

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

Sunnadeniyage Jayadasa,
Dehigahalanda,
Ambalantota.
Plaintiff

SC APPEAL NO: SC/APPEAL 218/2016

SC LA NO: SC/HCCA/LA/37/2016

CA NO: SP/HCCA/TA/24/2012 (F)

DC TISSAMAHARAMA NO: 175/2002/L

Vs.

1. Sudusinghage John Singho
(Deceased),
 - 1A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
Substituted 1st Defendant
2. Ramasundara Hettige Misinona
(Deceased)
 - 2A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
Substituted 2nd Defendant
3. Jasenthu Hewage Dharmadasa,
No. 1046, Nandimithra Mawatha,
Gemunupura, Tissamaharama.

4. Chaminda Sudusinghe,
“Chaminda”, Gemunupura,
Tissamaharama.
3rd and 4th Defendants

AND BETWEEN

Sunnadeniyage Jayadasa,
Dehigahalanda,
Ambalantota.
Plaintiff-Appellant

Vs.

1. Sudusinghage John Singho (Deceased),
1A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
Substituted 1st Defendant-Respondent
2. Ramasundara Hettige Misinona
(Deceased),
2A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
Substituted 2nd Defendant-Respondent
3. Jasenthu Hewage Dharmadasa,
No. 1046, Nandimithra Mawatha,
Gemunupura, Tissamaharama.

4. Chaminda Sudusinghe,
“Chaminda”, Gemunupura,
Tissamaharama.
3rd and 4th Defendant-Respondents

AND NOW BETWEEN

Sunnadeniyage Jayadasa,
Dehigahalanda,
Ambalantota.
Plaintiff-Appellant-Appellant

Vs.

1. Sudusinghage John Singho (Deceased),
1A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
Substituted 1st Defendant-Respondent-
Respondent
2. Ramasundara Hettige Misinona
(Deceased),
2A. Wimaladasa Sudusinghe,
Gemunupura, Tissamaharama.
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Respondent
3. Jasenthu Hewage Dharmadasa,
No. 1046, Nandimithra Mawatha,
Gemunupura, Tissamaharama.

4. Chaminda Sudusinghe,
“Chaminda”, Gemunupura,
Tissamaharama.
3rd and 4th Defendant-Respondent-
Respondents

Before: S. Thurairaja, P.C., J.
Kumuduni Wickremasinghe, J.
Mahinda Samayawardhena, J.

Counsel: W. Dayaratne P.C. with R. Jayawardena for the Plaintiff-
Appellant-Appellant.
Prabath de Silva with Madushani Kulerathna with Salome de
Silva for the Defendant-Respondent-Respondents.

Argued on: 26.09.2022

Written submissions:

by the Plaintiff-Appellant-Appellant on 27.04.2017 and
21.11.2022.

by the Defendant-Respondent-Respondents on 09.05.2017
and 26.10.2022.

Decided on: 27.03.2023

Samayawardhena, J.

The plaintiff filed this action in the District Court of Tissamaharama against the defendants seeking a declaration of title to the land described in the schedule to the plaint on deed No. 1907 marked P5, ejectment of the defendants therefrom and damages. The 1st and 2nd defendants filed answer seeking a dismissal of the plaintiff's action, a declaration that they are entitled to the property on prescriptive possession through Geetha

Chandanees Sudusinghe (මෙම උත්තරයේ උපලේඛනයේ සඳහන් දේපල 1,2 විත්තිකරුවන්ට ගීතා වාන්දනී සුදුසිංහ යන අයගෙන් කාලාවරෝධී භුක්තියට උරුම වී ඇති බව ප්‍රකාශ කරන ලෙස) and a declaration that deed P5 is a nullity.

After trial, the District Judge dismissed the plaintiff's action and entered judgment for the defendants. On appeal, the High Court of Civil Appeal in Tangalle affirmed the judgment of the District Court and dismissed the appeal. The plaintiff appealed to this Court against the judgment of the High Court and this Court granted leave to appeal mainly on two questions of law:

- (a) Did the High Court of Civil Appeal err in law in affirming the judgment of the District Court which decided that P5 is a forgery relying entirely upon the report of the Examiner of Questioned Documents?
- (b) Did the High Court of Civil Appeal err in law in affirming the judgment of the District Court which decided that upon the death of Geetha Sudusinghe, the property devolves upon the 1st and 2nd defendants being her natural parents?

