said to have encroached. The Defendant too had obtained a commission to survey the land and even though Plan No. 732/92 prepared pursuant to the commission and the Report of the Surveyor had been marked, the Defendant did not lead the evidence of the Surveyor.

9) Commission Plan No. 4393 contained 14 lots, with the Defendant admitting in his evidence that he is in occupation of Lot Nos. 13 and 14 thereof, in extent of 1A 3R 35P, which lots formed part of the land referred to in the permits issued to the Plaintiffs. It is noted that even though the land situated to the east of Lot No. 13 is State land and has been cultivated by the Defendant, he did not present any permit in respect of the land situated to the east of Lot No. 13 or any other permit other than the aforementioned annual permit issued in 1980, thus raising a doubt whether the land referred to in the said permit issued to the Defendant is in fact the land situated to the east of Lot No. 13.

10) Be that as it may, the Commission Plan prepared by the Defendant contained five lots, with the Defendant admitting in his evidence that (a) he is in occupation of Lot Nos. 4 and 5 of the said Plan, in extent of 2A 0R 32.5P, and (b) Lot Nos. 13 and 14 are identical to Lot Nos. 4 and 5, even though there was a slight difference between the two plans with regard to the extent of land.

11) The Surveyor who prepared Plan No. 4393 had superimposed Lot No. A1 of FVP No. 2383, which is the land described in Schedule 'A' to the plaint, on Plan No. 4393. It is clear from the said superimposition that a part of Lot No. 13 forms part of Lot No. A1 of FVP No. 2383. Based on this, the District Court had concluded that the land occupied by the Defendant is part of the land that has been given by way of a permit to the 1st Plaintiff. The District Court had reached a similar conclusion in respect of the land that was the subject matter of the permit granted to the 2nd Plaintiff, even though the land referred to in the permit issued to the 2nd Plaintiff had not been superimposed on Plan No. 4393.

Judgment of the District Court

12) By its judgment delivered on 10th November 1997, the District Court held as follows:

> "පැමිණිල්ලේ 'බී' උපලේඛණයේ සඳහන් ඉඩම් කැබැල්ල 'පැ. 6' දරණ බලපත්‍රය අනුව දෙවෙනි පැමිණිලිකාර එච්.එම්. උක්කු අම්මාට රජයෙන් ලැබුණු ඉඩම බව අධිෂ්ඨාපනය කරන ලද පිඹුරු හා අවසාන ගම් සිතියමෙන් තහවුරුවේ.
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> දැන් මා ඉදිරියේ සළකා බැළීමට ඇත්තේ ආරාවුලට අදාල ඉඩම් කැබැල්ල රජය විසින් ප්‍රධානය කර ඇත්තේ කුමන පාර්ශවකරුටද යන්නයි.
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> පැමිණිලිකරු විසින් 'පැ 5' යනුවෙන් ලකුණු කර ඉදිරිපත් කර ඇති අංක: 48445 යන ඉඩම් සශ්‍රික කිරීම පිළිබඳ ආඥා පණත යටතේ ඇති අවසර පත්‍රය ප්‍රධානය කර ඇත්තේ 1963 අගෝස්තු මස 07 වෙනි දින දිය. එසේම 2 වෙනි පැමිණිලිකාර එච්.එම්. උක්කු අම්මාට රජය විසින් ප්‍රධානය කර ඇති අංක: 63161 දරන බලපත්‍රය ප්‍රකාර ඇයට එම ඉඩම ලැබී ඇත්තේ 1970 ජුනි මස 25 වෙනි දින දිය.
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> එසේම විත්තිකරු විසින් 'වී. 1' ලෙස ලකුණු කර ඉදිරිපත් කරන ලද "ඉඩමක පදිංචි වීමේ වාර්ෂික අවසර පත්‍රය" ඔහුට 1980 නිකුත් කර ඇති බව කියා සිටින ලදි. විත්තිකරු සිය මුලික සාක්ෂියෙන් කියා සිට පරිදි ආරාවුලට අදාල ඉඩම අංක: මහ/නි/1197 දරණ බලපත්‍රයේ මායිම් තුල පිහිටි ඉඩම 'පැ1' සහ 'වී1' දරණ පිඹුරෙහි නිරූපිත පිළිවෙලින් ලොට අංක: 13 සහ 14 සහ 3 සහ 4 බව පිළිගෙන ඇත. ඔහුගේ සාක්ෂිය පිළිගන්නේ නම් ඔහුට රජය විසින් ප්‍රධානය කර ඇති අංක: මහ/නි/1197 දරණ බලපත්‍රය ප්‍රධානය කර ඇත්තේ 1980 වර්ෂයේදිය.

