

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

In the matter of a Rule in terms of Section 42 (2) of the  
Judicature Act, No 2 of 1978

Dr. Lakshman Lucian de Silva Weerasena  
No. 372, Galle Road, Colombo 03.

**Complainant**

**SC Rule 14/2000**

Vs,

1. Jayantha Attanayake  
Attorney at Law
2. Mrs. Ratnamalie Maitipe Attanayake  
Attorney at Law

Both of  
No. 65, Stork Place, Colombo 10

**Respondent**

**Before: Hon. Vijith K. Malalgoda, PC J**  
**Hon. Murdu N.B. Fernando, PC J**  
**Hon. S. Thurairaja, PC J**

**Counsel:** Sumedha Mahawanniarachchi with Ms. Kaumadi Galagedara instructed by A.C. Latheef  
for the 1<sup>st</sup> Respondent.

Rohan Sahabandu, PC with Ms. Hasitha Amarasinghe for the BASL.

Ms. Viveka Siriwardena de Silva, DSG for the Hon. Attorney General.

**Inquiry on:** 02.05.2012, 12.06.2012, 04.09.2012, 16.01.2013, 22.07.2014, 29.09.2014, 10.12.2014,  
20.06.2017, 02.08.2019, 07.11.2019, 27.01.2020, 28.01.2020, 31.03.2022, 05.05.2022

**Decided on: 10.03.2023**

## **Vijith K. Malalgoda PC J**

The Complainant Dr. Lakshman Lucian de Silva Weerasena a Medical Practitioner by profession had complained to the Registrar of the Supreme Court by way of an affidavit dated 24<sup>th</sup> February 1999 against two Attorneys at Law namely Jayantha Attanayake and Ratnamalie Maitipe Attanayake regarding a series of transactions, that had taken place between 05.10.1992 and 01.08.1996 with regard to a property situated at No 90, Lauries Road, Colombo 04.

The inquiry into the said complaint was commenced before the Supreme Court after issuing the rule for the alleged misconduct specified in paragraphs (a)- (h) against both Attorneys at Law on 16.01.2001. An amended rule dated 17.09.2001 was served on the two Respondents on 18.10.2001. Of the misconduct alleged against the two Respondents, misconduct specified in paragraphs (a) -(e) and (h) relates to the 2<sup>nd</sup> Respondent, and paragraphs (a), (f), and (g) relate to the misconduct alleged against the 1<sup>st</sup> Respondent.

The 2<sup>nd</sup> Respondent passed away during the pendency of the proceedings before this Court and the inquiry against the 1<sup>st</sup> Respondent continued until its conclusion. Since the inquiry against the 2<sup>nd</sup> Respondent did not continue after the death of the said Respondent was reported, (a copy of her death certificate was tendered before the Court by the 1<sup>st</sup> Respondent who is also the husband of the 2<sup>nd</sup> Respondent) this Court will not consider the material led against the 2<sup>nd</sup> Respondent unless the said evidence is linked to the conduct of the 1<sup>st</sup> Respondent.

The allegations of misconduct under which the inquiry proceeded against the 1<sup>st</sup> Respondent are as follows;

- a) You the 1<sup>st</sup> and 2<sup>nd</sup> Respondents above named, being Attorneys at Law, did conspire to fraudulently draw, attest and authenticate or cause the drawing, attestation, and authentication of the Deeds bearing Nos. 705,706,707,726 and 2428 in respect of the property described in the schedules to the said deeds with the intention of depriving the lawful heirs of the Estate of the late Agnes Georgiana Fonseka, the owner of the said property who died intestate.
- f) You the 1<sup>st</sup> Respondent above named being an Attorney at Law, knowingly was a party to a fraudulent Deed of Transfer bearing No. 726 attested by your wife, the 2<sup>nd</sup> Respondent above named, by which deed Ulpagoda Pathira Arachchige Dona Gunaseeli Karunanayake purportedly

sought to unlawfully transfer the title to the property described in the schedule to the said deed to you the 1<sup>st</sup> Respondent above named, being the property in respect of which the Deed of Declaration No. 706 fraudulently drawn, attested and authenticated by the 2<sup>nd</sup> Respondent above named.

