

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

In the matter of an appeal in terms of section 5 C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006, against a judgment delivered by the Provincial High Court exercising its jurisdiction under section 5A of the said Act.

SC APPEAL NO. 121/2022
SC HC CALA No. 154/2019
LA Application No.
WP/HCCA/GAM/LA/29/2018
D.C. Gampaha Case No. 3449/L

Upeksha Anuradha Dassanayaka of
No.131, Louise Avenue, Kelaniya.

And presently of No.3, Springfield Drive,
Narre Warren, North Victoria 3804,
Australia.

And appearing by her Power of
Attorney Wanasinghe Arachchige Indrani
Chandrika of No.131, Louise Avenue,
Kelaniya.

PLAINTIFF

Vs.

1. Anushka Maduranga Vithanagamage
of No.438/3, Kottawa Road, Athurugiriya.

And presently of No.3/103, Springfield
Drive, Narre Warren, North Victoria 3804,
Australia.

And appearing by his Power of Attorney
Senadheerage alias Polwattage Dona
Kanthi of No.438/3, Kottawa Road,
Athurugiriya.

2. Ayesha Niroshan Benedict de Saram
Of No. 695, Kulasevana Mawatha,
Kottawa, Pannipitiya.

DEFENDANTS

AND

2. Ayesha Niroshan Benedict de Saram
Of No. 695, Kulasevana Mawatha,
Kottawa, Pannipitiya.

2nd DEFENDANT-PETITIONER

Vs.

Upeksha Anuradha Dassanayaka of
No.131, Louise Avenue, Kelaniya.

And presently of No.3, Springfield Drive,
Narre Warren, North Victoria 3804,
Australia.

And appearing by her Power of
Attorney Wanasinghe Arachchige Indrani
Chandrika of No.131, Louise Avenue,
Kelaniya.

PLAINTIFF-RESPONDENT

1. Anushka Maduranga Vithanagamage
of No.438/3, Kottawa Road, Athurugiriya.

And presently of No.3/103, Springfield
Drive, Narre Warren, North Victoria 3804,
Australia.

And appearing by his Power of Attorney
Senadheerage alias Polwattage Dona
Kanthi of No.438/3, Kottawa Road,
Athurugiriya.

1st DEFENDANT-RESPONDENT

AND NOW BETWEEN

2. Ayesh Niroshan Benedict de Saram
Of No. 695, Kulasevana Mawatha, Kottawa,
Pannipitiya.

**2nd DEFENDANT-PETITIONER-
APPELLANT**

Vs.

Upeksha Anuradha Dassanayaka of
No.131, Louise Avenue, Kelaniya.

And presently of No.3, Springfield Drive,
Narre Warren, North Victoria 3804,
Australia.

And appearing by her Power of
Attorney Wanasinghe Arachchige Indrani
Chandrika of No.131, Louise Avenue,
Kelaniya.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

1. Anushka Maduranga Vithanagamage
of No.438/3, Kottawa Road, Athurugiriya.

And presently of No.3/103, Springfield
Drive, Narre Warren, North Victoria 3804,
Australia.

And appearing by his Power of Attorney
Senadheerage alias Polwattage Dona
Kanthi of No.438/3, Kottawa Road,
Athurugiriya.

**1st DEFENDANT-RESPONDENT-
RESPONDENT**

BEFORE : **P. PADMAN SURASENA J.**
A.L. SHIRAN GOONERATNE J.
ARJUNA OBEYESEKERE J.

COUNSEL : M.C.Jayarathne PC with M.D.J. Bandara, Nishani
H. Hettiarachchi for the 2nd Defendant-Petitioner-
Appellant.
Ranjan Suwandarathne PC with Anil Rajakaruna for the
Plaintiff-Respondent-Respondent.

