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

SC/Appeal/199/17
SC/HCCA/LA: 342/16
CP HCCA /FA: 15/2015
D.C Kandy Case No: L/1240/12

An application under Sections 75 and 76 of the Trusts Ordinance.

1. Subramaniam Ramasamy
   No. 68, Colombo Road,
   Kandy.
2. Balasubramaniam Vaitheeswaran
   No.74, Colombo Road,
   Kandy.

PETITIONERS

Vs.

V. R. Soundarajan
No. 40, Venkarasamy Road,
ChettianKottam,
Erode 63800
Tamil Nadu- South India.

RESPONDENT

AND

In the matter of an Appeal against the order dated 19/11/2014 delivered in case No. 1240/L/2012 under the Civil Procedure Code.

V. R. Soundarajan
No. 40, Venkarasamy Road,
ChettianKottam,

Erode 63800
Tamil Nadu- South India.
RESPONDENT-APPELLANT

Vs.

1. Subramaniam Ramasamy
   No. 68, Colombo Road,
   Kandy.
2. Balasubramaniam Vaitheeswaran
   No.74, Colombo Road,
   Kandy.

PETITIONERS-RESPONDENTS

AND NOW

In the matter of an application under Section 839 of the Civil Procedure Code.

Nadesan Sathasivam
No. 128/11, Vihara Lane,
Mulgampola,
Kandy.
PETITIONER

Vs

V. R. Soundarajan
No. 40, Venkarasamy Road,
Chettian Kottam,
Erode 6380
Tamil Nadu- South India.
RESPONDENT-APPELLANT-
RESPONDENT

1. SubramaniamRamasamy
   No. 68, Colombo Road,
   Kandy.
2. Balasubramaniam Vaitheeswaran
   No.74, Colombo Road,
   Kandy.

PETITIONERS-RESPONDENT-RESPONDENTS

AND NOW BETWEEN

In the matter of an Application for Leave to Appeal to the Supreme Court under Section 5C of the Act No.54 of 2006 from the Order of the High Court of Civil Appeal holden in Kandy dated 2nd June 2016.

Subramaniam Ramasamy
No. 68, Colombo Road,
Kandy.

PETITIONER-RESPONDENT-RESPONDENT-PETITIONER

Vs

V. R. Soundarajan
No.40, Venkarasamy Road,
Chettian Kottam,
Erode 63800
Tamil Nadu- South India.

RESPONDENT-APPELLANT-RESPONDENT-RESPONDENT

Nadesan Sathasivam
No. 128/11, Vihara Lane,

Mulgampola,
Kandy.
PETITIONER-RESPONDENT

Balasubramaniam Vaitheeswaran
No.74, Colombo Road,
Kandy.
PETITIONER-RESPONDENT
RESPONDENT -RESPONDENT

Before: E.A.G.R. AMARASEKARA, J.
K.K. WICKREMASINGHE, J. &
A.L.S. GOONERATNE, J.

Counsel: Dr. K. Kang-Isvaran PC with K.V. S Ganesharajan, Lakshmanan Jeyakumar, Sriranganathan Ragul and K. Nasikethan for the 1st Petitioner-Respondent-Respondent-Appellant.
S. Kumarasingham with Srivanthi Indrakumar for the Respondent-Appellant-Respondent-Respondent and Petitioner-Respondent

Argued On: 19.03.2021

Decided On: 24.02.2022

E.A.G.R.Amarasekara, J.

The Petitioner – Respondent - Respondent – Petitioner, Subramaniam Ramasamy (hereinafter sometimes referred to as the Petitioner) together with the Petitioner – Respondent – Respondent – Respondent, Balasubramaniam Vaitheeswaran, (hereinafter sometimes referred to as the Petitioner – Respondent-Respondent) filed by way of summary procedure an action before the District Court of Kandy against the Respondent – Appellant – Respondent – Respondent, V.R. Soundarajan (hereinafter sometimes referred to as the Appellant- Respondent) under Sections 75 and 76 of the Trust Ordinance inter alia praying for an order nisi declaring that the office of trustees of Sri Selvavinyagar Temple Trust has

