

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

In the matter of an Appeal to the Supreme  
Court of the Democratic Socialist Republic  
of Sri Lanka.

Mahawattage Wijayapala of Hathuwa,  
Piyadigama, Ahangama.

**PLAINTIFF**

**SC Appeal No. 71 A/ 2010**

**Vs**

1. Suduwelikondage Percy Mahinda Weliwatta
2. Ahangama Vidanage Magilin Silva (Dead)
- 2A. Wanigathunga Arachchige Ranjith de Silva  
of Sri Ginananda Mawatha, Karandugoda,  
Ahangama.
3. Baranage Allis Appu (Dead) of Karandugoda,  
Ahangama.
- 3A. B. Peter Appu of Piyadigama, Ahangama.
- 3B. R.P. Rosalinnona of Sri Ginananda Mawatha,  
Karandugoda, Ahangama.
4. Parana Rattambige Arlin Nona (Dead), Sri  
Ginananda Mawatha, Karandugoda,  
Ahangama.
5. Akuressa Acharige Bandusena, Sena  
Jewellers , Ahangama.
6. Uyana Hewage Babunona (Dead)
7. Wellage Nandasiri.
8. Wellage Nandasena.

9. Wellage Padumasena.
10. Wellage Indrani, all of Sri Ginanada Mawatha, Karandugoda, Ahangama.
11. Lanhewage Agnes Silva (Dead )
- 11A. Wellalage Sumithra Sudharma  
Gunathilaka of Sri Ginananda Mawatha,  
Karandugoda, Ahangama.
12. Dikkumburage Nikulas Silva (Dead) of Sri  
Ginananda Mawatha, Karandugoda,  
Ahangama.
- 12A. Dikkumburage Wijedasa of Piyadigama,  
Ahangama.
13. Nanayakkara Liyanage Edwin Alwis (Dead)  
of Weliwatta, Ahangama.
14. Wellalage Pantis Appu (Dead) of Sri  
Ginananda Mawatha, Karandugoda,  
Ahangama.
- 14A. Wellalage Sumithra Sudharma of Sri  
Ginanada Mawatha, Karandugoda,  
Ahangama.
15. Koggala Wellalage Marthenis Appu (Dead)  
of Sri Ginananda Mawatha, Karandugoda,  
Ahangama.
16. Malidurage Wilson of Meegahagoda,  
Ahangama.
17. L.B. Meena Nona of Sri Ginananda  
Mawatha, Karandugoda, Ahangama.
18. Bopage Gomis of Kahawathugoda,  
Ahangama.
19. Koggala Wellalage Sumathiratna of Sri  
Ginananda Mawatha, Karandugoda,  
Ahangama.
20. Saldurage Sawneris (Dead) of  
Kahatagahawatta, Meegahagoda,  
Ahangama.

21. Saldurage Garlis of Keraminiyawatta, Ahangama.
22. Saldurage Jamis
23. Saldurage Somasiri
24. Saldurage Subaneris
- 24A. Newtan Dunusingha all of Keraminiya, Ahangama.
25. Olidurage alias Ahangama Gamage Charli of Madagodawatta, Meegahagoda Ahangama.
26. Olidurage Piyasiri alias Piyasiri Dharmage of Madagodawatta, Meegahagoda, Ahangama
27. Paththiniya Durage Shelton of Kahawathugoda, Ahangama.
28. Olidurage Dochchi alias William Somawansa (Dead) of Keraminiyawatta Ahangama.
- 28A. D. Wilson of Keraminiyawatta, Ahangama
29. Olidurage Isaneris (Dead)
- 29A. O.D. Wimalasena of Keraminiyawatta, Ahangama.
30. Olidurage Simon all of Keraminiyawatta Ahangama
31. Olidurage alias Vidanadurage Wilina of Keraminiyawatta, Ahangama
32. Olidurage Simon of Fonsekawatta, Kotegoda, Nugegoda
33. Hewa Rathgamage Wimalasena of Karandugoda, Ahangama
34. Uyanahewage Kulawathie of Dominguwawatta, Hathuwa, Piyadigama, Ahangama.
35. Dulcy Balamana of Piyadigama, Ahangama
36. Baranage Dayaseeli, and

37. Upali Kalupahana , both of Sri  
Ginananda Mawatha, Karandugoda,

**DEFENDANTS**

**AND**

Mahawattage Wijayapala of Hathuwa,  
Piyadigama, Ahangama.

