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

In the matter of an Appeal against the Judgement of the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) holden at Avissawella, dated 30th June 2015 in terms of the Article 128 of the Constitution read with Section 5C (1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No.54 of 2006

Case no.: SC/APPEAL/222/2016

Leave to Appeal No: SC/HC/CALA/ 246/2015
HCCA (Avissawella): WP/HCCA/AV/1393/2012/F
D.C (Avissawella): 22844/P

Kuruwita Arachchillage Jagath Kumara Abeythunga,
A27, Galpatha,
Ruwanwella.

PLAINTIFF

Vs

1. Kuruwita Arachchillage Jayatilake
   Kiriporuwa,
   Ampagala
2. Agas Pathirennehelage Gunaratna,

Galpatha,

Ruwanwella.

DEFENDANTS

AND BETWEEN

1. Kuruwita Arachchillage Jayatilake
   Kiriporuwa,
   Ampagala
2. Agas Pathirennehelage Gunaratna,
   Galpatha,
   Ruwanwella.

DEFENDANT- APELLANTS

Vs

Kuruwita Arachchillage Jagath Kumara Abeythunga,
A27, Galpatha,
Ruwanwella.

PLAINTIFF- RESPONDENT

AND NOW BETWEEN

1. Kuruwita Arachchillage Jayatilake
   Kiriporuwa,
   Ampagala
2. Agas Pathirennehelage Gunaratna,
   Galpatha,
   Ruwanwella.

DEFENDANT-APELLANTS- APPELLANTS

Vs

Kuruwita Arachchillage Jagath Kumara Abeythunga,
A27, Galpatha,
Ruwanwella.

PLAINTIFF-RESPONDENT- RESPONDENT

BEFORE : **L.T.B. DEHIDENYA, J.,**
S. THURAIRAJA, PC, J. and
YASANTHA KODAGODA PC, J

COUNSEL : Thishya Weragoda with Prathap Welikumbura, Meinusha Gamage and Sashya Karunapalage for the Defendants-Appellants–Appellants.

S. A. D. S Suraweera or the Plaintiff-Respondent-Respondent

ARGUED ON : 6th October 2020

WRITTEN SUBMISSIONS: Written Submissions for Defendants-Appellants-Appellants submitted on 17/01/2017 and 25/01/2021

Written Submissions for Plaintiff-Respondent-Respondent submitted on 18/01/2018 and 25/01/2021.

DECIDED ON : 29th September 2021

S. THURAIRAJA, PC, J.

The Facts

The Plaintiff-Respondent-Respondent namely Kuruwita Arachchillage Jagath Kumara Abeythunga (hereinafter referred to as the "Respondent") instituted Partition action before the District Court of Avissawella by Plaint dated 30th August 2006 against the Defendants; Kuruwita Arachillage Jayathilaka (1st Defendant-Appellant-Appellant, hereinafter referred to as the "1st Appellant") and Agas Pathirennehelage Gunaratna (2nd Defendant-Appellant-Appellant, hereinafter referred to as "2nd Appellant").

The original owner of the land sought to be partitioned was one Kuruwita Arachchillage Peter Appuhamy who became entitled by virtue of final decree in Partition Action bearing No.7160 in the District Court of Avissawella and thereafter transferred his rights to one Kuruwita Arachchillage Hemaratne by Deed of Transfer No.36180 dated 11th November 1968.

The said Hemaratne died intestate leaving behind 1/2 share to his wife Danasuriya Arachchige Baby Nona and the remainder 1/2 share to his six siblings namely Kuruwita Arachillage Kusumawathie, Jayathilaka (1st Appellant), Kamalawathie, Gnanalatha (referred to as Gunathilaka in the District Court Judgement), Thilakalatha and Abeytunga. The said Baby Nona transferred her rights to the Respondent by the Deed of Transfer No.1628 dated 1st June 2004. The aforesaid Kusumawathie, Kamalawathie, Gnanalatha and Thilakalatha transferred their rights to Jayathilaka (1st Appellant) by Deed of Transfer No. 9925 and thereafter the 1st Appellant transferred his rights to Agas Pathirennehelage Gunaratna (2nd Appellant).

