

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

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S.C. Appeal No. 82/2008  
S.C. (H.C.) C.A. L.A. No. 47/2008  
NCP (Anuradhapura) HC CA/ARP 36/2007  
D.C. Polonnaruwa No. 6330/L

Palate Gedera Gunadasa,  
Pradeshiya Sabawa,  
Medirigiriya.

**Plaintiff-Respondent-Appellant**

Vs.

Palate Gedera Marywathy,  
Parana Pola Asala,  
Diyasenpura.

**Defendant-Appellant-Respondent**

**BEFORE** : Dr. Shirani A. Bandaranayake, J.  
N.G. Amaratunga, J. &  
Chandra Ekanayake, J.

**COUNSEL** : P. Wickramasekera for Plaintiff-Respondent-Appellant  
J.P. Gamage for Defendant-Appellant-Respondent

**ARGUED ON:** 13.10.2009

**WRITTEN SUBMISSIONS**

**TENDERED ON:** Defendant-Respondent: 23.08.2010

**DECIDED ON:** 26.10.2010

**Dr. Shirani A. Bandaranayake, J.**

This is an appeal from the order of the High Court of Civil Appeal of the North Central Province (hereinafter referred to as the High Court) dated 07.05.2008. By that order learned Judges of the High Court had set aside the judgment of the District Court of Polonnaruwa dated 24.10.2001 and had granted relief to the defendant-appellant-respondent (hereinafter referred to as the respondent). The plaintiff-respondent-appellant (hereinafter referred to as the appellant) sought leave to appeal from this Court, which was granted on the following question:

“Have the learned Judges of the Civil Appeal High Court erred by failing to consider and apply section 60 of the Land Development Ordinance to the facts of this case?”

The facts of this appeal as submitted by the appellant, *albeit* brief, are as follows:

The appellant and the respondent are siblings and were the children of one Palate Gedera Jamis, who was the original permit holder of the land morefully described in the amended Plaint dated 06.03.1996. The appellant submitted that his father, the said Palate Gedera Jamis had given him half share of the land in question and the other half had been given to the respondent. The respondent had been in possession of the entire land and therefore the appellant in his amended plaint, filed before the District Court had prayed that,

- (1) a declaration that the documents marked P<sub>1</sub>, P<sub>2</sub> and P<sub>3</sub> are valid documents;
- (2) a declaration that the appellant is the lawful successor/permit holder to the land morefully described in the second schedule to the Plaint; and
- (3) to evict the respondent from the said corpus.

The respondent had claimed that the said Palate Gedera Jamis had changed his earlier disposition of the property in question prior to his death, which was registered on 22.11.1994 (P<sub>5</sub>) and had given the entirety of the land to the respondent.

After the trial, the District Court had made order in favour of the appellant stating that the registration of the document P<sub>5</sub> on 22.11.1994 does not come within the provisions of section 60 of Land Development Ordinance. The respondent appealed to the High Court, which had set aside the judgment of the District Court.

In the District Court, the parties had admitted that the original permit holder of the land was Palate Gedera Jamis, who had died on 25.05.1994. It was also admitted that the said Jamis had by document marked P<sub>4</sub> dated 17.06.1993 named the appellant and the respondent as successors.

Learned Counsel for the respondent, submitted that on the basis of a letter written by Jamis, the father of the appellant and the respondent on 05.04.1994 (V<sub>1</sub>), the ownership of the said land was transferred to the respondent and the Register of Permits/Grants under the Land Development Ordinance was amended accordingly on 22.11.1994 (P<sub>5</sub>).

The said Register of Permits/Grants issued under the Land Development Ordinance had recorded the transfer in the following terms:

“පො/ප/2298 දරණ දීමනා පත්‍රයෙහි ප්‍රධාන ලාභියා වූ පලාතේ  
ගෙදර ජේමිස් මිය ගොස් ඇති බැවින් එකී දීමනා පත්‍රයේ මූල් අයිතිය  
ඔහුගේ දරුවා වන පලාතේ ගෙදර මේරවති නමින් පැවරීම.”