become vacant and to appoint (1) Duraisamypillai Sivasubramaniam, (2) Perumal Palaniappan, (3) Ratnasabapathy Mohan and (4) Govindasamy Krishnamoorthy as trustees and members of the Board of Management of the said trust. Upon supporting the matter, the District Court entered order nisi dated 02/02/2012 as prayed for in the petition and appointing the trustees named in the said petition. Said order nisi being served, Appellant - Respondent filed his objections by way of a statement of objections dated 02/07/2013. Subsequent to an inquiry learned District Judge by his order dated 19.11.2014 made the order nisi absolute appointing the above named four persons as trustees of Sri Selvaninayagar temple and its temporalities.

Aggrieved by the said Order, Appellant-Respondent preferred an appeal to the Civil Appellate High Court. During the pendency of the appeal in the Civil Appellate High Court, Petitioner – Respondent, Nadesan Sathasivam filed a petition and an affidavit under section 839 of the Civil Procedure Code, naming him as intervenient-petitioner, purporting to seek him to be added as a party to the said appeal. It must be noted that as per the caption of the said petition filed under section 839, even V.R. Soundarajan, Appellant Respondent has also joined as a petitioner along with the Petitioner- Respondent, Nadesan Sathasivam. It was inter alia stated in the said petition dated 31.01.2016, that;

- Affairs of the temple and its temporalities were managed by an instrument of trust bearing No. 3220 dated 20.11.1939 attested by C. Sivaparagasam NP.
- The age-old temple was built and managed by the Family Trust of Ana Runa Leyna of Devakotte South India and one Ramanathan Chettiyar a direct decendant of the said family became the Trustee of the Temple.
- Verappan Chettiyar, son of Ramanathan Chettiyar became the trustee of Sri Selvinayagar temple as provided in the trust instrument on the death of his father, thus ensuring that the hereditary rights of the temple are preserved.
- Verappan Chettiyar has appointed one K. Gunaratnam to handle the day-to-day administration of the temple. Gunaratnam engaged one Pasupathy to assist him in his duties, and on the demise of Pasupathy, said Gunaratnam came forward to appoint Govindasamy Krishnamoorthy (one

of the persons sought to be appointed as a trustee in the District Court action).

- Group of worshippers opposed to the said appointment of Govindasamy Krishnamoorthy and filed a civil action styled X 10804 in the District Court Kandy pertaining to which a settlement was arrived.
- As per the terms of settlement entered in the District Court V.R. Soundararajan, Appellant– Respondent took the appointment as the trustee of the temple and appointed Govindasamy Krishnamoorthy to manage the day-to-day affairs in keeping with the terms of settlement and the aforesaid trust instrument.
- They (This appears to mean the petitioners of the said petition, namely Appellant-Respondent and Petitioner- Respondent) were totally dissatisfied with the manner the temple was managed and there were many instances where the handling of affairs by the said Govindasamy was found wanting or against the norms followed by any place of worship of Hindus.
- On complaints made by them (Petitioners of the said petition) and several others, the Appellant-Respondent cancelled the power of attorney given to Govindasamy Krishnamoorthy.
- Only two individual worshippers filed an action in the District Court under section 75 and 76 of the Trust Ordinance praying to appoint four persons (including Govindasamy Krishnamoorthy) as trustees and members of the Board of management of the said trust and temporalities. Proper procedures would have been to invoke the provisions of Section 102 of the Trust Ordinance.
- When ordering the order nisi a serious error had been made by the learned District Judge by completely overlooking section 76(2)(d) of the Trust Ordinance, where it provides that in appointing the new trustees the court shall have regard to the interest of all the beneficiaries.
- Two applicants' voice cannot be considered to be a 'representative voice' of a large number of worshippers, and the order made in the District Court is prejudicial to the worshippers of the temple who are represented adequately by the 20 intervenient – petitioners.

- Order made by the District Court also violates section 76(1)(b) of the Trust Ordinance which provides that the court shall have regard to the wishes of the person if any empowered to appoint new trustees.
- Clauses 7 and 8 of the trust instrument states that a surviving kith or kin of Ana Runa Lena family would qualify as one empowered to appoint new trustees.

