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

In the matter of an Appeal under Section 5(C)1 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No.54 of 2006.

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney
holder Kumunthan Vijitha
of Markandu Road, Mulangavil.

2. Rathinam Kumunthan

3. wife Vijitha

Both of Markandu Road,
Mulangavil

Plaintiffs

Vs.

S.C. Appeal No.148/2018
S.C./HCCA/ LA No. .567/2016
H.C. Northern Province,Jaffna
(Civil Appellate) No.Rev. 65/2016
D.C.Mallakam No.Mis/164/2012

Iyathurai Perinpanayagam
Moolai South, Chulipuram
Presently of Chettier Eating
House, Pillaiyar Kovilady,
Mulangavil.

Defendant

AND

Iyathurai Perinpanayagam
Moolai South, Chulipuram

Presently of Chettier Eating
House,Pillaiyar Kovilady,
Mulangavil.

Defendant-Petitioner

Vs.

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney
holder Kumunthan Vijitha
of Markandu Road, Mulangavil.

2. Rathinam Kumunthan

3. Wife Vijitha
Both of Markandu Road,
Mulangavil

Plaintiff-Respondents

AND NOW BETWEEN

1. Iyathurai Kulenthiran
5252 Rue L'armoise Pierrefonds
QC H8Z 0A6 Montreal, Canada
through his power of attorney
holder Kumunthan Vijitha
of Markandu Road, Mulangavil.

2. Rathinam Kumunthan

3. wife Vijitha
Both of Markandu Road,
Mulangavil

Plaintiff-Respondent-

Appellants

Vs.

1. Iyathurai Perinpanaagam
Moolai South, Chulipuram

Presently of Chettier Eating
House, Pillaiyar Kovilady,
Mulangavil.

Defendant-Petitioner-

Respondent

2. Selvarasa Selvarooban
No.31, Kuruban Road,
Mulankavil,
Killinochchi

Added-Respondent

BEFORE : **E.A.G.R. AMARASEKARA, J.**
A.H.M.D. NAWAZ, J.
ACHALA WENGAPPULI, J.

COUNSEL : Ms. Shakthiyaraji K. for the Plaintiff-Respondent-Appellant
K.V.S. Ganesharajan with S. Rague & K. Nasikethan for the Defendant-Petitioner-Respondent.
V. Puvitharan P.C. for the Added-Respondent

ARGUED ON : 22nd February, 2022

ORDER ON : 06th April, 2023

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ACHALA WENGAPPULI, J.

The Added-Respondent, one *Selvarasa Selvarooban*, was named and added as a party to the instant appeal by the Plaintiff-Respondent-Appellants by way of an amended petition tendered to this Court, supported by an affidavit along with an amended caption. This

amendment was made by the Plaintiff-Respondent-Appellants only after this Court had granted leave on their original petition. Upon being noticed by this Court, the Added -Respondent was represented by the learned President's Counsel, who then moved his client be discharged from these proceedings. In his submissions, learned President's Counsel took up the position that the Added-Respondent was neither a party to the action before the original Court instituted by the Plaintiff-Respondent-Appellants, nor to the proceedings before the Civil Appellate High Court holden in *Jaffna*, initiated by the Defendant-Petitioner-Respondent, in invoking its revisionary jurisdiction. In these circumstances, it was contended by the Counsel that the Added-Respondent is not bound by either of the two Judgments referred to in the instant appeal. The Plaintiff-Respondent-Appellants have resisted the said application.

The three Plaintiff-Respondent-Appellants have instituted the instant action in 2012, before the District Court of *Mallakam*, regarding a dispute over the ownership of a passenger bus bearing number NPNA 0226. In their prayer to the Plaint, the Plaintiff-Respondent-Appellants have sought a declaration against the Defendant-Petitioner-Respondent, who was the registered owner of the said passenger bus at that point of time, that the said passenger bus is held by him "*in trust and benefit*" of the Plaintiff-Respondent-Appellants. They also sought the following reliefs in their prayer to the Plaint: -

i. an order of Court on the Defendant-Petitioner-Respondent to "*consent the Route Permit*" in favour of the 2nd Plaintiff-Respondent-Appellant,

ii. an order of Court to handover the said passenger bus immediately to the Plaintiff-Respondent-Appellants, and also

iii. an order restraining him from "*selling, transferring, mortgaging the bus*".