**PLAINTIFF – PETITIONER**

**Vs**

1. Suduwelikondage Percy Mahinda  
Weliwatta
2. Ahangama Vidanage Magilin Silva (Dead)
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- 14A. Wellalage Sumithra Sudharma of Sri  
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21. Saldurage Garlis of Keraminiyawatta,  
Ahangama.
22. Saldurage Jamis
23. Saldurage Somasiri
24. Saldurage Subaneris
- 24A. Newton Dunusingha all of Keraminiya,  
Ahangama.
25. Olidurage alias Ahangama Gamage  
Charli of Madagodawatta, Meegahagoda  
Ahangama.
26. Olidurage Piyasiri alias Piyasiri  
Dharmage of Madagodawatta,  
Meegahagoda, Ahangama
27. Paththiniya Durage Shelton of  
Kahawathugoda, Ahangama.
28. Olidurage Dochchi alias William  
Somawansa (Dead) of Keraminiyawatta  
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- 28A. D. Wilson of Keraminiyawatta,  
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- 29A. O.D. Wimalasena of Keraminiyawatta,  
Ahangama.
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31. Olidurage alias Vidanadurage Wilina of  
Keraminiyawatta, Ahangama
32. Olidurage Simon of Fonsekawatta,  
Kotegoda, Nugegoda
33. Hewa Rathgamage Wimalasena of  
Karandugoda, Ahangama
34. Uyanahewage Kulawathie of  
Dominguwawatta, Hathuwa,  
Piyadigama, Ahangama.

35. Dulcy Balamana of Piyadigama,  
Ahangama
36. Baranage Dayaseeli,
37. Upali Kalupahana both of Sri  
Ginananda Mawatha, Karandugoda,

**DEFENDANTS – RESPONDENTS**

**AND NOW BETWEEN**

Mahawattage Wijayapala of Hathuwa,  
Piyadigama, Ahangama.

**PLAINTIFF – PETITIONER – APPELLANT**

**Vs**

1. Suduwelikondage Percy Mahinda  
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35. Dulcy Balamana of Piyadigama, Ahangama
36. Baranage Dayaseeli,
37. Upali Kalupahana both of Sri Ginananda Mawatha, Karandugoda,

**DEFENDANTS – RESPONDENTS – RESPONDENTS**

**BEFORE :**                    **S.Eva Wanasundera PC.J.**  
**Sisira J de Abrew J. &**  
**Upaly Abeyrathne J.**

**COUNSEL :**                    Rohan Sahabandu PC for the Plaintiff – Petitioner - Appellant  
Harsha Soza PC with Upendra Walgampaya for 4A Defendant – Respondent – Respondent  
Chandana Wijesooriya for the 12B to 12 H Defendants – Respondents - Respondents

**ARGUED ON :**                    07.12.2015.

**DECIDED ON :**                    **24.03 .2016**

**S.EVA WANASUNDERA PCJ.**

In this matter, leave to appeal was granted on 23.07.2010., on one question of law, i.e. “ In the circumstances pleaded, is the affidavit filed by the Plaintiff Petitioner in compliance with the provisions of Section 12(3) of the Oaths and Affirmation Ordinance? “

The facts pertinent to this case are as follows: The Plaintiff filed a Partition Action to partition the land of an extent of about two acres. The preliminary plan No. 328 of 03.09.1976 showed the land to be partitioned as an extent of 3 Roods and 7.85 Perchs. Initially a commission was issued to Surveyor Gamini Nihal Samarasinghe to prepare the final plan. He submitted Plan No.328A of 20.11.1999. whereby he proposed a scheme for division of the corpus. The Plaintiff had objected to this plan and pursuant thereto Surveyor K.W.Pathirana submitted plan No. 3181 dated 14.09.2002 and thereafter plan No. 3181A. There were objections to these plans and at the instance of the 1<sup>st</sup> Defendant-Respondent-Respondent a commission was issued to Surveyor W.T.S. Wijayatillake and he submitted plan No. 436 dated 27.02.2004.

However, it is common ground that after inquiry, Court by its order dated 06.03.2009 accepted plan No. 328A of surveyor G.N. Samarasinghe subject to certain modifications for the division of the corpus amongst the parties. The Plaintiff Petitioner being aggrieved by the said order of the order of the District Judge sought leave to appeal therefrom to the High Court of Civil Appeals of the Southern Province holden at Galle.

A preliminary objection was raised that the said Leave to Appeal application is not maintainable in as much as the petition by which leave to appeal was sought was **not supported by a valid Affidavit** as required by law. The parties who objected, moved that the application for leave be dismissed in limine.

The High Court by its order dated 24.11.2009 accepted the said objections and dismissed the leave to appeal application of the Petitioner with costs. The Plaintiff Petitioner has come before this court against the said order of the High Court. Leave was granted by this Court on the aforementioned question of law.

This Court has to analyze the matter in view of the Oaths and Affirmation Ordinance.