The Appellants by their joint Statement of Claims dated 29th January 2009, prayed for dismissal of the action on the grounds that the said Hemaratne was a person Subject to Kandyan Law and that Baby Nona, wife of said deceased Hemaratne, was not entitled to any share of the land sought to be Partitioned, as the devolution of title from him has to be determined in accordance with Kandyan Law where the

widow is only entitled to Life Interest in the land and that even the said rights were extinguished upon her remarrying in 1980.

The Respondent pleaded that the rights of said Baby Nona have been determined in a previous District Court (Avissawella) Case bearing No. 20316/P and therefore the matter operates as *Res Judicata*. It must be clarified that the Case no. 20316/P was a Partition Action instituted by the 1st Appellant, regarding a different land, previously owned by the same Hemaratne. In the case 20316/P, the application of personal laws was not discussed or contested, and the land was partitioned considering that Baby Nona (said Hemaratne's widow) was not governed by any Personal Laws, namely Kandyan Law.

The Respondent argued in the plaint that in the case 20316/P as it was an undisputed fact that was accepted by all parties, including the 1st Appellant, that Baby Nona was not subject to Kandyan law, her interest in the land is not merely that of Life Interest, thus enabling her to transfer her interest in the land to the Respondent by Deed bearing No. 1628, as was done by her. Thereby he sought the land in the instant case to be Partitioned accordingly.

The Additional District Judge of Avissawella held in favor of the Respondent by Judgement dated 28th August 2012.

Being aggrieved and dissatisfied thereof, the Appellants preferred an appeal to the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) holden in Avissawella under and in terms of Section 754(1) of the Civil Procedure Code.

The learned High Court Judge, in the judgment dated 30th June 2015, considers two questions of law. Firstly, the question of whether the said Hemaratne was a Kandyan and secondly, whether the case bearing 20316/P operates as *Res Judicata* as against the parties in this case.

In answering the first question of law, the learned High Court Judge affirms that the Appellants have failed to adduce sufficient evidence to prove that Hemaratne was a Kandyan and that Kandyan law must apply to the inheritance of his estate.

In answering the second question of law, the Learned Judge noted that the 1st Appellant of the present case was the 1st Plaintiff in the Partition action bearing No. 20316/P and that the case was concluded without contest. It is manifest from the Judgment of the 20316/P case that Baby Nona was allotted her share of the land without any questions being raised as to the law applicable to the estate of Hemaratne.

The Learned Judge notes that as the 1st Appellant was the 1st Plaintiff of the earlier case, he is bound by the judgment of the said case and is therefore estopped from claiming that devolution of the title must be determined in accordance with Kandyan Law. In view of this fact, it was held in the High Court Judgement that the Additional District Judge was correct in concluding that the judgement in the earlier partition decree (case bearing No.20316/P), operates as *Res Judicata* in regard to the devolution of title from Hemaratne in the present case.

Being aggrieved thereof, the Appellants preferred a Leave to Appeal application to this court and Leave was granted on the following grounds:

a. Has the learned High Court Judge erred in law in applying the principles *Res Judicata* in the instant matter?
b. Has the learned High Court Judge erred in law in failing to appreciate that the land sought to be partitioned in Case No. 20316/P and the land sought to be partitioned in the instant matter bearing No. 22844/P were not the same land?
c. Has the learned High Court Judge erred in law in failing to appreciate and apply the Judgment in **Jayasinghe v. Kiribindu** (1997) 2 Sri L.R. 1 and **Gunaratne v. Punchibanda** (1927) 29 NLR 249 in determining whether a person is subject to Kandyan Law or not is a pure question of law?

d. Has the learned High Court Judge erred in law in failing to conclude that the plea of *res judicate* is not applicable in the instant matter since the subject matter of the present action has not been concluded in a previous action within the provisions of Section 34, 207 or 406 of the Civil Procedure Code?