It was averred in the plaint of the Plaintiff-Respondent-Appellants that the said passenger bus was purchased from the funds supplied by the 1st Plaintiff-Respondent- Appellant. The 2nd and 3rd Plaintiff-Respondent-Appellants are husband and wife respectively. The Defendant-Petitioner-Respondent is the father of the 3rd Plaintiff-Respondent-Appellant and a sibling of the 1st Plaintiff-Respondent-Appellant. On the request of the 2nd and 3rd Plaintiff-Respondent-Appellants, the 1st Plaintiff-Respondent-Appellant, who now resides in *Canada*, had provided a sum of Rs. 3.5 Million on 18.03.2010, to proceed with the purchase of the disputed passenger bus. After the purchase, it was registered in the name of the Defendant-Petitioner-Respondent allegedly *"in trust"*. He had obtained a route permit in his name from the National Transport Commission to transport passengers between *Kilinochchi* and *Mulangavil* in that bus, while the 2nd Plaintiff-Respondent-Appellant functioned as its driver.

When the 1st Plaintiff-Respondent-Appellant demanded a sum of Rs. 2 Million from the capital he had provided to purchase the said passenger bus at a subsequent point of time, it is claimed by the 2nd and 3rd Plaintiff-Respondent-Appellants that they have secured a loan from the Commercial Leasing Company, in January 2011 with a view to pay back to the 1st Plaintiff-Respondent-Appellant. They also claimed that since then, they themselves paid the monthly instalment of Rs. 60,000.00

to the said Leasing Company. In June 2011, a dispute arose between the 2nd and 3rd Plaintiff-Respondent-Appellants and the Defendant-Petitioner-Respondent over a payment and the route permit of the passenger bus was cancelled by the authorities. The Plaintiff-Respondent-Appellants also alleged that the said cancellation was done by the authorities on the instigation of the Defendant-Petitioner-Respondent, and the said cancellation had resulted in depriving them of any income from plying passengers, on which they relied on to service the said loan instalment. After making a complaint to *Kilinochchi* Police in this regard, the disputing parties were directed to the Mediation Board. Since there was no settlement of the dispute, the instant action was instituted by the Plaintiff-Respondent-Appellants as the Defendant-Petitioner-Respondent had kept the bus at an undisclosed location and they feared that the latter might transfer the ownership of the disputed passenger bus to a third party.

In his answer, the Defendant-Petitioner-Respondent had denied the claim of a trust and averred that it was on his request that the 1st Plaintiff-Respondent-Appellant sent a sum of Rs. 3 Million to a relative in *Puttlam* as a loan to purchase the passenger bus. He further alleged that it is upon the failure of the 2nd and 3rd Plaintiff-Respondent-Appellants to repay the loan from the income derived from the bus, the 1st Plaintiff-Respondent-Appellant requested him to take possession of same and sell it, in order to recover the capital. The Defendant-Petitioner-Respondent had thereupon pledged the vehicle to the Commercial Leasing Company and obtained a sum of Rs. 2 Million, which he deposited in the account of a relative, who was named by the 1st Plaintiff-Respondent-Appellant, by way of a part settlement of the said loan of Rs. 3 Million and he himself had paid several instalments.

The Defendant-Petitioner-Respondent further alleged that the disputed passenger bus had been kept at an undisclosed location by the 2nd Plaintiff-Respondent-Appellant and a police complaint was lodged. The bus was later recovered by the Police, concealed in a remote area bordering a forest in *Achchipuram, Vavunia*.

The parties proceeded to trial and presented evidence with no trial issues settled between them. At the conclusion of the trial, the learned District Judge, after fixing the date for the Judgment, noted that there were no issues settled between the parties. The trial Court had thereafter delivered its Judgment on 10.03.2016, after parties have agreed on the trial issues at that late stage. The Judgment was delivered in favour of the Plaintiff-Respondent-Appellants and the Court granted the declaration that the said passenger bus is held by the Defendant-Petitioner-Respondent in trust and directed him to consent for the transfer of Route Permit. The Court also ordered the Defendant-Petitioner-Respondent to hand over the disputed passenger bus to the Plaintiff-Respondent-Appellants.

The Defendant-Petitioner-Respondent did not prefer an appeal against the said Judgment, instead he had opted to invoke revisionary jurisdiction of the Civil Appellate High Court in *Jaffna*, by filing application No. Revision/65/2016, on 23.05.2016. The Plaintiff-Respondent-Appellants have resisted the said revision application, and the appellate Court, after an inquiry had delivered its order on 12.10.2016 setting aside the Judgment of the District Court. The interference to the Judgment of the trial Court by the appellate Court was made on the basis that the Plaintiff-Respondent-Appellants have averred in their Plaint of a repayment of Rs. 2 Million made by the

Defendant-Petitioner-Respondent to the 1st Plaintiff-Respondent-Appellant and therefore the disputed vehicle is not a trust property. The appellate Court also ruled that since the Defendant-Petitioner-Respondent had mortgaged the passenger bus to the Commercial Leasing Company, the Plaintiff-Respondent-Appellants should have added that Company as a necessary party to their action. However, there was no attempt made by the Plaintiff-Respondent-Appellants to name that party to the proceedings before this Court.