However, though there are prayers ; for a stay order, for entertaining and acceptance of the petition, for issuance of notices and costs and other relief, it is pertinent to note that in the said petition filed purporting to seek intervention, there is no prayer seeking to allow the intervention of the Petitioner-Respondent or the 20 people who are purported to be represented by the Petitioner-Respondent or them to be added as parties.

The Petitioner and the Petitioner – Respondent-Respondent filed objections to Petitioner- Respondent's application for intervention by way of statement of objection dated 29.02.2016 wherein it was inter alia stated that;

- Petitioner Respondent was not a party before the District Court Kandy case No. 1240/L/2012.
- The present matter being a final appeal the Petitioner-Respondent is not entitled to file any document for intervention.
- Although the Petitioner-Respondent has filed the petition on the basis that he is representing the 20 worshippers, the case filed in the District Court was under section 75 and 76 of the Trust Ordinance and that the petitioner-Respondent or any other devotees are not entitled to make any application at this stage.
- Purported petition filed by the Petitioner-Respondent is liable to be dismissed *in limine* in as much section 839 of the Civil Procedure Code does not empower to file any application before the court hearing the appeal for the purposes of intervention.
- The purported application for intervention is misconceived in law.
- The reliefs prayed for in the purported petition for intervention do not comply with an application for intervention.

Subsequently, learned Civil Appellate High Court judges by its order dated 02/06/2016 allowed the application for intervention. Learned High Court judges in its order inter alia stated that;

- Reliefs sought in the original court was to declare that the office of the trustee has become vacant and to appoint a new board of trustees named in the application.
- When a charitable trust based on a trust instrument which has laid down conditions for the appointment of trustees was in existence, the application has been made under sections 75 and 76 of the Trust Ordinance to appoint new trustees and not under section 102 of the Trust Ordinance. Thus, majority of the worshippers would not have been aware that there going to be a change in the trusteeship.
- Thus, there is a serious issue to be considered in appeal whether the learned judge has considered section 76(2)(d) of the Ordinance, where it states it should have regard to the interests of all the beneficiaries.
- This is a case inherent powers should be exercised for the ends of justice and to prevent abuse of the process of court.

Being aggrieved by the said order of the High Court of Civil Appeals the Petitioner preferred an appeal to this court. When this matter was supported before this court, having heard the learned counsel, this court was inclined to grant leave to appeal on the questions of law set out in paragraph 12(a) to (e) of the petition which are as follows; (Vide journal entry dated 13.10.2017)

a) Is the order of the High Court of Civil Appeal holden in Kandy and dated 2nd June 2016 contrary to Law?
b) Did the High Court of Civil Appeal misdirected itself in law in coming to the conclusion that the Petitioner – Respondent is entitled to be added as a party in appellate proceedings?
c) Did the High Court of Civil Appeal misdirect itself in law in calling in aid section 839 of the Civil Procedure Code in allowing the Petitioner – Respondent's application for intervention?
d) Did the High Court of Civil Appeal misdirect itself in law in delving into the merits of the Appeal when the only matter before them at present was the purported application for intervention?

e) Did the High Court of Civil Appeal misdirect itself in law in calling in aid **Mahanayake Thero Malwatte Vihare Vs Registrar General, Kaviratne and Others Vs Commissioner General of Examination** and **Seneviratne Vs Abeykoon** in allowing the purported application for intervention?"

Moreover, when this matter was taken up for argument before this court on 19.03.2021, Mr. Kumarasingham, counsel for the Appellant Respondent and Petitioner-Respondent suggested two more questions of law which are as follows;

a) "Is the inherent power of a court within the meaning of the provisions of section 839 of the Civil Procedure Code synonymous and one and the same with inherent jurisdiction of a court and,
b) If so, is section 839 of very narrow scope and of limited application?"

Since Mr. Kanag-Isvaran PC had no objections for them, this court recorded the above as additional questions of law in addition to the questions of law for which leave to appeal had already been granted.