Application of Kandyan Law instead and the application of *Res Judicata*

Examining the facts of the instant case, I believe it is prudent to first acknowledge the central underlying question put forward to this Court by the parties. It is clear that the Respondent, who has received his interest in the land by widow of said Hemaratne by Deed of Transfer No. 1628, wishes to Partition this land. It is also an established fact that the Appellants in the present case maintain that the said Hemaratne was a Kandyan and thus, the devolution of title from him must be determined in accordance with Kandyan Law where the widow shall only get an estate for life.

Section 11 of the **Kandyan Law Declaration and Amendment Ordinance No.39 of 1938** (hereinafter referred to as the "Ordinance") clearly states that:

> *(1) When a man shall die intestate after the commencement of this Ordinance leaving a spouse him surviving, then -*
>
> > *(a) the surviving spouse shall be entitled to an estate for life in the acquired property of the deceased intestate…*
> >
> > *(b) if the surviving spouse shall contract a diga marriage, she shall cease to be entitled to maintenance out of the paraveni property of the deceased but shall not by reason of such re-marriage forfeit her aforesaid life estate in the acquired property;*

This provision was applied in the case of **Tikiri Banda V. Dingiri Banda (1970) 76 NLR 203**, and this principle was followed well before the enactment of the Ordinance in the case of **Dingiri V. Undiya (1918) 20 NLR 186**.

It must be noted that there is no mention of a child of said Hemaratne in the documents before this court. In terms of succession by siblings, which is of significance to this case, **Section 17** of the Ordinance must be referred to, which states as follows:

> *17. In the devolution of the estate of any person who shall die intestate after the commencement of this Ordinance,*
>
> > *(a) whenever the estate or any part thereof shall devolve upon heirs other than a child or the descendant of a child, and such heirs are in relation to one another brothers or sisters, or brothers and sisters, or the descendants of any deceased brother or sister, such heirs shall inherit inter se the like shares and in like manner as they would have done had they been the children or descendants of the deceased intestate*

Thus, it is clearly advantageous for the Appellants to adopt the stance Kandyan Law applies due to the above principles. As through the application of the above principles to the instant case, Baby Nona would not have the power to transfer her interest to the Respondent and instead of the Appellants and Respondent having a respective interest of ½ share of the land each, the Respondent would have no interest in the land at all.

Upon perusal of evidence, we find that in the Examination of witnesses conducted in the District Court of Avissawella on the 30th of September 2010, in the present Partition action bearing no.22844/P, the 1st Appellant himself admits the fact that he wishes different stances to be adopted in the two Partition cases:

> *ප්‍ර: තමන්ට තිබෙන මේ ප්‍රශ්නය මේ 20316 දී හේමරත්නගේ අයිතිවාසිකම් බිරිඳට ගියා කියන එක ගරු අධිකරණය පිළිගත්තා?*

(Q: Is your problem that in the case 20316, the Court accepted that the said Hemaratne's Rights transfer to his wife?)

උ: ඔව්.

(A: Yes.)

ප්‍ර: තමන් මේ 22844 කියන මේ නඩුවේ හේමරත්නගේ අයිතිවාසිකම් බිරිඳට යනවා කියන එක කියන්න කැමති නැහැ?

(Q: Do you not want to say in this 22844 case that Hemaratne's Rights transfer to his wife?)

උ: නැහැ.

(A: No.)

The 1st Appellant further admits that he did not raise the issue regarding the law applicable to Baby Nona in the District Court case 20316P due to the fact that he was suffering from poor health conditions and wished for the proceedings to be concluded quickly and for that land to be partitioned without any contest. However, in the instant case the 1st Appellant himself persists in requesting the court to apply Kandyan Law, to the same Baby Nona whose status was not disputed in a case with similar circumstances to the present case. Based on this observation it is clear that the Appellants wish for the court to apply different laws to the same person in two separate but similar cases, with no other basis but their own preference and benefit.