The Plaintiff-Respondent-Appellants have thereafter sought Leave to Appeal from this Court against the said order of the Civil Appellate High Court, by way of a petition and affidavit tendered to the Registry on 24.11.2016. This Court, having heard the Plaintiff-Respondent-Appellants as well as the Defendant-Petitioner-Respondent on 05.10.2018, had decided to grant Leave to Appeal to the questions of Law, as set out in paragraphs 39(i), (ii), (iii) and (iv) of the said Petition, which have been formulated mainly on the existence of a trust. The determination on these several questions of Law will have to be made only after hearing the parties on them at a subsequent stage and at this point of time, this Court concerns itself only with the application of the Added-Respondent.

The reason attributed by the Plaintiff-Respondent-Appellants, in adding the Added-Respondent to these proceedings, was provided by way of a motion tendered to this Court for the first time on 11.10.2017. It was stated therein that the Added-Respondent, being the "*current owner of the bus*", should be added as a party. They sought permission to amend the petition and as well as its caption and also moved to bring the "*fraudulent*" act committed by the Defendant-Petitioner-Respondent

to the notice of this Court, in transferring his ownership to the Added-Respondent, pending appeal. They also claimed in the said motion that if the present owner is not added as a Respondent, an "*irremediable loss*" would be caused to them, as instituting a fresh action against the said Added-Respondent is not feasible.

It is only on 11.10.2017, the Plaintiff-Respondent-Appellants have brought the fact of transferring the ownership of the disputed passenger bus by the Defendant-Petitioner-Respondent to the Added-Respondent to the notice of this Court for the first time, and that too by way of a motion. In the said motion, the Plaintiff-Respondent-Appellants alleged that the ownership of the passenger bus had been transferred in favour of *Selvarasa Selvarooban* by the Defendant-Petitioner-Respondent on 25.11.2016 and therefore sought permission of Court to add him as a "*necessary party*" to the appeal, in order to "*effectually and completely adjudicate the dispute*". The application of the Plaintiff-Respondent-Appellants was repeated in the 2nd motion filed on 03.05.2018, filing of which apparently was necessitated as the 1st motion was misplaced. The 3rd motion by the Plaintiff-Respondent-Appellants was also on the same lines. It had been tendered to Court on 10.10.2018. The Plaintiff-Respondent-Appellants, for the fourth time filed a similar motion dated 26.11.2018, and this time, in addition to the motion, they have tendered an amended petition and an affidavit, along with an amended caption with the said *Selvarasa Selvarooban* named therein as an Added-Respondent, in relation to their appeal.

This Court, having heard submissions of the learned Counsel for the Plaintiff- Respondent-Appellants in support of her said 4th motion and, in the absence of any objections by the Defendant-Petitioner-

Respondent, had issued notice on the Added-Respondent, upon acceptance of the said amended petition and caption. The Added-Respondent was represented by his Counsel on the notice returnable date i.e. 22.05.2019. He resisted being added as a party to the instant appeal and sought to discharge him from the proceedings. The inquiry on the application of the Added-Respondent seeking to discharge himself was taken up by this Court on 22.02.2022.

It was contended on behalf of the Added-Respondent by the learned President's Counsel that *Selvarasa Selvarooban* is not a party to the action before the District Court or to the proceedings before the Civil Appellate High Court and hence he had not been heard by any of the Courts below. It was also contended that, in the absence of a provision enabling an addition of a party during pendency of an appeal, the Plaintiff-Respondent-Appellants have no legal basis to add the Added-Respondent as a party at this late stage of the proceedings. The Learned President's Counsel relied on the reasoning of the Judgment of ***Fernando v De Silva & Others*** (2000) 3 Sri L.R. 29, in support of his contention that even at the stage of execution of a decree of the original Court, an application to add a party would not be entertained.

