

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

H.M. Bandara Menike,  
Nattharampotha, Polgaswela,  
Kundasale.  
Plaintiff

**SC APPEAL NO: SC/APPEAL/23/2014**

**SC LA NO: SC/HCCA/LA/385/2011**

**HCCA KANDY NO: CP/HCCA/733/2005A (F)**

**DC KANDY NO: P/11663**

Vs.

1. S.M. Dingiri Banda,  
Pansalawatte Road,  
Walamale, Ulpothawatte,  
Kundasale.
2. H.M. Biso Manike,  
Madanwela, Hanguranketha.
3. H.M. Punchibanda,  
Walamale, Ampitiya.
4. Tanthirige Wilfred De Silva,  
No. 39, Gurudeniya Road,  
Ampitiya.
5. T. Leslie De Silva,  
No. 39, Gurudeniya Road,  
Ampitiya.

Defendants

AND BETWEEN

4. Tanthirige Wilfred De Silva, (Deceased)  
4A/5. T. Leslie De Silva,  
Both of No. 39,  
Gurudeniya Road,  
Ampitiya.

Defendant-Appellants

Vs.

H.M. Bandara Menike,  
Nattharampotha,  
Polgaswela,  
Kundasale.

Plaintiff-Respondent

1. S.M. Dingiri Banda,  
Pansalawatte Road,  
Walamale, Ulpothawatte,  
Kundasale.
2. H.M. Biso Manike,  
Madanwela, Hanguranketha.
3. H.M. Punchibanda,  
Walamale, Ampitiya.

Defendant-Respondents

AND NOW BETWEEN

T. Leslie De Silva,  
No. 39,  
Gurudeniya Road,  
Ampitiya.

4A and 5<sup>th</sup> Defendant-Appellant-  
Appellant

Vs.

H.M. Bandara Menike,  
Nattharampotha, Polgaswela,  
Kundasale.

Plaintiff-Respondent-Respondent

1. S.M. Dingiri Banda,  
Pansalawatte Road,  
Walamale, Ulpothawatte,  
Kundasale.  
Presently at,  
Ulpatthawaththa,  
Temple Road,  
Ketawala, Lewla,  
Kandy.
2. H.M. Biso Manike, (Deceased)
- 2A. D. M. Chandrasekara Banda,  
Both of Madanwela, Hanguranketha.
3. H.M. Punchibanda,  
Walamale, Ampitiya.

Defendant-Respondent-Respondents

Before: Hon. Justice Priyantha Jayawardena, P.C.  
Hon. Justice A.L. Shiran Gooneratne  
Hon. Justice Mahinda Samayawardhena

Counsel: Dr. Sunil Coorey with Sudarshani Coorey for the 4A and 5<sup>th</sup>  
Defendant-Appellant-Appellant.  
Panchali Ekanayaka for the Plaintiff-Respondent-  
Respondent.  
Chanaka Kulathunga for the 1<sup>st</sup> Defendant-Respondent-  
Respondent.

Argued on : 26.10.2021

Written submissions:

by the 4A and 5<sup>th</sup> Defendant-Appellant-Appellant on  
04.04.2014 and 02.11.2021.

by the 1<sup>st</sup> Defendant-Respondent-Respondent on  
02.10.2019, 05.07.2021 and 01.11.2021.

Decided on: 28.02.2024

**Samayawardhena, J.**

The plaintiff filed this action to partition the land described in the schedule to the plaint among the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants in equal shares, each being entitled to a 1/3 share of the land. After an uncontested trial in which only the evidence of the plaintiff was led, the judgment dated 15.07.1992 was entered allotting the shares as previously mentioned.