Further, the Appellants point out that *Res Judicata* cannot be used due to the difference in subject matter, namely the lands of the two separate cases. However, it must be noted that while the instant case and the case bearing no.20316P are similar in the parties and the lineage of the lands, the Judgements by the District Court and the High Court Judge state that the Courts have used the case 20316P only to the extent of the law applicable to Baby Nona, and the High Court Judge even notes that the previous case was about a separate land with parties including but not limited to

some of the parties of the present case (namely, the 1st Appellant and Respondent). To this extent it is clear that both the High Court and the District court was concerned with the consistency of the application of law. This is given that if, in this case Kandyan Law was to be applied, it would lead to a disparity between the judgement of the instant case and the judgement in the case bearing no.20316P as different laws would apply to the same person.

In terms of the substance of the present dispute, it is clear that the parties' disagreement in the use of the principle of *Res Judicata* pertains to the application or disapplication of Kandyan Law to the rights of Baby Nona over this property. Thus, I am of the view that answering the questions of law before this court pertaining to *Res Judicata* is not in itself relevant or necessary for the resolution of this dispute, as the most pressing concern is the potential applicability of Kandyan Law. Thus, prior to examining the facts, both similar and contrasting, between the instant Partition case and that bearing no. 20316P, it must be understood that application of the principle of *Res Judicata* is of little consequence as the Appellants have failed to prove the applicability of Kandyan Law to Baby Nona, the deceased Hemaratne, or any parties to the present dispute.

Applicability of Kandyan Law not proved by the Appellants

It is an established view that where a person contends that a special Personal Law applies in the place of the General Law, the burden of proof is upon the party making such a claim. In the case of **Kandiah. vs. Saraswathy** 54 NLR 137, where the applicability of Thesavalamai Law to a particular party was discussed, Dias S. P. J stated as follows:

> *"No authority has been cited to show that there is any presumption of law by which a Court can say without proof that the Thesavalamai applies to a particular Tamil who happens to reside in the Jaffna Peninsula. In the absence of such a presumption I am of opinion that the burden of proof is*

on the party who contends that a special law has displaced the general law in a given case to prove the applicability of such special law.'

(Emphasis added)

I am inclined to follow the precedent set and long followed in terms of the applicability of the special Personal laws, particularly Kandyan Law, whereby the party claiming that the special law applies must discharge the burden of proof upon them to rebut the presumption that General Law is applicable.

In order to determine whether the Appellants have discharged the burden upon them to prove that the said Hemaratne is indeed a Kandyan, I find it pertinent to firstly pay attention to the statements of the 1st Appellant himself. Upon perusal of evidence, we find that in the Examination of witnesses conducted in the District Court of Avissawella on the 30th of September 2010, in the initial Partition action bearing no. 22844/P for the present case, the 1st Appellant has given the following answers to the questions asked during cross-examination which I have reproduced below for reference:

ප්‍ර: තමන් උඩරට විවාහයක්ද කරගෙනද තිබෙන්නේ?

(Q: Do you have a Kandyan marriage?)

උ: සාමාන්‍යයෙන් විවාහයක් හැටියට මේක තිබෙන්නේ

(A: This exists as a normal marriage)

Further:

ප්‍ර: තමන්ගේ අබේතුංග මල්ලී විවාහ වුණෙත් සාමාන්‍ය විවාහ ආඥා පනත යටතේ 112 පරිච්ඡේදය යටතේ නේද?

(Q: Didn't your brother Abeythunga also get married under the General Marriage Registration Ordinance under Chapter 112?)

උ: ඔව්.

(A: Yes.)

ප්‍ර: තමන් කිව්වානේ නඩුවේ පලවෙනි නඩුවෙන් පසුව උපදෙස් ලැබුණා කියලා උඩරට කියලා?

(Q: You said that after the first hearing of the case you were adviced that you were Kandyan right?)

උ: උඩරට කියලා නෙවෙයි උඩරට නීතිය බලපානවා කියලා

(A: not saying Kandyan, but that Kandyan Law applies)

ප්‍ර: මොකක්හරි ලේඛනයක් ඉදිරිපත් කරනවාද තමන්ගේ පියාට, මවට, සහෝදරියන්ට හෝ උඩරට නීතිය බලපාන ලේඛනයක්?