In her reply, learned Counsel for the Plaintiff-Respondent-Appellants had submitted that her clients have lost their only source of income derived by plying passengers for the last five years, primarily due to fraudulent act of the Defendant-Petitioner-Respondent and therefore if the Added-Respondent is not made a party to the instant appeal, the purpose of seeking a determination of their appeal by this Court would be rendered futile. She alleged that the Defendant-

Petitioner-Respondent did not execute decree in the original Court and did not even make an application to this Court for writ pending appeal in his failure to deposit of cost. As such, it was contended that the Defendant-Petitioner-Respondent is in clear violation of the applicable procedural Laws and guilty of abuse of process to the extent of committing contempt of Court. She had cited a long string of judicial precedents as found in ***Sarkar* on *Code of Civil Procedure***, 12th Ed, which dealt with judicial decisions that were pronounced in relation to addition of parties in that jurisdiction and particularly invited our attention to the following text, which states (at p. 306):

> " *Where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the later circumstances in order to shorten litigation or to do complete justice between the parties , it is incumbent on the Court to take notice of events which have happened since the institution of the suit and to mold its decree according to the circumstances as they stand at the time the decree is made."*

She also invited this Court to exercise its inherent powers, citing ***Sarkar***, where it is stated (at p. 900) "*section 151 of the Civil Procedure Code is an enabling provision by virtue of which inherent powers have been vested with the Court not to feel helpless in such circumstances. But to administer substantial justice, Court can use its own inherent power to fill up the lacunae left by the legislature while enacting law or where the Legislature is unable to foresee any circumstances which may arise in a particular case*."

In view of the above contentions, I shall now proceed to consider the application of the learned President's Counsel for the Added-Respondent.

Admittedly the Added-Respondent is named as a party for the first-time pending determination of the appeal of the Plaintiff-Respondent-Appellants and after leave was granted. He was not a party to the litigation before the District Court nor to the proceedings held before the Civil Appellate High Court, as correctly highlighted by the learned President's Counsel.

The submissions of the learned Counsel for the Plaintiff-Respondent-Appellants, in resisting the application of the Added-Respondent, was primarily presented on the principles that are embodied in the statutory provisions contained in section 18 of the Civil Procedure Code. Of the several local judicial precedents that were referred to in her submissions, I find that all of them have been decided on the principles of Law that contain in the said statutory provision. The long list of quotations cited from *Sarkar* too relates to a similar statutory provision that govern the procedure of addition of parties before the original Courts, in the neighbouring jurisdiction of *India*.

Of course, the relevant statutory provision that provided for addition of a party to a civil dispute, pending adjudication before the District Court, is found in section 18 of our Civil Procedure Code. Purpose of such an addition of a party, as stated in the section, is to enable the Court to effectually and completely adjudicate upon all the questions involved in that action. A considerable body of judicial precedents that is available on this topic indicate that the superior Courts have considered the statutory provisions contained in the said

section in a multitude of factual situations and had laid down applicable principles that govern the discretion of a Court, when such an application is made. The oft quoted Judgment of this Court, ***Arumugam Coomaraswamy v Andiris Appuhamy and Others*** (1985) 2 Sri L.R. 219, where *Ranasinghe* J (as he was then) favoured the wider construction of the statutory provisions of the applicable Law, in addition of parties. But the application of these principles is limited to addition of parties in the original Courts and that too before the Judgment is pronounced.

The Judgment of ***Fernando v De Silva & Others*** (2000) 3 Sri L.R. 29 considered the objection raised by an added respondent Company, when it was named as a party to the appeal by the Plaintiff. The appeal was preferred by the plaintiff in seeking to challenge the trial Court's decision, by which it had refused to add the said respondent Company as an added party at the stage of execution of writ. In delivering the judgment, *de Z Gunawardene J* stated (at p. 32) that *"… no one can be added as a party to the action after Judgment had been entered, one way or the other. Nothing more need be said in regard to this question as it is so well known."* A similar view was taken in the Judgment of ***Ameen v Salahudeen & Others*** (1998) 3 Sri L.R. 185, where *Wigneswaran J* had determined the validity of an order made under section 18 by the District Court, in which an outsider was admitted as an intervenient party, after the said Court had entered its decree. His Lordship, following the ratio of the judgments of ***Cooray v Gaffar*** – (CA 92/80 DC *Panadura* (552) CAM 18.2.1983), ***Pitisinghe v. Ratnaweera*** 62 NLR 572, ***Norris v. Charles*** 63 NLR 510 and ***Richford Trading Company v. The Miyanawita Estates Co., Ltd. and another*** (CA 790/84 DC Colombo 47303RE - CAM 13.9.1985) stated (at p. 190) *"… allowing the*

addition of the petitioner-respondent as a necessary party after decree was entered, was ex facie bad in law and therefore set it aside and declare void all steps taken by Court based on that order as from the time of such order."

