

~~PC~~  
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*Judgment*  
**(35)**, 1965

No. **34** OF 1964

Supreme Court of Ceylon,  
No. 461 (Final) of 1960.

District Court of Colombo,  
Case No. 8434/L.

IN HER MAJESTY'S PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON

BETWEEN

Dr. M. G. PERERA of No. 72, New Buller's Road, Bambalapitiya,  
Colombo .. .. .

*Defendant-Appellant*  
*Appellant*

AND

Miss DARIA MEMALTA HENRY of No. 25/3, Lauries Road,  
Bambalapitiya, Colombo .. .. .

*Plaintiff-Respondent*  
*Respondent*

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R E C O R D  
OF  
P R O C E E D I N G S

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2-1-66  
3-1-66

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UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED  
 LEGAL STUDIES**  
 - 9 FEB 1966  
 25 BEDFORD SQUARE  
 LONDON, W.C.1.

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**PART I**

**No. 1**

**Journal Entries**

No. 1  
Journal Entries  
31.1.58 to  
30.5.63

**IN THE DISTRICT COURT OF COLOMBO**

No. 8434/L.

Class : 1.

Miss D. M. Henry.....*Plaintiff*

Amount : Rs. 500/-.

*vs.*

Nature : Right of Way. Dr. M. G. Perera.....*Defendant.*

Procedure : Regular.

10

**JOURNAL**

The 31st day of January 1958.

Mr. N. A. B. Stave files appointment and Plaint together with Documents marked ' A ' Sketch.

Tender Deficiency stamps Rs. 1·80 for sketch.

Sketch to be stamped in the first instance.

(Sgd.) A. L. S. SIRIMANE,  
*Addl. District Judge.*

Summons issued with Precept returnable on the day of 19

(2) 15.2.58.

20

Mr. N. A. B. Stave for plaintiff.

Proctor for plaintiff tenders stamp deficiency of Rs. 1·80 due on sketch.

(1) Accept plaint,

(2) Note and file,

(3) Issue summons for 14.5.58.

(Intld.) A. L. S. S.,  
*A.D.J.*

(3) 22.2.58.

Summons issued on defendant.

30

(Intld.).....

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
Continued

(4) 14.5.58.

Summons served on defendant. Proxy filed by Mr. A. C. Abeyratne.

Answer 16.7.58.

(Intld.) A. L. S. S.

(5) 16.7.58.

Answer due—filed.

Trial 22.1.59.

(Intld.) A. L. S. S.

(6) 7.1.59.

10

Proctor for plaintiff files list of witnesses and documents.

Copy sent by Registered Post to proctor for defendant.

File.

(Intld.) A. L. S. S.,  
A.D.J.

(7) 9.1.59.

Proctor for plaintiff files additional list of witnesses and documents and moves for summons.

Copy sent by Registered Post to proctor for defendant.

Allowed. Issue summons.

20

A.D.J.

(8) 12.1.59.

Proctor for plaintiff files additional list of witnesses and moves for summons.

Copy sent by Registered Post to proctor for defendant.

Allowed. Issue summons.

A.D.J.

(9) 15.1.59.

3 subpoenas issued by plaintiff.

(Intld.)..... 30

(10) 22.1.59.

Mr. N. A. B. Stave for plaintiff.  
 Mr. G. C. Abeyratne for defendant.  
*Vide* Journal Entry (5). Trial.  
*Vide* proceedings.  
 Call on 23/2 for terms of settlement.

No. 1  
 Journal Entries  
 31.1.58 to  
 30.5.63—  
*Continued*

(Intld.) A. L. S. S.

(11) 24.1.59.

Proctor for plaintiff files additional list of witnesses and moves  
 10 for summons.

Copy sent by Registered Post to proctor for defendant.  
 Allowed. Issue summons.

(Intld.) A. L. S. S.,  
*A.D.J.*

(12) 23.2.59.

Mr. N. A. B. Stave for plaintiff.  
 Mr. G. C. Abeyaratne for defendant.  
*Vide* Journal Entry (10) case called.  
 Terms of settlement not filed.  
 20 Trial 17.8.59.

(Intld.) A. L. S. S.,  
*A.D.J.*

(13) 6.8.59.

17.8.59 the trial date in this case falls during August vacation.  
 1. Call case on 7.8.59 to refix the date of trial.  
 2. Inform proctors.

(Intld.) A. L. S. S.,  
*A.D.J.*  
 6.8.59.

30 (14) 7.8.59.

Mr. N. A. B. Stave for plaintiff.  
 Mr. G. C. Abeyratne for defendant.  
*Vide* Journal Entry (13) case called to refix date of trial.  
 Trial 15.2.60.

(Intld.) A. L. S. S.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
*Continued*

(15) 20.1.60.

3 subpoenas issued by plaintiff.

(Intld.).....

(16) 10.2.60.

Mr. G. C. Abeyratne proctor for defendant moves to revoke the proxy granted to him by the defendant in this case.

Defendant should consent.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

12.2.60. 10

(17) 11.2.60.

Mr. N. A. B. Stave, proctor files plaintiff's additional list of witnesses and documents and moves for summons on them.

Copy sent to proctor for defendant under registered post.

Allowed. Issue summons.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

12.2.60.

(18) 11.2.60.

Mr. S. Ratnakaram, proctor files proxy as proctor for defendant together with the revocation of proxy granted to Messrs. Abeyratne & Abeyratne—proctors.

Revocation allowed, accept proxy.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

12.2.60

(19) 15.2.60.

Mr. N. A. B. Stave for plaintiff.

Mr. S. Ratnakaram for defendant.

*Vide* Journal Entry (14).

Trial.

*Vide* proceedings.

Notice to amend answer on 7.3.60.

(Sgd.) A. L. S. SIRIMANE,

15.2.60.

(20) 22.2.60.

Proctor for plaintiff moves to certify the payment of Rs. 210/- being costs of trial of 15.2.60.

Payment certified.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
*Continued*

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
23.2.60.

(21) 7.3.60.

Mr. N. A. B. Stave for plaintiff instructing Mr. Walpita.

10 Mr. S. Ratnakaram for defendant instructing Mr. Kottegoda.

*Vide* Journal Entry (19).

Amended answer due—filed with a motion setting out the amendments with notice to proctors for plaintiff.

Mr. Kottegoda addresses Court in support of proposed amendments.

Mr. Walpita consents.

The amendments are allowed.

Trial 8.9.60.

20 (Sgd.) A. L. S. SIRIMANE,  
7.3.60.

(22) 2.7.60.

Proctor for plaintiff tenders replication of plaintiff and moves that same be filed.

Proctor for defendant received notice.

File.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
5.7.60.

(23) 12.8.60.

30 Proctor for defendant files defendant's list of witnesses and documents and moves for summons.



No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
*Continued*

Proctor for plaintiff received notice.

- 1. File.
- 2. Cite.

(Intld.) .....

*A.D.J.*

16.8.60.

(24) 18.8.60.

Proctor for plaintiff moves to file plaintiffs additional list of witnesses and moves for summons.

Proctor for defendant received notice.

10

- 1. File.
- 2. Cite.

(Sgd.) .....

*A.D.J.*

23.8.60.

(25) 23.8.60.

Proctor for plaintiff moves to file plaintiff's additional list of witnesses and moves for summons.

Proctor for defendant received notice.

20

- 1. File.
- 2. Cite. Certified copies to be obtained beforehand.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

29.8.60.

(26) 30.8.60.

1 subpoena issued by plaintiff Panadura.

3 subpoenas issued by plaintiff.

(Intld.).....

(27) 31.8.60.

1 subpoena issued by defendant.

30

(Intld.).....

(28) 1.9.60.

3 subpoenas issued by defendant.

(Intld.).....

(29) 1.9.60.

Mr. T. Vanniasinkam for defendant files defendant's additional list of witnesses and moves for summons. Proctor for plaintiff takes notice.

- 1. File.
- 2. Cite.

No. 1  
 Journal Entries  
 31.1.58 to  
 30.5.63—  
*Continued*

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
 6.9.60.

10 (30) 6.9.60.

2 subpoenas issued by defendant.

(Intld.) .....

(31) 8.9.60.

Mr. N. A. B. Stave for plaintiff.  
 Mr. S. Ratnakaram for defendant.  
*Vide* Journal Entry (21).  
 Trial.  
*Vide* proceedings.  
 Judgment on 14.9.60.

20

A. L. S. SIRIMANE.  
 8.9.60.

(31a) Documents  
 P1-P6,  
 D1-D4 filed.

(Intld.) .....

(32) 14.9.60.

Mr. N. A. B. Stave for plaintiff.  
 Mr. S. Ratnakaram for defendant.  
*Vide* Journal Entry (31).

30

Judgment delivered in open Court.

(Sgd.) A. L. S. SIRIMANE,  
 14.9.60.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63---  
*Continued*

(33) 19.9.60.

Mr. T. Vanniasinkam, proctor files petition of appeal of defendant-appellant.

Petition of appeal accepted.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
19.9.60.

(34) 19.9.60.

Proctor for defendant-appellant moves to tender petition of appeal of defendant-appellant against the judgment of this Court<sup>10</sup> dated 14.9.60 with (a) Uncancelled stamps for Rs. 24/- being stamps due of Supreme Court Judgment, (b) Uncancelled stamps for Rs. 12/- being stamps due on the certificate in appeal, (c) application for typewritten copies with Kachcheri Receipt for Rs. 15/-.

He also moves for notice for service (1) on the plaintiff-respondent personally, (2) On the proctor for plaintiff-respondent, to show cause if any why the said defendant-appellant should not deposit in Court to the credit of this case, Rs. 150/- as security for any costs of appeal which may be incurred by the said plaintiff-respondent in the premises, on 23.9.60 at 10.45 o'clock in the forenoon or soon thereafter deposit<sup>20</sup> a sufficient sum of money to cover the expenses of serving notice of appeal on the proctor for plaintiff-respondent.

1. Keep stamps in safe.
2. Note and file application for typewritten copies.
3. Issue notice of security for 23.9.60.
4. Issue paying-in-voucher for Rs. 150/-.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
19.9.60.

(35) 19.9.60.

30

Notice of security issued to Fiscal Western Province.  
Plaintiff-respondent and proctor for plaintiff-respondent.

(Intld.) .....

(36) 23.9.60.

Mr. S. Ratnakaram for defendant-appellant.

Mr. N. A. B. Stave for plaintiff-respondent. Absent.

*Vide* (34).

Notice of tendering security served on proctor for plaintiff-respondent and on the plaintiff-respondent.

Security offered is accepted.

On bond being perfected issue notice of appeal for 21.10.60.

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.  
23.9.60.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
Continued

(37) 23.9.60.

Proctor for appellant tenders bond to prosecute appeal with  
10 Kachcheri Receipt Y/15 197993 for Rs. 150/- with notice of appeal to be issued on proctor for respondents.

Issue notice of appeal as already ordered by Court for 21.10.60.

(Intld.) .....  
Asst. Secretary.

(38) 23.9.60.

Notice of appeal on proctor for plaintiff-respondent issued to Fiscal Western Province.

(39) 29.9.60.

Proctor for plaintiff-respondent applies for typewritten copies  
20 and moves for paying-in-voucher for Rs.15/-.

1. File.
2. Issue paying-in-voucher for Rs. 15/-.

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

Paying-in-voucher entered.

30.9.60.

(40) 21.10.60.

Mr. S. Ratnakaram for defendant-appellant.

Mr. N. A. B. Stave for plaintiff-respondent.

30 *Vide* Journal Entry (36).

Notice of appeal served on proctor for plaintiff-respondent.

Forward record to Supreme Court.

(Sgd.) A. L. S. SIRIMANE,  
21.10.60.  
A.D.J.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
Continued

(41) 4.11.60.

*Vide* motion filed proctor for defendant moves that in the event of the plaintiff making an application for the removal of the pillars, to cause the plaintiff to notice the defendant, before any order is made.

No application for execution of decree has been made.

(Sgd.) A. L. S. SIRIMANE,  
4.11.60.

(42) 24th January, 1961.

Proctor for plaintiff files Kachcheri Receipt for Rs. 15/- being 10 fees for typewritten copies for the appeal briefs.

Note and file.

(Intld.).....  
A.D.J.  
24.1.61.

(43) 27th April, 1961.

*Vide* motion filed. Proctor for defendant tenders certified copies of the documents marked D1-D4 and moves to withdraw the original documents.

Application allowed.

(Intld.) ..... 20  
A.D.J.

Received documents

D1, D2, D3 and D4.

T. VANNIASINKAM,  
*Proctor for Defendant.*

9.2.61.

(44) 25.5.61/2.6.61.

Proctor for plaintiff tenders decree for signature and approval of Court.

Draft decree not in order. Submit fresh draft.

(Intld.) ..... 30  
A.D.J.  
13.6.61.

(45) 21/22/6.61.

Proctor for plaintiff tenders fresh draft decree for approval and signature of Court.

Decree entered of record.

(Intld.) .....  
A.D.J.  
23.6.61.

No. 1  
Journal Entries  
31.1.58 to  
30.5.63—  
Continued

(46) 22.7.61.

Record forwarded to the Supreme Court with cancelled stamps 10 for Rs. 24/- for Supreme Court Judgment.

(Sgd.) .....  
Asst. Secretary.  
22.7.61.

(47) 2/3.1.63.

The Registrar, Supreme Court returns record with Supreme Court Decree.

Appeal dismissed. Defendant-appellant ordered to pay plaintiff-respondent taxed costs of the appeal.

File.

20

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

(48) 28.5.63.

As the application for the appeal to the Privy Council has been allowed, Registrar, Supreme Court requests that the record be sent to him without delay.

Forward record to Supreme Court.

(Intld.) A. L. S.,  
A.D.J.  
28.5.63.

30 (49) 30.5.63.

Record forwarded to Registrar, Supreme Court.

(Sgd.) .....  
Asst. Secretary.



- (b) that the defendant be ordered to demolish and remove the said two pillars ;
- (c) for damages at Rs. 7·50 per month from date hereof till removal of the obstruction ;
- (d) for costs ; and
- (e) for such other and further relief as to this Court shall seem meet.

No. 2  
Plaint of the  
Plaintiff  
31.1.58—  
*Continued*

(Sgd.) N. STAVE,  
*Proctor for Plaintiff.*

10

*The Schedule above referred to :*

All that Lot N (being a divided portion of the land called Mestriyawatte) situated at Lauries Road, Bambalapitiya within the Municipality and District Court of Colombo, Western Province, bounded on the North by Lot M, East by Lot D, South by Lot O and on the West by the property of Sir Donatus Victoria containing in extent nineteen decimal nine perches (A0.R0.P19.9) according to Plan No. 2126 dated 25th February, 1954 made by W. A. L. de Silva, Licensed Surveyor.

(Sgd.) N. STAVE,  
*Proctor for Plaintiff.*

20

*Documents filed with the Plaintiff*

Appointment.

Copy of Plan No. 2126 of 25th February 1954 made by W. A. L. de Silva Licensed Surveyor.

(Sgd.) N. STAVE,  
*Proctor for Plaintiff.*

Settled by

Mr. A. L. J. CROOS RAJ CHANDRA,  
*Advocate.*





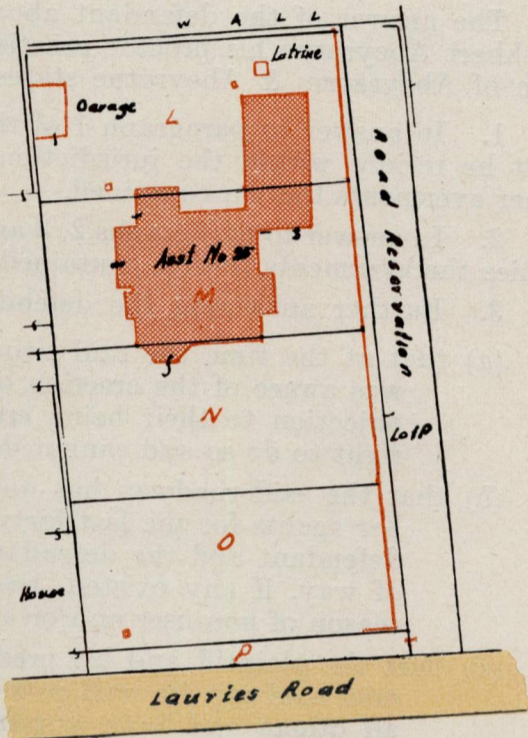
Plan No. 2126 (same as the Plan marked "A" annexed to the  
Plaint of the Plaintiff)

No 2126

P4  
Plan No. 2126  
(same as the  
Plan marked  
"A" annexed  
to the Plaintiff)  
25.2.54

Lot A of the same land  
Dr. M. J. A. Sundrasekera

The property of  
Sir J. D. Victoria



SCALE OF ONE CHAIN TO AN INCH

PLAN

Of five allotments of land called Mestriyawatta  
alias Kahatagahawatta

Situated at

Bambalapitiya within the Municipality of Colombo

bearing assessment No 25  
Colombo District  
WESTERN PROVINCE

Bounded as follows

- North by lot A of the same land of Dr. M. J. A. Sundrasekera
- East by a road reservation marked lot D of the same plan
- South by Lauries Road
- West by the property of Sir J. D. Victoria

	A	R	P
Lot L Containing in extent	0.	0.	19.9
" M	0	0.	19.9
" N	0.	0.	19.9
" O	0.	0.	19.9
" P	0.	0.	03.0
<b>Total</b>	<b>0</b>	<b>2</b>	<b>02.6</b>

Surveyed & }  
Partitioned } on the 25<sup>th</sup> day of February 1954

This is a subdivision of lots B & C in Plan No. 545  
of 29.3.24 made by H. Don David Surveyor

Sgd W. A. L de Silva  
Licd. Surveyor

*True Copy*  
*W. A. L de Silva*  
Licd. Surveyor & Leveller 10.7.53

No. 3  
 Answer of the  
 Defendant  
 16.7.58

No. 3  
 Answer of the I

IN THE DISTRICT COU

Miss Daria Mem  
 Road, Bamba

No. 8434/Land.

Dr. M. G. Perera  
 Colombo.....

On this 16th day of July, 1958.

The answer of the defendant above named by Cuthbert Abeyratne his proctor practising in the firm of Abeyratne & Abeyratne states as follows:

1. In answer to paragraph 1 of the plaint that he resides within the jurisdiction of the Court and denies the averments therein contained.

2. In answer to paragraphs 2, 3 and 4 of the plaint he denies the averments therein contained.

3. Further answering the defendant states:

(a) that at the time the said two roads were laid out he was aware of the erection of the said road and had no objection to their being erected and has no right to do so and cannot do so.

(b) that the said roadway has no user and he has no agents for the last forty years and the defendant and the defendant's agents of way, if any existed, have no right of way on reason of non-user and/or a long user.