(Q: Are you presenting any document that shows that Kandyan Law applies to you father, mother, or sisters?)

උ: මම එහෙම ඉදිරිපත් කරන්නේ නැහැ

(A: I am not presenting such a document)

In examining the above excerpts of the witness statements, it is evident that the Appellants do not have substantial evidence proving that the law applicable to the deceased Hemaratne, Baby Nona or even any of the siblings of Hemaratne including himself is Kandyan Law.

He also states that he is only aware of his lineage to the extent of his Father's Father, who he insists was born of persons who were Kandyan from before 1815. However, the Appellants have not provided this court, The High Court, or the court of first instance with any substantial evidence to prove that they are subject to Kandyan law or that any of the relevant persons have even married under Kandyan Law. He is aware that his own marriage and more importantly, the marriage of the deceased Hemaratne was under the General Marriages Ordinance

It must also be noted that the Judgement by the District Court Judge and the High Court Judge clearly state that the only reason for the use of the case 20316P is in

that the same law must apply to the person, as the Appellants have failed to discharge the burden of proof upon them.

Therefore, the applicability of *Res Judicata* is a moot point of discussion as the objection of the Appellants to the Partitioning of the land as per the plaint of the Respondent, does not stand when considered upon the merits of this case, the witness statements of the parties and the submissions before this court, as even if the case bearing 20316P is not applied *Res Judicata*, Baby Nona would be Governed by general law, allowing for the Respondent to have a valid legal claim over ½ of this property through Deed of Transfer No.1628 as the Appellants have failed to prove the applicability of Kandyan law.

Application of *Res Judicata*

The Principle of *Res Judicata* is founded upon the key maxims of *Nemo debet lis vaxari pro eadem causa* (no person should be vexed twice for the same cause), *Interest republicae ut sit finis litium* (it is in the interest of the state that there should be an end of litigation) and *Res Judicata pro veritate occipitur* (Decision of the court should be adjudged as true). Through the application of the principle of *Res Judicata* a party is barred from re-examining a case which has been adjudicated by a competent court.

In the instant case, the questions of law raised by the parties pertain to *Res Judicata* and the application or disapplication of this principle thereof. Thus, I find it pertinent to establish the facts of the instant case which are of relevance to this principle.

As mentioned prior, in the District Court case bearing no. 20316P, the current 1st Appellant instituted a partition action for a different land owned by the same Hemaratne. In the mentioned case, both the 1st Respondent and said Baby Nona are among the many parties to the action. However, it is pertinent to note that the 2nd Appellant is not among the parties to said action. Further, it can be averred upon an examination of the facts that the lands in the case bearing 20316P and the instant case

are different lands as the names, extent, and the preliminary partition actions which gave the rights to said Hemaratne are all different.

The Partition action bearing 20316P was concluded with no contest and the land was partitioned accordingly, with Baby Nona claiming her portion of the land. As mentioned above, the 1st Appellant himself admits that he did not raise any claim of the law applicable to Baby Nona as he was unwell and did not wish to delay proceedings.

However, this Court finds that in the present case, when it is not in the interest of the 1st Appellant, he raises a claim of the applicability of Kandyan Law to Baby Nona. If in the unlikely event, this Court, the District Court, or the High Court were to decide that Kandyan Law does apply to Baby Nona, it would be a judgement conflicting with the earlier partition case 20316P. It is not prudent to apply two separate personal laws to the same party in nearly identical circumstances in two separate and similar cases. Baby Nona is either a person subject to Kandyan Law or she is not. This court cannot say she is both at the same time due to the failure of the 1st Appellant to raise the question in the initial case bearing number 20316P.