Sec.12 (3) of the Oaths and Affirmation Ordinance reads:

“ Every commissioner before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, **shall state** truly in the jurat or **attestation at what place** and on what date the same was administered or taken, and shall initial all alterations, erasures, and interlineations appearing on the face thereof and **made before the same was so administered and taken.**”

In many cases of the Supreme Court, the jurat of an affidavit has been discussed. I observe that an affidavit is a document by which someone affirms or swears to the facts which is within his knowledge. Therefore it is a very important document. In the present case the Appellant tendered an affidavit along with his petition to the High Court of Civil Appeals which court should rely on what is contained in the affidavit as sheer evidence pertaining to the matters before court in the Petition. In this Affidavit, the place it was signed is not mentioned in the jurat. The High Court has rejected it. The Justice of the Peace is supposed to read the contents of the Affidavit to the Affirmant/Deponent and then only should the signature of the Affirmant/ Deponent be placed on the Affidavit. For this procedure to take place, the Justice of the Peace or the Commissioner of Oaths and the Affirmant/Deponent should be seated in one place , each one facing the other one, for one to understand what he is signing. The place is important. If someone could prove that they were at different places on that date, for example, that the Affirmant/Deponent was in one country and the Justice of the Peace was in another country, then that affidavit will be proven to be untrue and false. There is no way to challenge an Affidavit, if the place is not mentioned. In the same way if the language it is written in is not understood by either the affirmant or the justice of the peace, again, the Affidavit can be challenged. In such a case if the Justice of the Peace knows the language the affidavit is written in, he can explain the contents to the Affirmant in the language he and the Affirmant know. Here again, the place is important. They have to be in

a suitable place where the contents of the affidavit can be read over and explained by the Justice of the Peace to the Affirmant. That is the reason why the place of attestation should be mentioned in the Jurat.

It was argued by the Appellant that the seal of the Commissioner of Oaths bears a place namely 'Galle' and that is enough to show that the place of attestation as Galle and on that alone, the place of attestation can be taken as Galle. The Affirmant residing in Colombo could sign an affidavit in Colombo before a Commissioner of Oaths who has a seal bearing his name and the word 'Galle' which is his main station of practice, at a time he is in Colombo. It is allowed in law for him to read over and explain the contents of the Affidavit to the affirmant sitting in Colombo as he can practice anywhere in the Country. Yet, the place of attestation should be mentioned as Colombo because otherwise on the face of the document there is no way that he could reasonably be taken for granted to be present in Galle for the attestation to be performed in Galle. The place in the seal of the Commissioner of Oaths is no proof of the place of attestation. It is only an indication of where the principal office of practice of the Commissioner of Oaths is. After all, the rule that the place of attestation should be mentioned which is contained in a statute as a statutory provision cannot be ignored as technical.

The Statutory Provision of Sec. 12(3) of the Oaths and Affirmation Ordinance, specifically mention that all the alterations, erasures and interlineations on the face of the Affidavit should be initialed by the Commissioner of Oaths before it is administered and taken by the person swearing or affirming the Affidavit. So, it has to be read over by the Commissioner by himself and then while reading over that way, he has to identify the alterations, erasures and interlineations and then initial the same by himself. It is only then that he can step onto administering the Affidavit, which means 'giving out' the oath/affirmation to the Deponent or Affirmant. It is to be noted that every step of the way is explained in the statutory provision. It has to be done carefully and diligently. At the time of administering the Affidavit, the Commissioner has to read the Affidavit over and explain what is contained in it, to the deponent/affirmant and get the person deposing /affirming

to understand and know what he is deposing / affirming to. It is a serious matter taking place between two persons., the deponent/affirmant and the Commissioner. Both of them vouch for the way it is done. The Affirmant/Deponant is then fully aware of what he is affirming to or he is deposing to, since it is as good as giving evidence before Court. The affidavit is an alternative method of giving evidence. We all are aware how important it is to be in the witness box inside a Court house giving evidence. Providing evidence by way of an affidavit should be given the same seriousness and importance. The place all this work is done is very important. It is like the person in the witness box giving evidence except for the fact that he will not be cross examined. The penal sanctions against a person swearing an affidavit which bears false evidence is the same in law as for a person who swears and gives false evidence.

Moreover, it should be noted that Sec. 12(3) is mandatory as it states that “ shall state truly at what place and on what date....”. Therefore the place of attestation to be mentioned in the jurat is mandatory and cannot be treated as simple as a technicality. If, in an affidavit, the place of attestation is not mentioned in the jurat, it cannot be in law regarded as a perfected affidavit before a commissioner of oaths and cannot be given due recognition in law as a valid affidavit in whatever forum it is produced. The rule of law has to be followed for recognition to take place for the document to be an affidavit. The date and the place of attestation go together each being very important for the validity of the document.

I have considered the following cases which were submitted in the written submissions as well as in the oral submissions:

1. Fancy Vs Sanoon 2006 BLR 58.
2. Kariyawasam Vs Sourthern Provincial Road Development Authority and 8 others 2007 , 2 SLR 33.
3. Navaratne Vs Wadugodapitiya 2006 1 SLR 273.
4. Kariyawasam Vs. Don Mercy 2006 2 SLR 256.

I conclude that the Affidavit filed by the Plaintiff Petitioner Appellant is not in compliance with Sec. 12(3) of the Oaths and Affirmation Ordinance. I hold that the Judges of the Civil Appellate High Court were correct in dismissing the appeal on the preliminary objection. I affirm the said order. This Appeal is dismissed. However I order no costs.

Judge of the Supreme Court

**Sisira J de Abrew J,**  
I agree.

Judge of the Supreme Court

**Upaly Abeyrathne J,**  
I agree.

Judge of the Supreme Court