Learned Counsel for the respondent contended that he is relying on the document marked P<sub>5</sub> and by that document the respondent has been recognized as the permit holder of the land in question. Since the respondent is in possession of the said land and that the permit marked P<sub>5</sub> was issued by the Divisional Secretary, Medirigiriya, learned Counsel for the respondent submitted that section 60 of the Land Development Ordinance would not be applicable in such a situation.

One of the questions that arose before the District Court was whether the said document marked as P<sub>5</sub> was a valid document in terms of the Land Development Ordinance.

The Land Development Ordinance was introduced in 1935 to provide for the systematic development and alienation of State land in the country. This Ordinance clearly specifies *inter alia*, how permits and grants are to be issued, how dispositions are to be made and how succession takes place.

It is not disputed that the deceased Palate Gedera Jamis was the original permit holder and that the land in question was alienated under and in terms of the Land Development Ordinance on 25.01.1982 (P<sub>3</sub>). Accordingly, succession to such land would be decided on the basis of the provisions laid down under the Land Development Ordinance. Chapter VII of the Land Development Ordinance deals with the successors to any land alienated on a permit or a holding and section 60 refers to nomination or cancellation of such alienation.

It is therefore evident that the learned District Judge of Polonnaruwa was correct when he had decided that the question of succession and the validity of the document marked P<sub>5</sub> should be considered on the basis of section 60 of the Land Development Ordinance.

The documents marked as P<sub>4</sub> dated 17.06.1993, V<sub>1</sub> dated 05.04.1994 and P<sub>5</sub> which was registered on 22.11.1994 all refer to the nomination of a successor to the original grant holder's property.

In **Madurasinghe v Madurasinghe** ([1988] 2 Sri L.R. 142), it was held that the successor under the Land Development Ordinance has to be considered in terms of section 60 of the said Ordinance. Accordingly it is apparent that the succession of the property alienated on a permit in terms of the Land Development Ordinance has to be considered and decided on the basis of section 60 of the said Ordinance. The said section 60 is in the following terms:

“No nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered

before the date of the death of the owner of the holding or the permit-holder.”

It is not disputed that Palate Gedera Jamis had nominated the appellant and the respondent as his successors by his application made to the Divisional Secretary, Medirigiriya. On 17.06.1993 (P<sub>9</sub>), the Divisional Secretary, Medirigiriya had forwarded the said application to the District Land Registrar, Polonnaruwa to take necessary action. The said application clearly states that its purpose was to ‘appoint a successor’. Based on that application the names of the appellant and the respondent were entered as successors of the said Jamis by P<sub>4</sub> dated 17.06.1993. It is also not disputed that the said Jamis had died on 25.05.1994 (P<sub>10</sub>). The contention of the learned Counsel for the respondent was that by letter dated 05.04.1994 (V<sub>1</sub>), the said Jamis had written to the Divisional Secretary, Medirigiriya requesting to nominate the respondent as his successor to the land in question. On the basis of this document, the said respondent’s name had been entered in to the Register of Permits/Grants under the Land Development Ordinance (P<sub>5</sub>). The said registration has been effected on 22.11.1994.

According to section 60 of the Land Development Ordinance, referred to above, a nomination would become effective, only if such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit-holder. It is therefore quite obvious that the nomination of the respondent had been registered on a date several months after the death of the said Jamis, who was the permit-holder.

It is therefore evident that it is necessary to apply the provisions contained in section 60 of the Land Development Ordinance to the facts of this case and the learned Judges of the High Court had erred by failing to consider and apply section 60 of the said Ordinance.

The question on which leave to appeal was granted by this Court is therefore answered in the affirmative.

For the reasons aforementioned this appeal is allowed. The order of the High Court dated 07.05.2008 is set aside and the judgment of the District Court of Polonnaruwa dated 24.10.2001 is thereby affirmed.

I make no order as to costs.

**Judge of the Supreme Court**

**N.G. Amaratunga, J.**

**I agree.**

**Judge of the Supreme Court**

**Chandra Ekanayake, J.**

**I agree.**

**Judge of the Supreme Court**