රජයේ බලපත්‍ර ප්‍රධානයේදී ද අනෙකුත් ඔප්පු වලට මෙන් ප්‍රමුඛත්වය බල පානු ඇත. එනම් 1 වෙනි සහ 2 වෙනි පැමිණිලිකරුවන්ට මෙම ඉඩම් ප්‍රධානය කර ඇත්තේ පිළිවෙලින් 1963 වර්ෂයේදී සහ 1970 වර්ෂයේදී වන අතර විත්තිකරු විසින් ඉදිරිපත් කර ඇති බලපත්‍රය අනුව ඔහුට ප්‍රධානය කර ඇත්තේ 1980 වර්ෂයේදීය. රජය විසින් 1963 සහ 1970 දී බලපත්‍රයක් මෙම ඉඩම් කැබැල්ල වෙනුවෙන් ප්‍රධානය කර තිබියදී විත්තිකරු 1980 වර්ෂයේදී ඉහතකී බලපත්‍ර අවලංගු නොකර වෙනත් අයෙකුට නැවත බලපත්‍රයක් ප්‍රධානය කිරීමට අයිතියක් නැත."

13) Thus, the District Court had taken the view that permits had been issued to the Plaintiffs as well as the Defendant in respect of the same land and that since the Plaintiffs have priority, the Plaintiffs are entitled to succeed. It must perhaps be reiterated that in any event, the annual permit issued to the Defendant had not been extended beyond the one year period. The District Court had accordingly answered the issues raised by the Plaintiffs in the affirmative.

Judgment of the Court of Appeal

14) Aggrieved, the Defendant invoked the appellate jurisdiction of the Court of Appeal. Having carefully examined the facts, the Court of Appeal stated as follows in its judgment:

> "*The learned District Judge concluded that the land claimed by the Plaintiffs and the Defendant were identical. He further held that the Plaintiffs were entitled to the relief claimed, including restoration to possession, as the permits issued to them were prior in time to the permit issued to the Defendant and as such the permit issued to the Defendant was not valid. Hence, this appeal by the Defendant.*
>
> *There is no dispute that the two permits issued to the Plaintiffs were issued in 1963 and 1970 whereas the defendant was issued a permit in 1980. This was done without lawfully cancelling the two permits issued to the Plaintiffs. In Wimala Herath (deceased) Sarathchandra Rajapaksha and others v Kamalawathie and another [(2013) 2 Sri LR 60] there were two permits issued under the Ordinance in relation to the same State land and the Supreme Court held that it is only after cancellation of the first permit on lawful grounds that the land could be divided and separate permits be issued for the divided portions.* ***Accordingly, the finding of the learned District Judge that the permit issued to the Defendant is invalid must be upheld****."* [emphasis added]

15) The District Court, whilst answering the issues raised by the Plaintiffs in the affirmative held that, "**විසඳිය යුතු ප්‍රශ්න වලට ලැබෙන පිලිතුරු මත මෙම නඩුව පැමිනිල්ලේ වාසියට තීන්දු කරමි**". As I have already stated, prayer (අ) of the amended plaint sought a declaration that the Plaintiffs are the owners of the State lands referred to in the permits issued to them and a further declaration that they are entitled to the possession of the said lands (**මෙම ඉඩම් බුක්ති විඳීමේ අයිතිවාසිකමක් ඇති බවට තීන්දු ප්‍රකාශයක්**). Due to Issue No. 3 being answered in the affirmative, on the face of it, the District Court had declared the Plaintiffs as the owners of the said lands referred to in the said permits and further declared that the Plaintiffs are entitled to the possession of the said lands. The issue in this case arises from the granting of the declaration that the Plaintiffs are the owners of the State lands referred to in the said permits.

16) Concerned whether the Plaintiffs are entitled for a declaration that they are the owners of the land since the Plaintiffs had only been issued a permit under the Land Development Ordinance, the Court of Appeal proceeded to state as follows:

> "*Whether the Plaintiffs are entitled to a declaration that they are the owners of the land possessed by them by virtue of permits issued under the Ordinance is a different question altogether, the answer to which must be found independent of the validity of the permit issued to the Defendant.*"

17) Having thereafter considered the law relating to the concept of ownership, the judgment of this Court in **Palisena v Perera** [56 NLR 407], the legal requisites to obtain a declaration of ownership and the entitlement of a permit holder for a declaration that he or she is the owner of the corpus, the Court of Appeal expressed the following view, with which I am in agreement:

> "*The Plaintiffs have not been granted any right of alienation to either of the two lots of state land. The right to possession and use and enjoyment are also subject to certain limitations. In the aforesaid circumstances,* ***I have no hesitation in concluding that the Plaintiffs are not entitled to a declaration that they are the owners of the state lands the possession of which have been given to them on permits issued under the Ordinance***." [emphasis added]