**ARGUED &
DECIDED ON** : 02.10.2023.

P. PADMAN SURASENA J.

Court heard the submissions of the learned Counsel for the 2nd Defendant-Petitioner-Appellant and also the submissions of the learned President's Counsel for the Plaintiff-Respondent-Respondent and concluded the Argument.

The Plaintiff had filed in the District Court, the Plaint in the instant case against the 1st Defendant and the 2nd Defendant praying inter alia for:

- i. a declaration that the Plaintiff is the owner of the property morefully set out in the schedule to the Plaintiff;
- ii. a declaration that the 1st and/or the 2nd defendant hold that property as a constructive trust in favour of the Plaintiff.

The Plaintiff in the Plaintiff itself has prayed for an enjoining order in the first place and then for an interim injunction against the 2nd Defendant, to compel the 2nd Defendant to maintain the Status Quo relating to the relevant land.

Having considered the material adduced before Court, the learned District Judge by his order dated 17.09.2018, has granted the interim injunction as prayed for in the Plaintiff against the 2nd Defendant.

Turning albeit briefly to the facts of the case, the land relevant to this action was originally owned by the mother of the Plaintiff. The said mother had subsequently transferred it to her daughter (the Plaintiff). The 1st Defendant is the husband of the Plaintiff.

The Plaintiff had subsequently transferred this land to her husband (the 1st Defendant). Later, the 1st Defendant (Plaintiff's husband) had transferred it to the 2nd Defendant.

This Court has granted Leave to Appeal on the following two questions,

- i. Did the Civil Appellate High Court err in Law by not taking into account, the fact that the Power of Attorney of the Plaintiff has no locus standi to institute the present action?
- ii. Were the learned Civil Appellate High Court Judges in error by not taking into consideration, the specific purposes contained in the said Power of Attorney when the learned High Court Judges determined the question pertaining to the institution of this action on the said Power of Attorney against the Defendants?

The central question to be decided by this Court as per the said two questions of law is whether the Plaintiff was entitled to institute this action on the strength of the Power of Attorney given by the Plaintiff to her mother.

When this question was raised on behalf of the 2nd Defendant in the course of the inquiry pertaining to the issuance of the interim injunction before the District Court, after considering the material adduced before Court, the learned District Judge had not accepted that as a ground to refuse the interim injunction prayed for by the Plaintiff.

The Provincial High Court of Civil Appeals, when considering the appeal lodged by the 2nd Defendant against the said order of the District Court, also had not accepted the said ground raised by the 2nd Defendant as a ground not to issue the interim injunction prayed for by the Plaintiff.

In the course of the argument, it was revealed before this Court that the Defendants have not yet filed their answers before the District Court.

Mr. Ranjan Suwadarathne PC appearing for the Plaintiff-Respondent-Respondent agreed that there is no bar for the Defendants to raise this point as an issue in the course of the trial in which case, the learned District Judge would be able to fully consider and decide this issue according to law.

We have taken into consideration the fact that whatever the views mentioned in the orders of Court have been mentioned in the course of an inquiry pertaining to the issuance of the interim injunction at a very early stage of this case. This has been done at a stage where the Defendants had not filed their answers. Thus, issues to be decided by the District Court are yet to be framed. It would be thereafter that the District Court would fully go into the matter and decide the relevant issues. Depending on whether the decision pertaining to the issue would depend on facts, the District Court would decide the proper stage to decide the issue.

In view of the above, we are of the view that this Court should best avoid deciding this issue at this stage because, issues are yet to be framed and the trial is yet to be conducted before the District Court.

In view of the factual positions already set out above, we are of the view that there was material before the learned District Judge to justify granting the interim injunction at that stage.

For those reasons, we decide not to interfere with the impugned judgment of the Provincial High Court of Civil Appeals at this stage.

For those reasons, we are of the view that it is best not to consider this question at this stage. This question must be left for the District Court to decide in the trial. We decide to dismiss this appeal without costs.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE J.

I agree.

JUDGE OF THE SUPREME COURT

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