The outcome of this appeal will depend on whether allowing to intervene at the appeal stage before the Civil Appellate High Court was legally correct. In this regard, it is worthwhile to observe that what was before the learned High Court Judges was an appeal against the order absolute made by the learned District Judge of the Kandy District Court confirming the order nisi issued in an action filed under summary procedure as described above. Unlike a leave to appeal application or a writ application or a revision application etc. filed in a court with appellate or supervisory jurisdiction, an appeal against a final order or judgment as contemplated in section 754(1) of the Civil Procedure Code (hereinafter sometimes referred to as a direct appeal) commences in the original court itself by filing notice of appeal in terms of section 755 of the said code suspending the exercise of jurisdiction of the original court till the appeal is decided. The other applications, namely for writs, revisions or leave to appeal etc. mentioned above inviting the exercise of appellate or supervisory jurisdiction originate in the court that have the appellate or supervisory jurisdiction. Hence, a direct appeal is a continuation of the process started by a filing of the plaint or petition in the original court. Thus, with regard to intervention or addition of parties, it is worthwhile to look at the section 18 of the Civil Procedure Code. In terms of the said section 18, for the effectual and complete adjudication and settlement of all

the questions involved, a court is empowered to add a party on an application made by a party before the hearing or at any time by the court without such application. Since such addition is allowed for the effectual and complete adjudication and settlement of all the questions involved in the action, it is clear that such addition has to be done before the judgment or the final order. In **Banda V Dharmaratne 24 N L R 210,** it was stated that the court has the power to add a party after trial is concluded but before the judgment is entered. It must be also noted that as per section 19 of the Civil Procedure Code no person shall be allowed to intervene in a pending action otherwise than in pursuance of, and in conformity with, the aforesaid provisions of section 18. The only exception is that any person on whose behalf an action is instituted or defended under section 16 of the said code can apply to court to make him a party. In terms of section 16, to sue or to be sued in a representative capacity, notices have to be served on the relevant persons by giving personal notice or through public advertisement as prescribed by the said section. Giving such notices, the court gives an opportunity to relevant persons to object to such permission being given to sue or be sued in a representative capacity and also there is an opportunity for the court to get it verified whether the representative character of the proposed intervenient party is genuine. All these steps described above as to the addition of parties, and filing or defending action in representative character have to be taken place in the original court at the commencement or anyway, prior to the delivery of judgment as the case may be.

As mentioned above, a direct appeal that commences with the filing of notice of appeal in terms of section 755(1) of the Civil Procedure Code in the original court is a continuation of the process started with the plaint/petition and is not a new application that originates in the court with the appellate jurisdiction. As such tendering of an application by a new party to intervene is contrary to the aforesaid provisions, namely sections 18,19 and 16 of the Civil Procedure Code.

Since the original action was filed in terms of summary procedure under chapter XXIV of the Civil Procedure Code, I would also like to refer to the following provisions in the Civil Procedure Code, namely sections 384, 385, 386, and 387.

These sections show how the respondents shall place matters in opposition through objections and how they shall place evidence as well as the petitioner's

right to reply and his entitlement to place additional evidence and the manner of placing evidence before the final order. By allowing new parties to intervene at the appeal stage, the learned High Court Judges have disregarded all these provisions and has open a gate for new parties to challenge the final order without any adjudication by the original court of the matters presented by the purported intervenient parties. As per section 390 of the Civil Procedure Code in an action or application under summary procedure, petitioner and the respondents are the parties to the action. Thus, the final order delivered by the original court relates to the cases presented by the said parties. By allowing new parties to intervene in the appeal stage, the learned High Court judges have attempted to make the final order, which was challenged in appeal, an order between the original petitioners, original respondents and the intervenient parties in appeal when there was no opportunity for the Petitioner to challenge the position of the intervenient parties before the final order made by the original court. Even the original court did not have an opportunity to adjudicate the said stance of the intervenient party. Further, Respondent Appellant being a petitioner to the application for intervention, it appears that the learned High Court Judges have given him an opportunity to challenge the final order through a new stance presented by the intervenient parties. Thus, it is clear that the allowing of intervention at appeal stage was prejudicial to the rights of the Petitioner as contemplated by aforesaid sections 384 to 387 of the Civil Procedure Code. One must not forget that the Civil Appellate High Court was sitting in appeal when that order was made and was not sitting as a court of first instance. It is true that on certain occasions a court sitting in appeal is empowered to entertain fresh evidence but it is not an unrestricted power that can pave way to allow new parties to intervene and bring in new stances or to present a new case. As held in **Ratwatte Vs Bandara 70 NLR 231**, reception of fresh evidence in a case can be justified, if following three conditions are fulfilled;