- g) You the 1<sup>st</sup> Respondent above named being an Attorney at Law, fraudulently caused Deed bearing No. 2428 to be drawn, attested, and authenticated by Mervin Samaraweera, Notary Public in favour of Niroshan Company (Pvt) Limited for consideration in a sum of Rs. 225,000/=, by which deed you the 1<sup>st</sup> Respondent above named purportedly sought to unlawfully transfer the property purportedly transferred to you by the Deed of Transfer No. 726 fraudulently drawn, attested, and authenticated by your wife, the 2<sup>nd</sup> Respondent above named.

Based on the above misconduct it was alleged that the 1<sup>st</sup> Respondent had committed;

- a) Deceit and/or malpractice within the ambit of section 42 (2) of the Judicature Act No 2 of 1978 which renders, unfit to remain as Attorney at Law
- b) Acted in breach of Rules 60 and 61 of the Supreme Court (Conduct and Etiquette for Attorneys at Law) Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka and thereby conducted in a manner which would be reasonably be regarded as disgraceful and dishonorable by Attorney at Law of good repute and competence, and which renders, unfit to remain as Attorney at Law.

An opportunity was given to both the Respondents including the deceased 2<sup>nd</sup> Respondent to show cause why they should not be suspended from practice or removed from the office of Attorney at Law under section 42 (3) of the Judicature Act No 2 of 1978 and the Respondents availed themselves of the opportunity given to show cause and filed an affidavit on their behalf.

As observed by me, the inquiry into the rule issued against the 1<sup>st</sup> Respondent (and the 2<sup>nd</sup> Respondent) was not taken up since two actions were pending before the District Court of Mount Lavinia to set aside several deeds attested by the 2<sup>nd</sup> Respondent.

After the lapse of several years, on 27.04.2011 the rule dated 17.09.2001 was read out to the Respondents and an opportunity was once again given to the Respondents to show cause as to why they should not be suspended from practice or removed from the office of Attorney at Law under the provisions of the Judicature Act No 2 of 1978.

The Rule was subsequently taken up before this Court on 02.05.2012 and the inquiry proceeded before this Court for several dates.

The Registrar of the Supreme Court Duminda Prabath Mudunkotuwa and the Complainant Dr. Lakshman Lucian de Silva Weerasena were summoned to give evidence at the inquiry in order to establish the allegation against the Respondents. Both witnesses were subjected to lengthy cross-examination by the learned counsel who represented the two Respondents including the deceased 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent died on 16.07.2016 when the 2<sup>nd</sup> witness Dr. Weerasena was under further cross-examination. During the said cross-examination several documents were shown and marked by the Respondents which include documents marked from 2R7 to 2R49 on behalf of the deceased 2<sup>nd</sup> Respondent.

As already referred in this judgment, the Rule matter against the two Attorneys at Law including the deceased Attorney at Law the 2<sup>nd</sup> Respondent, was on a complaint made by Dr. Lakshman Lucian de Silva Weerasena to the Registrar Supreme Court by way of an affidavit dated 24.02.1999. When Dr. Lakshman Lucian de Silva Weerasena was summoned to give evidence, whilst confirming the affidavit submitted to this Court the witness had submitted the following;

The witness was a Doctor of Medicine and was working as the Chairman of the Civil Aviation Examination Board and practiced in his clinic at the time he gave evidence before Court. He was the President of the Medico-Legal Association in 2003. His mother's maiden name was Adeline Winifred Perera and after marriage Adeline Winifred Weerasena. His mother was a housewife, and she had 2 siblings; her brother was H.I.C Perera (Attorney-at-Law) who passed away and her elder sister was Agnes Georgiana Fonseka (hereinafter referred to as A.G. Fonseka) married to Richard Clement Fonseka (Barrister and worked as a legal consultant- hereinafter referred to as R.C. Fonseka). Dr. Weerasena had two siblings: Kanishka Lakshman Weerasena (Doctor) and Tharangani Shamalee Anthoney.

His father passed away in 1989 and his mother passed away in 1993. At the time of the death, they were residing at their own house at No 368, Galle Road, Colombo 03. His mother's sister, A.G. Fonseka resided at No. 90, Lauries Road, Bambalapitiya, with her husband, but they did not have children. A.G. Fonseka continued to occupy this house even after the death of her husband with servants until her death. R.C. Fonseka died on 18.03.1982 and A.G Fonseka died on 08.11.1987.