The District Court refused the 4<sup>th</sup> defendant's application for intervention after the judgment was delivered. Thereafter the Court of Appeal made order dated 07.06.2000 directing the District Court to add the 4<sup>th</sup> defendant as a party and to allow him to place evidence of his interests in the land and to amend the interlocutory decree accordingly. Upon this direction, the District Judge allowed further evidence to be led and made order dated 05.12.2005 whereby it was decided to divide the 1/3 share originally allotted to the 1<sup>st</sup> defendant between the 1<sup>st</sup> and 4<sup>th</sup> defendants equally, i.e. each being entitled to a 1/6 share. No change was made in respect of the 1/3 share each allotted to the plaintiff and the 2<sup>nd</sup> defendant. On appeal, the High Court set aside this order and restored the previous judgment of the District Court dated 15.07.1992. This appeal by the 4<sup>th</sup> defendant is against the judgment of the High Court.

Heen Banda was at one time owner of the land to be partitioned by deed No. 500 dated 22.10.1942 (P2). According to the deed, he became entitled to “*One undivided third part or share of and all that land called Ulpathewatte of three amunams in paddy sowing extent*”. Heen Banda had plan No. 262 dated 09.11.1945 (P3) prepared to depict this land. According to this plan, the extent of the land is 1 acre, 2 roods and 3/4 of a perch. Heen Banda transferred undivided 2 roods to the 2<sup>nd</sup> defendant by deed No. 287 dated 17.12.1974 (P5), and another undivided 2 roods to the plaintiff by deed No. 288 (P4) executed on the same date by the same notary. After the execution of these two deeds, Heen Banda was left with only 2 roods and 3/4 of a perch. These facts are not disputed.

Thereafter, Heen Banda transferred an undivided extent of one *pela* paddy sowing area to the 4<sup>th</sup> defendant by deed No. 4390 dated 17.03.1977 (5D5) and another same extent of land to the 1<sup>st</sup> defendant by deed No. 4392 (1D1) executed on the same date by the same notary.

According to traditional Sinhala land measurements as reported in *Ratnayake v. Kumarihamy* [2002] 1 Sri LR 65 at 81, 1 *pela* of paddy sowing extent is equivalent to 2 roods and 20 perches. After the execution of deeds P4 and P5, it is undisputed that Heen Banda did not have rights on the land to transfer one *pela* each to the 1<sup>st</sup> and 4<sup>th</sup> defendants. As I stated previously, he had only 2 roods and 3/4 of a perch left. Therefore, after the transfer of his remaining rights to the 4<sup>th</sup> defendant by deed 5D5, Heen Banda did not have any rights to alienate to the 1<sup>st</sup> defendant by deed 1D1.

However, the 1<sup>st</sup> defendant claims priority over the 4<sup>th</sup> defendant’s deed by prior registration. Although the 4<sup>th</sup> defendant’s deed is prior in date of execution, it is not prior in date by registration. The 1<sup>st</sup> defendant’s deed was registered at the Land Registry before the 4<sup>th</sup> defendant’s deed was

registered there. This is the crux of the matter on this appeal. The contest of this appeal is only between the 1<sup>st</sup> defendant and the 4<sup>th</sup> defendant. There is no issue with regard to the 1/3 share each of the plaintiff and the 2<sup>nd</sup> defendant.

In terms of section 7(1) of the Registration of Documents Ordinance, No. 23 of 1927, as amended, an instrument affecting land is void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent instrument which is duly registered under the Ordinance. If A sells his land to B by a notarially executed deed and after some time sells the same to C in the same way, the second sale overrides the first sale, if C registers his deed before the first deed is registered. Section 7(2) enacts that fraud or collusion in obtaining such subsequent instrument or in securing the prior registration thereof shall defeat the priority of the person claiming thereunder.

However, registration is not indispensable for the validity of a deed. Want of registration does not make an otherwise perfect title imperfect. An unregistered deed may be considered void when compared to a registered one, but it remains valid and enforceable for all other purposes.

Three main requisites need to be satisfied for the doctrine of priority by registration to operate:

- (1) Both deeds shall proceed from the same source.
- (2) The interests sought to be conferred shall be adverse, creating a clash of interests.
- (3) The conveyance shall be for valuable consideration.