- It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial[1],

[1] Rev.Kiralagama Suumanatissa Thero V Aluwihare (1985) 1 Sri L R 19, Meegama Gurunnanselage Don Sirisena Wijeyakoon V Indrani Margret Wijeyakoon (1986) 2 C A L R 378

- The evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive,
- The evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, although it need not be incontrovertible.

Since one has to give reasons why the evidence could not have been obtained with reasonable diligence for use at the trial, such fresh evidence can be allowed when a party to the original court action make an application and not to new parties who wants to join in the appeal stage. On the other hand, the application filed in the High Court has no prayer to allow fresh evidence and as such it was not an application to lead fresh evidence.

Even though, the Petitioner Respondent and the Appellant Respondent argue that intervention at the appeal stage is not barred by any positive legal provision and it should be allowed, what explained above clearly indicate that allowing of intervention of a new party at the appeal stage in a direct appeal is contrary to express provisions in the Civil Procedure Code and it also was inimical to the rights of the Petitioner. It must be stated that section 839 of the Civil Procedure Code is not intended to authorize a court to override the express provisions of the Civil Procedure Code- vide **Kamala V Andris 41 NLR 71**. Even in **Wakachicku Construction Co. Ltd. Vs Road Development Authority (2013)1 S L R 164**, it was held that the court's power to interpose its inherent authority cannot be invoked in regard to matters which are sufficiently covered by a specific provision of the relevant Act. As explained above Civil Procedure Code provides when and how addition of a party can be done.

On the other hand, inherent powers of the court are adjunct to the existing Jurisdiction of the court and cannot be made the source of new jurisdictions – vide **All Ceylon Commercial and Industrial Workers Union Vs Ceylon Petroleum Corporation (1995) 2 Sri L R 295** and **Jeyaraj Fernandopulle V De Silva (1996) 1 Sri L R 70.** The Civil Appellate High Court was sitting in appeal when it made the order allowing the intervention. Thus, on that occasion, the High Court's inherent powers were adjunct to its appellate jurisdiction. By allowing intervention it has decided to hear, in the manner a court of first instances does, a new stance or a

case of a new party which was not tested in the original court. Thus, it appears the Civil Appellate High Court has stepped outside its inherent powers as an Appellate Court and decided to exercise powers of an original court.

Moreover, whether in fact the Petitioner-Respondent represents 20 other worshipers is a matter of fact, if this application for intervention was done before the original court, as mentioned above the original court would have issued notices and take necessary steps prior to giving permission to a party to appear in the representative capacity. Further, the counsel for the Appellant Respondent in his written submissions tendered on21.05.2018 states that the purported notarially attested trust deed no. 3220 never surfaced in the original court. However, it is a misleading statement as the said deed was referred to in paragraph 6 of the petition dated 31.01.2012 to the District Court and was marked as P1. Further the said paragraph had been admitted by the Respondent Appellant in his objections- vide paragraph 7 of the objections dated 2.7.2013. Furthermore, nothing is said why the Appellant Respondent could not take up the present position that he now takes up with the Petitioner Respondent, when he presented his case in the original court. It must be noted that the Appellant Respondent and the Petitioner Respondent are Represented by the Same Counsel and have joined together as petitioners in presenting the purported petition for intervention. If the High Court is to get the genuineness of representative character of the Petitioner Respondent or new facts revealed in the said petition for intervention verified during the appeal it has to act as an original court but not as a court sitting in appeal. On the other hand, following excerpts from the order dated 02.06.2016 (which is titled as Judgment) indicates that the learned High Judges had gone in to the merits of the application and have taken the representation of 20 worshipers through the Petitioner-Respondent and the validity and relevancy of certain facts stated in the purported petition for intervention as true, even when the notices were not served on the relevant worshipers to get that verified before giving permission to the Petitioner Respondent to appear in representative character, and also when the Petitioner did not have a chance to challenge those facts in the Original Court. The said excerpts are as follows;

"*In the instant matter what has to be considered is if, the intervention is not allowed, whether the intervenient parties interests are going to be affected and will prejudice be caused to them*."

"Therefore, *it is obvious that the majority of the worshipers would not have been aware that there was going to be a change in the trusteeship."*

Further, Appellant Respondent being a petitioner to the purported application to intervention, has not shown why he could with due diligence present his case in the original court in the manner now he presents it along with the Petitioner Respondent. There is no prayer in the petition before the High Court of Civil Appeal to lead fresh evidence in appeal or no clear prayer to allow intervention either. It appears, by making this strange application for intervention at the appeal stage, the Appellant Respondent and the Petitioner Respondent were trying to circumvent the failure on the part of the Appellant Respondent that took place in the District Court by not applying for addition or intervention as well as in not presenting the case in the manner they now want to present. As shown above, there is a procedure to add a party which has to be done before the final judgment and allowing intervention is not adjunct to the appellate jurisdiction of court sitting in appeal for hearing a direct appeal from the court below.

Further, since the order made by the court below was between parties to that action, if there are other beneficiaries of the trust, they must advice themselves to what steps to be taken in that regard. However, they should not be allowed to interfere with the findings of a contested action between other parties at the appeal stage prejudicing the rights of the Petitioner. In my view, a court sitting in appeal has no jurisdiction to sit as an original court to decide an action between original parties and new intervenient parties who came forward at the appeal stage, since the law expect to add parties or allow intervention prior to the final judgement or order. It appears that the Petitioner Respondent and the Appellant Respondent argue that since there is no provision to intervene during the appeal stage intervention should be allowed under section 839. In my view, there is no need to provide for intervention at the appeal stage when the law expects such intervention prior to the final judgment or order. On the other hand, section 839 is there to prevent abuse of the process of the court. Allowing intervention in this

manner may promote abuse of the process of the court since it may pave for intervention evading the rights of the Petitioner as explained above.

Petitioner Respondent has made submissions in relation to Article 134(3) of the Constitution. It is not necessary to discuss the application of the said Article as it is a provision relating to the jurisdiction of the Supreme Court but not to the Civil Appellate High Court which made the impugned order. The scope and the limitation of the said Article has to be decided in a suitable case when hearing of a new party by the Supreme Court becomes an issue.

It is also argued that since there is no positive law that prohibits a third-party intervention in Appellate proceedings, the courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided by the code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law, and as a matter of general principle, prohibitions cannot be presumed. It must be stated here that what is expressly stated excludes the others. As shown above, there are express provisions in the Civil Procedure Code which provides for the addition of parties and intervention in an action. As explained above it has been held by our courts that it has to be done before the final judgment. Thus, the said argument cannot hold water.

The cases, **Kavirattne and Others Vs Commissioner General of Examination 2012 BLR 139** and **SeneviratneV Abeykoon (1986) 2 S L R 1** cited by the learned High Court Judges have no direct relevance to the matter at hand, namely the allowing of intervention of a party at appeal stage. Kaviratne case was a Fundamental Rights application that originates in the supreme court and, there, intervention has been allowed before the final order and as such it is not an occasion that allowed intervention during the appeal stage from a direct appeal from an original court. The case Senaviratne V Abeykoon was a case in which the original court itself used inherent powers to restore the possession, when there was no express provision. In that case, the plaintiff took law into his own hands and evicted the other party from the possession when the District Court gave the defendant right to stay in the property. The said case also had nothing to do with the addition of parties at the appeal stage. The learned High Court Judges have also referred to the decision of **Maha Nayaka Thero Malwatta Vihare V Registrar General 39 N L**

R 186 in support of their decision, but it appears to be a decision made by the then Supreme Court in the exercise of its original writ Jurisdiction. Following excerpt at page 189 indicates that intervention was allowed before the final order.

"*After order nisi had been issued on the Registrar-General, Urapola Ratnajoti submitted his petition and affidavit on February 23,1937, and prayed to be allowed to intervene, and to be heard before final order was made. As he was vitally concerned in the matter, he was given the opportunity he sought and his counsel was heard……"*

Thus, the above is not a decision that support the proposition that a court sitting in appeal in a direct appeal has inherent powers to allow intervention of new parties at the appeal stage and to hear a new stance or a case presented by them. Even though, the learned counsel appearing for the Petitioner Respondent as well as for the Appellant Respondent has referred to several decided cases, none of them, in my view supports the said proposition.

Counsel for the Appellant Respondent and Petitioner Respondent while referring to many decisions made on writ applications has attempted to establish that the learned High Court Judges' impugned decision is correct, but neither allowing intervention nor rejecting intervention in writ applications has any relevance as those occasions are not occasions that allow intervention during the appeal stage of a direct appeal. The journal entries dated 17.12.2013 and 30.12.2013 of Nuwara **Passa Pedige Sugathan and Emage William V Nuwara Passa Pedige Gunawathie C A Appeal No.663/99** tendered by the said counsel with a motion does not indicate whether the intervention was allowed during the pendency of that appeal by the Appeal Court. Even if it was allowed by the Appeal Court it does not give reasons for why and how it allowed the intervention. Thus, the said journal entries cannot be considered as a decision that indicates that the intervention of parties at the appeal stage in a direct appeal is legally correct or feasible.

As per the reasons elaborated above, it is my view that the impugned order of the Civil Appellate High Court of Kandy, dated 02.06.2016 is contrary to law and the said High Court misdirected itself in law in coming to the conclusion that the Petitioner – Respondent is entitled to be added as a party in appellate

proceedings. Further, it misdirected itself in law in calling in aid section 839 of the Civil Procedure Code in allowing the application for intervention and in delving into the merits of the Appeal by accepting certain facts as true or proved when the only matter before them at that occasion was the purported application for intervention. As explained above, the said High Court misdirected itself in law in calling in aid Mahanayake Thero Malwatte Vihare Vs Registrar General, Kaviratne and Others Vs Commissioner General of Examination and Seneviratne Vs Abeykoon in allowing the purported application for intervention. Thus, the questions of laws allowed at the time of granting of leave have to be answered in the affirmative and in that context, answering them is sufficient to allow the appeal and I do not see it is necessary to answer the additional questions suggested by the counsel for the Petitioner Respondent and the Appellant respondent. As a passing remark, I would prefer to state that the first additional question of law(a) is more academic than one need to be answered to solve the matter before us. Since the word Jurisdiction indicates the extent of the power to make legal decisions and judgments and sometimes it connotes the authority a court has, one can say the term “inherent jurisdiction” can be used synonymously with the term “inherent powers”. The second additional question of law(b) is also not necessary to be answered, since the view expressed above is that the Civil Appellate High Court’s order was outside its inherent powers adjunct to its appellate powers. However, it must be said that section 839 itself contains its limits as it can be used only to make orders necessary for the ends of justice or to prevent abuse of the process of court. It should not be used to prejudice accepted rights of a party. As explained above, it has been used in a prejudicial manner to the rights of the petitioner. Further, our courts through several decisions have explained several limits in using inherent powers, some of which have been referred to above, such as that it should not be used to override express provisions and it is adjunct to the existing jurisdiction.

For the foregoing reasons, I allow the appeal and set aside and vacate the impugned order(judgment) dated 02.06.2016 of the High Court of the Civil Appeal of the Central Province holden in Kandy while dismissing the application dated 21.01.2016 of the Petitioner Respondent.

The Petitioner is entitled to the costs of this Court as well as costs of the court below.

……

Judge of the Supreme Court

K.K Wickremasinghe, J.

I agree

……

Judge of the Supreme Court

A.L.S Gooneratne, J

I agree

……

Judge of the Supreme Court