As a nephew of A.G. Fonseka, Dr. Weerasena cared about his mother's sister until the time of her death since she was ill and had no children. She had no financial problems because she was quite stable financially. A.G. Fonseka was in good mental health until her death. There were several domestic aids at her house and most of them were for a long time, due to her ill health.

After the death of R.C. Fonseka, she had a joint account with one Cyril de Silva who was working at her house. Cyril was an educated boy, and he did all the accounts for A.G. Fonseka. Gunaseeli Karunanayake was A.G. Fonseka's domestic servant, but she was never an adopted child. Gunaseeli's father was the caretaker of the garden. The driver of A.G. Fonseka was Thissa. The Gardner was Martin. Cyril used to be in and out of her house to attend to her financial matters and Mercy attended to A.G. Fonseka's other matters like payment of wages. Most of them lived in the house of A.G. Fonseka, but there were no adopted children in that house.

In the latter stage of A.G. Fonseka's life, Gunaseeli got married to Nobel Ranasinghe and they lived in the same house. Gunaseeli and Nobel had two children from their marriage and they were Thushari Ranasinghe (elder daughter) and Manori Ranasinghe (younger daughter).

A.G. Fonseka had 13 houses in Colombo. She gave some properties to the people who helped her. The 10<sup>th</sup> Lane property was given to Thushari (Gunaseeli's eldest daughter). The car and property were given to the Driver.

When R.C. Fonseka passed away, he had a last will, but no testamentary case was filed by Dr. Weerasena until the death of A.G. Fonseka. The witness was not aware of a testamentary proceeding, but he said that A.G. Fonseka enjoyed whatever she got from the last will of R.C. Fonseka because all the properties of R. C. Fonseka had been devolved to A.G. Fonseka.

Nobel Ranasinghe also died after A.G. Fonseka's death. A.G. Fonseka died in 1987 and subsequent to A.G. Fonseka's death, witness's mother also passed away. Although that time period was so critical, before the expiry of 10 years, he filed a testamentary case for A.G. Fonseka. It was entrusted to his elder brother at the beginning, but he too was feeble and did not take any trouble over this. Witness intervened in the testamentary proceedings with the help of Mrs. Pushpa Narendran (AAL).

The testamentary action was filed in 1997 in DC Colombo. Witness's mother as a sibling of A.G. Fonseka would have been the sole inheritor of A.G. Fonseka's estate. In the meantime, his mother died

without making a last will. Some of the events that took place during this period were narrated by the witness as follows;

- Two testamentary cases had been filed in respect of the estates of Agnes Georgiana Fonseka (Aunt) i.e., DC Colombo Case No. 33935/T, and Adeline Winifred Weerasena (Mother) i.e., DC Colombo Case No. 34383/T; and witness had obtained the letter of Administration for both cases.
- The domestic helper to late A.G. Fonseka namely Gunaseeli Karunanayake made an attempt to intervene and falsely claim title to the property bearing assessment No. 90 Lauries Road, Bambalapitiya;
- Also, an Attorney at Law Jayantha Attanayake (1<sup>st</sup> Respondent) had claimed ownership of an undivided portion of the property situated at No. 90 Lauries Road, Bambalapitiya;
- Upon making inquiries it had been revealed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents together with the aforesaid domestic helper Gunaseeli Karunanayake had prepared fraudulent Deeds and purportedly transferred the ownership to the said property to Thushari Ranasinghe (daughter of Gunaseeli Karunanayake) and to the said Jayantha Attanayake.

As submitted by the witness the extent of the land belonging to late A.G. Fonseka was 44 perches and a Deed of Declaration in respect of undivided 37 perches was registered by Gunaseeli Karunanayake the domestic helper of late A.G. Fonseka under Deed of Declaration No. 705 and a Deed of Declaration in respect of the balance 7 perches was also registered by the same person namely Gunaseeli Karunanayake under Deed of Declaration No. 706. The portion of land referred to in Deed No. 705 had been gifted by the declarant to her daughter Thushari Ranasinghe by Deed No.707. All three Deeds referred to above had been attested by the same Notary Public namely Ratnamali Maitipe Attanayake (2<sup>nd</sup> Respondent) on the same day i.e., on 05.10.1992.