In arriving at the conclusion that the principle of *Res Judicata* applies to the present dispute the District Court and the High Court have taken certain relevant factors into account. The learned District Court Judge in his judgement for the instant case, bearing no.22844P has stated in page 3 that in arriving at a decision, he has taken into consideration the argument by the Respondent that the Judgement in the District Court case bearing 20316P between the same parties regarding a different land is a material fact for the instant case in determining whether the deceased Hemaratne is a Kandyan, the objection by the Appellants refuting that claim, and the judgement of the case ***Jayasinghe v Kiribindu and others (1997) 2 SLR 1*** relied on by the Defense to support their objection.

Upon examining the evidence, the District Court Judge had come to the conclusion that the Appellants failed to prove that the deceased Hemaratne was a Kandyan.

In terms of the judgement of the case ***Jayasinghe v Kiribindu and others (ibid),*** the District Court Judge has noted that in this case that while the Supreme Court had decided that the question of whether a daughter married in Diga can claim rights of a Binna married daughter is a pure question of law, and that thus, a previous case before the court between the parties was immaterial, the Supreme Court did not necessarily decide that the question of whether Kandyan Law applies or not is a pure question of law. On the contrary, Justice Dheeraratne has stated that a question arising out of a question of fact or a question which is a combination of a question of fact and a question of law, a previous judgment is a material consideration.

Upon this basis, the District Court Judge has concluded that the question of whether a person is a subject of Kandyan law or not is not a pure question of law owing to the requirement of the proving the circumstantial fact of whether the person in question is a descendant of a resident of the Kandyan regions as of 1815. As such, the evidence presented before the court by the 1st Appellant and the Judgement in the previous case bearing no. 20316P was considered a material fact in the instant case pertaining to the inheritance of the estate of the said Hemaratne.

Thereafter, the learned High Court Judge in his judgement has reaffirmed that the 1st and 2nd Appellants failed to adduce sufficient evidence to prove that Hemaratne was a Kandyan, and Kandyan Law applies to the inheritance of his estate. Further, the judgement sufficiently notes the difference between the lands in question in the instant case and the previous 20316P case, by expressly stating the differences of the names and lot numbers of each land. The High Court Judge has also noted that in the previous case was concluded without contest and the 1st Appellant as the only party

giving evidence was not cross examined and 1st Appellant admitted that Baby Nona is entitled to her share of the land from marital inheritance from Hemaratne.

The High Court Judge further notes that as the 1st Appellant of the present case was the 1st Plaintiff of the previous case, he is bound by the judgement of the said case and therefore he is estopped from claiming that devolution of title from Hemaratne should be determined in accordance with Kandyan Law. In view of the above mentioned circumstances the High Court Judge has concluded that he is in agreement with the Additional District Judge in concluding that the judgement of the earlier partition action operates as *Res Judicata* in regard to the devolution of title from Hemaratne in the present case.

I find it pertinent to note that in both the District Court Judgement and the High Court Judgement of the instant case, the learned Judges have aptly noted the failure of the Appellants to prove the applicability of Kandyan Law to the said Hemaratne, the difference between the lands in the previous case bearing no. 20316P and the instant case bearing no. 22844P, and the observation that the judgement of the previous case is only relevant to the question of determining the law applicable. As mentioned by the learned High Court Judge, I am of the view that the Appellants are estopped from bringing the present claim.

As further enumerated upon by Basnayake C.J in **Herath v. The Attorney General [1958] 60 NLR 193,** at pages 217 and 218, unlike in Roman Law, English Law classifies *Res Judicata* as a branch of estoppel. A distinction between these two principles were drawn by Beaman, J. in the Indian case **Casamally vs Currimbhoy, I.L.R 36 BOM. 214** as follows:

> *"Put in the most simple and colloquial way, Res Judicata precludes a man averring the same thing twice over in successive litigations, while estoppel prevents him saying one thing at one time and the opposite at another.*

The instant case in addition to the principle of *Res Judicata,* the concepts pertaining to estoppel, especially judicial estoppel, are of relevance. Where a competent court which has jurisdiction over the parties and the subject matter of a dispute, has pronounced final decision, any party to such litigation, or in the case of a decision *in rem* any party whomsoever, as against any other party, is estopped from disputing such a decision on the merits in a subsequent litigation on the basis of *Res Judicata estoppel*. The decision by the District Court Judge in the case bearing no. 20316P operates as *Res Judicata* as the decision of the law applicable to Baby Nona pertains to the merits of the case.