18) The Court of Appeal thereafter considered whether the Plaintiffs are entitled to an order evicting the Defendant from the State land which was the subject matter of the action, which relief "*although not claimed in the plaint was framed as Issue No. 16 and accepted by Court*". Having done so, the Court of Appeal held that:

> "*it is not possible to grant that relief to the Plaintiffs. The relief of ejectment is based on the declaration of ownership sought by the Plaintiffs which as explained earlier cannot be granted. …*
>
> *The Plaintiffs sought an order of ejectment on the basis of the declaration of ownership they sought to the State land. For the reasons adverted to earlier, they are not entitled to such a declaration. Hence, the Court cannot grant an order of ejectment as it is a consequential relief to the declaration of ownership.*"

19) On the above reasoning, the Court of Appeal set aside the judgment of the District Court and dismissed the action of the Plaintiffs and the cross claim of the Defendant.

Questions of law

20) Aggrieved, the Plaintiffs sought and obtained special leave to appeal from this Court on 18th March 2019 on the following questions of law:

(a) Did the Court of Appeal err in law when it failed to consider that the Court of Appeal can correct or modify the judgment of the District Court in terms of Section 773 of the Civil Procedure Code in order to resolve the actual dispute between the parties?

(b) Did the Court of Appeal err in law when it failed to consider that this action is a dispute between permits as admitted by the parties?

(c) Did the Court of Appeal err in law when it failed to consider the actual and real dispute between the parties and dismissed the action of the Appellant on the basis that the prayer to the plaint contained the words, "පැමිණිලිකරුවන්ට අයිති බවට තිබ්දු, ප්‍රකාශයක්"?

21) I am of the view that the only question that needs to be considered in order to determine this appeal is whether the Plaintiffs were entitled to the possession of the lands referred to in the said permits by virtue of the said permits and if so, whether the Plaintiffs are entitled to a consequential order to eject the Defendant from the said lands.

Rights under a permit

22) In **Palisena v Perera** [supra], the plaintiff in whose favour a permit had been issued under the provisions of the Land Development Ordinance sought to eject the defendant who was trespassing on his land. The trial Court held that the plaintiff was only a licensee and not entitled to ask for a possessory decree or to ask that a third party in possession be ejected from the land. Having characterized the action as "*a vindicatory action in which a person claims to be entitled to exclusive enjoyment of the land in dispute, and asks that, **on proof of that title**, he be placed in possession against an alleged trespasser*", Gratiaen, J held that, "*it is very clear from the language of the Ordinance and of the particular permit P1 issued to the plaintiff that a permit-holder who has complied with the conditions of his permit **enjoys**, during the period for which the permit is valid, **a sufficient title which he can vindicate against a trespasser in civil proceedings***." [at page 408; emphasis added].

23) Referring to the above passage, the Court of Appeal has correctly stated that, "*the ratio decidendi in Palisena v. Perera (56 NLR 407) does not enable the plaintiff in this case to maintain an action for declaration of ownership to the land given to him under a permit issued in terms of the Ordinance.*" The Court of Appeal thereafter referred to **Attanayake v Aladin** [(1997) 3 Sri LR 386], where having considered the decision in Palisena v Perera, it had been stated that, "*Clearly therefore what was decided by Gratiaen, J. was that in a vindicatory action the relief of ejectment would only be consequent to a declaration or vindication of the right to possess*."

24) While it is true that the Plaintiffs initially sought a declaration that they are the owners of the land, through their amended plaint the Plaintiffs sought a declaration that they are entitled to the possession of the said lands as well, and thereafter raised Issue Nos. 1, 2, 3 and 16, correctly capturing the relief that they are legally entitled to, without any objection being raised by the Defendant to such issues. The District Court answered the said issues in the affirmative but given the manner in which it worded the last paragraph of the judgment (**විසඳිය යුතු ප්‍රශ්න වලට ලැබෙන පිලිතුරු මත මෙම නඩුව පැමිනිල්ලේ වාසියට තීන්දු කරමි**), I am of the view that the District Court erred by granting the entirety of the relief prayed for in paragraph (අ) of the prayer to the amended plaint, whereas the District Court should have qualified the above finding by limiting the rights of the Plaintiffs to the rights that they have derived by virtue of the permits. I must perhaps add that this error arose primarily owing to the defective pleadings of the Plaintiffs.

Arguments on behalf of the Substituted Plaintiff

25) The learned Counsel for the Substituted Plaintiff presented two arguments before us.

26) Whilst conceding that the Plaintiffs are not entitled to a declaration of title or ownership to the lands referred to in the permits, the first argument was that the Plaintiffs are entitled to a declaration recognising their rights conferred on them by the permits which would necessarily include possession of the land and which right, he submitted, would include an order for the ejectment of the Defendant from the said land.