- In the Deed of Declaration No. 705 attested by the 2<sup>nd</sup> Respondent, the Declarant Gunaseeli Karunanayake had declared that she, by long and undisturbed and uninterrupted possession for over a period of thirty (30) years, is the sole and absolute owner of the land described in the schedule thereto bearing assessment No. 90 Lauries Road, Bambalapitiya (Extent of 37 perches). She had also made a declaration therein that Richard Clement Fonseka and Agnes Georgiana Fonseka are her stepfather and stepmother respectively and

that she is the sole heir being their adopted child and that she had inherited the said property;

- The Deed of Declaration No. 706 had been attested on the same day as the aforesaid Deed No. 705, i.e., on 05.10.1992 by the 2<sup>nd</sup> Respondent, where the same Declarant Gunaseeli Karunanayake had declared that she, by long and undisturbed and uninterrupted possession for over a period of thirty (30) years, is the sole and absolute owner of the land described in the schedule thereto bearing assessment No.90 (part) Lauries Road, Bambalapitiya (Extent of 7 perches). She had also made a declaration therein that Richard Clement Fonseka and Agnes Georgiana Fonseka are her stepfather and stepmother respectively and that she is the sole heir being their adopted child and that she had inherited the said property;

According to the witness, in addition to the three deeds referred to above, details of two more deeds bearing Nos. 726 and 2428 had transpired during the Testamentary proceeding referred to above.

- The Deed of Transfer No. 726 had been attested on 03.02.1993 by the 2<sup>nd</sup> Respondent whereby the said Declarant Gunaseeli Karunanayake had sold the property in the schedule thereto bearing assessment No. 90 (part) Lauries Road, Bambalapitiya (7 perches) to the 1<sup>st</sup> Respondent for a consideration of Rs. 200,000/-;
- The Deed of Transfer No. 2428 had been attested on 01.08.1996 by Mervin Samaraweera Notary Public whereby the 1<sup>st</sup> Respondent had transferred the property he had purportedly purchased from Gunaseeli Karunanayake by Deed No. 726, to Niroshan Company (Pvt) Ltd. in which the two directors at that time were Jayantha Attanayake and Ratnamali Maitipe Attanayake (1<sup>st</sup> and 2<sup>nd</sup> Respondents) for a consideration of Rs. 225,000/-;

Since the three deeds bearing Nos. 705, 706, and 707 referred to the property belonging to late A.G. Fonseka, the witness had instituted proceedings before the District Court of Mt. Lavinia seeking a declaration to nullify those deeds.

The judgment in both cases (947/97/L and 882/97/L) filed before the District Court of Mt. Lavinia were entered in favour of the Plaintiff in the year 2006. As already referred to by me in this Judgment, the delay in commencing the proceeding in the instant rule matter was the interest shown by the parties with regard to the outcome of the said proceedings.

The Judgment of the District Court of Mt. Lavinia case No. 947/97/L was delivered on 23.01.2006. (P-7) The Decree dated 05/05/2006 obtained from the District Court of Mt. Lavinia in the said case was marked as P-7A and the Eviction Order as P-7B was carried out to evict Gunaseeli and her daughter Thushari.

In an affidavit submitted by Gunaseeli Karunanayake at the time the three deeds were attested, she had declared that R.C Fonseka and A.G. Fonseka were her stepfather and stepmother, and she was adopted by them and therefore, she had inherited the said property. But witness Dr. Weerasena rejected the above and stated that his aunt A.G. Fonseka was alive till 1987 and therefore Gunaseeli Karunanayake could not claim undisturbed and uninterrupted possession for a longer period since she was the domestic aid of Late A.G. Fonseka until her death in 1987.

According to the witness, the decision of the District Court of Mt Lavinia case No. 947/97/L was challenged before the Civil Appellate Court but was withdrawn by the Appellants and there was no proceeding before any Court challenging the decision in the case No. 947/97/L at the time he gave evidence before the Supreme Court.

Witness Dr.Weerasena further stated that, when A.G. Fonseka died, Gunaseeli was in occupation of the property in question and he granted her permission to stay until they need the property. Further, he accepted that A.G. Fonseka and R.C Fonseka gifted properties to their servants since they have no children, and those servants helped a lot for them. Although they gifted properties in the 9<sup>th</sup> and 10<sup>th</sup> lane, in Colpity to Gunaseeli and her daughter, she fraudulently made an attempt to get ownership of the land in question.

