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.

SC Appeal No. 121/ 2011

SC HCCA LA No. 395/2010

NWP/HCCA/KUR/77/2007 (F)

DC Kuliyapitiya Case No. 13938/L

1. Amarasinghe Arachchige Ramani Amarasinghe, Baburugama, Kalugamuwa.

2. Dr. Amarasinghe Arachchige Sepalika Jayamaha neé Amarasinghe,
Presently in the United Kingdom and appearing by her Power of Attorney Holder who is the 1st Plaintiff.

3. Amarasinghe Arachchige Sriyani Manel de Silva nee Amarasinghe, No. 74, Charles Place, Lunawa, Moratuwa.

PLAINTIFFS

Vs.

1. Mahara Mohottalalage Upali Gunarathna Bandara, Badullewa, Narammala.

2. Dasanayaka Achchilage Dasanayaka, Badullewa, Narammala

3. Mahara Mohottalalage Herath Banda, Badullewa, Narammala.

DEFENDANTS

AND BETWEEN

1. Mahara Mohottalalage Upali Gunarathna Bandara, Badullewa, Narammala.

2. Dasanayaka Achchilage Dasanayaka, Badullewa, Narammala

3. Mahara Mohottalalage Herath Banda, Badullewa, Narammala.

DEFENDANTS-APPELLANTS

Vs.

1. Amarasinghe Arachchige Ramani Amarasinghe, Baburugama, Kalugamuwa.

2. Dr. Amarasinghe Arachchige Sepalika Jayamaha neé Amarasinghe,
Presently in the United Kingdom and appearing by her Power of Attorney Holder who is the 1st Plaintiff.

3. Amarasinghe Arachchige Sriyani Manel de Silva nee Amarasinghe, No. 74, Charles Place, Lunawa, Moratuwa.

PLAINTIFFS-RESPONDENTS

AND NOW BETWEEN

Amarasinghe Arachchige Sriyani Manel de Silva nee Amarasinghe, No. 74, Charles Place, Lunawa, Moratuwa.

3rd PLAINTIFF-RESPONDENTS-PETITIONER

Vs.

1. Mahara Mohottalalage Upali Gunarathna Bandara, Badullewa, Narammala.

2. Dasanayaka Achchilage Dasanayaka, Badullewa, Narammala

3. Mahara Mohottalalage Herath Banda, Badullewa, Narammala. (Now deceased)

3A. Mahara Mohotthalalage Upali Gunarathna Bandara, Badullewa, Narammala.

DEFENDANTS-APPELLANTS-RESPONDENTS

BEFORE : **P. PADMAN SURASENA J.**
JANAK DE SILVA J.
K. PRIYANTHA FERNANDO J.

COUNSEL : Manohara De Silva, PC instructed by Manoj Perera for the 3rd Plaintiff-Respondent-Appellant.

Chula Bandara with Gayathri Kodagoda for the Defendants-Appellants-Respondents.

ARGUED & DECIDED ON : 04th October 2023

P. PADMAN SURASENA J.

Court heard the submissions of the learned President's Counsel for the 3rd Plaintiff-Respondent-Appellant as well as the submissions of the learned Counsel for the Defendants-Appellants-Respondents and concluded the argument.

The Plaintiffs filed their plaint initially against the 1st and 2nd Defendants praying *inter alia:*

(i) for a declaration that the 1st-3rd Plaintiffs are the owners of the lands more fully set out in the schedules to the plaint;

(ii) for an order cancelling the Deed No. 3607 attested on 11-06-2001 by D.M.M. Dissanayake, Notary Public transferring the land described in schedule 1 to the 1st Defendant.

(iii) for an order cancelling the Deed No. 2147 attested on 15-07-2003 by P.A.C. Wijesinghe, Notary Public transferring the land in the 2nd schedule to the 2nd Defendant.

(iv) for ejectment of the 1st, 2nd and 3rd Defendants from the relevant lands.

1st and 2nd Defendants filed a joint answer admitting that the 1st and 2nd Defendants had no title to the paddy land relevant to this case. The 1st and 2nd Defendants also averred that Mahara Mohottalalage Herath Banda was the tenant cultivator of the paddy land relevant to the instant action. The material prayer in the joint answer filed by the 1st and 2nd Defendants is only a prayer to add said Mahara Mohottalalage Herath Banda as a Defendant to the case. This is because the 1st and 2nd Defendants in their joint answer itself had categorically averred the fact that neither of them has any title to the paddy land relevant to the action but their role is limited only to assisting said Mahara Mohottalalage Herath Banda who is the tenant cultivator of the said paddy land. It was on that basis that the learned District Judge had taken steps to add said Mahara Mohottalalage Herath Banda as the 3rd Defendant of the case.

After adding said Mahara Mohottalalage Herath Banda as the 3rd Defendant, he (the 3rd Defendant) also had filed an answer admitting that Menuhamy had been the tenant cultivator under Amarasinghe Arachchige Don Albanu Appuhamy. He also has stated in his answer that after the demise of said Menuhamy, he continued as the tenant cultivator. There is no dispute that Menuhamy is the father of the 3rd Defendant (Herath Banda).

The above facts show that the 1st and 2nd Defendants had not claimed anything in their favour as far as either the possession or the ownership of the properties relevant to this case are concerned.

The 3rd Defendant had taken up two main issues. Firstly, he has not admitted that Piyasiri Amarasinghe is the son of Isabela Hamine. Secondly, the 3rd Defendant has also raised the issue that the title to this property has not devolved on said Piyasiri Amarasinghe as he was not entitled to receive a letter of administration in respect of this property after the demise of Isabela Hamine. In respect of the prayers for cancellation of the two deeds, the 3rd Respondent has taken up the position that the execution of those two deeds was a mistake on his part. We observe that there exists only one material prayer in the 3rd Defendant's answer. That is a prayer for a declaration that the 3rd Defendant is the tenant cultivator in case the Court grants the declaration that the Plaintiffs are the owners of the relevant land. As pointed

out by the learned President's Counsel for the Appellant, we observe that there are two material admissions made in the trial. They are as follows:

(1) Menuhamy had functioned as a tenant cultivator under Amarasinghe Arachchige Don Albanu Appuhamy.

(2) The 3rd Defendant had functioned as a tenant cultivator under 1st, 2nd and 3rd Plaintiffs.

After the trial, the learned District Judge by his judgement dated 05-06-2007, having analyzed the evidence produced in the case before the District Court, had proceeded to grant reliefs prayed for, by the Plaintiffs in their plaint.

Being aggrieved by the judgement of the District Court, the Defendants had appealed to the Provincial High Court of Civil Appeals. The Provincial High Court of Civil Appeals for the reasons set out in the judgement dated 27-10-2010, has set aside the judgement of the District Court. Perusal of the judgement of the Provincial High Court of Civil Appeals shows that the sole ground for setting aside the judgement of the District Court is the alleged failure of the Plaintiffs to prove the fact that their father, Piyasiri Amarasinghe was a child of Dona Isabela Hamine.

The learned Judges of the High Court of Civil Appeals had taken the view that the documents produced by the Plaintiffs marked **P4**, **P5**, **P6**, **P7**, **P8**, **P9**, **P10** and **P11** are not sufficient to prove the fact that the Plaintiffs' father Piyasiri Amarasinghe is the only child of Isabela Hamine. It is in that background that this Court is now called upon to decide the following two central issues that had arisen in the course of the argument of this case in this Court.

i. *Have the learned Judges of the High Court* of Civil Appeals *erred in holding that* the documents produced by the Plaintiffs do not establish that Piyasiri Amarasinghe is the son of Dona Isabela Hamine;
ii. *Has the High Court* of Civil Appeals *erred in not considering the legal effect of the admission No. 3 wherein the 3rd Defendant had admitted that at sometimes prior to filing of this case, he was a tenant cultivator under the Plaintiffs and Plaintiff's mother.*

Let me consider whether the Plaintiffs in the instant case, through the documents produced by them, had established the fact that Piyasiri Amarasinghe is the son of

Dona Isabela Hamine. The 01st Plaintiff in her evidence had produced her father's school leaving certificate marked **P4**. Although her father's name has been written in **P4** as Peter Singho, the 01st Plaintiff in her evidence had clarified that her father used his name as Piyasiri Amarasinghe. The 01st Plaintiff in her evidence had also produced two obituary notices marked **P5** and **P6**. According to these two obituary notices (**P5** and **P6**), the death of A. D.A. Appuhamy was announced by his son Piyasiri Amarasinghe.

The 01st Plaintiff in her evidence had also produced her father's and mother's wedding invitation card marked **P7**. This wedding invitation card has identified Piyasiri as the son of Don Albanu Amerasinghe Appuhamy and Dona Isabela Perera Palihawadana Arachchi Hamine. The 01st Plaintiff in her evidence had testified to the fact that said Piyasiri is her father. The 01st Plaintiff had also testified in her evidence that the bride mentioned in the Wedding invitation card (**P7**) Rathnawali is her mother.

The 01st Plaintiff had also produced the Marriage certificate of her father and mother marked **P8**. According to **P8**, the 01st Plaintiff's father who stood as the bride groom in that wedding has been named as Amerasinghe Arachchige Piyasiri Amerasinghe. The bride groom's father's name has been mentioned in **P8** as Amerasinghe Arachchige Don Albanu Appuhamy whom the 01st Plaintiff has asserted in her evidence as her paternal grandfather.

Another document produced by the 01st Plaintiff in her evidence is a permit issued by Narammala Village Council which had permitted her father to bury the body of her grandmother whose name has been mentioned therein as P A. D. Isabela Perera. This burial permit has been produced marked **P9**.

The 01st Plaintiff had also produced two receipts issued by Wijesinghe Florists which are invoices issued in relation to the expenses borne with regard to a funeral. It is the 01st Plaintiff's evidence that these invoices marked **P10** and **P11** are receipts issued to her father Piyasiri Amerasinghe for the payment of funeral expenses to Wijesinghe Florists in relation to the funeral of Palihawadana Arachchige Dona Isabela Perera Hamine who is her grand mother.

Thus, the Plaintiffs had relied on the following documents namely: **P7** the copy of the wedding invitation of Piyasiri Amarasinghe where it is stated that he was the only child of Don Albanu Amarasinghe Appuhamy and Dona Isabela Perera

Palihawadana Arachchi Hamine; the marriage certificate of Piyasiri Amarasinghe **P8** which shows that he is the son of Amrasinghe Arachchige Don Albanu Appuhamy; **P9**, **P10** and **P11** which are receipts for payments made by Piyasiri Amarasinghe to the Narammala Village Committee and to the funeral undertakers for the burial and other funeral arrangements of Isabela Hamine, to establish the fact that Piyasiri Amarasinghe is the son of Dona Isabela Hamine. Perusal of the questions asked on behalf of the Defendants during the cross examination of the 01st Plaintiff shows clearly that the Defendants had not been successful in assailing the above evidence adduced by the 01st Plaintiff. The Defendants in the cross examination had been content only to highlight the fact that the 01st Plaintiff had not produced her father's (Piyasiri Amarasinghe's) birth certificate to prove that said Piyasiri Amarasinghe is the son of said Isabela Hamine. Having considered the above documentary as well as the oral evidence, we are satisfied that the Plaintiffs have sufficiently proved that their father Piyasiri Amarasinghe is the son of Dona Isabela Hamine.

The learned Judge of the Provincial High Court of Civil Appeals had taken the view that the three receipts marked **P9**, **P10** and **P11** cannot be construed as evidence relevant, under section 32(5) of the Evidence Ordinance, to the matter in issue. He had proceeded to hold that the documents produced marked **P3** to **P12** cannot also be held to be relevant under section 32(5) of the Evidence Ordinance.

Let me reproduce below, Section 32(5) of the Evidence Ordinance:

> *S. 32: Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases :—*
>
> 1) *.....*
> 2) *..*
> 3) *..*
> 4) *..*
> 5) *When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage, or*

adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6) *When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.*
7) *…*
8) *…*

Section 50 of the Evidence Ordinance is also relevant in that regard and hence is reproduced below:

> *S.50: When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:*
>
> *Provided that such opinion shall not be sufficient to prove a marriage in proceedings for divorce, or in prosecutions under sections 362B, 362C, and 362D of the Penal Code.*

Learned President's Counsel for the 3rd Plaintiff-Respondent-Appellant relied *inter alia* on the judgment in the case of *Maniapillai and others Vs. Sivasamy.*[1] In *Maniapillai's* case, the issue arose was whether a person was born of a lawful wedlock. In other words, the resolution of the dispute that arose in that case, was dependent on the answer to the question whether Sinnapodi Velupillai married one Annaletchumi and had a child Kailasapillai by her. In that case, there was neither the birth certificate of Kailasapillai nor the marriage certificate of Sinnapodi Velupillai and Annaletchumi had been produced. However, the deed No. 3873 (marked D3 in that case) of 20th May 1907 whereby Sinnapodi Velupillai and his

[1] *1980 (2) Sri L.R. 214.*

father Vyravi Sinnapodi had donated a land to Kailasapillai who was described as the son of Velupillai and grandson of Sinnapodi had been produced as evidence in that case. There was also the certificate of marriage (marked D4 in that case) of Kailasapillai where his father's name had been given as Sinnapodi Velupillai. Soza, J relying on the strength of the contents in those documents adduced as evidence in that case, held that the declarations regarding the relationship found in the documents marked D3 and D4 produced in that case, were relevant and admissible to find an answer to the question whether Sinnapodi Velupillai had indeed married one Annaletchumi and had a child Kailasapillai by her.