There is no dispute that the 1<sup>st</sup> defendant's deed and the 4<sup>th</sup> defendant's deed originate from the same source for valuable consideration. But the issue is whether the interests sought to be conferred by Heen Banda by

those two deeds are adverse, creating a clash of interests. The deeds must conflict with one another to claim priority by registration.

A. St. V. Jayewardene, *The Law Relating to the Registration of Deeds* (1919), page 80 states:

*Instruments may be said to be adverse when the rights dealt with by them are inconsistent or antagonistic, but not when the rights dealt with by one, do not interfere with, or infringe the rights dealt with, by the other.*

In *Samaranayake v. Cornelis* (1943) 44 NLR 508 at 511 De Kretser J. states:

*The argument that the competing deeds must come from the same source is quite correct if properly understood. It does not mean that they must come from the same person or persona. As de Sampayo J. put it in *Bernard v. Fernando* [16 N. L. R. 438], "The truth, I think, is that the expression 'adverse interest' refers only to cases where two persons claim interests traceable to the same origin", i.e., the lines of title must not be parallel but must intersect at some point and so produce the clash of interests.*

In *Wijewardena v. Lorenzu Perera* (1880) 4 SCC 9, the plaintiff took a secondary mortgage of a piece of land, and his mortgage expressly recited that the land was subject to the claimant's primary mortgage. The plaintiff registered his secondary mortgage prior to the registration of the claimant's primary mortgage. The Supreme Court held that the plaintiff's priority of registration did not give his mortgage priority over the claimant's mortgage. Cayley C.J. states at pages 9-10:

*[The Ordinance] renders void a prior unregistered deed as against parties claiming an adverse interest thereto by virtue of a*

*subsequent deed which has been duly registered. But in the present case there is no conflict of adverse interests in the deeds. The same interest is not dealt with by the two deeds. The plaintiff's deed purports to create a secondary mortgage, and the claimant's primary mortgage is expressly recited in the plaintiff's deed. It is clear that the intention of the parties was that the plaintiff's mortgage should be subject to the claimant's. The two mortgages are not adverse one to other, but the second one hypothecates such interest only as the mortgagor had left to him in the land after the first mortgage was effected.*

In the case of *Mohamad Ali v. Weerasuriya* (1914) 17 NLR 417 the Court impressed upon the requirement of "adverse interest" as an indispensable one for a successful plea for priority by registration.

In *Jayawardena v. Subadra Menike* (SC/APPEAL/32/2009, SC Minutes of 04.03.2010) it was held:

*It is quite clear that in terms of section 7(1) of the Registration of Documents Ordinance, an instrument becomes void if it is not duly registered, provided that there is an adverse claim against the said instrument by virtue of a subsequent instrument, which is duly registered.*

In *Jinaratana Thero v. Somaratana Thero* (1946) 32 NLR 11, Jayetileke J. held that "*To interpret a deed, the expressed intention of the parties must be discovered.*"

On the facts and circumstances of this case, it is evident that Heen Banda did not intend to dispose of the same portion of land to two different people dishonestly or otherwise. According to the schedules of the two deeds, Heen Banda transferred "*An undivided extent of **one pela** paddy sowing towards the **West***" of the land to the 4<sup>th</sup> defendant by deed No.



4390 dated 17.03.1977 (5D5) and “An undivided **one pela** paddy sowing towards the **North**” of the land to the 1<sup>st</sup> defendant by deed No. 4392 (1D1) executed on the same date by the same notary. The deeds 5D5 and 1D1 are not competing deeds and there is no clash of interests. The argument of learned counsel for the 1<sup>st</sup> defendant that since no divided portions were transferred, both deeds convey “some adverse or inconsistent interest” in the land to attract the applicability of the statutory principle of priority by registration is unacceptable.

Section 7(4) of the Registration of Documents Ordinance states that registration of an instrument under the Ordinance shall not cure any defect in the instrument or confer upon it any effect or validity which it would not otherwise have except the priority conferred by the section. Prior registration does not confer title on the holder of the prior registered subsequent deed.