It is relevant to note that the Added-Respondent was added as a party by the Plaintiff-Respondent-Appellants not at the time filing of the application in this Court seeking Leave to Appeal, but at the hearing stage of the appeal of the Plaintiff-Respondent-Appellants, and even after the question of granting of leave was decided. The Plaintiff-Respondent-Appellants, in seeking Leave to Appeal against the Judgment of the Civil Appellate High Court, have invoked the provisions of section 5C (1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, which enables a party to appeal to this Court directly against any Judgment, decree or order pronounced or entered by a High Court, in the exercise of its jurisdiction granted by section 5A of the said Act.

Once its jurisdiction is invoked, proceedings before this Court are governed by the procedure as set out in the Rules of the Supreme Court 1990. In setting out the procedure in which a party could seek Special Leave as well as Leave to Appeal from this Court, both Rules 4 and 25(8) impose a mandatory requirement by insisting on the requirement that "*all parties in whose favour the Judgment or order complained against was delivered, or adversely to whom such appeal is preferred*" shall be named as respondents.

It appears from the wording of both these Rules that naming of respondents should be made at the time of lodgment of such an application, notice of appeal or the petition of appeal, as the case may be. Rule 4 refers to "*every such application*", indicating that it relates to

applications seeking Special Leave to Appeal as contemplated by Rule No. 2, while Rule 28(5) also indicates that "*every such petition of appeal and notice of appeal*" and thus relates to the appeals and notices of appeal as referred to in Rule 28(2). In my view, both these Rules, in addition to imposing a requirement of naming of "*all parties in whose favour the Judgment or order complained against was delivered, or adversely to whom such appeal is preferred*" as respondents at the time of invocation of appellate jurisdiction of this Court, have also included another description of respondents, when it stated that such appeal or application shall also name parties "*whose interest may be adversely affected by the success of the appeal*".

This Court in the Judgment of ***Ibrahim v Nadarajah*** (1991) 1 Sri L.R. 131, held that "*It has always, therefore, been the law that it is necessary for the proper constitution of an appeal that all parties who may be adversely affected by the result of the appeal should be made parties and, unless they are, the petition of appeal should be rejected.*" This was an instance where the appellant had failed to name a party to the proceedings before lower Court as a respondent in the appellate proceedings before this Court. It should be noted that *Amerasinghe* J had used the description "*all parties who may be adversely affected by the result of the appeal*" whereas the Rules refer to the description of such a party "*whose interest may be adversely affected by the success of the appeal.*" In view of this description, it is doubtful whether the Added-Respondent could be termed as such a party.

The said pronouncement by *Amerasinghe* J was re-affirmed in ***Senanayake v Attorney General & Another*** (2010) 1 Sri L.R. 149 as it was stated by *Bandaranayake J* (as she then was) that *"In terms of the*

Supreme Court Rules, for the purpose of proper constitution of an appeal, it is vital that all parties, who may be adversely affected by the result of the appeal should be made parties." Thus, the said pronouncement implies that the party who may be adversely affected by the result of the appeal, should be named as a party to the proceedings before this Court, at the stage of invocation of its appellate jurisdiction. In ***Senanayake v Attorney General & Another*** (ibid), this Court held that the Appellant had failed to name the Director-General of the Commission to Investigate Allegations of Bribery and Corruption, who is a necessary party to the appeal, since it was he who had instituted proceedings in the original Court as the complainant. The Court then proceeded to dismiss the said appeal for non-compliance of the Supreme Court Rules.

In the instant appeal, as already noted, the addition was made by the Plaintiff-Respondent-Appellants while their appeal was pending before this Court, and after a determination of their rights was made by the High Court of Civil Appeal in the exercise of its revisionary jurisdiction. It is also noted that there is no express provision of Law or a Rule which enables an applicant or an appellant to name a total stranger as a party, particularly in mid-stream of the appellate proceedings that are already instituted and continuing before this Court. The Plaintiff-Respondent-Appellants have sought to justify their action of naming a party in mid-stream by advancing the contention that, in the absence of a specific provision of Law that prohibits addition of parties pending appeal before this Court, it should not refuse to make the proposed addition of a party necessary in order to facilitate a complete adjudication of the dispute presented before the District Court.