(c) that the plaintiff and his predecessors have used the said roadway for well over fifty years and have acquired a right of way over the said road.

Wherefore the defendant prays :—

- (a) that the plaintiff's action be dismissed;
- (b) for costs of suit, and,
- (c) for such other and further relief as the Court shall seem meet.

(Sgd.) ABEY

**No. 4****Proceedings before the District Court**

8434/L.

22.1.59.

No. 4  
 Proceedings  
 before the  
 District Court  
 22.1.59

Advocate Walpita for plaintiff instructed by Mr. Stave.

Advocate N. Samarakoon for defendant instructed by Mr. Abeyratne.

Messrs. Walpita and Samarakoon state that this matter is being adjusted and move for a date to notify the settlement.

Of consent, call on 23.2.59 for terms.

10

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*

**No. 5****Proceedings before the District Court**

15.2.60.

D.C. Colombo 8434/L.

No. 5  
 Proceedings  
 before the  
 District Court  
 15.2.60

Mr. Advocate Walpita instructed by Mr. Stave for the plaintiff.  
 Mr. Advocate Kottegoda instructed by Mr. Ratnakaram for the defendant.

Mr. Kottegoda says he finds on going through the evidence that it is necessary to amend the answer in certain respects. He says **20** that he was only retained yesterday and therefore could not advise his client earlier. His client has revoked the earlier proxy given to the proctor who appeared for him first. He begs for an adjournment. He consents to prepay the costs of the other side before amending his answer. Mr. Walpita consents.

Let the defendant file a motion setting out the proposed amendments to the answer for consideration with notice to the other side on 7.3.60.

It is agreed that the defendant should pay a sum of Rs. 210/- to the plaintiff before 10 a.m. on 7.3.60. If this is not done the **30** application to amend the pleadings to be dismissed.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*  
 15.2.60.

No. 6  
Amended  
Answer of the  
Defendant  
3.3.60

**No. 6**

**Amended Answer of the Defendant**

**IN THE DISTRICT COURT OF COLOMBO**

Miss Daria Memalta Henry of 25/3, Lauries  
Road, Bambalapitiya, Colombo.....*Plaintiff*  
No. 8434/L. *vs.*  
Dr. M. G. Perera of No. 72, New Buller's Road,  
Colombo.....*Defendant.*

On this 3rd day of March, 1960.

The amended answer of the defendant abovenamed appearing 10  
by S. Ratnakaram and his assistant T. Vanniasinkam his proctor  
state as follows :—

1. In answer to paragraph 1 of the plaint the defendant admits  
that he resides within the jurisdiction of this Court but denies the  
other averments therein contained.

2. In answer to paragraphs 2, 3 and 4 of the plaint the defendant  
denies the averments therein contained.

3. Further answering the defendant states :—

- (a) That Plan No. 345 of 29th March 1924 made by H. D. David  
Licensed Surveyor shows 3 Lots A, B and C in extent 20  
1 Rood 21.75 Perches, 1 Rood 7.15 Perches and 35.43  
Perches respectively.
- (b) The said Lot A had road access shown as Lot D a reservation  
of 15.67 perches originally whilst Lot B and C had road  
access from Lauries Road for a long time.
- (c) A portion of Lot A in extent 24.25 perches was acquired by  
the Government for widening Buller's Road which is  
North of Lot A in the said Plan.
- (d) The aforesaid road reservation later came to be of an extent  
of about 13.24 perches as depicted in Plan No. 233 of the 30  
27th February 1954 made by E. S. Tudugalla Licensed  
Surveyor which was originally a muddy plot in scrub  
jungle with old coconut and other trees unfit for vehicular  
traffic.
- (e) The defendant built the said roadway at his expense and  
cut down trees, filled the mud-holes, built drains, put  
concrete posts with barbed wire, built the brick and lime  
plaster pillars expending about Rs. 7,500/- for making

the said roadway fit for motor vehicles to pass from his said land Lot A to Lauries Road.

No. 6  
Amended  
Answer of the  
Defendant  
3.3.60—  
*Continued*

- 10 (f) The aforesaid Lot B and C bearing assessment No. 25 was one premises with one house having access to Lauries Road South of Lot C and the owner or owners of the said Lots B and C did not use the roadway later shown in Plan 3131 of the 20th of August 1932 made by E. H. Anthonisz Licensed Surveyor and the owner or owners of Lots B and C have lost any right of use of this roadway by non-user and abandonment of same for well over the prescriptive period.
- 20 (g) The owner or owners of the aforesaid Lots B and C which had road access to Lauries Road in Plan No. 2126 of the 25th February 1954 alleged to have divided the said Lots B and C into four Lots called L, M, N and O giving the same divided Lots road access to the roadway made by the defendant and now seek to enlarge the said roadway and build houses with the said roadway made by the defendant as means of access to the aforesaid Lots whilst giving up the road access to Lauries Road which the owners of Lots B and C had for a very long time to their Lots B and C in Plan 345 aforesaid.
- (h) Plaintiff even if she is the owner of the Lot N cannot maintain this action without joining the other owners of Lots M, L and O in the said plan and this action is bad in law for non-joinder of necessary parties if the other owners also claim road access to defendant's improved roadway at an expense of Rs. 7,500/-.
- 30 (i) The plaintiff and the other owners of Lots M, L and O in the said Plan No. 2126 destroyed the drains built by the defendant removed the barbed wire and the concrete posts and now desire to use the roadway built by the defendant at an expense of Rs. 7,500/- by pulling down the pillars of which they were aware whilst the defendant built them.
- (j) The defendant states that plaintiff and other owners of Lots L, M and O cannot now revive a right lost by non-user and abandonment.
- 40 (k) The defendant and his predecessors in title have prescribed to the said right of way by user for well over the prescriptive period.
- (l) The defendant built the said gate pillars twelve feet apart from each other and the plaintiff and the others stood by

No. 6  
Amended  
Answer of the  
Defendant  
3.3.60—  
*Continued*

and acquiesced in same as they had access to Lauries Road from Lots B and C in Plan No. 345.

4. The defendant states that plaintiff is now attempting to use the roadway built by the defendant at an expense of Rs. 7,500/- without paying defendant the value of the expenses, labour and supervision expended by him in building the roadway to his Lot A in Plan 345 if the Court holds that plaintiff and others are entitled to use this roadway.

5. The defendant counter-claims a sum of Rs. 6,000/- from the 10 plaintiff and/or the owners of Lots B and C in Plan 345 now Lots L, M, N and O in Plan No. 2126, if plaintiff and other owners desire to revive a lost grant abandoned by them by non-users and/or the Court grants plaintiff and the other owners a right of way over this roadway.

Wherefore the defendant prays that the Court be pleased to :—

- (a) Dismiss the plaintiff's action for non-joinder of necessary parties,
- (b) Declare that plaintiff have lost the right of way declared by non-user and abandonment, 20
- (c) That defendant has prescribed to the said roadway,
- (d) Award Rs. 6,000/- to defendant from plaintiff and/or the other owners of Lots L, N and O if they are joined in the action.
- (e) for costs, and
- (f) for such other and further relief as to this Court shall seem fit.

(Sgd.) S. RATNAKARAM,  
*Proctor for Defendant.*

Settled by,  
H. A. Kottegoda, Esqr.

## No. 7

## Replication of the Plaintiff

## IN THE DISTRICT COURT OF COLOMBO

No. 8434/Land. Miss Daria Memalta Henry of Colombo....*Plaintiff*  
*vs.*  
 Dr. M. G. Perera of Colombo.....*Defendant.*

No. 7  
 Replication of  
 the Plaintiff  
 16.6.60

On this 16th day of June, 1960.

The replication of the plaintiff abovenamed appearing by Noel Austin Bernardin Stave, her proctor states as follows :—

10 1. The plaintiff joins issue with the defendant on the several averments made by him in his amended answer in so far as they are inconsistent with the plaint.

2. This plaintiff further denies that she has lost her right of way by non-use and abandonment or that the defendant has acquired a prescriptive right to the same.

3. This plaintiff denies that she is liable to pay the defendant for any expenses made by the defendant in making the said roadway.

4. This plaintiff also states that any monies spent by the defendant in building the said roadway was done without her consent  
 20 for his own use.

5. This plaintiff states she is not liable for any such expenses. Wherefore the plaintiff prays :—

(a) that the counter-claim of the defendant be dismissed,

(b) that the Court be pleased to declare the said two pillars referred to in the plaint are an encroachment on the plaintiff's right of way and direct that the defendant do demolish the said two pillars or in the alternative decree that they be demolished,

30 (c) for damages in the sum of Rs. 7.50 per month till such determination,

(d) for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) N. STAVE,  
*Proctor for Plaintiff.*

Settled by  
 (Sgd.) S. W. WALPITA,  
*Advocate.*



**No. 8**  
**Issues Framed**

8434/L.

8.9.60.

Advocate Walpita for plaintiff instructed by Mr. N. A. B. Stave.

Advocate Kottegoda for defendant instructed by Mr. S. Ratnakaram.

Issues suggested by Mr. Walpita :—

1. Is the plaintiff the owner of Lot N in Plan No. 2126 of 1954 together with a right of way over Lot D shown in that plan on the title pleaded in the plaint. 10

2. Has the defendant obstructed the use of the right of way by erecting two pillars at the entrance to the said Lot D.

3. If so, is plaintiff entitled to have the said obstruction removed and the right of way restored.

(Damages are agreed on at Re. 1/- per month from the date of action if plaintiff succeeds in her claim).

Issues suggested by Mr. Kottegoda :—

4. Was the road reservation in Plan No. 2126 unfit for vehicular traffic.

5. Did the defendant at his own expense spend about Rs. 7,500/- 20 in making the said road reservation fit for vehicular traffic.

6. Had the owners of Lots L, M, N and O, lost any right to such road reservation—

(a) by non-user ;

(b) by abandonment.

7. Have the plaintiff and other owners of the said lots destroyed the drains built by the defendant and removed the barbed wire fence and concrete posts put up on either side of the road by the defendant.

8. Can the plaintiff in this action only claim road access up to Lot N. 30

9. What sum is the plaintiff liable to pay the defendant for making the road fit for vehicular traffic.

10. Prescriptive rights of parties.

(It is admitted that there are two pillars 12 ft. apart put up by the defendant on the road reservation at the entrance to Lauries Road).

**No. 9**  
**Plaintiff's Evidence**

*Plaintiff's Case*

No. 9  
Plaintiff's  
Evidence

Evidence of  
M. Henry  
Examination

Mr. Walpita calls :—

MAGDALENE HENRY. Sworn. 65. No. 25/3, Lauries Road, Colombo.

I am the plaintiff's mother. Lots A, B and C in Plan No. 345 of 29th March 1924, which I produce marked P1, belonged to Julie Maria Fernando and she died, and her estate was administered in 10 D.C.1182 of this Court and Peter Anthony Fernando was appointed administrator in that case. He on orders of Court sold Lots A, B and C by public auction and my husband on deed No. 1645 of 28th June 1924, which I produce marked P2, purchased Lots B and C together with the right of way over the road reservation marked Lot D in that plan. My husband died leaving a Last Will No. 56 dated 20th November 1940, which was admitted to probate in Case No. 9512 of this Court by which this property, Lots B and C were left to the four children—Sheila, Stella, the plaintiff and Henry. The four children divided Lots B and C among them on deed No. 139 of 1955 20 which I produce marked P3. Lots B and C were divided into five lots marked L, M, N, O and P, Lot P being a small lot on the south left out for road widening, etc. These lots are shown in Plan No. 2126 of 25th February 1954, which I produce marked P4. P3 was a deed of exchange by which the four children took four lots and the plaintiff became the owner of Lot N.

I remember when my husband bought this property—that was in 1924. There was a house " St. Gerards " on Lot B. We lived in that house. We came to live there in 1932. Before that it was rented out to various people, Mr. E. A. P. Wijeyeratne being one of 30 them. Lots B and C were used as one land. We had entrance to the house from Lauries Road through Lot C. There was also the road reservation Lot D.

Q. Was there any fence demarcating that road reservation ?

A. No. There was a gate in the middle of the property.

(Shown P1).

There were two gates on Lot C and one gate on Lot B leading on to the road reservation shown as Lot D in Plan P1.

Q. Can you remember who put up that fence separating the road ?

40 A. My husband put up the fence and he put up the gate also.

No. 9  
Plaintiff's  
Evidence—  
Continued

Evidence of  
M. Henry  
Examination—  
Continued

From 1932 we lived in the house till 1936. During that period we used the road reservation Lot D. We had a car. My husband used to go along that lane sometimes. He gets out of the gate and goes along the road reservation and on to Lauries Road. More frequently he used the other two gates leading to Lauries Road. I have myself used that road to get on to Lauries Road. When we wanted to get to New Bullers Road we crossed Dr. Sandarasagara's garden which is Lot A.

Q. How did you get to Dr. Sandarasagara's garden ?

A. To get to his garden we used to enter through that gate lead- 10  
ing to Lot D and go towards Lot A along the road Lot D.

Lot A belonged to Dr. Sandrasagara at that time. There was no right of way across his garden, but we went over Lot A with Dr. Sandarasagara's permission.

After 1936 this house was rented out again until 1942. Then we came back to the house. From 1942 up to the present time we are living in that house. In the rear portion of the house there was an annex. That annex was rented out to one Mr. Lewis in about 1954. He was there for about 4 years. After him Mr. Thiedeman occupied 20  
the annex. Mr. Lewis also used the road Lot D to get to Lauries Road. When Mr. Lewis was living in the annex Mr. Thiedeman used to visit him frequently and he also used that lane. When my husband bought this property, one Mr. Smith was the owner of Lot A. He put up a house there. Then Mr. Smith died and as far as I recollect one Dr. Joseph was the owner ; he was a D.M.O. He also died and as far as I remember one Mr. Samarasinghe bought it, and from him Mr. Fernando bought it and then Dr. Sandarasagara. After him one Mr. Shums became the owner for about 2 months and then the defendant purchased Lot A from him in 1954.

When Dr. Sandarasagara owned Lot A he also used the road 30  
reservation Lot D to get to Lauries Road. But he had access to Buller's Road as well. All throughout we used this road access Lot D to get to Lauries Road. I deny that we abandoned the use of that road reservation.

Q. What was the state of the road before the defendant bought it ?

A. It was an old gravel road with weeds growing here and there.

My children then divided this land into four lots before the defendant purchased Lot A. After the defendant purchased Lot A 40  
he renovated the house and put all the debris and earth from the old foundation on to the road. We did not object to it. Little by little, by people constantly walking over it, it got hard and became

uneven. After the defendant came into occupation of the house he repaired the road. The defendant owns some lorries which are kept at the end of this lane near his house. He repaired this lane in order to get his lorries up there. Almost every day the lorry goes along this lane and is parked in the lane at night. Without repairing the road he could not have brought his lorry.

No. 9  
Plaintiff's  
Evidence—  
*Continued*

Evidence of  
M. Henry  
Examination—  
*Continued*

Plaintiff's application to build a house was after the defendant bought this property. The plans for the buildings were approved. Plaintiff received a letter dated 5th August 1957 from the Municipa-  
10 lity. They said that there were two pillars erected at the entrance to the road leading into Lauries Road which are causing obstruction and wanted them pulled down. I produce that letter marked P5. The road reservation is 20 ft. wide. The pillars are only 12 ft. apart. The Municipality did not approve the building plans as the entrance to the lane is only 12 ft. wide. Then I wrote to the defendant asking him to demolish or remove this obstruction. He refused to do so. I produce a letter dated 17th January 1957 marked P6 written to my proctor by the defendant's proctor. He denies that I have any right over the roadway. He claimed the roadway as his.

20 Plaintiff has been compelled to file this action because she is unable to put up any buildings on her lot unless the obstruction is removed.

*Cross-examined.*

Evidence of  
M. Henry  
Cross-  
examination

Q. The house " St. Gerards " has access to Lauries Road ?

A. Yes.

Q. There was nothing between Lots B and C in Plan P1 ?

A. Yes.

Q. Always you had a wide roadway to get to Lauries Road ?

A. Yes.

40 Q. So that access to Lot A had to be through Lauries Road ?

A. Yes.

New Buller's Road came up somewhere in 1924. It was a narrow road and later it was extended taking in a portion from Lot A.

Q. At the entrance to the road reservation from Lauries Road until 1954 there was a barbedwire fence on coconut posts ?

A. There was a gate there.

Q. That was put up by the owners of Lot A ?

A. I don't know by whom it was put up. It was not put up by me. May be Dr. Sandrasekera put it up, I cannot say.

No. 9  
Plaintiff's  
Evidence—  
Continued

Evidence of  
M. Henry  
Cross-  
examination—  
Continued

Q. Your husband did not live here ?

A. He was living there from 1932 to 1936. In 1936 we left and went to another house. My husband was living in Kotahena and I lived in Bambalapitiya. I cannot remember the number of our car, but we had a Citroen car. The car was driven from Lauries Road to St. Gerards sometimes along this roadway.

Q. There was a barbed wire fence on both sides of the road reservation ?

A. On both sides there were fences separating the other properties and there was a gate leading on to our property. Our car 10 used to come along this road and turn into that gate.

Q. I put it to you that this road reservation was uneven ground, full of pot-holes and plenty of wild trees and some old coconut trees growing on it ?

A. No. There was not a single coconut tree on the lane, not even other trees.

I cannot remember whether Mr. Anthonisz came to survey Lot A in 1932. In 1924 Mr. David made a plan for our property. I don't know whether Mr. Tudugalle came and made a plan.

Now the road reservation is a fairly good road.

20

Q. Defendant had filled up the uneven places with certain materials from his house ?

A. There were no uneven places ; it was one block of land. He filled up the road with debris and then rolled up the place. He did not build any drains on either side. I reserved a certain space between the road reservation and the building, but there were no drains there. My husband put up the concrete posts and made the fence. The defendant did not put barbed wire. The two pillars were put up after repairing the road. Between the two pillars there may be about 12 ft. roadway. There is no gate fixed. A car can be 30 taken through, between those pillars but our tenants have to take their car in and it is obstructing.

Q. Your complaint is that the pillars should be 20 ft. apart for you to build on these four divided blocks ?

A. Yes.

The defendant has got a lorry which he takes to the back of his house.

Q. There is more than one lorry which he leaves on the roadway ?

A. There is only one lorry.

40

Q. I put it to you defendant has several lorries ?

A. Only one lorry comes down the lane.

In this action plaintiff is claiming a right of way up to the end of Lot N.

(Shown a letter).

Q. You were anxious to get the pillars removed and you wanted to pay for the two pillars ?

A. I offered to pay out of Court Rs. 250/-. I learned that the cost of the pillars was not more than Rs. 150/- but we offered Rs. 250/- by way of settlement.