There is no ambiguity as to what was intended to be conveyed by the said two deeds by Heen Banda. He wanted to convey equal shares to both the 1<sup>st</sup> and 4<sup>th</sup> defendants but from different parts of the larger land. If there is any ambiguity, the court can look for extrinsic evidence to resolve the ambiguity.

It was held in the Supreme Court case of *Appuhamy v. Gallella* (1976) 78 NLR 404:

*Where the extent of a grant of land is stated in an ambiguous manner in a conveyance, it is legitimate to look at the conveyance in the light of the circumstances which surrounded it in order to ascertain what was therein expressed as the intention of the parties. It is permissible to resort to extrinsic evidence in order to resolve the ambiguity relating to the subject matter referred to in the conveyance. In such circumstances it is proper to have regard to the*

*subsequent conduct of each of the parties, especially when such conduct amounts to an admission against the party's proprietary interest.*

In the instant case, after Heen Banda had executed the two deeds, the 1<sup>st</sup> defendant entered into possession of the northern portion of the land and the 4<sup>th</sup> defendant entered into possession of the south-western portion of the land. The preliminary plan and the report clearly confirm this. The buildings of the northern portion of the land including the house marked D were claimed by the 1<sup>st</sup> defendant before the surveyor and the house marked F in the south-western boundary was claimed by the 4<sup>th</sup> defendant. There is no dispute over these improvements. The house claimed by the 1<sup>st</sup> defendant is in lot 1 in the preliminary plan whereas the house claimed by the 4<sup>th</sup> defendant is in lot 2 in the same plan and the two lots are separated by a “*ଓଡ଼ି ଚିଠି*”. These circumstances amply demonstrate the intention of not only the transferor Heen Banda but also the 1<sup>st</sup> and 4<sup>th</sup> defendants.

In *Dingiri Naide v. Kirimenike* (1955) 57 NLR 559 it was held that “*Where several deeds form part of one transaction and are contemporaneously executed, each deed must speak only as part of the one transaction.*”

Hence I hold that the doctrine of priority by registration is inapplicable in this instance.

The District Court correctly analysed the evidence from the proper perspective and gave effect to the intention of Heen Banda. Accordingly, the remaining interest of Heen Banda was divided equally between the 1<sup>st</sup> and the 4<sup>th</sup> defendants (each receiving a 1/6 share). However, the High Court took the view that there was “no sufficient material available to arrive at such finding” by the District Court, despite there being, as I previously explained, sufficient material to support that conclusion.

The main argument of learned counsel for the 1<sup>st</sup> defendant is that the Court of Appeal did not set aside the original judgment of the District Court dated 15.07.1992 whereby the entire land was divided equally among the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants, but only allowed the 4<sup>th</sup> defendant to place evidence of his interests in the land before the District Court and the amendment of the interlocutory decree, if necessary. His argument is that since the Court of Appeal did not set aside the original judgment of the District Court, the 4<sup>th</sup> defendant's appeal must necessarily fail as the District Court could not have altered its own judgment. If that argument is accepted, the Court of Appeal order allowing the 4<sup>th</sup> defendant to lead evidence to establish his rights to the land and to amend the interlocutory decree accordingly is meaningless. I reject that argument unhesitatingly.

This Court granted leave to appeal against the judgment of the High Court on the following questions of law:

- (a) Did the High Court err in holding that the intention of Heen Banda in executing deeds 1D1 and 5D5 was to convey equally to the 1<sup>st</sup> and 4<sup>th</sup> defendants his balance 1/3 share, was not relevant?*
- (b) In terms of the contents of the schedules of the said two deeds should those two deeds be read together?*
- (c) Are the said two deeds only one transaction although contained in two separate documents?*
- (d) Did the High Court err in holding that deed 1D1 gets priority by prior registration over deed 5D5?*

I answer the questions of law in the affirmative and set aside the judgment of the High Court dated 23.08.2011 and restore the order of the District Court dated 05.12.2005 and allow the appeal with costs payable by the 1<sup>st</sup> defendant to the 4(a) defendant.

Judge of the Supreme Court

Priyantha Jayawardena, P.C., J.

I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court