Soza J, in *Maniapillai's* case, in relation to sections 32(5) 32(6) and 50 of the Evidence Ordinance, proceeded to state as follows:

> *"Under the provisions of section 32(6) of the Evidence Ordinance when a statement of the deceased person relates to the existence of any relationship by blood, marriage or adoption between deceased persons it will be admissible provided-*
>
> 1. *it is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and*
> 2. *it was made before the question in dispute was raised.*
>
> *Section 50 of the Evidence Ordinance makes relevant the opinion expressed by conduct, as to the existence of relationship of any person who as a member of the family or otherwise has special means of knowledge of such relationship.*
>
> *It is under these provisions, to wit, section 32(5) and (6) and section 50 of the Evidence Ordinance that it is possible to admit evidence, otherwise hearsay, of deceased persons figuring in a genealogical tree such as one often comes across in a partition case. - see Cooray v Wijesuriya.[2] It should be observed that these provisions deal not with presumptions but only with relevance. There is no doubt that the declarations regarding relationship found in D3 and D4 are relevant and admissible. But these declarations*

[2] (1958) 62 NLR 158.

> *must be assessed and evaluated in the context of the other evidence in the case".*[3]

Thus, for the above reasons, I hold that the view taken by the learned Judge of the Provincial High Court of Civil Appeals that the three receipts marked **P9**, **P10** and **P11** cannot be construed as evidence relevant under section 32(5) of the Evidence Ordinance to the matter in issue and the documents produced marked **P3** to **P12** cannot be held to be relevant under section 32(5) of the Evidence Ordinance is erroneous. I have already adverted to the fact that the above documentary evidence taken in to consideration along with the oral evidence adduced on behalf of the Plaintiffs, have sufficiently proved that the father of the Plaintiffs Piyasiri Amarasinghe is the son of Dona Isabela Hamine. Therefore, the learned Judge of the Provincial High Court of Civil Appeals has erred in arriving at the conclusion that the Plaintiffs had failed to prove the fact that their father, Piyasiri Amarasinghe was a child of Dona Isabela Hamine.

We observe that the learned Judge of the Provincial High Court of Civil Appeals had required strict proof of the afore-said relationship. *H.N.G. Fernando, J* in the case of *Pathirana V. Jayasundara, 58 NLR 169,* had the following to say in relation to the requirement of strict proof in vindicatory actions -:

> *"I have no doubt that it is open to a lessor in an action for ejectment to ask for a declaration of title, but the question of difficulty which arises is whether the action thereby becomes a rei vindicatio for which strict proof of the Plaintiff's title would be required, or else is merely one for a declaration (without strict proof) of a title which the tenant is by law precluded from denying. If the essential element of a rei vindicatio is that the right of ownership must be strictly proved, it is difficult to accept the proposition that an action in which the Plaintiff can automatically obtain a declaration of title through the operation of a rule of estoppel should be regarded as a vindicatory action"*

In the same case, *Gratiaen, J.* in his judgment while agreeing with *H.N.G. Fernando, J* had further elaborated on this in the following manner:

> *"A decree for a declaration of title may, of course, be obtained by way of additional relief either in a rei vindicatio action proper (which is in truth an action in rem) or in a lessor's action against his overholding tenant (which is*

[3] *At page 217.*

an action in personam). But in the former case, the declaration is based on proof of ownership; in the latter, on proof of the contractual relationship which forbids a denial that the lessor is the true owner"

We observe that there is no specific mention in the judgement of the Provincial High Court of Civil Appeals that the learned Judge of the Provincial High Court of Civil Appeals had specifically treated this case as a *rei vindicatio* action when deciding this case. However, from the fact that the learned Judge of the Provincial High Court of Civil Appeals had required strict proof of the afore-said relationship, could be an indication that the learned Judges of the Provincial High Court of Civil Appeals may have been confused on this aspect of the case.

Be that as it may, in view of the admission made by the 3rd Defendant that he functioned as the tenant cultivator under the Plaintiffs, we see no necessity for the Provincial High Court of Civil Appeals to require strict proof of the afore-said relationship. In those circumstances, we hold that the learned Judge of the Provincial High Court of Civil Appeals had erred in totally disregarding the presence of the aforesaid admission made by the Defendants. Therefore, we decide to set aside the judgment dated 27-10-2010 pronounced by the learned Judges of the Provincial High Court of Civil Appeals. We proceed to restore the judgment dated 05-06-2007 pronounced by the learned District Judge.

Appeal is allowed.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA J.
I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO J.
I agree.

JUDGE OF THE SUPREME COURT

Mhd/-