In addressing the matter of whether questions not raised in earlier proceedings, can operate as *Res Judicata* in a subsequent proceeding, the opinions expressed by Wingram VC in **Henderson v Henderson (18430) 3 Hare 100** which are of relevance are reproduced below:

> *"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction,* ***the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances} permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case.*** *The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time"*

(Emphasis added)

Further as per **Spencer Bower, Turner and Handley** in their book **The Doctrine of Res Judicata** a party is entitled to the claim that the issue estoppel does not take effect if a party was excusably ignorant of some matter which would have altered the whole aspect of the case. However, the estoppel stands if there were no newly discovered facts, if it was only newly discovered in the sense that the party realized its importance, if the party had actual knowledge of the fact or might with reasonable diligence have acquired such knowledge.

This stance is not one that is new to our legal system**. The Administration of Justice (Amendment) Law No. 25 of 1975** which was later repealed stated in Chapter 6 as follows:

> *Section 491*
>
> *(1) Subject to the provisions in regard to co-defendants or co-plaintiffs contained in this section, where a final decision on a controverted question of law or issue of fact has been pronounced in any action before it by a Court of competent jurisdiction, any party or privy to such action as against any other party or privy thereto, and in the case of a decision In rem any person whomsoever as against any other person, shall in any subsequent action wherein such question of law or issue of fact is directly and substantially in issue between them be estopped from disputing or questioning such decision.*
>
> *(4) Where the determination of the question of law or issue of fact is not expressly recorded but is necessarily involved in the adjudication, such adjudication is itself a decision on the controverted question of law or issue of fact.*

Further in Section 493:

(6) Any matter which might or ought to have been made a ground of defence or attack in the former action shall be deemed to have been a matter in issue in such action, whether in fact made a ground of defence or attack or not.

Taking all the above principles of law into account, I find that in the instant case the question of law applicable to Baby Nona was a question that should have been raised in the previous case and the 1st Appellant is not entitled to claim ignorance as there are no newly discovered facts or circumstances. As such the District Court decision in the case bearing no. 20316P operates as *Res Judicata* in the present case.

In answering the question of law pertaining to the interpretation of the judgement of **Jayasinghe v. Kiribindu (supra)**, I am inclined to agree with the interpretation afforded by the learned District Court Judge, especially in light of the statements by Justice Dheeraratne in the judgment. It is apparent that the question of law raised by the parties in the case of **Jayasinghe v. Kiribindu** was the interpretation of the relevant statute in determining whether the daughter married in Diga could acquire Binna rights. An instance of such a pure question of law where the only dispute is as to the interpretation of law and not of facts or surrounding circumstances, is dissimilar to a situation as that of the instant case, where the applicability of the law itself must be proven with facts disputed by the parties.

Decision

Upon perusal of all evidence and submission presented to this Court by the parties, I find that the 1st Appellant has not provided the court with sufficient evidence to support the claim that the said Hemaratne is a person subject to Kandyan law and thus Baby Nona is only entitled to claim Life Interest over the Property. Further, I find that the learned Additional District Court Judge and the learned High Court Judge have not erred in law in asserting that the judgment in the previous District Court case bearing no. 20316P operates as *Res Judicata* in the instant case.

Taking the aforementioned circumstances into consideration I answer the first question of law in the negative. I answer the second question of law in the negative as the learned Judge has acknowledged the differences of the lands as enumerated above. I am of the view that the third question of law must be answered in the negative as the learned Judges of the District Court and the High Court have correctly applied the law established by the mentioned cases as clarified above. Finally, the final question of law shall be answered in the negative as well. The Respondent shall be entitled to costs of the litigation to this court, and to costs in respect of the appeal filed in the High Court.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA PC, J

I agree

JUDGE OF THE SUPREME COURT