I remember the time the defendant was making improvements to his house. There were a number of workmen working there. They assisted the defendant in making this roadway. It was not necessary for me to carry out any repairs to the road.

Q. Defendant maintained the road from 1954 upwards ?

A. He repaired the road once, there was nothing to maintain.

Only the road is all broken up and the grass is growing now because it is not done properly.

*Re-examined.*

20 Defendant repaired the road once, that is all he did. There was no necessity to do even those repairs. He did that for his lorry. He did not tell me he was going to repair the road. It was done without my consent.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

Dr. MICHAEL JOSEPH SANDARASEKERA. Sworn. 58, Assistant Director of Medical Services, No. 117, Park Road, Colombo.

(Shown P1). I was at one time the owner of Lot A in this plan.  
30 That was between 1952 and 1954. There is a house on Lot A and I resided in that house. The main entrance to that house was off Buller's Road and from the rear one could get on to Lauries Road from the road reservation shown as Lot D in P1. According to my deed I had the right to use that road reservation. During the time I occupied the premises in Lot A I used that road reservation to get across to Lauries Road and go to St. Mary's Church. I remember the plaintiff's mother. They were living in the house known as St. Gerards in Lot B. At the time I bought the property and came into residence they were living there. At the time I sold also they

No. 9

Plaintiff's  
Evidence—  
*Continued*

Evidence of  
M. Henry  
Cross-  
examination—  
*Continued*

Evidence of  
M. Henry  
Re-examina-  
tion

Evidence of  
Dr. M. J. San-  
darasekera  
Examination

No. 9  
Plaintiff's  
Evidence—  
*Continued*

were still living there. I remember there was a gap through which one could enter Lot B from the road reservation Lot D. Mrs. Henry and her family might have used that road. They used to go across my garden to Buller's Road. They had to come along the road reservation Lot D to get to my garden. I sold that property to one Mr. Shums. What I sold was nothing more than what I had obtained from my purchaser. I had only a right of way over Lot D and nothing more. I never claimed Lot D for myself. Lot D is only a passage.

Evidence of  
Dr. M. J. San-  
darasekera  
Cross-  
examination

*Cross-examined.*

By Deed No. 1306 of 19th March 1954 I and my wife sold Lot A 10 with the road reservation.

(Mr. Kottegoda produces the deed marked D1). The second schedule to the deed is the road reservation Lot D. What was sold was the land described in the First Schedule to the plaint together with the road reservation shown in the second schedule.

*Q.* At the top of the road reservation there was a barbed wire on coconut posts at the entrance to Lauries road with a running gate ?

*A.* In order to prevent people from dumping rubbish there was a sort of running gate. 20

The barbed wire fence was on either side of the lane. If I remember rightly I put that gate to prevent people from throwing rubbish into the lane.

*Q.* Apart from the road reservation the owners of Lots B and C had access to Lauries Road ?

*A.* The only way of getting into Lauries Road was along the road reservation.

*Q.* Long years ago there was no entry from this to Buller's Road ?

*A.* I believe when the land was sold in 1924 there was no entry 30 to Buller's Road.

*Q.* Mrs. Peiris who is living on the East of this land was interested in getting rights on this road at one time ?

*A.* I don't know ; I am not aware of that. I have not been to this road reservation recently.

*Q.* In what condition was this road when you lived there ?

*A.* It was rather a bad bit of road. It was a wide road but it was not built up or constructed. There were no trees on the road itself but there were coconut trees on the boundary. There were no coconut trees in the centre of the road. Along the plaintiff's side of 40

the roadway there were some coconut trees. There was low grass here and there. All that was cleared from time to time and we were making use of the road. There might have been some jak trees or mango trees on the side of the road but I don't remember them being on the road itself. We walked up to Lauries Road along this road reservation. I did not use this roadway for my car.

*Re-examined.* Nil.

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

No. 9  
Plaintiff's  
Evidence—  
*Continued*

Evidence of  
Dr. M. J. Sandarasekera  
Cross-examination—  
*Continued*

10 FREDERICK SAMUEL THIEDEMAN. Sworn. 51. Seventh day Adventist Mission, L Block, Flats, Bambalapitiya.

Evidence of  
F. S. Thiedeman  
Cross-examination

I was at one time in occupation of the annex to St. Gerards, at Lauries Road. I was there from July 1957 till October 1959. Prior to my coming into occupation of that annex one of my friends Mr. Clifford Lewis whose wife is a relation of mine was occupying the annex. He was there for about four years from about 1953. When he was in occupation of the annex I used to visit him practically every day or twice a week. I used to come from the Lauries Road side and then Mr. Lewis asked me why I don't come from the New  
20 Buller's Road side. Thereafter I used to come from the New Buller's road side. After I came into occupation of the annex I used the Lauries Road side. I have been to this house from both sides, that is from the Lauries Road entrance and from the Buller's Road entrance. When I came from the Lauries Road side there was a gate at the entrance and a roadway leading to the house.

(Shown P4). The road reservation Lot D is the roadway that I used. You can also get to the annex coming from New Buller's Road. That is, you have to go over Dr. Sandarasekera's land and get it. At that time Dr. Sandarasekera was in occupation. But at  
30 one point, even coming from that end, one has to go a short distance along the road reservation Lot D to get to the annex.

*Cross-examined.*

I know the defendant by sight. I have not gone through his property while he was there.

Evidence of  
F. S. Thiedeman  
Cross-examination

Q. That is prior to the defendant buying the property ?

A. Possibly.

Q. Between 1954 and now you have not gone from Buller's Road to this annex ?

A. Possibly the last date I have been over Lot A was a little  
40 before 1954.



No. 9  
Plaintiff's  
Evidence—  
*Continued*

Evidence of  
F. S. Thiede-  
man  
Cross-  
examination—  
*Continued*

I know Lauries Road. From Lauries Road there was an entrance to St. Gerards. I used that entrance sometimes when I came into occupation of the annex. I could not get to the annex from Buller's Road from the time that defendant became the owner of Lot A.

(Shown D1). (Witness points out the road reservation Lot D). I went along the road reservation to the annex in St. Gerards. From the time I went into occupation there was no entrance to my annex from across the land from Lauries Road. I had to come along Lot D to get to the annex.

*Q.* I put it to you that until the buildings were put up on 10 Lots B and C there was an entrance from Lauries Road to St. Gerards ?

*A.* At the time Lewis was in occupation I used to enter through Mrs. Henry's main gate and sometimes along the reservation Lot D.

*Q.* Mrs. Henry's main gate was opening to Lauries Road ?

*A.* We used both ways.

*Q.* The other road prior to 1954 was not constructed ?

*A.* There was always a gravel road there. I did not see very much of construction or maintenance done on that road. There were shrubs on either side and grass on the centre of the road. There were no jak trees on the road. I cannot remember seeing any jak 20 trees on the side of the road. I did not see any old coconut trees on the road.

*Re-examined.* Nil.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*

Plaintiff's case closed.

No. 10  
Defendant's  
Evidence

Evidence of  
V. D. C.  
Kurera  
Examination

**No. 10**  
**Defendant's Evidence**

*Defendant's Case*

Mr. Kottegoda calls.

30

V. DOUGLAS CLARENCE KURERA. Sworn. 42. Auctioneer & Broker, No. 39 Chatham Street, Colombo.

Our firm are well known auctioneers. We sell a large number of properties in Colombo and elsewhere. On conditions of Sale No. 452 of 7th May 1954, which I produce marked D2, I auctioned this property shown in Plan No. 233 of 27th February 1954 which I produce marked D3. It was purchased by the defendant Dr. M. G.

Perera on Deed No. 2010 of 14th May 1954 which I produce marked D4. I went to this property.

(Shown D3). The road reservation at that time was not a built up roadway. It was more or less in semi-jungle. It was just a land reserved for a road. I cannot say whether there was a gate at the top.

(Shown D1). I do not go right to the end of the land. I came to the property from Buller's Road. I do not think any vehicles could have been taken along that road reservation.

10 *Cross-examined.*

I first came to this land in 1954. Prior to that I did not know the state of this land. I came to know the land as a result of the auction. I knew that there was a road reservation appertaining to the land to be sold leading to Lauries Road. I came up to the road reservation but did not go along it. I merely had a look at the road. I did not walk along it. I cannot really say whether any vehicles or people could go along that road. But from what I could see I do not think any vehicles could have gone on that road. There were a lot of trees on the road reservation. They were fairly large trees, 20 some trees were about a foot in diameter. From where I stood I could have seen a number of trees. The road reservation was marked out and you could see the trees. It was in jungle. The road reservation was marked on the plan but I did not go right up the road.

(Shown D3).

*Q.* Did you visit the premises after this plan was made or before ?

*A.* I have seen the house before, but the conditions of sale were drawn up on this plan.

30 *Q.* If there were the big trees on the centre of the road the surveyor would have shown them on the plan ?

*A.* I could not say that. I only know that I saw some trees. I cannot say what the trees were. I cannot recollect whehter I saw kottan trees, kapok trees, etc. I sold the land according to Plan D3. Normally surveyors do not mark all the trees shown on the roadway.

*Q.* According to you these trees were about 1 ft. thick in diameter and those trees would have to be cut and uprooted for the road to be repaired ?

*A.* I won't go to that extent. I have not been to this land 40 recently.

No. 10  
Defendant's  
Evidence—  
*Continued*

Evidence of  
V. D. C.  
Kurera  
Examination—  
*Continued*

Evidence of  
V. D. C.  
Kurera  
Cross-  
examination

No. 10  
Defendant's  
Evidence—  
Continued

Q. If there were trees that which you would have to remove those trees and the roots also ?

A. I think so.

Evidence of  
V. D. C.  
Kurera  
Cross-  
examination—  
Continued

I sold this property under instructions from Mr. Sharma. I am giving my version of what I have seen. I don't know what others have seen.

*Re-examined.* Nil.

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

Evidence of  
E. S. Tudugalla  
Examination

EDMUND SPENCER TUDUGALLA. Affirmed. 65. Licensed 10  
Surveyor, No. 24 Vivekananda Road, Wellawatte.

On the 27th February 1954 I prepared Plan D3. D3 shows the road reservation to the lots. Between Lauries Road and the road reservation I show a masonry drain and a wire on live fence. I have demarcated a number of trees on the side of this road reservation. At the time I went in 1954 the road reservation was not a constructed road. It was overgrown with jungle and not used as a road at all.

Q. Were there trees on the road reservation ?

A. There were trees. I have marked on the North of the road reservation kottan trees, kapok trees, those were all on the boundary. There were other trees on the road reservation also. There were one or two trees on the centre also. Surveyors do not mark trees in the centre of a road on the plan, only on the boundary. I have been a Court surveyor for the last 14 years. Before that I was a Government Surveyor. The land was sandy. The road reservation was flat. 20

Q. Were there any holes ?

A. Not much of holes. It is close to the sea shore. It was not possible to take a car on that road at that time. I also show that it has been barbed wired on concrete posts along the fence at 30 that time. On one side there was wire on live fence.

Q. You show a portion where the fence has been broken ?

A. This is not broken. This is a sort of entrance to that land. I have not been to this land recently.

Evidence of  
E. S. Tudugalla  
Cross-  
examination

*Cross-examined.*

I have shown two concrete posts on the western side of the private road about half way along it. There was no barbed wire there and one could enter Mrs. Henry's property from there and go along the

road reservation shown in D3. There were other concrete posts along the rest of that fence, and wired.

(Shown P1).

Through the gap in the fence which I have shown in D3 one could enter Lot B in P1. I made D3 shortly before the defendant bought this property. At the time I made the plan I have shown barbed wire on concrete posts which shows that the concrete posts were in existence before the defendant bought the property.

(Adjourned)

10

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

8.9.60.

Hearing resumed at 2.15 p.m.

EDMUND SPENCER TUDUGALLA. Affirmed. Recalled.

*Cross-examination (Contd.).*

Q. This plan you made D3, on the West of this road Lot D you have shown a barbed wire on concrete posts.

You said there was a gap, the entrance into the premises No. 25 Lauries Road, there were no trees along this boundary ?

20 A. I took the concrete posts as the permanent boundary.

Q. My question is whether there were trees or not ?

A. There may have been other trees but I did not take them.

Q. You cannot say definitely whether there were trees on the boundary ?

A. I cannot say.

Q. But on the eastern boundary you have shown barbed wire and live fence ?

A. Yes.

30 Q. You have shown one kottan tree, another kottan tree, kapok trees, etc. ?

A. Yes.

Q. Can you remember the size of those kapok and kottan trees ?

A. They were about 10 to 15 years old at that time.

Q. You have been a surveyor for how many years?

A. For 14 years as a licensed surveyor. Before that I was a government surveyor.

No. 10  
Defendant's  
Evidence—  
*Continued*

Evidence of  
E. S. Tudugalla  
Cross-  
examination—  
*Continued*

No. 10  
Defendant's  
Evidence—  
Continued

Evidence of  
E. S. Tudugalla  
Cross-  
examination—  
Continued

Q. As a licenced surveyor how many surveys have you done ?

A. I have prepared over 345 plans.

Q. These were spread out during these 14 years ?

A. Yes.

Q. Have you got your notes of survey in this case ?

A. I have but I haven't got them now.

Q. You did not look at those notes of survey ?

A. I have brought the copy of the plan.

Q. I am asking you about the notes of the survey ?

A. I did not look at them. 10

Q. This plan was made in 1954. Since this plan was made how many plans did you make ?

A. Over 150 plans.

Q. You said earlier there were a number of trees and shrubs and jungle on this roadway. In this plan you have not shown any trees and shrubs, etc. ?

A. No.

Q. Can you remember in a plan made in 1954, and you did not make any reference to your field notes, can you remember the state of the land six years ago ? 20

A. I can.

Q. Even though you have not referred to the field notes and even though you have not made any notes on this plan you can say ?

A. I remember the land.

Q. You can positively state that there were a number of trees ?

A. Yes.

Q. What were those trees ?

A. Kottan trees, Eramudu trees and mostly shrubs.

Q. Any flowering trees ?

A. Yes. 30

Q. If Mr. Kurera states there were no flowering trees it is not true ?

A. There were trees. It is not usual to show trees on the middle of the road.

Q. Shown D3. You have clearly marked the two boundaries east and west. You have also shown the entrance to No. 72. And

you show a wire fence and a gap. That means that though there was a wire fence you could go into the land ?

A. Yes.

Q. Similarly there is a gap from Lauries Road into the private road ?

A. A masonry drain with a gap.

Q. Can you remember there was a gate there ?

A. No.

Q. You know Dr. Sandarasagara who gave evidence and who 10 said there was a running gate ?

A. I remember very well there was no gate.

Q. In your view this road could not be used ?

A. At that time no cart even had been taken over it.

Q. You cannot say why there was a gate, and entrance from the road into this premises ?

A. I took it as they had been entering from the land on to the road and from the road on to the land.

Q. That means they had been using that road to enter that land ?

20 A. Yes.

*Re-examined.*

Q. You were only asked to define the boundary of the land ?

A. They were very particular to show the road. There is a road leading to Lauries Road and they wanted it shown.

Q. Who commissioned you to make this plan ?

A. Mr. Tampoe of De Saram's.

Q. The plan was not made at the instance of the defendant ?

A. No.

Q. Normally when you make a plan you don't put down the 30 plantations inside the road unless there is a dispute with regard to the plantations ?

A. If there is any boundary in the middle you indicate how the boundary is going.

Q. At that time this was not used according to your observations as a cart road ?

A. Yes.

No. 10  
Defendant's  
Evidence—  
*Continued*

Evidence of  
E. S. Tudugalla  
Cross-  
examination—  
*Continued*

Evidence of  
E. S. Tudugalla  
Re-examina-  
tion

No. 10  
Defendant's  
Evidence—  
Continued

Q. You have shown the wire and live fence at the entrance to Lauries Road in the south ?

A. Yes.

Evidence of  
E. S. Tudugalla  
Re-examina-  
tion—  
Continued

Q. You are a retired government servant ?

A. Yes.

Q. And you are not anxious to do much work ?

A. As I am getting old I don't care to do much.

Q. You don't undertake to do much surveys ?

A. Not big surveys. I do small surveys.

(Sgd.) A. L. S. SIRIMANE, 10  
A.D.J.

Evidence of  
C. V. Wickre-  
masinghe—  
Examination

CHARLIES VALENTINE WICKREMASINGHE. Sworn. 47 years. Assistant Superintendent of Cleversana Estate, Eratne, Karawita.

Q. In 1954 you were in charge of the building operations of Dr. M. G. Perera ?

A. Yes.

Q. You renovated the building. Shown D3 ?

A. Yes.

Q. At that time what was the condition of that road reservation 20 in that plan ?

A. It was a sort of footpath.

Q. Was it used as a cart road ?

A. No.

Q. What was there on the ground ?

A. There were a number of trees about 7 inches in diameter. There were some on the sides and some in the middle of the road and there was scrub jungle.