A similar contention was advanced before this Court by Counsel in ***Ramasamy v Soundarajan & Others*** (SC Appeal No. 199/17 – decided on 24.02.2022) to defend the decision of the Civil Appellate High Court in *Kandy,* allowing an intervention of a party during appellate proceedings before that Court. Rejecting the said contention, *Amarasekera* J stated in view of the statutory provisions contained in section 18 of the Civil Procedure Code, "*it must be stated here that what is expressly stated excluded others*".

In relation to the instant appeal, it is relevant to note that in the absence of a direct appeal that had been preferred by the Defendant-Petitioner-Respondent there was no continuation of the litigation process that had proceeded before the District Court beyond the delivery of the Judgment by that Court in favour of the Plaintiff-Respondent-Appellants. Instead, he had opted to invoke supervisory jurisdiction conferred on the High Court of Civil Appeal seeking its intervention to set aside that Judgment. In these circumstances, the continuality of the process of litigation was interrupted. Thereupon, with the invocation of revisionary jurisdiction, it had assumed the character of different process of litigation between the parties named therein. The revisionary jurisdiction of the High Court of Civil Appeal is a discretionary remedy as opposed to a right to appeal and there must be exceptional circumstances, in order to trigger in the process of supervisory jurisdiction of the High Court of Civil Appeal. Thus, in such circumstances the question of addition of parties to the original action does not arise and the statutory provisions, namely section 18 of the Civil Procedure Code, as referred to by the learned Counsel for the Plaintiff-Respondent-Appellants on that point does not provide any

assistance to the determination of the contentious issue raised before this Court.

Even the question is whether the added party as a necessary party to the revision application filed before the High Court of Civil Appeal, the outcome of which is now being challenged in the instant appeal should be answered in the negative since the complaint of the illegality and the irregularity of the Judgment of the original Court by the Defendant-Petitioner-Respondent had nothing to do with the Added-Respondent and therefore he is not a necessary party to be named in the said revision application. This is because as far as the Judgment of this Court (which will have to be pronounced only after hearing the appeal) is concerned the Added -Respondent cannot be considered as a party in whose favour the Judgment or order complained against was delivered, or adversely to whom such appeal is preferred.

The Plaintiff-Respondent-Appellants, in fact made no endeavour to justify their naming of the Added-Respondent in mid-stream in the instant appeal by referring to any statutory provision of Law or a Rule. They also made no endeavour to impress this Court that the addition of the Added-Respondent was necessary because he qualifies to be treated as a party "*whose interest may be adversely affected by the success of the appeal*". Instead, the learned Counsel for the Plaintiff-Respondent-Appellants had chosen to harp on the complaint that if the Added-Respondent is not added, even if their appeal ended up in success, it is their interests that would be adversely affected and not that of the Added-Respondent.

It was already noted that the learned President's Counsel's contention is that the Added-Respondent was not a party to the proceedings before the District Court and the Civil Appellate High Court. The Added-Respondent had acquired ownership to the disputed passenger bus from its duly registered owner, the Defendant-Petitioner-Respondent, who had a Judgment of an appellate Court in his favour at that point of time. There was no prohibition, lien, caveat, or stay order preventing the Defendant-Petitioner-Respondent to transfer ownership of that bus, he held in his name. This particular transaction had taken place on 25.11.2016. The delivery of the Judgment of the Civil Appellate High Court was made on 12.10.2016. The Plaintiff-Respondent-Appellants have sought leave from this Court against the said Judgment by their petition dated 21.11.2016 and this Court issued notice on the Defendant-Petitioner-Respondent, that the said application is listed for support on 13.02.2017.

The said Notice was dispatched to the Defendant-Petitioner-Respondent on 28.11.2016 informing that the matter is listed for support on 13.02.2017. By then, the said transfer of the ownership of the disputed passenger bus in favour of the Added-Respondent had already been completed. Since, this transfer had taken place on 25.11.2016, it is doubtful whether the Defendant-Petitioner-Respondent was aware of the fact that the instant application was pending before this Court before making the said transfer. Thus, I am unable to accept the claim that there had been an abuse of process by the Defendant-Petitioner-Respondent. It also must be noted that the previous owner of the said passenger bus, as per the Certificate of Registration ("X"), was Commercial Leasing and Finance PLC and not the Defendant-Petitioner-Respondent. There was no explanation as to this change of

ownership from the Defendant-Petitioner-Respondent to that Company. However, the explanation for the delayed inclusion of the said Added-Respondent to the instant proceedings by the Plaintiff-Respondent-Appellants is that they learnt about this transfer only around June 2017 and therefore have not "*reasonably foreseen*" such a turn of events. This claim cannot be accepted. In their Plaint filed before the District Court, the Plaintiff-Respondent-Appellants averred that "… *there are possibilities of transferring the bus to another person*" by the Defendant-Petitioner- Respondent. This averment clearly indicates that the Plaintiff- Respondent-Appellants had already foreseen the adoption of such a course of action by the Defendant-Petitioner-Respondent when they instituted the original action and in fact they prayed for, in the interim, an order of Court to prevent such a transfer taking place.