At the trial, by way of formal admissions, it was *inter alia* accepted by the defendants that:

- (a) David Silva became the owner of the property by a partition decree marked P1 and P2.
- (b) David Silva gifted that property to his wife Podinona and Geetha Sudusinghe by deed No. 1227 marked P3.
- (c) Podinona gifted her share to Geetha Sudusinghe by deed No. 33 marked P4 (thereby Geetha Sudusinghe becoming the sole owner of the property).
- (d) Geetha Sudusinghe is the adopted child of David Silva and his wife, Podinona.

(e) The 1st and 2nd defendants are the biological parents of Geetha Sudusinghe.

The plaintiff's case was that Geetha Sudusinghe gifted the property to the plaintiff by deed P5. This was challenged by the defendants on the basis that P5 is a forgery and the District Court accepted the defendants' position. The contention of learned President's Counsel for the plaintiff is that the District Court came to this conclusion solely on the evidence of the Examiner of Questioned Documents (EQD) and on no other evidence and this is against the well-established law.

The EQD gave evidence at the trial. He is an officer of the Government Analyst's Department. The report was marked V3. His evidence is that the signature of Geetha Sudusinghe appearing on deed P5 is a forged one. According to his evidence, Geetha Sudusinghe's purported signature has been created by tracing out her genuine signature on deed P5.

03. පැ1 හි වූ පැ 1අ අත්සන පරීක්ෂා කොට අදාළ ආදර්ශ සමග ඉල්ලා ඇති පරිදි සැසඳුවෙමි. මා හට පෙනී ගියේ පැ1 හි පැ1අ ප්‍රශ්නගත අත්සන නිර්මාණය කර ඇත්තේ නිර්ව්‍යාජ අත්සනක් ආකෘතියක් ලෙස භාවිතා කර ඇද ගන්නා ලද කාවැද්දීම් මත බෝල්පොයින්ට් තීන්තෙන් ඇඳීමෙන් බවයි.

04. මාගේ නිගමනය වනුයේ පැ1හි පැ1අ අත්සන් කෙටුම්පත් කරන ලද ව්‍යාජ අත්සනක් බවයි.

The expert witness is very confident on that finding as he says that he used the latest advanced technology known as Video Spectral Comparator (VSC) technology in this regard. This technology with advanced characteristics for examination, comparison and authentication is a complete digital imaging system used by (among many others) Examiners of Questioned Documents for detecting variations on altered and counterfeit documents. At the invitation of the defendants' counsel the expert witness produced his investigation results marked V5. The District

Judge accepted his evidence. The complaint of learned President's Counsel for the plaintiff is based on the sentence found in the judgment of the District Court where the learned District Judge says that to come to the conclusion that deed P5 is a forgery, the evidence of the EQD itself is sufficient. I accept that the District Judge cannot decide the genuineness of P5 on the EQD report alone. The expert only expresses his opinion on the matter. It is not conclusive. The Court will take the expert's opinion into careful consideration to form its independent opinion, which shall ultimately prevail. The Court cannot blindly accept such evidence. *Vide Gratiaen Perera v. The Queen* (1960) 61 NLR 522, *Charles Perera v. Motha* (1961) 65 NLR 294, *Fernando v. The State* (1972) 75 NLR 315.

However I cannot accept the argument of learned President's Counsel for the plaintiff that the District Judge entirely depended on the evidence of the EQD to conclude that deed P5 is a forgery. The District Judge in the judgment *inter alia* refers to the evidence of Seetin, an attesting witness to the deed. His evidence is fragile and not convincing at all. Geetha Sudusinghe was sick at that time but she is said to have gone to Ambalantota by bus to execute the deed. Seetin also says that she died about one week after the execution of the deed but according to P5 it was executed on 10.01.2002. Geetha Sudusinghe died on 07.02.2002. He did not know that he was signing as a witness to a deed but later came to know that it was a deed. When suggested that they prepared a forged deed his answer was that he does not know. *Vide* pages 419-420 of the brief. The plaintiff did not call Sunil, the other attesting witness and/or the notary to give evidence.