Q. How high were the scrub jungle ?

A. About 2½ to 3 feet.

30

Q. Did you have anything to do with regard to the construction of the roadway ?

A. Yes.

Q. You superintended the construction of the roadway ?

A. Yes.

- No. 10  
Defendant's  
Evidence—  
*Continued*
- Q. Whom did you employ ?  
A. I employed the contractor who was putting up the building.
- Q. What is his name ?  
A. Saleem and Thowfeek.
- Q. How much was spent on building this road ?  
A. About Rs. 7,000/-.
- Q. Where are these accounts ?  
A. Given to the doctor.
- Q. After he constructed the road was it a good roadway ?  
10 A. It was a roadway where cars or lorries could be brought.
- Q. What did you do ?  
A. It was a bit of land, not a cart road. It was only bare.  
We filled in the road with two to three-inch broken stones and sent a steam roller over it and tarred it.
- Q. Did the doctor have any lorries ?  
A. Yes.
- Q. How many ?  
A. About 3 lorries.
- Q. They used to be taken there ?  
20 A. Yes.
- Cross-examined.*
- Q. You are working in an estate belonging to Dr. Perera ?  
A. Yes.
- Q. For how many years have you been under him ?  
A. For about 25 years.
- Q. Did you see this property before he bought it ?  
A. On the day of the auction I was there.
- Q. There was a road clearly marked with boundary fences on two sides ?  
30 A. There were no boundary fences.
- Q. What was there to demarcate the west and east boundaries ?  
A. On one side there was a live fence ?
- Q. Which side ?  
A. I think it is the side where these buildings have come up now. On the right-hand side there was one of these strands of barbed wire.
- Evidence of  
C. V. Wickre-  
masinghe  
Examination—  
*Continued*
- Evidence of  
C. V. Wickra-  
masinghe  
Cross-  
examination



No. 10  
 Defendant's  
 Evidence—  
 Continued

Evidence of  
 C. V. Wickra-  
 masinghe  
 Cross-  
 examination—  
 Continued

Q. On the western side there was nothing ?

A. Yes.

Q. On the western side are the houses belonging to the plaintiff ?

A. Yes.

Q. You know anything about that plan being made by Mr. Tudugalla ?

A. No.

Q. Shown D3. That plan was made before the defendant bought the property ?

10

A. Yes.

Q. That plan shows before he bought this barbed wire or concrete posts ?

A. May have been. The time that doctor bought the land and put up this building there were no boundary markings.

Q. The doctor purchased this just a few months after this plan was made ?

A. I do not know.

Q. If that plan shows barbed wire fence on concrete posts that is wrong ?

20

A. According to me there were no fences.

Q. There was no fence or anything at the entrance to Lauries Road ?

A. There were two coconut stumps fixed up and a sort of road put up at the entrance to Dr. Perera's property.

Q. At the Lauries road entrance there were two coconut posts with a road across ?

A. Yes.

Q. If a vehicle was brought ?

A. Vehicles could not have been brought at that time.

30

Q. What were the trees that were there on the eastern boundary ?

A. There was a mango tree, a jak tree and kottan tree.

Q. Were there any trees on the western side of the boundary ?

A. There may have been.

Q. Then in the centre of the road ?

A. There was grass.

Q. There were no trees ?

A. There were two or three trees. The ordinary common trees that you find like kottan trees.

Q. The rest of it was grass ?

A. Scrub jungle.

Q. What was the scrub jungle ?

A. It was grass.

Q. You said that you were given the task of getting this road done up ?

A. Yes.

10 Q. For that purpose you employed two contractors to do the road ?

A. Yes.

Q. What did they actually do on the road ?

A. They constructed a road where a vehicle can be brought in.

Q. Who kept the accounts ?

A. All the accounts were kept by doctor and his clerks.

Q. You had nothing to do with keeping of the accounts ?

A. Daily what I spent I kept accounts.

20 Q. Apart from that you do not know how much was paid and what were the expenses met by Dr. Perera ?

A. 7,500 rupees.

Q. What are the items you can't say ?

A. Steam roller cost about 5 to 6 hundred rupees. The stone cubes about Rs. 150/-. The sand, labour, tarring all that cost him well over Rs. 7,500/-.

Q. You are quite sure Rs. 7,500/- was spent ?

A. Perfectly certain.

Q. Shown D3. What is the length of the roadway ?

A. 231 feet.

30 *Re-examined.* Nil.

No. 10  
Defendant's  
Evidence—  
*Continued*

Evidence of  
C. V. Wickre-  
masinghe  
Cross-  
examination—  
*Continued*

(Sgd.) A. L. S. SIRIMANE,  
A.D.J.

No. 10  
Defendant's  
Evidence—  
*Continued*

ZAIN AHAMED ALI. Affirmed. 75 years. Mason, residing at Porutota.

Evidence of  
Z. Ahamed  
Ali  
Examination

I remember I made a house from the doctor in 1954. I worked in the bungalow. I remember the road leading to the bungalow. There was a tarred road. I know Lauries Road. There was a road leading from Lauries Road to the defendant's house. I cleared the jungle on that land. There were papaw trees, plantain trees, there were kapok trees, jak trees on the land. There were coconut trees. All these were cut. There were coconut trees on either side, and the whole passage was cleared. I got the trees cut. I cleared the shrubs 10 and levelled the ground. We levelled the ground with a steam roller. The steam roller was brought by the doctor. I had taken a contract for Rs. 7,000/-. The two pillars were put up by me. Thowfeek is my son. At the entrance to Lauries Road there was a running gate.

Evidence of  
Z. Ahamed  
Ali  
Cross-  
examination

*Cross-examined.*

It was I who put up the big bungalow of the doctor and so I know this land. That was Dr. Sandarasagara. I built the house of the defendant. The house was demolished and re-built for the defendant.

I did not know these premises before the doctor purchased it. I came to know only about 1954. I know the road also from that 20 date. This road is more than 300 feet. This road is more than 75 feet long. On either side of this roadway there were barbed wire fences. On the western side there is an old fence which was removed and concrete posts were put up. Before I did my work there were no concrete posts. There was a fence. The fence was fixed on wooden posts. I am sure there was no concrete posts. The wooden posts were removed by me and concrete posts and barbed wire put. I do not know what the surveyor says but there were wooden posts. On the eastern side there was a wall and in line with that wall there were trees on to which the barbed wire was fixed. On the eastern boundary 30 was a wall. Beyond that wall was the fence. It was a live fence and on to it barbed wire was fixed. That fence was left as it was. That was allowed to remain as it was. I did not try to find out what the trees on the live fence were. I do not know what these trees are. On either side of the footpath there were trees and on the eastern side there was a footpath. On either side of this road between these fences there were trees. But there were no trees in the centre of the road. There was a small jak plant in the centre of the road. But that jak plant was on the Lauries Road side. It was a small tree about a foot in diameter. Without cutting that tree a car could go on a 40 side. I had to cut trees to make the road and I had to cut this jak tree to broaden the road. I cut several other trees too. I thereafter prepared the road. I gave the estimate to make this road to Dr. Perera. I estimated at Rs. 7,000/-. It is not Rs. 7,500/-. Dr. Perera

accepted that estimate. Without any question he accepted the estimate. I did not give an estimate item by item. I only said my estimate was Rs. 7,000, and the doctor accepted it. After the job was completed he gave me Rs. 7,000/-. I deny that this road would have cost only Rs. 900/- to build. The contract for the house was for Rs. 45,000/-. The labour alone was Rs. 45,000/- and the doctor supplied the material, the sand, bricks, cement, etc. For the road I supplied the material.

No. 10  
Defendant's  
Evidence—  
*Continued*

Evidence of  
Z. Ahamed  
Ali  
Cross-  
examination—  
*Continued*

*Re-examined.*

10 The doctor supplied the steam roller. I took about 11 months to make the house. To construct the road I took about one month.

Evidence of  
Z. Ahamed  
Ali Re-  
examination

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*

Defendant's case closed. Documents to be filed with a list in office tomorrow.

Mr. Walpita cites Massdorp Law of Things Book 2 at page 230. Judgment on 14th September, 1960.

(Sgd.) A. L. S. SIRIMANE,  
*A.D.J.*

20

**No. 11**

**Judgment of the District Court**

14.9.60.

D.C. 8434/L.

No. 11  
Judgment of  
the District  
Court  
14.9.60

**JUDGMENT**

The plaintiff's father was the owner of Lots B and C in the Plan P1 together with a right of way over Lot D in that plan. He purchased these interests in 1924 on the Deed P2. After his death his 4 children divided these two lots as shown in Plan P4 and by the deed of exchange P3 the plaintiff is the owner of Lot N in that plan. The defendant became the owner of Lot A in plan P1 (which lies  
30 to the north of Lot B) in May 1954 on the deed D4. The plaintiff complains that her use of the right of way over Lot D has been obstructed by the defendant who has put up two pillars 12 feet apart at the southern end of Lot D near Lauries Road.

The plaintiff's documentary title to Lot N and her right to the use of Lot D can hardly be denied. The deed P2 expressly reserves

No. 11  
 Judgment of  
 the District  
 Court  
 14.9.60—  
*Continued*

the right to use Lot D and admittedly it is from the same source that the defendant's predecessor had purchased Lot A. The defendant himself purchased Lot A only on 14.5.54 D4 with the right of way over Lot D. He did not get the dominion over Lot D, only the right to use it as a right of way. Some suggestion was made (but not seriously pursued at the trial) that the owners of Lots B and C had by non-user lost their rights to Lot D.

On this point I have no hesitation in accepting the evidence of the plaintiff's mother, Dr. Sandarasagara (who owned Lot A shortly before the defendant) and Mr. Thiedeman. The plaintiff's mother 10 had been living for many years in the house on Lot B. Being the owner of both Lots B and C entrance was easy from Lauries Road on the south but Lot D which she referred to as a lane was also used by them. In fact their car a "Citreon" was taken that way. Plaintiff's mother's evidence is that there was a gate or opening on the eastern side of Lot B leading to Lot D. If they had not used Lot D there would have been no such opening on that side—and that opening was found even as late as February, 1954 by the surveyor Mr. Thudugalla called by the defendant who prepared the plan D3. From this opening plaintiff and her predecessors entered Lot D not only to come to 20 Lauries Road on the South but to go northwards into Lot A and over that lot (with Dr. Sandarasagara's permission) to New Buller's Road on the North. Dr. Sandarasagara corroborates the plaintiff's mother on this point. The annexe to the house on Lot B was occupied by Mr. Louis, a relative of Mr. Thiedeman who regularly visited this place from 1953, until he himself went into occupation of the annexe in 1957 and remained there till 1959. He used this roadway.

I do not see how the defendant can claim Lot D for himself and deny the plaintiff's rights to use it—for he became the owner only on 14.5.54. There is no evidence at all that his predecessors ever pos- 30 sessed Lot D exclusively (in fact Dr. Sandarasagara's evidence is to the contrary) and this action was filed in 1958. I am unable to accept the evidence of Mr. Kurera and Mr. Thudugalla that there were trees on this roadway. This is denied by both Dr. Sandarasagara and Mr. Thiedeman. The road was not a good one but it was one which could be used. The defendant after he became the owner had repaired the road and considerably improved it. The amount he is alleged to have spent on these improvements is Rs. 7,000/-. I think the witness highly exaggerates the expenses involved. It is said that some accounts were kept of the expenditure but no such accounts 40 were produced. An old mason Ahamed Ali was also called to repeat this sum. He says that he handed an estimate (which did not set out any details of expenditure) to the defendant for Rs. 7,000/- which was readily accepted without question and payment promptly made. No such estimate is produced and this evidence sounded highly artificial. Admittedly it was this witness who had put up the

two pillars at the entrance narrowing the 20 feet roadway which had led up to this dispute.

The road is 20 feet wide and 70 yards long. In my opinion the repairs effected by the defendant could not have exceeded Rs. 2,000/- at most. I do not think, however, that he is entitled to claim any sum from the plaintiff for these improvements. He never consulted the plaintiff when he carried out these repairs and appears to have done so only for his own benefit—because he is the owner of some lorries which regularly use this roadway now. I agree with Mr. 10 Kottegoda that the plaintiff can in this action claim for her right to use this roadway only up to her lot, viz., Lot N, but that does not effect the case one way or another.

I would answer the issues as follows :—

1. Yes.
2. Yes.
3. Yes.
4. No.
5. No.
6. (a) No.
- 20 (b) No.
7. No.
8. Yes.
9. Nil.
10. Neither party.

Enter judgment for the plaintiff as prayed for at (a) and (b) of the prayer to the plaint, damages as agreed upon and costs of this action. The defendant to remove the pillars within two months.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

30

14.9.60.

Delivered in open Court.

(Sgd.) A. L. S. SIRIMANE,

*A.D.J.*

14.9.60.

No. 12  
Decree of the  
District Court  
14.9.60

**No. 12**  
**Decree of the District Court**  
**Decree**

**IN THE DISTRICT COURT OF COLOMBO**

Miss Daria Memalta Henry of 25/3, Lauries Road,  
No. 8434/Land. Colombo.....*Plaintiff*  
*vs.*  
Dr. M. G. Perera of No. 72, Buller's Road, Colombo  
.....*Defendant.*

This action coming on for disposal before A. L. S. Sirimanne 10  
Esquire, Additional District Judge, Colombo, on the 14th day of  
September 1960 in the presence of Advocate Mr. S. W. Walpita,  
instructed by Mr. N. A. B. Stave, Proctor on the part of the plaintiff  
and of Advocate Mr. Kottegoda, instructed by Mr. S. Ratnakaram,  
Proctor on the part of the defendant.

It is ordered and decreed that the two pillars standing on Lot D  
as depicted in Plan No. 2126 dated 25th February 1954 made by  
W. A. L. de Silva licensed surveyor filed of record in this case and  
more fully described in the schedule hereto are an encroachment on  
the plaintiff's right of way over Lot D and the defendant be and is 20  
hereby ordered to demolish the said two pillars standing on Lot D  
within two months from date hereof.

It is also ordered and decreed that the defendant do pay to the  
plaintiff damages as agreed at Re. 1/- per month as from the date of  
the action (30th January 1958) till the said two pillars standing on  
Lot D are demolished.

It is further ordered and decreed that the defendant do pay to  
the plaintiff her costs of action.

*The Schedule above referred to*

All that allotment of land marked Lot D on the Plan No. 345 30  
dated 29th March 1924 made by H. Don David, Licensed Surveyor  
(being a reservation for a road twenty feet wide) being a defined portion  
of land marked B from and out of all that garden called Mastriyawatta  
alias Kahatagahawatta formerly bearing assessment No. 31/B and  
Ward No. 968 situated at Bambalapitiya within the Municipality  
and District of Colombo Western Province and bounded on the North  
by Lot A on the said Plan No. 345, East by the former Lot C (a portion  
of the same land belonging to Mrs. P. C. Fernando), South by Lauries  
Road and West by Lots B and C on the said Plan No. 345 containing

in extent fifteen perches and sixty-seven one hundredths of a perch (A0-R0-P15.67/100) as per the said Plan No. 345.

(Sgd.) Illegibly,  
Additional District Judge.

No. 12  
Decree of the  
District Court  
14.9.60—  
Continued

This 14th day of September, 1960.

23.6.61.

Drawn by me.

(Sgd.) N. STAVE,  
Proctor for Plaintiff.

No. 13

10

Petition of Appeal to the Supreme Court

No. 13  
Petition of  
Appeal to the  
Supreme Court  
19.9.60

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

D.C. Colombo                   Miss Daria Memalta Henry of 25/3, Lauries Road,  
No. 8434/L.                    Bambalapitiya.....*Plaintiff*  
S.C. No. 461(F)                *vs.*  
1960                            Dr. M. G. Perera of 72, New Buller's Road,  
                                  Bambalapitiya.....*Defendant.*

Dr. M. G. Perera of 72, New Buller's Road,  
Bambalapitiya .....*Defendant-Appellant*  
*vs.*

20

Miss Daria Memalta Henry of 25/3, Lauries Road,  
Bambalapitiya.....*Plaintiff-Respondent.*

To :

The Honourable the Chief Justice and the other Judges of the  
Honourable the Supreme Court of the Island of Ceylon.

On this 19th day of September, 1960.

The petition of appeal of the defendant-appellant abovenamed  
appearing by S. Ratnakaram and his Assistant T. Vanniasinkam his  
proctors states as follows :—

1. The plaintiff-respondent filed this action to have the two  
30 pillars erected by the appellant at the entrance to road reservation  
Lot D belonging to him to be removed and to recover damages.

2. The appellant filed answer claiming that the said Road  
Reservation belonged to his land Lot A in Plan P1 and that Lots B  
and C had road access from Lauries Road which is on the East of  
Lot C which Lots B and C were one Lot without any demarcation  
till 1954 with road access from Lauries Road always.



No. 13  
 Petition of  
 Appeal to the  
 Supreme Court  
 19.9.60—  
 Continued

3. The plaintiff-respondent and her brothers and sisters by P4 of 1954 divided the said Lots B and C into 5 Lots L, M, N, O and P to build houses and claim to use Lot D which had been constructed into a motorable road by the appellant at an expense of about Rs. 7,500/-.

4. The Trial took place on the 8th of September 1960 on 10 issues framed and the learned Additional District Judge by his Judgment and decree entered on the 14th of September 1960 entered Judgment for the plaintiff-respondent as prayed for in prayer (a) with damages agreed at Re. 1/- per month from date of action. 10

5. Feeling aggrieved and hurt by the said Judgment and Decree the appellant begs to appeal to Your Lordships' Honourable Court on the following and other grounds :—

- (a) The said Judgment is contrary to law and against the weight of the documents produced and the oral evidence led at the trial.
- (b) The Learned Judge has failed to consider that by D1 which referred to Plan P1 the Road Reservation was to Lot A of the appellant who obtained title to same by D4.
- (c) The learned Judge has failed to consider that the plaintiff- 20  
 respondent under P2 or P3 got no right to the Road Reservation Lot D or the right to use Lot D as a road on her documents of title.
- (d) The evidence of Dr. Sandarasagara and other witnesses called by the appellant speak to the coconut trees, jak and mango trees that were on the Road Reservation over which Dr. Sandarasagara went by foot as owner.
- (e) There is no evidence of vehicles having been taken over this road reservation prior to appellant becoming owner of same in 1954 except an "*ipse dixit*" of the plaintiff- 30  
 respondent's mother who left this land in 1936 with her husband who went to separate places of residence.
- (f) It is common ground that appellant constructed the present motorable road at his expense of about Rs. 7,500/- and built the gates 12 feet apart at the entrance on the East to Lauries Road where a running gate or gate was always in existence put up by the owners of Lot A who was solely entitled to the road reservation Lot D.
- (g) Apart from the oral evidence there is the Plan D3 made in 1954 at the instance of Messrs. De Sarams by the Surveyor 40  
 Tudugalla which shows the condition of the road reservation and the trees on the boundary and the purpose for which it was made prior to appellant purchasing same in 1954 by D4.

- (h) The plaintiff-respondent wanted to pay for the pillars Rs. 250/- prior to date of action but was not prepared to pay for the expenses of construction of the roadway by the appellant.
- (i) There was no dispute that the appellant made this road reservation 20 feet wide and 70 yards long fit for lorries to be taken to his premises which the Judge estimate at Rs. 2,000/-.
- 10 (j) The learned Judge has misdirected himself as regards the rights of parties.
- (k) The evidence discloses that the gates put up by the appellant to which the owner of Lots B and C had no objection at that time does not prevent the use of the road even if the plaintiff-respondent and other owners had a right to use the same without any payment.
- (l) It is inconceivable that the plaintiff-respondent could use the roadway constructed by the appellant at his own expense on his road reservation without any payment at all.
- 20 (m) In any event the order to demolish the gates is wrong and unwarranted.
- (n) The plaintiff-respondent has suffered no damages at all and there is no proof of damages though the quantum was agreed upon for convenience at the trial.

Wherefore the appellant prays that Your Lordships' Court be pleased to :—

- (i) dismiss the plaintiff's action,
- (ii) Set aside the order for demolition of the gates.
- 30 (iii) Declare that the appellant is entitled to the said road reservation.
- (iv) Award the appellant the sum of Rs. 6,000/- or in the alternative declare that plaintiff-respondent is not entitled to use the said Lot D.
- (v) and or has lost right to use same,
- (vi) set aside the order for damages at Re. 1/- per month.
- (vii) for costs, and
- (viii) for such other and further relief as to Their Lordships' Court shall seem fit.

(Sgd.) T. VANNIASINKAM,  
*Proctor for Defendant-Appellant.*

No. 14  
Decree of the  
Supreme Court  
4.12.62

No. 14  
Decree of the Supreme Court

S.C. 461/'60 (F).

ELIZABETH THE SECOND, QUEEN OF CEYLON AND  
OF HER OTHER REALMS AND TERRITORIES,  
HEAD OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Miss Daria Memalta Henry of No. 25/3, Lauries Road,  
Bambalapitiya, Colombo.....*Plaintiff*

*vs.*

10

Dr. M. G. Perera of No. 72, New Buller's Road,  
Colombo..... *Defendant.*

Dr. M. G. Perera of No. 72, New Buller's Road,  
Colombo..... *Defendant-Appellant*  
*against*

Miss Daria Memalta Henry of No. 25/3, Lauries Road,  
Bambalapitiya, Colombo.....*Plaintiff-Respondent.*

Action No. 8434/Land.

District Court of Colombo.

This cause coming on for hearing and determination on the 4th day of December 1962 and on this day, upon an appeal preferred by 20 the defendant-appellant before the Honourable Kingsley Herat, Puisne Justice and the Honourable Gardiya Punchihewage Amara-seela Silva, Puisne Justice of this Court, in the presence of Counsel for the defendant-appellant and plaintiff-respondent.

It is considered and adjudged that this appeal be and the same is hereby dismissed.

It is ordered and decreed that the defendant-appellant do pay to the plaintiff-respondent the taxed costs of this appeal.

Witness the Honourable Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 20th day of December in the year One 30 thousand Nine hundred and Sixty-Two and of Our Reign the Eleventh.

(Sgd.) B. F. PERERA,  
*Deputy Registrar of the Supreme Court.*

## No. 15

**Application for Conditional Leave to Appeal to the Privy Council**  
**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 15  
 Application  
 for Conditional  
 Leave to  
 Appeal to the  
 Privy Council  
 21.12.62

In the matter of an application for Conditional leave to Appeal to Her Majesty the Queen-in-Council in terms of the Appeals (Privy Council) Ordinance, Chapter 100 of the Revised Legislative Enactments of Ceylon (1956) in S.C. 461 of 1960 and D.C. Colombo 8434/L.

10 S.C. Application No. 461/60. Dr. M. G. Perera of No. 72, New Buller's Road, Bambalapitiya, Colombo.....  
 ..... *Defendant-Petitioner*

*vs.*

Miss Daria Memalta Henry of No. 25/3, Lauries Road, Bambalapitiya, Colombo.....  
 ..... *Plaintiff-Respondent.*

To :

His Lordship the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

20 On this 21st day of December, 1962.

The petition of the defendant-petitioner abovenamed appearing by S. Ratnakaram and his Assistant T. Vanniasinkam, his proctors, states as follows :—

1. That feeling aggrieved by the Judgment of Your Lordships' Court pronounced on the 4th day of December 1962 the defendant-petitioner is desirous of appealing therefrom to Her Majesty the Queen-in-Council.

2. The said judgment is a final judgment and the matter in dispute in this appeal amounts to or is of the value of a sum in excess of Rs. 5,000/- and the appeal involves directly or indirectly some claim or question to or respecting property of the value of a sum in excess of Rs. 5,000/-.

3. Notices of the intended application for leave to appeal were given in terms of Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance Chapter 100 by :—

- (a) sending to the plaintiff-respondent a notice under express registered cover on the 15th day of December 1962 ;
- (b) sending a notice on the 15th day of December, 1962 by express registered cover to the address for service given

No. 15  
Application  
for Conditional  
Leave to  
Appeal to the  
Privy Council  
21.12.62—  
*Continued*

in the Proxy of the proctor who represented the plaintiff-respondent both at the trial and in the appeal to this Court ;

- (c) telegram on the 15th day of December 1962 ; and
- (d) by handing to the plaintiff-respondent personally a notice on the 15th day of December 1962.

4. The said notices sent to the plaintiff-respondent and her proctor respectively were as follows :—

“ No. 72, New Buller’s Road,  
Colombo, 10  
14th December, 1962.

To :

Miss D. M. Henry,  
No. 25/3, Lauries Road,  
Bambalapitiya.

Dear Madam,

*S.C. 461 (Final) of 1960—D.C. Colombo Case No. 8434/L.*

I, M. G. Perera of No. 72, New Buller’s Road, Colombo the defendant-appellant in the above styled action do hereby give you notice of my intention to apply to the Supreme Court of the Island of Ceylon for conditional leave to appeal to Her Majesty the Queen-in-Council against the Judgment and Decree of the Honourable the Supreme Court of the Island of Ceylon in the above case pronounced on the 4th day of December 1962. The application for conditional leave will be made to the Supreme Court within 30 days of the said judgment.

(Sgd.) M. G. PERERA,  
*Defendant-Appellant* ”.

Wherefore the defendant-petitioner prays :—

- (a) that Your Lordships’ Court be pleased to grant Conditional Leave to appeal from the said Judgment of Your Lordships’ Court dated the 4th day of December, to Her Majesty in Council ;
- (b) and for such other and further relief as to Your Lordships’ Court shall seem meet.

(Sgd.) S. RATNAKARAM,  
*Proctor for Defendant-Petitioner.*

*Documents filed with Petition.*

1. Appointment of proctors.
2. Affidavit.
3. Registered postal articles receipts.
4. Copy of Telegram.

No. 15  
Application  
for Conditional  
Leave to  
Appeal to the  
Privy Council  
21.12.62—  
*Continued*

(Sgd.) S. RATNAKARAM,  
*Proctor for Defendant-Petitioner.*

**No. 16**

**Minute of Order Granting Conditional Leave to Appeal to the  
Privy Council**

10

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 16  
Minute of  
Order granting  
Conditional  
Leave to  
Appeal to the  
Privy Council  
6.3.63

In the matter of an application for Conditional  
Leave to Appeal to the Privy Council under  
the Rules set out in the Schedule to the Appeals  
(Privy Council) Ordinance.

S.C. Application      Dr. M. G. Perera of No. 72, New Buller's Road,  
No. 555 of 1962.      Bambalapitiya, Colombo.....  
..... *Defendant-Petitioner*

*vs.*

20

Miss Daria Memalta Henry of No. 25/3, Lauries  
Road, Bambalapitiya, Colombo.....  
..... *Plaintiff-Respondent.*

The application of Dr. M. G. Perera of No. 72, New Buller's  
Road, Bambalapitiya, Colombo, for Conditional Leave to Appeal to  
Her Majesty the Queen-in-Council from the judgment and decree of  
the Supreme Court of the Island of Ceylon pronounced on the 4th  
day of December, 1962 in S.C. 461 (Final) of 1960 D.C. Colombo  
Case No. 8434/L having been listed for hearing and determination  
before the Honourable Miliani Claude Sansoni, Puisne Justice, and  
30 the Honourable Leonard Bernice de Silva, Puisne Justice, in the  
presence of S. C. Crossette Thambiah Esquire, Advocate for the  
petitioner and there being no appearance for the respondent, order  
has been made by Their Lordships on the 6th day of March, 1963  
allowing the aforementioned application for Conditional Leave to  
Appeal to Her Majesty the Queen-in-Council.

(Sgd.) J. W. SUBASINGHE,  
*Registrar of the Supreme Court.*

No. 17  
Application  
for Final Leave  
to Appeal to  
the Privy  
Council  
29.3.63

## No. 17

## Application for Final Leave to Appeal to the Privy Council

## IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to  
Appeal to Her Majesty the Queen-in-Council.

S.C. No. 461/60 D.C. No. 8434/L. Application for Conditional Leave to Appeal No. 555/1962.	Dr. M. G. Perera of No. 72, New Buller's Road, Bambalapitiya, Colombo..... ..... <i>Defendant-Appellant-Petitioner</i> <i>vs.</i> Miss Daria Memalta Henry of No. 25/3, Lauries 10 Road, Bambalapitiya, Colombo..... ..... <i>Plaintiff-Respondent.</i>
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This 29th day of March, 1963.

To :

His Lordship the Honourable the Chief Justice and the other  
Judges of the Supreme Court of the Island of Ceylon.

The petition of the defendant-appellant-petitioner abovenamed  
appearing by S. Ratnakaram and his Assistant T. Vanniasinkam, his  
proctors, states as follows :—

1. The defendant-appellant-petitioner on the 6th day of March, 20  
1963 obtained Conditional Leave from this Honourable Court to  
Appeal to Her Majesty the Queen-in-Council against the judgment of  
this Court pronounced on the 4th day of December 1962.

2. That the defendant-appellant-petitioner has in compliance in  
the conditions on which such leave was granted given security by  
deposit of a sum of Rs. 3,000/- with the Registrar of the Supreme Court  
and hypothecation thereof by Bond and also deposited with the  
Registrar a sum of Rs. 3,000/- in respect of the amount and fees  
mentioned in Section 4 (2) (b) and (c) of the Appeals (Privy Council)  
Ordinance.

30

Wherefore the defendant-appellant-petitioner prays :—

(a) that he be granted Final Leave to Appeal against the said  
judgment of this Court dated 4th December, 1962 to Her Majesty  
the Queen-in-Council ;

(b) for costs, and

(c) for such other and further relief as to Your Lordships' Court  
shall deem meet.

(Sgd.) S. RATNAKARAM,  
*Proctor for Defendant-Appellant-Petitioner.*

No. 18

Minute of Order Granting Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

No. 18  
Minute of  
Order granting  
Final Leave to  
Appeal to the  
Privy Council  
13.5.63

In the matter of an Application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S.C. Application  
10 No. 146 of 1963.

Dr. M. G. Perera of No. 72, New Buller's Road, Bambalapitiya, Colombo... *Defendant-Petitioner*

*vs.*

Miss Daria Memalta Henry of No. 25/3, Lauries Road, Bambalapitiya, Colombo.....  
..... *Plaintiff- Respondent.*

The application of Dr. M. G. Perera of No. 72, New Buller's Road, Bambalapitiya, Colombo, for Final Leave to Appeal to Her Majesty the Queen-in-Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 4th day of December, 1962 in S.C. 461 (Final) of 1960 D.C. Colombo Case  
20 No. 8434/L., having been listed for hearing and determination before the Honourable Miliani Claude Sansoni Puisne Justice, and the Honourable Leonard Bernice de Silva, Puisne Justice, in the presence of S. C. Crossette Thambiah Esquire, Advocate for the petitioner and there being no appearance for the respondent, order has been made by Their Lordships on the 13th day of May, 1963 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen-in-Council.

(Sgd.) J. W. SUBASINGHE,  
*Registrar of the Supreme Court.*

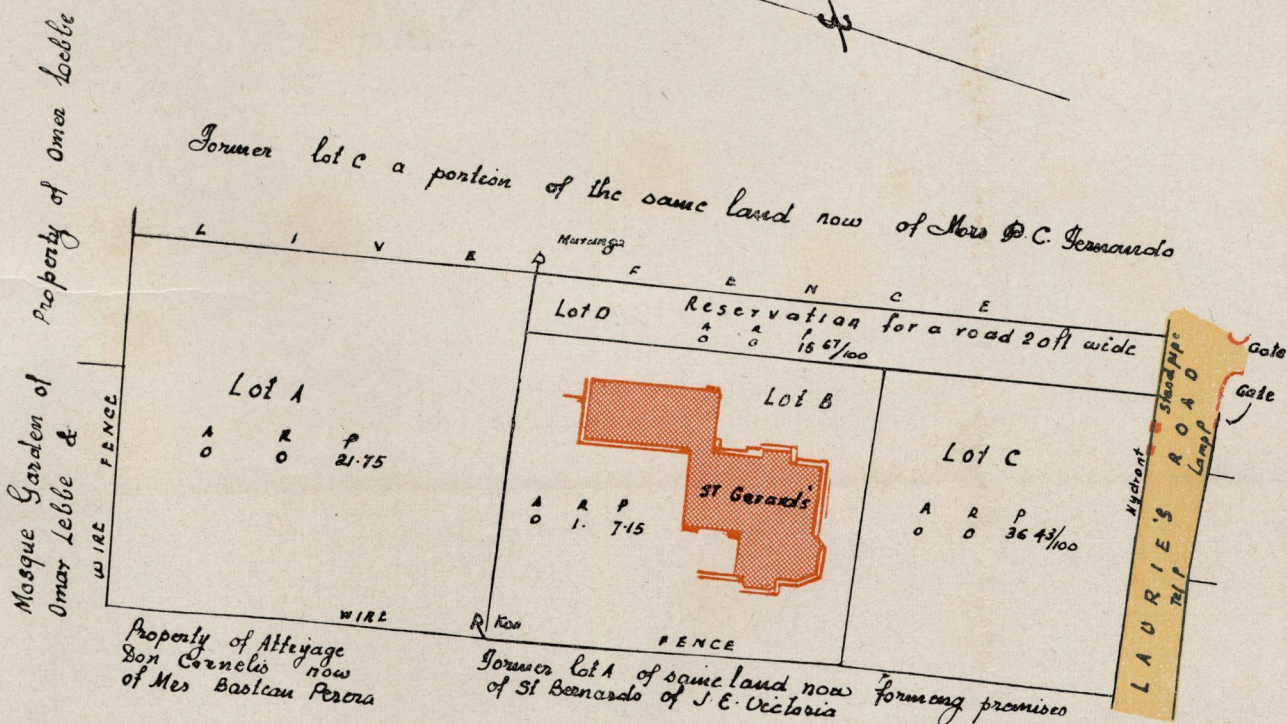




PART II

**EXHIBITS**





Scale of One Chain to an Inch

P L A N

Of all that defined portion of land formerly marked lot 'B' from and out of all that garden called Mestriawatta alias Hoahatagahawatta bearing Assmt No 31, presently bearing Assmt No 31(5) & ward No 968 situated at Bambalapitiya within the Municipality of Colombo, Colombo District, Western Province Bounded as follows.

	lot A	lot B	lot C	lot D
North	By Mosque Garden of Omar Lebbe & property of Omar Lebbe	lot A, a portion of the same land	lot B, a portion of the same land	lot A, a portion of the same land
East	" Former lot C, a portion of the same land now of Mrs P.C. Fernando	lot D, a portion of the same land (Reservation for a road)	lot D, a portion of the same land (Reservation for a road)	Former lot C, a portion of the same land now of Mrs P.C. Fernando
South	" lot B, a portion of the same land	lot C, a portion of the same land	Laurie's Road	Laurie's Road
West	" Now premises of St Bernard's of J.E. Victoria, former lot A, a portion of the same land & property of Attyage Cornelis now of Mrs Basilia Pereira	Now premises of St Bernard's of J.E. Victoria, former lot A, a portion of the same land	Now premises of St Bernard's of J.E. Victoria former lot A, a portion of the same land	lots B & C, portions of the same land.

	Containing in extent	Acres	Roods	Persches
lot A	=	0	1	21.75
" B	=	0	1	7.15
" C	=	0	0	35.43
" D	=	0	0	15.67
Total		1	0	00.00

Date of Survey: 29th March 1924

Sgt. H. D. David  
Local Surveyor & Leveller

lots A, B, C & D together bounded as follows  
 North by Mosque Garden of Omar Lebbe & property of Omar Lebbe  
 East " Former lot C, a portion of the same land now of Mrs P.C. Fernando  
 South " Laurie's Road  
 West " Now premises of St Bernard's of J.E. Victoria, former lot A a portion of the same land & property of Attyage Don Cornelis now of Mrs Basilia Pereira

True Copy

H. D. David  
Local Surveyor & Leveller.  
20. 7. 63.



Divided portions of A109/118.

Appl. No. D303/19.1.59.

No. 1645

To All to Whom These Presents Shall Come Peter Anthony Nolasco Fernando of Bambalapitiya, Colombo, presently of Panadura Administrator of the Estate of Julie Marian Fernando of Lauries Road, Bambalapitiya, aforesaid deceased.

10 Sends Greeting.

Whereas the said Julie Maria Fernando was under and by virtue of Deed No. 1699 dated the Fifteenth day of June, 1916 and Deed No. 1505 dated the Eleventh day of September, 1912 both attested by H. P. Weerasooriya of Colombo aforesaid Notary Public seized and possessed of and well and sufficiently entitled to all that Lot marked Letter " B " in the Plan from and out of all that gardens called Mestriawatte *alias* Kahatagahawatte with the plantations and buildings thereon (being a portion of the premises bearing Assessment No. 31) situated at Lauries Road in Bambalapitiya within the  
20 Municipality and District of Colombo Western Province and which said Lot marked Letter " B " bearing Assessment No. 968/31(b) Lauries Road bounded on the North by the property of Omer Lebbe Baas on the East by a defined portion of this same land and marked Letter " C " on the South by a Road leading to Cinnamon Gardens (known as Lauries Road) and on the West by a portion marked Letter " A " of the same land and by the property of Attidiyage Don Cornelis containing in extent one acre (A1-R0-P0) according to plan thereof No. 3015 dated 16th July, 1912 made by George P. Weeraratne Licensed Surveyor.

30 And Whereas the said Julie Maria Fernando died intestate at Colombo aforesaid on the fifth day of October, 1922.

And Whereas letters of Administration of the estate and effects of the said Julie Maria Fernando were on the twenty-sixth day of June, 1924 issued by the District Court of Colombo in Testamentary Action No. 1182 of the said Court to the said Peter Anthony Nolasco Fernando.

And whereas the said Peter Anthony Nolasco Fernando as administrator as aforesaid was by order of the said Court dated the fourteenth day of March, 1924 authorised and empowered to sell

P2  
Deed No. 1645  
28.6.24—  
Continued

the said premises hereinbefore fully described by Public Auction and to bring the proceeds of the sale into Court.

And whereas the said Peter Anthony Nolasco Fernando as administrator as aforesaid in pursuance of the said order of Court dated the 14th day of March, 1924 caused the said premises hereinbefore fully described to be surveyed and divided by H. D. David Licensed Surveyor into three different lots marked A, B and C in the Plan thereof and caused the same to be put up for sale separately by Public Auction by Thomas Ambrose de Mel of Colombo aforesaid Licensed Auctioneer on the 16th day of May, 1924 at which sale 10 Pinteruralage Don Henry Wijeyeratne of Bambalapitiya aforesaid (hereinafter referred to as the said Don Henry Wijeyeratne) as the highest bidder was declared the purchaser of the said Lots " B " and " C " of the said premises at or for the aggregate price or sum of Rupees Twenty-one thousand Five hundred (Rs. 21,500/-).