This is not a situation in which the Plaintiff-Respondent-Appellants had failed to name a necessary party to the action they instituted against the Defendant-Petitioner-Respondent or to have failed to add the Added-Respondent as a party, in compliance of section 18 of the Civil Procedure Code, before the trial Court pronounced its Judgment. The inclusion of Added-Respondent as a party in mid-stream of the appeal proceedings in this Court is a direct consequence of him acquiring ownership of the passenger bus, over which the Plaintiff-Respondent-Appellants and the Defendant-Petitioner- Respondent are currently engaged in a process of litigation that had reached its final phase. It is settled Law that the rights of the parties are decided as at the date of action. When the Plaintiff-Respondent-Appellants instituted action, the registered owner was the Defendant-Petitioner-Respondent and he is bound by the Judgment delivered against him by the trial Court, until it was set aside by the

Civil Appellate High Court. The entitlement of the Plaintiff-Respondent-Appellants will finally be decided by this Court after hearing of their appeal, where the Defendant-Petitioner-Respondent is a party.

The inherent powers of a Court should not be used to deny the Added Respondent's right to defend against allegation of fraud made by the Plaintiff-Respondent-Appellants before an original Court, as the allegation of fraud is based on facts and the former had no opportunity to challenge such allegations and to place his side of the narration. If the actions of the Added-Respondent are violative of the Plaintiff-Respondent-Appellant's rights, they could sue the former on that cause of action.

In the absence of any specific Rule in the Supreme Court Rules as to make an addition of a party in mid-stream of appellate proceedings before this Court, a question necessarily arises whether cannot this Court hear a party, who is not originally a party to the proceedings, under any circumstances, even if it is of the view that such a party should be afforded an opportunity to be heard.

The judgment of ***Bandaranaike v Jagathsena & Others*** (1984) 2 Sri L.R. 397, is an instance where this Court, in addition to dealing with several other important areas of Law, also dealt with a situation where a party, who was originally not a party to the appellate proceedings before the Court of Appeal but was subsequently allowed to intervene into and had sought leave to appeal from this Court against the Judgment of that Court. A preliminary objection was raised before this Court challenging the petitioner's *locus standi* to seek review of the Judgment of the Court of Appeal on the basis that she was neither an

appellant nor a respondent to the appellate proceedings. *Colin-Thome* J, rejecting the said preliminary objection stated thus (at p. 406);

> "*Under Article 128 (2) the Supreme Court has a wide discretion to grant special leave to appeal to the Supreme Court from a judgment of the Court of Appeal where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court. Under Article 128 (2) you do not have to be a party in the original case.*"

His Lordship further stated that his view is strengthened on an examination of Article 134 (2) and (3) of the Constitution, as Article 134(2) provides that "*The Supreme Court may in its discretion grant to any other person or his legal representative such hearing as may appear to the Court to be necessary in the exercise of its jurisdiction under this Chapter.*" Thus, a discretion is conferred upon this Court by Article 134(3), enabling it to hear any party if it "*appear to the Court to be necessary in the exercise of its jurisdiction under this Chapter.*" But in relation to the instant matter, I am not inclined use that discretion to prejudice the rights of the Added-Respondent by adding him as a party at this stage of the proceedings and thereby denying him of an opportunity to place evidence before the original Court and also to cross-examine the opposite party in relation to his defenses that could be taken by him, as contemplated in sections 65, 66, 68 and 98 of the Trusts Ordinance.

Admittedly the primary reason for the addition of the Added-Respondent was due to the fact of him becoming the registered owner of the disputed passenger bus. At first glance, the reason to add the Added-Respondent could be justified since the Plaintiff-Respondent-Appellants had no hand in the said transfer and it was done without

their knowledge. They also claim that such a transfer was not foreseen by them.

But if one were to inquire into the relevant attendant circumstances, one cannot help but to note that it is the lackadaisical approach of the Plaintiff-Respondent-Appellants that had mainly contributed to the present state of affairs, in which the addition of the Added-Respondent was moved for, in order to have the current owner of the passenger bus added as a party. I have already referred to the fact that this eventuality had already been foreseen by the Plaintiff-Respondent-Appellants at the time of institution of their action but did nothing to secure their rights after the trial Court pronounced its Judgment in their favour.