Witness Duminda Prabath Mudunkotuwa was the Registrar of the Supreme Court when the Complaint against the two Respondents was received in the Supreme Court Registry on 24.02.1999. (P-1)

On receipt of the said complaint, by letter dated 28.05.1999 (P-2), he had called observations from the two Respondents. (At the time he gave evidence both Respondents were present before Court and were represented by Counsel) Several Communications between the Registrar of the Supreme Court and the two Respondents were marked as P-2 to P-5 during his evidence.

Documents from P-1 to P-17 were marked during the inquiry and that includes the District Court Judgment dated 23.01.2006 in the District Court, Mount Lavinia case No. 947/97/L (P-7), the four Deeds bearing Nos. 705,706,707 and 726 (P-8, P-9, P-10, and P-11), the order dated 05.05.2010



delivered by the Civil Appellate High Court of the Western Province P-12 and Deed Number 2428 attested by Mervin Samaraweera N.P dated 01.08.1996 (P-17)

At the time the case for the prosecution was closed, the 2<sup>nd</sup> Respondent was not among the living and the inquiry was proceeding only against the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent opted to give evidence and according to his testimony, he was called to the Bar in the Year 1982. Since then, he had a civil practice and was having his office at No. 135/5/1 St. Sebastian Hill, Colombo 12 until 1994. He is a graduate of the University of Colombo since 1974 and his graduate certificate was produced marked 1R3. During his carrier as an Attorney at Law, he served as the Chairman Rent Board for a few years since 1984, and also served as a Director of the Sri Lanka State Trading Corporation for a period of 5 ½ years. He was the Managing Director of Niroshan Company (Pvt) Ltd. which was incorporated in the year 1983 and his wife, the 2<sup>nd</sup> Respondent in the instant inquiry, namely Ratnamali Maitipe Attanayake was the other Director of the said Company. They lived at No. 65, Stork Place, Colombo 10. His wife too had practiced law, mainly handled conveyancing work, and had her office at their residence, No. 65, Stork Place, Colombo 10.

As submitted by the 1<sup>st</sup> Respondent, parties to Deeds 705, 706, and 707 attested by his wife, the 2<sup>nd</sup> Respondent, were unknown to him at the time the said Deeds were attested. Later he got to know that the declarant in Deeds 705 and 706 namely Gunaseeli Karunanayake was interested in selling a portion of the land, namely the subject matter to Deed 706, and therefore studied the history of the land and the declarant. He got to know Gunaseeli Karunanayake as the occupant of the house bearing assessment No. 90, Lauries Road, Bambalapitiya. According to the 1<sup>st</sup> Respondent Gunaseeli was not a domestic servant of A.G. Fonseka. He was informed by Gunaseeli that she was the adopted child, of A.G. Fonseka. He further stated that Gunaseeli has tendered an affidavit to this effect to the case which was pending in DC Mt. Lavinia. Gunaseeli was married to Nobel Ranasinghe.

After her marriage, she lived in the house at No. 90, Lauries Road, Colombo 04. The marriage Certificate No. 6797 dated 25/02/1972 of Gunaseeli and Nobel Ranasinghe was marked as '2R7'. It was mentioned in the said certificate that the place of the marriage as 'මනාලියගේ නිවසේ සිදුවුණා'. The '2R8' was the marriage certificate issued by the Parish Priest of St. Mary's Church Bambalapitiya on 25/02/1972. After the marriage, Gunaseeli and Nobel had two children Thushari Ranasinghe (the birth certificate was marked as '2R9') and Manori Ranasinghe (the birth certificate was marked as '2R10'). Gunaseeli and Nobel lived in No. 90, Lauries Road, Bambalapitiya, and selected it as their matrimonial

house. The 1<sup>st</sup> Respondent further stated that Gunaseeli and Nobel lived in that house, even after the death of R.C Fonseka and A.G. Fonseka.

The 1<sup>st</sup> Respondent knew about the two Deeds of Declaration. The 1<sup>st</sup> one is 'P8' – the Deed No. 705 attested by R.M. Attanayake dated 05.10.1992 regarding the land No. 90, Lauries Road, Bambalapitiya – Lot 1A and 1B (as one lot) – Plan No. 1905 made by A.S.P Gunawardena Licensed Surveyor – 37 purchases. The other Deed was marked as 'P9' – the Deed of Declaration No. 706 attested by R.M. Attanayake dated 05.10.1992. –the Plan No. 1905 made by A.S.P Gunawardena Licensed Surveyor – for the Lot 1A, 1B 7 purchase - regarding the land No. 90/1/A, Lauries Road, Bambalapitiya. However, he stated that he does not know about drafting those Deeds, since all the deeds were drafted by his Wife (the 2<sup>nd</sup> Respondent) without his knowledge.

The 1<sup>st</sup> Respondent further stated that Gunaseeli has given an affidavit to his wife. Based on the said affidavit, his wife (the 2<sup>nd</sup> Respondent) has drafted Deeds 705 and 706. The affidavit given by Gunaseeli dated 1992.09.01 was marked as '1R4'.

The Original Deed of Transfer No. 726 was also marked as '1R5'. The transferor was Ulpagoda Pathiraarachchige Dona Gunaseeli Karunanayaka, and her address was No. 90, Lauries Road, Bambalapitiya. The transferee of this deed was Jayantha Attanayake (the 1<sup>st</sup> Respondent) and his address was No. 65, Stork Place, Colombo 10. The value of the Deed was 2 lakhs.

As stated by the 1<sup>st</sup> Respondent, the main reason for him to buy the land in question was the relationship he had with Nobel Ranasinghe, husband of Gunaseeli Karunanayake. 1<sup>st</sup> Respondent wanted to help the Ranasinghe family since they had financial difficulties. Therefore, he agreed to buy a 7 Perch block for Rs. 700000/- from the wife of Nobel Ranasinghe. However, the 1<sup>st</sup> Respondent had taken up the position that he was unaware of any Deeds attested by his wife including Deed No 706 at the time those Deeds were attested by his wife.

In the first instance, the 1<sup>st</sup> Respondent paid Rs. 30,000/- and then Rs. 320,000/-. Later he paid another Rs. 350,000/-. However, the 1<sup>st</sup> Respondent had admitted that the value entered in the Deed was only 200000/-. The 1<sup>st</sup> Respondent had admitted inspecting the folios at the Land Registry and the documents at Colombo Municipal Council before purchasing the Land.

On the other hand, he could not find any legal document as proof of the adoption of Gunaseeli by A.G. Fonseka and R.C Fonseka. However, the 1<sup>st</sup> Respondent did not accept the fact that Gunaseeli has not

acquired prescriptive rights. At the inquiry, it was revealed that Gunaseeli has not acquired prescriptive rights since the deed was attested 5 years after the death of A.G. Fonseka.

After purchasing the land, he used it as a car park for Niroshan Company (Pvt) Ltd which is a driving institute. 1<sup>st</sup> and 2<sup>nd</sup> Respondents were the directors of the said company. He transferred the said land on 01.08.1996 by Deed No. 2428 (P17) to Niroshan Company (Pvt) Ltd. The Deed was attested by Mervin Samaraweera Notary Public. During the cross-examination, it was revealed that notary Mervin Samaraweera used the residential address of the 1<sup>st</sup> Respondent as notary's address.

The 1<sup>st</sup> Respondent resigned from Niroshan Company (Pvt) Ltd as Director in 2005 and informed the Company Registrar. Thereafter the Directors of the said Company were his wife the 2<sup>nd</sup> Respondent and his children namely: Ratnamali Maitipe Attanayake, Dilakshi Kaushalya Attanayake, Mulasi Attanayake, and Yasas Attanayake.

When considering the material already discussed, it appears that the Complainant was unaware of any transaction regarding the house and property at No. 90, Lauries Road, Bambalapitiya when he decided to institute testamentary proceedings with regard to late A.G. Fonseka's estate. As already discussed, A.G. Fonseka and R.C. Fonseka had several servants working for them and after the death of R. C. Fonseka the house was managed by those employees who worked for the family for a long period of time. Since the old couple did not have children, most of their properties were gifted to the domestic employees including Gunaseeli Karunanayake and her children but the house and property at No. 90, Lauries Road where A.G. Fonseka lived at the time of her death were not given to anybody and there was no problem for her to gift the said property if she was interested in doing so.

In the said circumstances it is clear that Gunaseeli Karunanayake never had uninterrupted possession of the house occupied by A.G. Fonseka after her death in 1987 for a long period since the time gap between the death of A.G. Fonseka and making the deed in question is only 05 years.

In his evidence at the inquiry before us, the 1<sup>st</sup> Respondent took up the position that the main reason for him to buy the land in question was to help Nobel Ranasinghe, the husband of Gunaseeli Karunanayake but he was unaware of any deeds attested by his wife the 2<sup>nd</sup> Respondent when he agreed to help his relation Nobel Ranasinghe by purchasing a land belonging to his wife at Lauries Road Bambalapitiya. However, this court is mindful of the following facts when analyzing the evidence given by the 1<sup>st</sup> Respondent at the Inquiry before us.

1. Gunaseeli Karunanayake had made two Deeds of declaration, one for the extent of 37 perches and the other for the remaining 7 perches (deeds 705 and 706) of the same land on 05.10.1992.
2. The land referred to in Deed 705 in the extent of 37 perches was gifted to her daughter by the declarant on the same day by Deed of Gift No. 707.
3. No steps were taken with regard to the land referred to in Deed No. 706 on that day.
4. The land referred to in Deed of Declaration 706 was transferred to the 1<sup>st</sup> Respondent by Gunaseeli Karunanayake for Rs. 200000/-. The said deed was also attested by the 2<sup>nd</sup> Respondent (Deed No. 726) on 03.02.1993.
5. The said transaction was done to help Ranasinghe's family since Nobel Ranasinghe the husband of Gunaseeli Karunanayake was a relation of the 1<sup>st</sup> Respondent.

If the declarant Gunaseeli Karunanayake was interested in claiming the title to the entire land and property within No. 90, Lauries Road, Bambalapitiya in the extent of 44 perches she could have easily included the entire extent to deed No. 705 and gifted it to her daughter but making a declaration separately to a seven perch block and disposing the said portion to the 1<sup>st</sup> Respondent who is known to her husband on a subsequent day, shows the involvement of the 1<sup>st</sup> Respondent even at the time the Deeds 705 and 706 were attested by the wife of the 1<sup>st</sup> Respondent. The same notary (i.e., the 2<sup>nd</sup> Respondent) had attested the Deed of Transfer for the portion of Land referred to in Deed No. 706 after she attested the original Deed of Declaration.

Whilst giving evidence before us, the 1<sup>st</sup> Respondent took up the position that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents were the Directors of Niroshan Company (Pvt) Ltd during the time he purchased the land in question in the year 1993. On 01.08.1996 the property which was in the name of the 1<sup>st</sup> Respondent was transferred to Niroshan Company (Pvt) Ltd by Deed No. 2428 attested by Mervin Samaraweera Notary Public. The address given in the Deed by the Notary is No. 65, Stork Place Colombo 10, which is also the residential address of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents at that time.

Even at the time the amended Rule was read over to the two Respondents (the 2<sup>nd</sup> Respondent was alive at that time) the property in question was in the name of Niroshan Company (Pvt) Ltd. where the two Directors were the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents. However, as submitted by the 1<sup>st</sup> Respondent he resigned from the Director Board in the year 2005 and then the Board of Directors of Niroshan Company (Pvt) Ltd. consisted of his wife (the 2<sup>nd</sup> Respondent) and his three children. As the Company is

no longer functioning the land in question has now been divided into two blocks and transferred in the names of two directors (two children of the 1<sup>st</sup> Respondent) (proceeding dated 28.01.2020. page 11)

As revealed before Court, the Deed Nos. 705,706, and 707 have been declared null and void by the Learned District Judge of Mt. Lavinia in the District Court Mount Lavinia Case No. 947/L/97. The Appeal against the said judgment was withdrawn and the judgment in the District Court stands valid to date. Therefore, it was submitted that the title could not pass to anyone based on the said Deeds. The 1<sup>st</sup> Respondent's claim to the property in question is based on Deed No. 706 which has been declared null and void.

However, the 1<sup>st</sup> Respondent was not prepared to accept this position, and the conduct referred to above shows several transactions taking place with regard to the said property within the family of the 1<sup>st</sup> Respondent even after the decision in District Court Mt. Lavinia Case No. 947/L/97 is pronounced.