And Whereas the said Don Henry Wijeyeratne duly paid the said purchase money in full and otherwise complied with the conditions of sale and have called upon the said Peter Anthony Nolasco Fernando as administrator as aforesaid to execute a conveyance in his favour of the said Lots " B " and " C " of the said premises. 20

Now Therefore Know Ye and These Presents Witness that the said Peter Anthony Nolasco Fernando as administrator of the estate of the said Julie Maria Fernando deceased in consideration of the said premises and of the said sum of rupees Twenty-one thousand Five hundred (Rs. 21,500/-) well and truly deposited in the said District Court of Colombo to the credit of the said Testamentary Case No. 1182 in pursuance of the said order of Court and in exercise of the power and authority granted to him by the said order of Court dated the 14th day of March, 1924 doth hereby grant bargain sell assign transfer convey and set over unto the said Don Henry Wijeye- 30 ratne his heirs executors administrators and assigns all those two allotments of land and premises in the Schedule hereto fully described together with all rights privileges easements servitudes and appurtenances whatsoever to the said premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the said Julie Maria Fernando deceased and of him the said Peter Anthony Nolasco Fernando as administrator as aforesaid in to upon or out of the same.

To Have and to Hold the said premises hereby conveyed unto 40 him the said Don Henry Wijeyeratne his heirs executors administrators and assigns for ever.

And the said Peter Anthony Nolasco Fernando doth hereby for himself his heirs executors and administrators covenant and agree

with the said Don Henry Wijeyeratne his heirs executors administrators and assigns that the said Peter Anthony Nolasco Fernando as administrator as aforesaid or otherwise hath not at any time heretofore made done or committed or knowingly suffered or has been party or privy to any act deed matter or thing whereby or by means whereof the said premises or any part thereof are is can shall or may be in anywise impeached encumbered or prejudicially effected in title charge estate or otherwise howsoever.

P2  
Deed No. 1645  
28.6.24—  
Continued

In witness whereof the said Peter Anthony Nolasco Fernando as  
10 administrator as aforesaid has set his hand to these presents and to two others of the same tenor and date at Colombo aforesaid this Twenty-eighth day of June, One thousand Nine hundred and Twenty-four.

*The Schedule above referred to :*

All those two allotments of land marked " B " and " C " in the Plan hereinafter referred to being divided portions of all that defined portion formerly marked " B " of a garden called Mestriyawatte *alias* Kahatagahawatta bearing assessment No. 31 and presently No. 968/31 (b) with the buildings thereon situated at Lauries Road,  
20 Bambalapitiya within the Municipality and District of Colombo Western Province and which said two Lots " B " and " C " adjoins each other and form one property and from their situation as respects each other can be included in one survey to wit :—

(1) All that lot marked B with the buildings standing thereon called " St. Gerards " in the plan hereinafter referred to (being a divided portion of all that defined portion formerly marked " B " of a garden called Mestriyawatte *alias* Kahatagahawatta bearing Assessment No. 968/31 (b) situated at Lauries Road aforesaid) bounded on the North by Lot " A " a portion of this same land on the East by  
30 Lot " D " a portion of the same land (reservation for a road) on the South by Lot " C " a portion of the same land and on the West by premises of St. Bernards' of J. E. Victoria formerly Lot " A " portion of the same land containing in extent one rood and seven perches and 15/100th of a perch (A0-R1-P7 15/100) according to Plan No. 345 dated 29th March, 1924 made by H. D. David Licensed Surveyor together with the right of way over the said reservation marked " D ".

2. All that lot marked " C " in the said plan thereof (being a divided portion of all is that defined portion formerly marked B of a garden called Mestriyawatte *alias* Kahatagahawatta bearing Assessment No. 968/31 (b) situated at Lauries Road aforesaid) bounded on  
40 the North by Lot " B " a portion of the same land on the East by Lot " D " a portion of the same land (reservation for a road) on the South by Lauries Road and on the West by the new premises of St. Bernards' of Mr. J. E. Victoria formerly Lot " A " portion of the



P2  
Deed No. 1645  
28.6.24—  
Continued

same land containing in extent thirty-five perches and forty-three hundredths of a perch (A0-R0-P35 45/100) according to the said Plan No. 345 together with the right of way over the said reservation marked D.

Witnesses :

(Sgd.) Illegibly.

(Sgd.) P. A. N. FERNANDO.

(Sgd.) Illegibly.

(Sgd.) W. E. v. de ROOY,  
N.P.

I, William Edward vander Smagt de Rooy of Colombo in the 10  
Island of Ceylon Notary Public do hereby certify and attest that the  
foregoing instrument having been read over by the within named  
Peter Anthony Nolasco Fernando in the presence of the subscribing  
witnesses Panapitikanamalage Wilson Perera and Julius Alfred  
Jayasinghe both of Colombo aforesaid all of whom are known to me  
the same was signed by the said Peter Anthony Nolasco Fernando  
and also by the said witnesses and by me the said Notary in my  
presence and in the presence of one another all being present at the  
same time on the Twenty-eighth day of June One thousand Nine  
hundred and Twenty-four at Colombo. 20

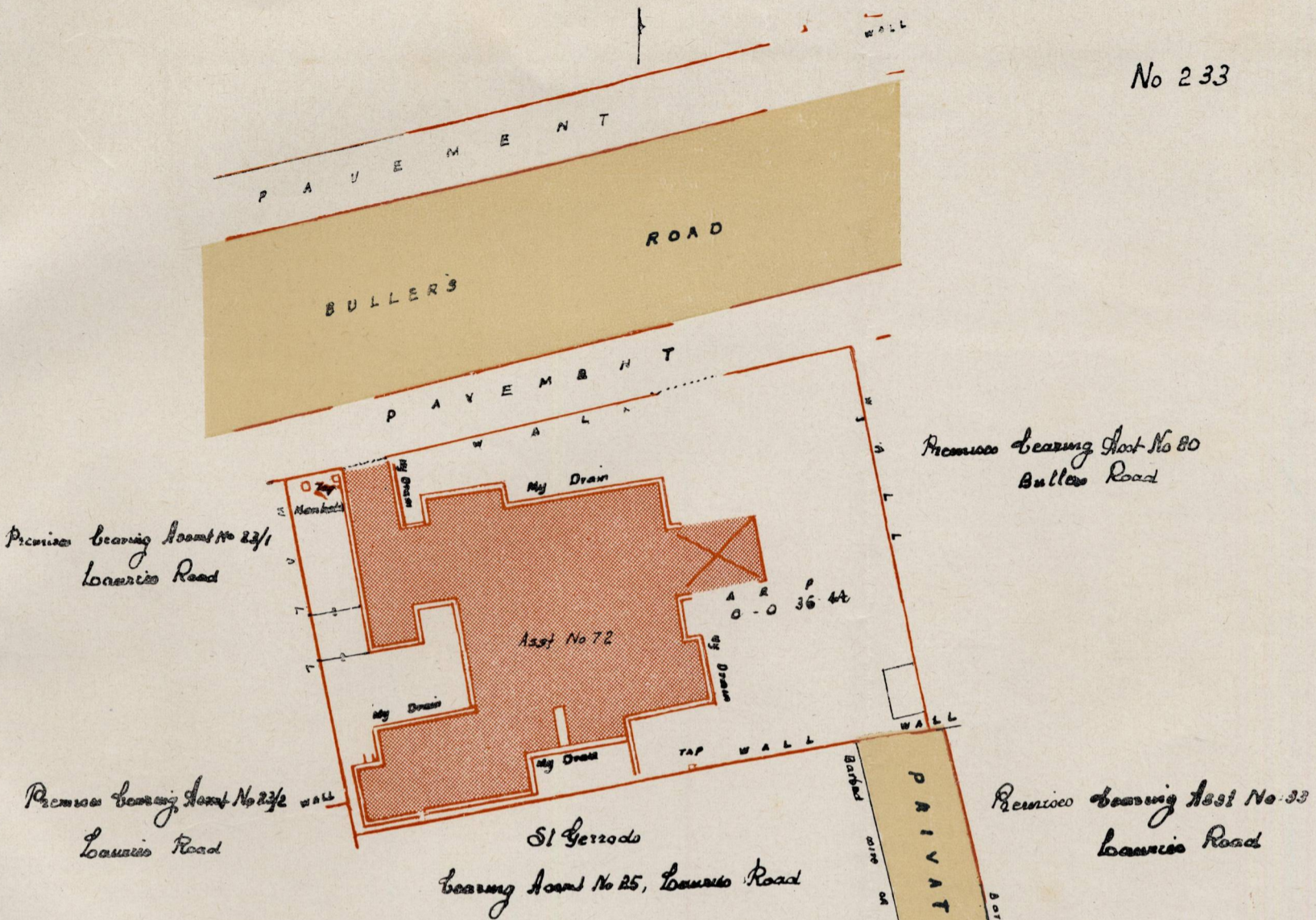
I, further certify and attest that in the original in line 7 of page 5  
the words " with the buildings standing thereon called St. Gerards "   
were interpolated the words and letter from the word with to the  
letter " D " which form the 25th line of page 5 were added and in  
the duplicate in line 3 of page 2 the word " at " was deleted in line 31  
of page 2 the word " as " was substituted for the word " on " in line  
11 of page 5 the words " with the buildings standing thereon called  
St. Gerard " were interpolated in line 14 of page 5, the word " called "  
was interpolated in line 15 of page 5 the letter " (b) " was deleted and  
the words and letter from the word " together " to the letter " D " 30  
which from the 8th line of page 6 were added before the foregoing  
instrument was read over as aforesaid and that Rs. 19,350/- part  
consideration was retained to be deposited on the 1st July, 1924 in  
the Colombo Kachcheri to the credit of Testamentary Action No. 1182  
D.C. Colombo in payment of the balance purchase price of the within  
mentioned property and that the original of this instrument bears a  
stamp of the value of Re. 1/- and the duplicate seven stamps of the  
value of Rs. 343/- and that the said stamps were supplied by Messrs.  
de Vos & Gratiaen.

Date of attestation  
28th June, 1924. }

Which I attest.

(Sgd.) W. E. v. de ROOY, 40  
Notary Public.

No 233



Scale of Half Chain to an Inch

Plan

OF AN ALLOTMENT OF LAND

With the buildings thereon formerly bearing Assnt No 29, Laurie's Road, now bearing Assnt No 72 Bullers Road

Situated at Bambalapitiya within the Municipality + District of Colombo

WESTERN PROVINCE

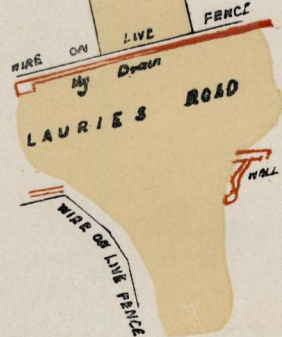
Bounded on the

- North by Bullers Road
  - East by Premises bearing Assnt No 80 Laurie's Road
  - South by St Gerardo bearing Assnt No 25 Laurie's Road
  - West by Premises bearing Assnt Nos 23/1 & 23/2 Laurie's Road
- Containing an extent 0 0 36.44

Surveyed on the 27th day of February 1954

True Copy  
R. P. Jayasinghe  
Local Surveyor & Licentiate  
10.7.63

Sgt E.S. Indugalle  
Chief Surveyor & Licentiate





I, K. E. Silva Additional Registrar of Lands, Colombo, do hereby certify the foregoing is a true copy by mechanical process of duplicate of Deed No. 1645 dated 28.6.1924 attested by Notary W. E. V. de Rooy filed in this office and is issued on the application of Miss D.M. Henry of 25/3 Lauries Road, Colombo 4.

P2  
Deed No. 1645  
28.6.24—  
Continued

(Sgd.) K. E. SILVA,  
*Addl. Registrar.*  
20th January, 1959.

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**D1**

**Deed No. 1306**

D1  
Deed No. 1306  
19.3.54

10

Prior Registration.  
See Schedules.

Drawn by us.  
F. J. & G. De SARAM,  
*Notaries Public.*

Registered A334/220

and

350/263

Colombo, 26th March 1954.

(Sgd.) Illegible.

*R.L.*

20

No. 1306

To All To Whom These Presents Shall Come Michael Joseph Aloysius Sandarasagara and Pumeni Sandrasagara (nee Muttukumaru) wife of the said Michael Joseph Aloysius Sandrasagara (acting herein by and with the consent and concurrence of her said husband testified by his executing these presents) both of Kalutara in the Island of Ceylon (hereinafter called "the vendors").

Send Greeting :

WHEREAS

(1) The vendors are seized and possessed of or otherwise well and sufficiently entitled to all that allotment of land (with the buildings standing thereon) in the first schedule hereto fully described.

(2) The vendors have agreed with Sago Abdul Cader Shumsdeen of Colombo in the said Island (hereinafter called "the purchaser") for the sale to the purchaser free from encumbrance of the said allotment of land buildings and premises together with the right of way hereinafter mentioned at or for the price or sum of One hundred and Twenty thousand rupees (Rs. 120,000/-) of lawful money of Ceylon.

D1  
Deed No. 1306  
19.3.54—  
Continued

Now Know Ye and These Presents Witness that in pursuance of the said agreement and in consideration of the said sum of One hundred and Twenty thousand rupees (Rs. 120,000/-) of lawful money aforesaid well and truly paid to the vendors by the purchaser (the receipt whereof the vendors do and each of them doth hereby expressly admit and acknowledge) the vendors do and each of them hereby sell grant convey assign transfer set over and assure unto the purchaser his heirs executors administrators and assigns all that the said allotment of land in the said first schedule hereto fully described together with the buildings standing thereon and all rights ways 10 privileges easements servitudes and appurtenances whatsoever to the said allotment of land buildings and premises belonging or in anywise appertaining thereto or held used or enjoyed therewith or reputed or known as part and parcel thereof and the full and free right liberty and licence to the purchaser and his aforewritten and the owners or owner for the time being of the said allotment of land and premises fully described in the said first schedule hereto and his or their tenants servants visitors and licencees and all other persons authorised by him or them (in common with all others having the like right) from time to time at all times hereafter at his and their 20 will and pleasure for all purposes connected with the use and enjoyment of the said allotment of land and premises in the said first schedule hereto fully described to go return pass and repass with or without horses cattle and other animals motor cars lorries carts wagons and other vehicles and conveyances laden or unladen in along and over the road reservation twenty feet wide marked Lot D on Plan No. 345 dated 29th March, 1924 made by H. Don David Licensed Surveyor (shown also on Plan No. 3131 dated 20th August, 1932 made by E. M. Anthonisz Licensed Surveyor) fully described in the second 30 schedule hereto and leading from Lauries Road to the said allotment of land and premises fully described in the said first schedule hereto and all the estate right title interest property claim and demand whatsoever of the vendors and each of them in to out of or upon the same and all deeds documents and other writings therewith held or relating thereto.

To Have and to Hold the said allotment of land buildings and premises hereby conveyed and assigned or expressed or intended so to be with all and singular the appurtenances thereunto belonging unto the purchaser and his aforewritten absolutely for ever.

And the vendors do and each of them doth hereby for themselves 40 and each of them and the heirs executors and administrators of them and of each of them covenant and agree with the purchaser and his aforewritten that the purchaser and his aforewritten shall and may at all times hereafter peaceably and quietly possess and enjoy the said allotment of land and premises in the said first schedule hereto fully described and the right of way aforesaid and receive the rents

and profits thereof without any interruption or disturbance by the vendors or either of them or the aforewritten of them or of either of them or any other person or persons whosoever lawfully claiming any right or title thereto and that the same are free from encumbrance and that the vendors and their respective aforewritten shall and will at all times hereafter warrant and defend the title to the said allotment of land buildings and premises and the right of land buildings and premises and the right of way aforesaid and every part or portion thereof unto the purchaser and his aforewritten against any and every  
 10 person or persons whomsoever and shall and will at all times hereafter at the request cost and expense of the purchaser or his aforewritten do and execute or cause to be done and executed all such further and other acts deeds assurances and things as the purchaser or his aforewritten shall or may reasonably require for more perfectly and effectually conveying and assuring the said allotment of land and premises and the right of way aforesaid or any part or portion thereof unto the purchaser and his aforewritten.

In witness whereof the vendors have set their respective hands to these presents and to two others of the same tenor and date at  
 20 Colombo aforesaid this nineteenth day of March One thousand Nine hundred and Fifty-four.

*The First Schedule above referred to :*

All that defined portion of land with the buildings standing thereon formerly bearing assessment No. 29, Lauries Road and now bearing Assessment No. 72, Buller's Road situated at Bambalapitiya within the Municipality and District of Colombo Western Province in the Island of Ceylon bounded on the North by Buller's Road on the East by premises bearing Assessment No. 33 Lauries Road on the South by Lot D on Plan No. 345 being a Reservation for a road and premises  
 30 bearing assessment No. 25, Lauries Road and on the West by premises bearing assessment Nos. 23/2 and 23/1, Lauries Road and Government Acquisition and containing in extent thirty-six perches and forty-six one hundredths of a perch (A0-R0-36 46/100P) according to the plan thereof No. 3131 dated 20th August, 1932 made by E. M. Anthonisz Licensed Surveyor.

Which said premises have been recently surveyed and according to Plan No. 233 dated 27th February, 1954 made by E. S. Tudugalla Licensed Surveyor is described as follows: All that allotment of land with the buildings standing thereon formerly bearing assess-  
 40 ment No. 29, Lauries Road and now bearing assessment No. 72 Buller's Road situated at Bambalapitiya aforesaid bounded on the North by Buller's Road on the East by premises bearing assessment No. 80, Buller's Road on the South by Private Road and premises known as " St. Gerard's " bearing assessment No. 25, Lauries Road

D1  
 Deed No. 1306  
 19.3.54—  
 Continued

D1  
Deed No. 1306  
19.3.54—  
Continued

and on the West by premises bearing assessment Nos. 23/2 and 23/1, Lauries Road and containing in extent thirty-six perches and forty-four one hundredths of a perch (A0.R0.36 44/100P.) according to said Plan No. 233 and registered in folio A334/220 at the Colombo Land Registry.

*The Second Schedule above referred to :*

All that allotment of land marked D on the said Plan No. 345 dated 29th March, 1924 made by H. Don David Licensed Surveyor (being a reservation for a road twenty feet wide) being a defined portion of land marked B from and out of all that garden called 10 Mestriyawatta *alias* Kahatagahawatta formerly bearing assessment No. 31/b and ward No. 968 situated at Bambalapitiya aforesaid bounded on the North by Lot A on the said Plan No. 345 on the East by the former Lot C (a portion of the same land belonging to Mrs. P. C. Fernando) on the South by Lauries Road and on the West by Lots B and C on the said Plan No. 345 and containing in extent fifteen perches and sixty-seven one hundredths of a perch (A0-R0-P15 67/100) according to the said Plan No. 345 which said premises as above described is a portion of the land registered in folio A 160/129 at the Colombo Land Registry. 20

Witnesses to the signature of the withinnamed executants who do hereby declare that they are well acquainted with them and know their proper names occupations and residences.	}	(Sgd.) M. J. P. SANDARA-SAGARA. (Sgd.) PUMENI SANDARASAGARA.
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(Sgd.) DAVID F. De SILVA.  
(Sgd.) P. A. SAMARAWICKREMA.