In their Plaint, they have averred their apprehension of the Defendant-Petitioner-Respondent transferring ownership of the disputed passenger bus to a third party. Perhaps, it is in view of this apprehension, the Plaintiff-Respondent-Appellants have sought for an order of Court on the Defendant-Petitioner-Respondent to immediately hand over the said vehicle to them. After trial, the District Court of *Mallakam*, by its judgment dated 10.03.2016, had granted that very relief.

The Defendant-Petitioner-Respondent had moved the Civil Appellate High Court holden in *Jaffna* seeking to set aside the said Judgment not by invoking its appellate jurisdiction but by invoking revisionary jurisdiction and tendered his petition to the appellate Court on 23.05.2016. The application was supported on 14.06.2016 and only on that day the appellate Court had made order staying further proceedings before the trial Court. In the absence of a Notice of Appeal that had been tendered within the stipulated time period, there was

sufficient time for the Plaintiff-Respondent-Appellants to seek execution of the Judgment, which granted them the substantial relief and particularly the custody of the passenger bus. If there was realistic threat of transferring the "*trust property*" to a third party, it is reasonable to expect the Judgment Creditor to move Court for the issuance of Writ of Execution. But the Plaintiff-Respondent-Appellants, having had a Judgment in their favour in an action in which they themselves specifically sought delivery of property, did not take any steps to execute Decree, even in the absence of any indication to appellate jurisdiction being invoked by the Defendant-Petitioner-Respondent.

Strangely, the learned Counsel who represented the Plaintiff-Respondent-Appellants before this Court alleged that it was the Defendant-Petitioner-Respondent who had failed to execute the Writ. She did not elaborate as to how the Defendant-Petitioner-Respondent could move Court to execute the Writ, that had been issued under the Judgment and Decree against him.

The order of the Civil Appellate High Court was delivered on 12.10.2016, on the said revision application by the Defendant-Petitioner-Respondent, and thereby the appellate Court had set aside the Judgment of the trial Court. The Plaintiff-Respondent-Appellants in addition to seeking Leave to Appeal from this Court, also sought interim relief by way of staying all proceedings relating to the decree in terms of the Judgment of the Civil Appellate High Court. After the relevant proceedings were translated into English, the Plaintiff-Respondent-Appellants supported their application on 05.10.2018 and this Court had granted Leave on four questions of Law. But the Plaintiff-Respondent-Appellants have not pursued with their

application for interim relief at that point of time and appears to have abandoned their claim on interim relief.

In relation to the instant appeal, it must be observed that this is not a situation where the Added-Respondent sought intervention into the appellate proceedings before this Court as a party for the first time under provisions of Article 134(3) seeking to exercise discretion of Court that he be heard. In fact, he resists the Plaintiff-Respondent-Appellants' act of naming him as an Added-Respondent to the proceedings before this Court.

Thus, it would appear from the considerations referred to in the preceding paragraphs that the Plaintiff-Respondent-Appellants, despite entertaining an apprehension that the Defendant-Petitioner-Respondent would transfer ownership of the disputed passenger bus to a third party, they did not diligently pursue available legal remedies to prevent such a transfer taking place. The Added-Respondent clearly is not a party to the action before the District Court or to the proceedings before the Civil Appellate High Court and therefore not bound by any of the two Judgments. In the circumstances, I am of the view that the Added-Respondent is not a party "*whose interests may be adversely affected by the success of the appeal*" as he himself asserts and therefore need not be heard in determining the instant appeal. In the circumstances, having asked the question whether it is necessary to hear the Added-Respondent, as *Samarakoon CJ* did in ***Bandaranaike v Jagathsena & Others*** (supra), I would answer same in the negative.

In view of the reasoning enumerated above, the application of the learned President's Counsel for the Added-Respondent seeking to discharge him from these proceedings should succeed. Therefore, the

Added-Respondent is discharged forthwith from these proceedings and, if they so whish, the Plaintiff-Respondent-Appellants may prosecute their appeal, on the Questions of Law that had already been formulated by this Court.

The application of the Added-Respondent is accordingly allowed, and he is discharged forthwith from these proceedings. The Plaintiff-Respondent-Appellants are directed to tender an amended caption in terms of this order along with necessary amendments to the amended petition dated 26.11.2018 within a period of four weeks from the pronouncement of this order.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT

A.H.M.D. NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT