

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

H.M. Premaratne,
H.M. Ranaweera,
Both Dombagamuwa, Makulpotha.
2nd and 3rd Defendant-Appellant-
Appellants
H.M. Bandara Menike,
Dombagamuwa, Makulpotha.
1A Defendant-Respondent-
Appellant

SC/APPEAL/13/2022
NWP/HCCA/13/2016/F
DC KURUNAGALA L/6245

Vs.

A.P. Premawathie,
Dombagamuwa, Makulpotha.
Substituted Plaintiff-Respondent-
Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice E.A.G.R. Amarasekara
Hon. Justice Mahinda Samayawardhena

Counsel: Jacob Joseph for the Appellants.
W. Dayaratna, P.C., with R. Jayawardena for the
Respondent.

Argued on: 20.06.2024

Decided on: 11.10.2024

Samayawardhena, J.

The plaintiff filed this action in the District Court of Kurunegala in the year 2004 seeking a declaration that he is the owner of the land described in the schedule to the plaint, ejectment of the three defendants therefrom, damages, and costs. The defendants filed a joint answer seeking dismissal of the plaintiff's action and a declaration that the 1st defendant is the owner of the land. After trial, the District Court entered judgment for the plaintiff except for damages. On appeal, the High Court of Civil Appeal of Kurunegala affirmed the judgment of the District Court. Hence this appeal by the defendants.

At the commencement of the trial, it was recorded as admissions that, by the Grant issued under the Land Development Ordinance marked P28, Vijja became the owner of the land, that Vijja was married to Kiri, and that both had died by the time of the trial.

Vijja died on 09.03.1994. Prior to his death, on 02.10.1988, he nominated his wife, Kiri, as his successor (vide P34 at pages 294-295 of the appeal brief). Learned counsel for the defendant-appellants contends that the nomination is invalid, asserting that Vijja did not sign the nomination form and that it was not registered at the Land Registry. This is the main argument of the appellants. Although the photocopied document P34 in the appeal brief seems to support this claim, an inspection of the original document P34 in the District Court case record reveals that Vijja placed his thumb impression instead of a signature, and the Land Registry seal confirms the registration of the nomination on 21.10.1988.

After the death of Vijja, as evidenced by P29, the Divisional Secretary of Polpithigama conveyed the land to Kiri. This conveyance was duly registered at the Land Registry on 05.12.1995 (vide V1). The document

marked P32/V2 confirms that Kiri nominated the plaintiff, Suramba, as her successor, and this nomination was also registered at the Land Registry.

P31 shows that on 14.07.1999, the Divisional Secretary of Polpithigama granted written permission to Kiri to convey the land to the plaintiff, subject to the life interest of Kiri. The draft Deed was approved by the Divisional Secretary of Polpithigama on 21.07.1999 (vide P30C), and the land was subsequently gifted to the plaintiff by Kiri through the Deed marked P30 dated 22.07.1999, which has also been registered at the Land Registry.

All the documents marked at the trial are either originals or duly certified copies issued by the Divisional Secretary or the Land Registry. At the conclusion of the plaintiff's case, there was no objection raised regarding the proof of these documents. I am fully satisfied that the provisions of the Land Development Ordinance have been duly complied with in these transactions.

The 1st defendant, Punchihapu, claims title to the land as the sister of Vijja. The 2nd and 3rd defendants are her children. This claim of the 1st defendant is patently unsustainable in law. She does not state that the above-mentioned documents are forged documents. What she states in the answer tendered to the District Court is that those documents were obtained by misleading government officials. This allegation is baseless.

This Court had previously granted leave to appeal on the following questions of law:

- (a) Did the High Court fail to consider that the plaintiff has failed to prove her title to the property?
- (b) Did the High Court fail to consider that Vijja has not nominated Kiri as his successor?

- (c) Did the High Court fail to consider that Kiri was not entitled to dispose of the holding?
- (d) Did the High Court fail to consider that P34 does not have the signature of Vijja?
- (e) Was the purported nomination not duly registered in the proper folio at the Land Registry?
- (f) Did the District Court and the High Court err in law by holding that acts of the Divisional Secretary have to be challenged by way of a writ?

I answer all the questions in the negative. This appeal is manifestly devoid of merit.

The judgments of the District Court and the High Court are affirmed, and the appeal is dismissed with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

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

I agree.

Judge of the Supreme Court