(Sgd.) A. R. TAMPOE,  
*Notary Public, Colombo,  
Ceylon.*

I, Albert Reginald Tampoe of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing transfer 30 having been read over by the within-named Michael Joseph Aloysius Sandarasagara and Pumeni Sandarasagara (both of whom are not known to me) in the presence of David Frederic de Silva of Green Path in Colombo aforesaid and Percy Alaric Samarawickrema of Mount Lavinia in the said Island the subscribing witnesses thereto both of whom are known to me and who declared that they were well acquainted with the said executants and knew their proper names occupations and residences the same was signed by the said Michael Joseph Aloysius Sandarasagara and Pumeni Sandarasagara and also by the said witnesses in my presence and in the presence of one 40 another all being present at the same time at Colombo aforesaid this nineteenth day of March One thousand Nine hundred and Fifty-four.

I further certify and attest that the consideration mentioned therein was paid in my presence and that the original of this instrument bears an impressed stamp of one rupee and the duplicate impressed stamps of the aggregate value of one thousand nine hundred and twenty rupees (Rs. 1,920/-).

Date of attestation.

19th March, 1954.

Which I attest

(Sgd.) A. R. TAMPOE,

*Notary Public.*

10

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**D2**

**Conditions of Sale (No. 452)**

*Conditions of Sale*

No. 452

D1  
Deed No. 1306  
19.3.54  
*Continued*

D2  
Conditions of  
Sale (No. 452)  
7.5.54

Upon which Vinin Douglas Clarence Kurera, Auctioneer carrying on business at 39, Chatham Street, Fort, Colombo, under the name, firm and style of Douglas C. Kurera & Co. under instructions from the owner will put up for sale by Public Auction at the spot at 5.15 p.m. on the seventh day of May, 1954 after previous advertisement, property hereinafter described.

20

1. Subject to the provisions of clauses 11 hereof the highest bidder shall become the purchaser and if any dispute shall arise between two or more bidders as to their bid the decision of the auctioneer shall be final and the sale proceeded with.

2. Bids of less than Rupees One hundred (Rs. 100/-) will not be accepted and no bidding shall be retracted.

3. The highest bidder on being declared the purchaser shall pay to the auctioneer conducting the sale, one-tenth of the purchase money and if required shall sign an agreement with two good and sufficient sureties (to be approved by the said Auctioneer) who shall bind themselves jointly and severally for the due performance of these conditions, renouncing the privileges to which sureties are otherwise by law entitled. Should the highest bidder fail to pay the required amount the next highest bidder will be declared the purchaser.

30

4. Immediately after the sale, the purchaser shall also pay the Auctioneer's commission at the rate or  $2\frac{1}{2}\%$  per cent. The cost of publishing this sale and of the stamps for these conditions, the cost



D2  
 Conditions of  
 Sale (No. 452)  
 7.5.54—  
 Continued

of drawing these conditions, the Notary's fees for attesting the same, the Auctioneer's and Notary's travelling charges and the clerk's fee.

5. The balance purchase money shall be paid to the said Auctioneers at Colombo on or before the thirtieth day from this date and thereupon a transfer (the cost whereof the purchaser shall bear) will be executed in his favour free of all encumbrances. A draft of the Deed of Transfer shall be previously submitted to and approved by the vendor's lawyers, Messrs. F. J. & G. De Saram.

6. Should the purchaser or his sureties fail or neglect to imply with these conditions all monies paid this day shall be forfeited and 10 the property shall be liable to be re-sold at their risk. They shall not be entitled to any advantage arising at such re-sale, but shall be liable in respect of any deficiency between it and the present sale.

7. No error or mistake in the description of the property shall annul, or affect the sale in any way.

8. The Auctioneer conducting the sale has the right to accept or reject the bid of any person without assigning his reasons therefor and he reserves to himself the right to bid once.

9. The vendors will supply the purchaser with the title deeds and plans relating to the property now in the possession of the 20 vendor.

10. The vendor will undertake to warrant and defend the title but will not give the purchaser a special warranty of title.

11. The vendor reserves to himself the right to withdraw the property from the sale if the price realised is below the reserve price.

#### DESCRIPTION OF PROPERTY

All that defined portion of land with the buildings standing thereon formerly bearing assessment No. 29, Lauries Road and now bearing assessment No. 72, Buller's Road situated at Bambalapitiya within the Municipality and District of Colombo Western Province 30 in the Island of Ceylon bounded on the North by Buller's Road on the East by premises bearing assessment No. 33, Lauries Road on the South by Lot D on Plan No. 345 bearing a reservation for a road and premises bearing assessment No. 25, Lauries Road, on the West by premises bearing assessment Nos. 23/2 and 23/1, Lauries Road and Government acquisition and containing in extent thirty-six perches and forty-six one hundredths of a perch (A0-R0-36 46/100P) according to the plan thereof No. 3131 dated 20th August, 1932 made by E. M. Anthonisz, Licensed Surveyor.

Which said premises have been recently surveyed and according 40 to Plan No. 233 dated 27th February, 1954 made by E. S. Tudugalla

Licensed Surveyor is described as follows: All that allotment of land with the buildings standing thereon formerly bearing assessment No. 29, Lauries Road and now bearing assessment No. 27, Buller's Road situated at Bambalapitiya aforesaid bounded on the North by Buller's Road on the East by premises bearing assessment No. 80, Buller's Road on the South by private road and premises known as "St. Gerard's" bearing assessment No. 25, Lauries Road and on the West by premises bearing assessment Nos. 23/2 and 23/1, Lauries Road and containing in extent thirty-six perches and forty-four one hundredths of a perch (A0-R0-36 44/100P) according to the said Plan No. 233 and registered in Folio A334/220 at the Colombo Land Registry.

D2  
Conditions of  
Sale (No. 452)  
7.5.54—  
Continued

Together with the right of way over the private road twenty feet wide leading from Lauries Road to the said premises.

*Bidders*

T. Gulam Hussein	..	..	..	..	..	50,000
Dr. B. E. Mendis	..	..	..	..	..	60,000
J. M. Perera ..	..	..	..	..	..	65,000
Dr. B. E. Mendis	..	..	..	..	..	75,000
20 J. M. Perera ..	..	..	..	..	..	85,000
Dr. B. E. Mendis	..	..	..	..	..	100,000
J. M. Perera	..	..	..	..	..	102,500
Dr. B. E. Mendis	..	..	..	..	..	103,000
Dr. M. G. Perera	..	..	..	..	..	104,000
Dr. B. E. Mendis	..	..	..	..	..	106,500
Dr. M. G. Perera	..	..	..	..	..	107,000

I, Vinin Douglas Clarence Kurera of the firm of Douglas C. Kurera & Co., Auctioneers, 39, Chatham Street, Fort, Colombo, do hereby declare that Dr. Mahamarakkalage Gregory Perera of 117, New Buller's Road, Colombo 3 did on the 7th day of May, 1954 become the purchaser of the said premises for the sum of Rupees One hundred and Seven thousand (Rs. 107,000/-) and that he has paid me Rupees Ten thousand Seven hundred (Rs. 10,700/-), in part payment of the purchase money aforesaid.

The Seventh day of May One thousand Nine hundred and Forty-four.

(Sgd.) V. D. C. KURERA,  
*Auctioneer.*

D2  
 Conditions of  
 Sale (No. 452)  
 7.5.54—  
 Continued

I, Dr. Mahamarakkalage Gregory Perera of 117, New Buller's Road, Colombo 3 do hereby acknowledge that I purchased the said premises for the sum of One hundred and Seven thousand (Rs. 107,000/-) in terms of the aforesaid conditions and I bind myself for the due performance thereof.

The 7th day of May One thousand Nine hundred and Fifty-four.

(Sgd.) M. G. PERERA,  
*Purchaser.*

I, Sago Abdul Cader Shumsdeen do hereby approve and ratify the above sale. 10

The seventh day of May One thousand Nine hundred and Fifty-four.

(Sgd.) S. A. C. SHUMSDEEN.

*Witness :*

We declare that we are well acquainted with the parties abovenamed and know their proper names, occupations and addresses.

(Sgd.) Illegible,  
*Notary Public.*

(Sgd.) Illegible.

(Sgd.) Illegible. 20

I, Rajanathan Devasenapathy of Colombo Notary Public, do hereby certify and attest that the foregoing instrument having been duly read over by Vinin Douglas Clarence Kurera the Auctioneer therein-named and by Mahamarakkalage Gregory Perera the purchaser therein-named and by Sago Abdul Cader Shumsdeen the owner therein-named in the presence of John Hugh Calistus Fernando of No. 30, 1st Chapel Lane, Wellawatte, in Colombo aforesaid and Sherard Terrance Austin de Silva Wijeyeratne of Horton Place in Colombo aforesaid the subscribing witnesses thereto all of whom are known to me the same was signed by the said Vinin Douglas Clarence Kurera (who has signed illegibly) Mahamarakkalage Gregory Perera and Sago Abdul Cader Shumsdeen and by the said witnesses in my presence and in the presence of one another all being present at the same time at Colombo aforesaid on the seventh day of May One thousand Nine hundred and Fifty-four. 30

I further certify and attest that in both the original and duplicate on page 1 in line 7 the words and figures " Subject to the Provisions of Clause 11 hereof " were interpolated before the word " the " and the letter " t " in the said word " the " was typed over in line 8 the

words " the property will be put again at the previous undisputed bidding " were deleted and the words " as to the bid the decision of the Auctioneer shall be " were interpolated in line 13 the words " if required " were interpolated between the words " and " and " shall " and the words " one or " were deleted in line 22 the words " remainder of the " were deleted and the word " Balance " was interpolated and the word " within " was deleted and the words " on or " were interpolated and in line 23 the words and figures within brackets " Thirty (30) days " were deleted and the words " before the thirtieth day "

10 were interpolated and the word " when " was deleted and the words " and thereupon " were interpolated in line 34 the word " not " was deleted and the word " any " was deleted and the word " the " was interpolated the word " or " was deleted and the word " and " was interpolated and the words " or copies thereof " were deleted in line 35 the words " and the purchaser shall if he so require the same obtain copies at his own cost " were deleted and the words " now in the possession of the Vendor " were interpolated and line 36 and line 37 were deleted on page 2 in line 9 the words " together with the right of way over " and lines 10 and 11 and on page 3 lines 19, 20,

20 21, 22, 23, 24 and 25 were all deleted and further in the original on page 1 in line 8 the word " the " between the words " bid " and " decision " was typed on erasure and further in the duplicate on page 1 in line 7 the letters " Su " in the word " Subject " in line 25 the letter " u " in the word " previously " and in line 39 the word " but " were typed on erasure before the foregoing instrument was read over as aforesaid and that the deposit of Rs. 10,700/- mentioned therein was paid in my presence and that the duplicate of this instrument bears two adhesive stamps to the value of Rs. 6/- and the original an adhesive stamp of Re. 1/-.

30 Which I attest.

(Sgd.) R. DEVA SENAPATHY,  
*Notary Public.*

Date of attestation

7th May 1954.

Typed by : (Intld.) .....

Compared by : (Intld.) .....

Application No. 30.

40 True copy of (D1) Deed No. 1306 dated 19.3.54 and (D2) conditions of sale No. 452 dated 7.5.54 filed of record in D.C. Colombo Case No. 8434/L.

(Sgd.) Illegibly,  
*Asst. Secretary, D.C., Colombo,*  
18.1.61.

D2  
Conditions of  
Sale (No. 452)  
7.5.54—  
*Continued*

D4  
Deed No. 2010  
14.5.54

**D4**  
**Deed No. 2010**

Prior Registration :—A334/220 and 350/383.

No. 2010

To All to Whom These Presents Shall Come, Sago Abdul Cader Shumsdeen of No. 73, Dickman's Road, Colombo. (hereinafter sometimes called and referred to as the vendor) and Doctor Mahamarakkalage Gregory Perera of No. 117, New Buller's Road Colombo.

*Send Greeting:*

Whereas the Vendor is seized and possessed of or otherwise well 10 and sufficiently entitled to all that allotment of land with the buildings standing thereon in the First Schedule hereto fully described with the right of way hereinafter mentioned.

And Whereas the Vendor caused the said allotment of land with the buildings standing thereon with the said right of way to be sold by Public Auction on the 7th day of May 1954, at the spot by Vinin Douglas Clarence Kurera Auctioneer of the firm of Messrs. Douglas C. Kurera and Company of Colombo and at which Sale the said Doctor Mahamarakkalage Gregory Perera being the highest bidder was declared the purchaser thereof at or for the price or sum of 20 Rupees One hundred and Seven thousand (Rs. 107,000/-) as per conditions of Sale bearing No. 452 dated 7th May, 1954 and attested by R. Devasenapathy of Colombo Notary Public which is annexed to the original hereof.

And Whereas the said Doctor Mahamarakkalage Gregory Perera has paid into the hands of the said Auctioneer at the conclusion of the said sale the sum of Rupees Ten thousand and Seven hundred (Rs. 10,700/-) being a one-tenth of the purchase price and other charges incidental to the said Sale.

And Whereas the said Doctor Mahamarakkalage Gregory Perera 30 having since paid the balance nineteenth purchase price namely :— Rupees Ninety-six thousand and Three hundred (Rs. 96,300/-) in terms of the said conditions of Sale and having otherwise complied with said conditions of sale, hath requested the Vendor to execute the necessary conveyance of the said allotment of land with the buildings standing thereon and the right of way in favour of himself and of his wife Warnakulasuriya Winifred Perera also of No. 117, New Buller's Road aforesaid and he the Vendor hath agreed to do so on the said Doctor Mahamarakkalage Gregory Perera becoming a party to and signing these presents.

Now Know Ye and These Presents Witness that the said Sago Abdul Cader Shumsdeen in pursuance of the said agreement and in consideration of the said sum of Rupees One hundred and Seven thousand (Rs. 107,000/-) well and truly paid by the said Doctor Mahamarakkalage Gregory Perera in manner aforesaid (the receipt whereof the Vendor doth hereby admit and acknowledge) doth hereby sell assign convey transfer set over and assure unto the said Doctor Mahamarakkalage Gregory Perera and the said Warnakulasuriya Winifred Perera (hereinafter sometimes called and referred to as the

10 Purchasers) and their respective heirs executors administrators and assigns all that the said allotment of land with the buildings standing thereon and in the First Schedule hereto fully described together with the full and free right leave liberty and license unto the purchasers and their aforewritten and the Agents servants visitors tenants of them and either of them and all other person or persons claiming title under them or either of them during the day or during the night with or without carriages horses bulls carts animals motor vehicles or any other conveyances mechanically propelled or otherwise laden or unladen for all lawful purposes for the use and occupation

20 of the said allotment of land described in the First Schedule hereto (with other person or persons who hold a similar right) to pass and repass over and along the private road twenty feet wide leading from Lauries Road to the said allotment of land hereby conveyed and in the second schedule hereto fully described and together with all other rights privileges easements servitudes advantages and appurtenances whatsoever to the said allotment of land with the buildings thereon belonging or appertaining or usually held occupied possessed or enjoyed therewith or reputed to belong or be appurtenant thereto

30 demand whatsoever of the vendor in to out of or upon the said allotment of land with the buildings thereon and described in the First Schedule hereto and every part thereof.

To Have and To Hold the said allotment of land with the buildings thereon and described in the First Schedule hereto together with the right of way as aforesaid and other appurtenances thereto belonging hereby conveyed or expressed or intended so to be unto the purchasers and their respective heirs executors administrators and assigns for ever.

And the Vendor doth hereby for himself his heirs executors and

40 administrators covenant and declare with and to the Purchasers and their heirs executors administrators and assigns that the said premises hereby conveyed or expressed so to be are free from any encumbrance lien or charge whatsoever and the Vendor and his aforewritten doth hereby agree and undertake to warrant and defend the title to the said premises and every part thereof unto the Purchasers and their aforewritten whenever called upon to do so against any person or

D4  
Deed No. 2010  
14.5.54—  
Continued

D4  
Deed No. 2010  
14.5.54—  
Continued

persons whomsoever and further that the Vendor and his aforewritten shall and will from time to time and at all times hereafter at the request costs and expense of the Purchasers or their aforewritten make do and execute or cause to be made done and executed all such further and other acts deeds assurances matters and things for the better and more perfectly assuring the said premises and every part thereof unto the Purchasers and their aforewritten as by them shall or may be reasonably required.

And These Presents further witness that the said Doctor Maharakkalage Gregory Perera doth hereby consent to this Deed of 10 Conveyance being executed in favour of himself and of his wife the said Warnakulasuriya Winifred Perera as is testified to by his becoming a party to and signing These Presents.

In Witness whereof the said Vendor and the said Doctor Maharakkalage Gregory Perera do set their respective hands hereunto and to two others of the same tenor and date as These Presents at Colombo on this Fourteenth (14th) day of May One Thousand Nine Hundred and fifty-four.

*The First Schedule above referred to:*

All that defined portion of land with the buildings standing 20 thereon formerly bearing assessment No. 29, Lauries Road and now bearing assessment No. 72, Buller's Road situated at Bambalapitiya within the Municipality and District of Colombo Western Province in the Island of Ceylon, bounded on the North by Buller's Road, on the East by premises bearing assessment No. 33, Lauries Road, on the South by Lot D on Plan No. 345 being a reservation for a road, and premises bearing assessment No. 25, Lauries Road and on the West by premises bearing assessment Nos. 23/2 and 23/1 Lauries Road and Government Acquisition and containing in extent Thirty-six Perches and Forty-six One hundredths of a Perch (A0-R0-P36, 46/100) 30 according to the Plan thereof No. 3131 dated 20th August, 1932 made by E. M. Anthonisz Licensed Surveyor which said premises according to a recent Survey Plan No. 233 dated 27th February, 1954 made by E. S. Tudugalla, Licensed Surveyor is described as follows:—All that allotment of land with the buildings standing thereon formerly bearing assessment No. 29, Lauries Road and now bearing assessment No. 72, Buller's Road situated at Bambalapitiya aforesaid bounded on the North by Buller's Road, on the East by premises bearing assessment No. 80, Buller's Road, on the South by Private Road and premises known as " St. Gerards " bearing assessment No. 25, Lauries 40 Road and on the West by premises bearing assessment No. 23/2 and 23/1, Lauries Road and containing in extent Thirty-six perches and Forty-four One hundredths of a Perch (A0-R0-P36 44/100) according to the said plan No. 233.

*The Second Schedule above referred to:*

All that allotment of land marked D on the said Plan No. 345 dated 29th March 1924, made by H. Don David Licensed Surveyor (being a reservation for a road twenty feet wide) being a defined portion of land marked B from and out of all that Garden called Mestriyawatta *alias* Kahatagahawatta formerly bearing assessment No. 31/B and Ward No. 968 situated at Bambalapitiya aforesaid bounded on the North by Lot A on the said Plan No. 345, on the East by the former Lot C (a portion of the same land belonging to Mrs. P. C. Fernando) on the South by Lauries Road and on the West by Lots B and C on the said Plan No. 345 and containing in extent fifteen perches and sixty-seven one hundredths of a perch (A0-R0-P15 67/100) according to the said Plan No. 345.