On the available evidence I do not think the District Judge was wrong to have come to the conclusion that the due execution of the deed was not proved and the signature of the donor is a forgery.

The next question is whether the District Judge was correct when he came to the conclusion that Geetha Sudusinghe was brought up by David Silva and Podinona but there is no evidence of adoption of her by David Silva and Podinona (මෙම නඩුවේ ඉදිරිපත් වූ තවත් කරුණක් වන්නේ ගීතා වාන්දනී සුදුසිංහ කුඩාකළ සිටම නැසිගිය ඩේවිඩ් සිල්වා හා පොඩිනෝනා විසින් හදාවඩාගත් බවයි. එහෙත් කුලවද්දා ගැනීමක් පිලිබඳ කරුණු ඉදිරිපත්ව නැත), and therefore after the death of Geetha Sudusinghe, her property shall devolve on her natural parents and siblings. This is a wrong finding. At the commencement of the trial, it was recorded as an admission of the defendants (පිලිගැනීම් විත්තිය වෙනුවෙන්) that Geetha Sudusinghe was adopted by David Silva and Podinona. (සුන්නා දෙනියගේ ඩේවිඩ් සිල්වා සහ ඔහුගේ භාර්යාව වන පොඩිනෝනා විසින් ගීතා වාන්දනී සුදුසිංහ යන අය දරුකමට හදාවඩාගත් බව පිළිගනී)

According to section 58 of the Evidence Ordinance such formal admissions recorded at the trial need no further proof unless the Court wants them to be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Section 31 of the Evidence Ordinance which enacts “Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained” relates to informal admissions mostly made out of Court.

Because of this formal admission, no issue was raised by either party whether Geetha Sudusinghe was adopted by David Silva and Podinona

and rightly so. Nor did the Court want that fact to be proved by calling witnesses. If it was the position of the defendants that Geetha Sudusinghe was not legally adopted but only brought up by David Silva and Podinona, there was no necessity for the defendants to record such admission at the trial but instead it ought to have been raised as an issue at the trial. This was not done.

In jurisdictions where adversarial system of justice is adopted such as Sri Lanka, it is a rudimentary principle of law that the case shall be decided by the judge as it is presented before him by the competing parties and not in the way the judge thinks the case ought to have been presented before him. Therefore the finding of the District Judge on that matter cannot allowed to stand. The Court has to proceed on the basis that Geetha Sudusinghe is the adopted child of David Silva and Podinona.

By way of further admissions quoted above, the 1st and 2nd defendants have accepted that Geetha Sudusinghe became the owner of this land by the two deeds of gifts marked P3 and P4 executed by David Silva and Podinona. However in the answer and by way of issues the 1st and 2nd defendants say that Geetha Sudusinghe became entitled to the land by prescription. Issue 16 reads as follows: එකී සුන්නාදෙනියගේ ඩේව්ඩ් සිල්වා මියයාමෙන් පසු, එකී ඩේව්ඩ් සිල්වා අයිතිය දැරූ, උත්තරයේ උපලේඛණයේ ඇතුළත් දේපොල සහ ඔහුට අයිති සියළු දේපොල භීතා වාන්දනී සුදුසිංහ යන අයට කාලාවරෝධී නීතිය යටතේ අයිති වේ ද?

The District Judge has answered this issue also in the affirmative. This is meaningless. I cannot understand how and why and against whom Geetha Sudusinghe had adverse possession to acquire the property by prescription when she had the paper title by deeds P3 and P4 about which there is no contest.

In any event, the plaintiff filed this action for declaration of title and ejectment of the defendants from the land. That means the defendants are in possession of the land. Merely because this Court sets aside the finding of the District Court on the question of adoption, the plaintiff cannot enter into possession of the land. This Court cannot express any legal opinion as to what the parties should do to vindicate their rights, if they think they have such rights.

The plaintiff's action in the District Court and the cross-claim of the defendants shall stand dismissed. The appeal is formally dismissed subject to the above findings. No costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Kumuduni Wickremasinghe, J.

I agree.

Judge of the Supreme Court