27) He accordingly submitted that with Issue Nos. 1, 2 and 3 being answered in favour of the Plaintiffs, the District Court could have proceeded to grant him a declaration that the Plaintiffs are entitled to the possession of the said lands and in view of Issue No. 16, the District Court could have ordered the ejectment of the Defendant. I am in agreement with this submission of the learned Counsel for the Substituted Plaintiff.

28) In **Mohammath Ismail Maraikkar Avvakuddy v Atham Lebbe Seiynutheen** [SC Appeal No. 157/2014; SC minutes of 25th July 2025], the plaintiff claimed that he has title to the land upon a permit issued under the Land Development Ordinance and the defendant had forcibly occupied the said land. The defendant alleged that the permit of the plaintiff had been fraudulently prepared and that the plaintiff had fabricated documents by means of undue influence. The plaintiff raised his issues in line with the position he had taken up in his plaint. The trial Court upheld the position of the defendant and held that the title of the plaintiff is defective. The High Court set aside the judgment of the trial Court and held that the plaintiff has title to the land by virtue of the permit.

29) In appeal, the question was whether the High Court erred in proceeding on the basis that the **plaintiff had title to the land** ignoring the conclusions reached by the learned District Judge with regard to fraud and undue influence. Wengappuli, J having concluded that the allegations of fraud and undue influence have not been established, held that while a permit holder is not entitled to get a declaration of title to State land, the plaintiff is entitled to get an order of eviction against the defendant and to eject the defendant. Thus, a holder of a permit issued under the Land Development Ordinance is entitled to an order to eject a trespasser.

30) The second argument of the learned Counsel for the Substituted Plaintiff was that the Court of Appeal could have granted a lesser relief than what had been prayed for and that had that been done, an order for ejectment could have been made.

31) In **Attanayake v Ramyawathie** [(2003) 1 Sri LR 401; at page 409] Bandaranayake, J [as she then was] having considered if a co-owner of a land who sues a trespasser for a declaration of title and ejectment is entitled to maintain the action even if he instituted the action as the sole owner of the land and premises, held as follows:

> "*I am of the firm view that, if an appellant had asked for a greater relief than he is entitled to, the mere claim for a greater share in the land should not prevent him, having a judgment in his favour for a lesser share in the land. A claim for a greater relief than entitled to should not prevent an appellant from getting a lesser relief*."

32) In **Mapa Pathirennehelage Sediris Singho and another v Rajapaksha Pathirennehelage Renuka and others** [SC Appeal No. 199/2018; SC minutes of 20th March 2025], Abayakoon, J stated as follows:

> *"Having considered a plethora of judgments and legal principles in that regard Mahinda Samayawardhena, J. observed in the case of M. Sudath Harrison and others Vs. W. Piyaseeli Fernando and others [SC Appeal No. 57/2016, decided on 11th September 2023] that; "If the plaintiff in a Rei Vindicatio action seeks a declaration of title to the entire land, but at the end of the trial, if the court finds that the plaintiff is not entitled to the entire land but only to a portion of it, the Court need not dismiss the action in toto. It is a recognized principle that when a plaintiff has asked for a greater relief than he is actually entitled to, it should not prevent him from getting the lesser relief which he is entitled to. 'Non debet cui plus licet quod minus est non licere': the greater includes the less. This is a well-established principle in law and also in consonance with common sense."*

33) Thus, even if the Plaintiffs had not amended the prayer, I am of the view that the District Court was entitled to grant the Plaintiffs (a) a lesser relief as far as their rights to the land were concerned, in terms of paragraph (ඇ) of the prayer to the plaint, that being a declaration that they are entitled to possess the said lands in accordance with the terms and conditions of the permits issued to them, (b) an order that the Defendant has no right to enter the land, and (c) an order for the ejectment of the Defendant.

Conclusion

34) I am in agreement with the above view expressed by the Court of Appeal that the Plaintiffs are not entitled to a declaration that they are the owners of the lands referred to in the said permits since they do not possess all the attributes that must be satisfied in order to claim ownership rights. However, the Plaintiffs were entitled to the relief that I have referred to in the preceding paragraphs, and to that very limited extent, I am of the view that the Court of Appeal erred when it set aside the judgment of the District Court. I would accordingly set aside only that part of the judgment of the Court of Appeal together with those parts of the said judgment

that held that the Plaintiffs are not entitled to a consequential order to eject the Defendant and substitute it with the following:

"The Plaintiffs are not entitled in law to a declaration of title and/or to the ownership of the lands referred to in Permit Nos. 48445 and 63161. However, the Plaintiffs are entitled to possess the said lands by virtue of and in accordance with the terms and conditions of the said permits and to a consequential order to eject the Defendant from the said lands."

35) Subject to the above, the judgments of the District Court and the Court of Appeal are affirmed. I make no order for costs.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J

I agree.

JUDGE OF THE SUPREME COURT