*Witnesses :*

(Sgd.) A. R. TAMPOE.

(Sgd.) R. DEVASENAPATHY.

(Sgd.) Illegibly.

SAGO ABDUL CADER SHUMSDEEN.

(Sgd.) M. G. PERERA.

20

(Sgd.) S. RATNAKARAM,  
N.P.

I, Sivaram Ratnakaram of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by Sago Abdul Cader Shumsdeen who signed this deed illegibly and Doctor Mahamarakkalage Gregory Perera who signed this deed as "M. G. Perera" the Executants herein named in the presence of Albert Reginald Tampoe of No. 27/2, De Fonseka Place, Havelock Town, Colombo, and Rajanathan Devasenapathy of No. 7, Alexander Road, Wellawatte, Colombo, who signed this deed as "A. R. Tampoe" and "R. Devasenapathy" respectively the subscribing witnesses hereto all of whom are known to me the same was signed by the said Executants, by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this Fourteenth (14th) day of May One Thousand Nine Hundred and Fifty-four.

I further certify and attest that in the Duplicate on page 4 in line 18 the letters "ed" on page 5 in line 3 the letter "i" were over-typed before the foregoing Instrument was duly read over as aforesaid and that the consideration mentioned in this Deed was paid as follows:—a sum of Rs. 96,300/- was paid by Cheque No. Y867187

D4  
Deed No. 2010  
14.5.54—  
Continued



D4  
Deed No. 2010  
14.5.54—  
Continued

dated this day drawn on the Bank of Ceylon, Colombo in favour of the Executant and the balance sum of Rs. 10,700/- was acknowledged to have been received prior to the execution of These Presents and that the duplicate of this Instrument bears six embossed stamps of the value of Rs. 1,712/- and the original one embossed stamp of Re. 1/-.

Date of attestation  
14th May 1954.

)

(Sgd.) S. RATNAKARAM,  
*Notary Public.*

*True Copy.*

To which a Rupee stamp is affixed and signed over same. 10  
Colombo 26th January, 1961.

(Sgd.) S. RATNAKARAM,  
*Notary Public.*

P3  
Deed No. 139  
20.7.55

**P3**

**Deed No. 139**

Drawn by us.

(Sgd.) De SILVA & MENDIS,  
*Notaries Public.*

Prior Registration :  
Colombo—A. 163/112.

20

No. 139.

This Indenture Made this twentieth day of July one thousand nine hundred and fifty-five between Pintherurallage Dona Lilith Miriam Sheila Henry of 25, Lauries Road, Bambalapitiya in Colombo in the Island of Ceylon (hereinafter called and referred to as "the party of the first part" which term shall where the context so requires or admits mean and include the said Pintherurallage Dona Lilith Miriam Sheila Henry her heirs executors administrators and assigns) (2) Pintherurallage Stella Miriam Collinette Basnayake (nee Henry) also of 25, Lauries Road, Bambalapitiya, presently residing in England 30 (hereinafter called and referred to as "the party of the Second Part" which term shall where the context so requires or admits mean and include the said Pintherurallage Stella Miriam Collinette Basnayake her heirs executors administrators and assigns) (3) Pintherurallage Daria Memalta Henry also of 25, Lauries Road, Bambalapitiya, presently residing in England (hereinafter called and referred to as "the party of the Third Part" which term shall where the context so requires or admits mean and include the said Pintherurallage

Daria Memalta Henry her heirs executors administrators and assigns) and (4) Pintherurallage Merl Chrysanthus Henry also of 25, Lauries Road, Bambalapitiya, aforesaid (hereinafter called and referred to as "the party of the fourth Part" which term shall where the context so requires or admits mean and include the said Pintherurallage Merl Chrysanthus Henry his heirs executors administrators and assigns).

P3  
Deed No. 139  
20.7.55—  
Continued

And Whereas under and by virtue of deed No. 1645 dated 28th June, 1924, attested by W. E. V. de Rooy of Colombo Notary Public  
10 Don Henry Wijeyeratne (now deceased) was held and possessed of all those two contiguous Lots B and C of the land called Mestriyawatta alias Kahatagahawatta situated at Lauries Road, Bambalapitiya and bearing assessment No. 25, (in the first schedule hereto fully described and hereinafter referred to as "the said premises) together with a right of way over Lot D of the same land.

And Whereas the said Don Henry Wijeyeratne died leaving a Last Will No. 56 dated 28th November, 1940, which was admitted to Probate in D.C. Colombo No. 9512 whereby he devised the said premises bearing Assessment No. 25 unto his four children namely  
20 the said (1) Pintherurallage Dona Lilith Miriam Sheila Henry, (2) Pintherurallage Stella Miriam Collinette Basnayake (nee Henry), (3) Pintherurallage Daria Memalta Henry and (4) Pintherurallage Merl Chrysanthus Henry.

And Whereas common possession has been found to be impracticable and the parties of the First, Second, Third and Fourth parts have caused the said premises to be divided into five lots marked Lots L, M, N, O and P according to Survey Plan No. 2126 dated 25th February, 1954, made by W. A. L. de Silva, Licensed Surveyor.

And whereas it has been agreed by and among the said parties  
30 that the party of the first part should be allotted to Lot O, the party of the second part Lot L, the party of the Third Part Lot N and the party of the Fourth Part Lot M in lieu of the undivided one-fourth share each is entitled to out of the said premises together with a right of way in common over the lot marked P in the said Survey Plan No. 2126.

Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the premises the parties of the Second Third and Fourth Parts do hereby grant convey assign transfer set over and assure unto the party of the First Part all that divided  
40 portion of the said premises marked Lot O in the said Survey Plan No. 2126 (more fully described in the Second schedule hereto) together with all and singular the rights ways easements and appurtenances thereto in anywise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title

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Continued

interest property claim and demand whatsoever of the said parties of the Second Third and Fourth Parts in to upon or out of the same with a right of way for both foot and vehicular traffic in and over the road reservation marked Lot P in the said Plan No. 2126 (more fully described in the Sixth schedule hereto) and the right to lay electric cables wires pipes or electric or water mains along over and under the said Lot P.

To Have and to Hold the said Lot O (described in the second schedule hereto) and hereby granted and assigned unto the party of the First Part together with the right of way over the said Lot P 10 absolutely and for ever.

And This Indenture Also Witnesseth that in pursuance of the said agreement and in consideration of the premises the parties of the First Third and Fourth Parts do hereby grant convey assign transfer set over and assure unto the party of the Second Part all that divided portion of the said premises marked Lot L in the said Survey Plan No. 2126 (fully described in the third schedule hereto) together with all and singular the rights ways easements and appurtenances thereto in anywise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property 20 claim and demand whatsoever of the said party of the First Third and Fourth Parts in to upon or out of the said Lot L together with a right of way in common in and over the said Lot P in the said Plan No. 2126 (more fully described in the sixth schedule hereto) and the right to lay electric cables and overhead wires or electric or water mains along over and under the said Lot P.

To Have and to Hold the said Lot L (described in the third schedule hereto) and hereby granted and assigned unto the party of the Second Part together with a right of way over the said Lot P 30 absolutely and for ever.

And This Indenture Further Witnesseth that in pursuance of the said agreement and in consideration of the premises the parties of the First Second and Fourth Parts do hereby grant convey assign transfer set over and assure unto the said party of the Third Part all that divided portion of the said premises marked Lot N in the said Survey Plan No. 2126 (fully described in the Fourth schedule hereto) together with all and singular the rights ways easements and appurtenances thereto in anywise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title and interest property claim and demand whatsoever of the 40 said parties of the First, Second and Fourth Parts in to upon or out of the said Lot N together with a right of way in common over the said Lot P in the said Plan No. 2126 (more fully described in the sixth schedule hereto) and the right to lay electric cables and over

head wires water pipes or electric or water mains along over and under the said Lot P.

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*Continued*

To Have and to Hold the said Lot N (described in the fourth schedule hereto) hereby granted and assigned unto the said party of the Third Part together with a right of way over the said Lot P absolutely and for ever.

And This Indenture Likewise Witnesseth that in pursuance of the said agreement and in consideration of the premises the parties of the first second and third parts do hereby grant convey assign  
10 transfer set over and assure unto the party of the fourth Part all that divided portion of the said premises marked Lot M in the said Survey Plan No. 2126 (fully described in the Fifth Schedule hereto) together with all and singular the rights ways easements and appurtenances thereto in anywise belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the said parties of the first, second and third parts in to upon or out of the said Lot M together with a right of way over the said Lot P in the said  
20 Survey Plan No. 2126 (more fully described in the sixth schedule hereto) and the right to lay electric cables and overhead wires water pipes or electric or water mains along over and under the said Lot P.

To Have and to Hold the said Lot M (described in the fifth schedule hereto) hereby granted and assigned unto the said party of the Fourth Part with a right of way over the said Lot P described in the sixth schedule hereto absolutely and for ever.

And the parties hereto do hereby mutually covenant and agree that they have not at any time heretofore made done or committed or been party or privy to any act deed matter or thing whatsoever whereby or by means whereof the said Lots L, M, N, O and the right  
30 of way over Lot P hereby assured unto each of them or any part thereof are is can shall or may be in anywise encumbered or charged in title estate or otherwise howsoever and that each of them shall and will always and at all times hereafter at the request and cost of the other of them do and execute or cause to be done and executed all such further and other acts deeds matters and things for the further and more perfectly assuring the said lots unto each of them in manner aforesaid as shall or may be reasonably required.

*The First Schedule above referred to:*

All those contiguous Lots B and C of the land called Mestriya-  
40 watta alias Kahatagahawatta together with the buildings standing thereon bearing assessment No. 25, situated at Lauries Road, Bambalapatiya within the Municipality and District of Colombo Western Province bounded on the North by Lot A of the same land claimed by

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Continued

Dr. M. J. A. Saundarasekera East by road reservation marked Lot D South by Lauries Road and on the West by the property called " St. Bernards " belonging to J. E. Victoria containing in extent two roods and two decimal five eight perches (A0-R2-P2 ·58) according to Plan No. 345 dated 29th March 1924, and made by H. D. David Licensed Surveyor together with a right of way over Lot D of the same land.

Which said Lot B of Mestriyawatta alias Kahatagahawatta situated at Lauries Road, Bambalapitiya aforesaid is bounded on the North by Lot A of the same land East by Lot D of the same land (reservation for road) South by Lot C of the same land and on the 10 West by premises called St. Bernards of J. E. Victoria formerly Lot A of the same land containing in extent one rood and seven and 15/100 perches (A0-R1-P7 ·15/100) according to Plan No. 345 dated 29th March 1924, and made by H. D. David Licensed Surveyor ; and

Which said Lot C of Mestriyawatta alias Kahatagahawatta situated at Lauries Road, Bambalapitiya aforesaid is bounded on the North by Lot B a portion of the same land East by Lot D a portion of the same land (reservation for road) South by Lauries Road and on the West by the new premises of " St. Bernard's " of J. E. Victoria formerly Lot A of the same land containing in extent thirty-five and 20 43/100 perches (A0-R0-P35 ·43/100) according to the aforesaid Plan No. 345.

*The Second Schedule above referred to:*

All that Lot O (being a divided portion of the contiguous Lots B and C of the land called Mestriyawatta alias Kahatagahawatta) situated at Lauries Road, Bambalapitiya aforesaid bounded on the North by Lot N East by Lot D road reservation South by Lot P road reservation and on the West by the property of Sir J. D. Victoria containing in extent nineteen decimal nine perches (A0. R0. P19.9) according to Plan No. 2126 dated 25th February, 1954 and made 30 by W. A. L. de Silva, Licensed Surveyor.

*The Third Schedule above referred to:*

All that Lot L (being a divided portion of the contiguous Lots B and C of the land called Mestriyawatta alias Kahatagahawatta) situated at Lauries Road, Bambalapitiya aforesaid bounded on the North by Lot A (in Plan No. 345 above referred to) belonging to Dr. M. J. A. Saundaresekera East by Lot D road reservation South by Lot M and on the West by the property of Sir. J. D. Victoria containing in extent Nineteen decimal nine perches (A0-R0-P19 ·9) according to the aforesaid Plan No. 2126. 40

*The Fourth Schedule above referred to:*

All that Lot N (being a divided portion of the contiguous Lots B and C of the land called Mestriyawatta alias Kahatagahawatta)

situated at Lauries Road Bambalapitiya aforesaid bounded on the North by Lot M East by Lot D road reservation South by Lot O and on the West by the property of Sir J. D. Victoria containing in extent nineteen decimal nine perches (A0-R0-P19.9) according to the aforesaid Plan No. 2126.

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*Continued*

*The Fifth Schedule above referred to :*

All that Lot M (being a divided portion of the contiguous Lots B and C of the land called Mestriyawatte *alias* Kahatagahawatta) situated at Lauries Road, Bambalapitiya aforesaid bounded on the  
10 North by Lot L East by Lot D road reservation South by Lot N and on the West by the property of Sir J. D. Victoria containing in extent nineteen decimal nine perches (A0-R0-P19.9) according to the aforesaid Plan No. 2126.

*The Sixth Schedule above referred to:*

All that Lot P (being a divided portion of the contiguous Lots B and C of the land called Mestriyawatte *alias* Kahatagahawatta) situated at Lauries Road, Bambalapitiya aforesaid bounded on the North by Lot O East by Lot D reservation for road South by Lauries Road and on the West by the property of Sir J. D. Victoria containing  
20 in extent three perches (A0-R0-P3) according to the aforesaid Plan No. 2126.

In witness whereof the parties hereto have set their respective hands to these presents and to five others of the same tenor and date at Colombo on this twentieth day of July One thousand Nine hundred and Fifty-five.

*Witnesses :*

(Sgd.) C. KARUNARATNE.  
(Sgd.) BERTRAM FERNANDO.

(Sgd.) S. HENRY.

30

Pintherurallage Stella Miriam  
Collinette Basnayake.

by her attorney.  
(Sgd.) M. HENRY.  
Pintherurallage Daria  
Memalta Henry.

by her attorney.  
(Sgd.) M. HENRY.  
(Sgd.) M. HENRY.  
(Sgd.) S. GUNASEKERA,  
N.P.

40

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Continued

I, Sugathadasa Gunasekera of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over by the within named Pintherurallage Dona Lilith Miriam Sheila Henry (who has signed as " S. Henry ") Karunage Mary Magdaline Henry (who has signed as " M. Henry ") as attorney for the withinnamed Pintherurallage Stella Miriam Collinette Basnayake and Pintherurallage Daria Memalta Henry and by the withinnamed Pintherurallage Merl Chrysanthus Henry (who has signed as " M. Henry ") in the presence of Clancy Karunaratne and Bertram Fernando, Proctor, both of Imperial Bank Buildings 10 Colombo the subscribing witnesses thereto all of whom are known to me the same was signed by the said Pintherurallage Dona Lilith Miriam Sheila Henry, Pintherurallage Stella Miriam Collinette Basnayake by her attorney the said Karunage Mary Magdaline Henry, by the said Pintherurallage Daria Memalta Henry by her attorney the said Karunage Mary Magdaline Henry (duly authorised thereto by a Power of Attorney bearing dated the 29th day of June, 1955) and by the said Pintherurallage Merl Chrysanthus Henry and by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time 20 at Colombo aforesaid this twentieth day of July One Thousand Nine Hundred and Fifty-five.

I further certify and attest that in the Original first Counterpart Second Counterpart and Third Counterpart originals and in the duplicate on page 1 in line 24 " L " in " Merl " and in line 28 " 1 " in " Merl " were typed on erasure and in the original first counterpart and second counterpart originals on page 1 in line 28 the word " his " was typed on erasure and in the Third Counterpart Original and Duplicate on page 1 in line 29 the word " his " was typed on erasure in the first counterpart Original on page 3 line 44 " said Survey Plan 30 No. 2126 " were typed on erasure and on page 6 whole of line 6 was deleted in the Third Counterpart Original on page 4 line 15 " and " deleted and in the duplicate on page 2 line 35 " road " was typed on erasure in line 52 " with " was deleted on page 3 line 13 " and " was interpolated on page 4 line 9 " or " was interpolated and in line 18 " and " was deleted and on page 6 line 7 " and on the West by the " were deleted before the same were read over and signed as aforesaid.

Date of attestation  
20th July, 1955.

}

Which I attest  
(Sgd.) S. GUNASEKERA,  
Notary Public. 40

(SEAL)

I certify that this and the preceding six pages are a true copy of deed of Partition bearing date 20.7.55 and Number 139 attested by me.

(Sgd.) Illegibly,  
Notary Public.

Colombo, 20.1.59.

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Deed No. 139  
20.7.55—  
Continued

P6

10 Letter from Abeyaratne & Abeyaratne, Proctors and Notaries  
to N. A. B. Stave, Proctor and Notary

ABEYARATNE & ABEYARATNE

*Proctors and Notaries.*

Geo. C. Abeyratne.

Telephone : 2485.

P6  
Letter from  
Abeyaratne &  
Abeyaratne,  
Proctors &  
Notaries to  
N. A. B. Stave,  
Proctor &  
Notary  
17.1.57

Negris Building,  
York Street,  
Colombo, 17th January, 1957.

20 Noel A. B. Stave Esq.,  
*Proctor & Notary.*  
233/8-9, Hultsdorf,  
Colombo.

Dear Sir,

Your letter dated the 12th instant, addressed to our client Dr. M. G. Perera has been referred to us for reply.

30 Our client instructs us to deny that your client has any right along and over the road leading from Lauries Road, to our client's property at New Buller's Road, referred to by you as " the common road way." This road was constructed by our client at his own expense and our client is most surprised to find your client now making a claim to the use of our client's roadway.

Our client denies that your client has any right over the said roadway.

Yours faithfully,  
(Sgd.) ABEYARATNE & ABEYARATNE.



P5

Letter from  
Municipal  
Engineer,  
Colombo, to  
Mrs. S. Henry  
5.8.57

**P5**

**Letter from Municipal Engineer, Colombo, to Mrs. S. Henry**

No. PBS. 610/56

The Town Hall,  
P. O. Box No. 110.  
Colombo, 5th August, 1957.

Subject : No. 25, Lauries Road.

Dear Madam,

Further to my letter of even number dated 3.7.57, I have to request you to remove the pillar erected at the centre of the 20-foot 10 approved road, early.

Yours faithfully,  
(Sgd.) Illegibly,  
*for Municipal Engineer.*

Mrs. S. Henry,  
25/3, Lauries Road,  
Bambalapitiya, Colombo.