As further revealed before this Court the two Defendants before the District Court Mt. Lavinia had appealed against the DC Judgment and while the aforesaid Appeal was pending, an application for the execution of decree pending Appeal had been made on behalf of the Plaintiff in terms of Section 761 of the Civil Procedure Code. The learned District Judge who inquired the said matter by order dated 27.04.2007, had granted a writ pending appeal to evict any person from the property in question and to hand over peaceful possession to the Plaintiff (Dr. Weerasena).

The Eviction Decree dated 30.04.2007 had been issued as per the order dated 27.04.2007. Immediately thereafter, Niroshan Company (Pvt) Ltd made an application dated 08.05.2007 under Section 328 of the Civil Procedure Code to be restored back in possession. However, the learned District Judge found no merit in the application made under section 328 by Niroshan Company (Pvt) Ltd. and dismissed the same.

At the inquiry into the section 328 application, evidence of Mervin Samaraweera Notary Public, and the 1<sup>st</sup> Respondent had been led. The 1<sup>st</sup> Respondent had given evidence on three dates i.e., 19.11.2007, 13.02.2008, and 09.05.2008 at the said inquiry. The order on the Section 328 application had been delivered on 21.10.2008 by the learned District Judge rejecting the application and refusing to place the Petitioner (Niroshan Company (Pvt) Ltd) back in possession. In the order of the learned District Judge it has been categorically stated that if the Petitioner Niroshan Company(Pvt) Ltd has any claim to the property in question, a separate action should be instituted.

However, the 1<sup>st</sup> Respondent has admitted before this Court that no separate action has been instituted for a declaration of title on his behalf or on behalf of Niroshan Company(Pvt) Ltd. (Proceedings dated 28.01 2020 at page 25)

Whilst giving evidence before Court the 1<sup>st</sup> Respondent had taken up positions which are contradictory to each other. It was his position at one stage, that he transferred the property in question to Niroshan Company (Pvt) Ltd. in which the directors were himself and his wife the 2<sup>nd</sup> respondent. (Proceedings dated 27.01.2020 on page 03)

Once again, he took up the position that he resigned from the Director Board of the said Company in the year 2005 and it was his wife and three children who were the Directors of Niroshan Company (Pvt) Ltd. since then.

However, he admitted giving evidence before the District Court in 2007 and 2008 even after his resignation from the Director Board when Niroshan Company(Pvt) Ltd made an application under Section 328 of the Civil Procedure Code to restore back in possession. He was the sole witness who gave evidence on behalf of Niroshan Company (Pvt) Ltd. other than Mervin Samaraweera Notary Public who attested the Deed.

It is also important to note at this stage, that the 1<sup>st</sup> Respondent had given this evidence before the District Court, while the instant Rule matter was pending before the Supreme Court.

In view of the foregoing, it is very much clear that the conduct of the 1<sup>st</sup> Respondent establishes his involvement in the three deeds including Deed No. 706 attested by his wife, the 2<sup>nd</sup> Respondent. Ultimately, he had become the beneficiary of the said declaration made by Gunaseeli Karunanayake. 1<sup>st</sup> Respondent had admitted before this Court that the husband of Gunaseeli Karunanayake was known to him during this period.

Since then, every attempt he had made either, with the help of his late wife or on his own initiative was to retain the property he acquired within his family circle.

From the above material, it is clear that there is ample evidence before this Court to conclude that the 1<sup>st</sup> Respondent had conspired to fraudulently draw, attest and authenticate or cause the drawing, attestation, and authentication of Deed Nos. 705,706,707,726 and 2428 with regard to the property in question and that he was a party to the preparation of fraudulent Deed Nos. 726 and 2428 where the title had been passed based on Deed No. 706 which was declared null and void by the District Court of

Mt. Lavinia. Even though the 1<sup>st</sup> respondent made an attempt to convince the court that the two deeds 726 and 2428 were attested much prior to the decision of the District Court of Mt. Lavinia, the involvement of the 1<sup>st</sup> Respondent in the preparation of the three deeds that were declared null and void by the District Court was established before us.

As already referred, the 1<sup>st</sup> Respondent was issued with a Rule under the hand of the Registrar of the Supreme Court,

- a) For committing Deceit and/or Malpractice within the ambit of Section 42 (2) of the Judicature Act No 2 of 1978
- b) For Acting in breach of Rules 60 and 61 of the Supreme Court Rules (conduct and Etiquette for Attorneys at Law) Rules 1988

The relevant provision as referred to above under the Judicature Act No. 2 of 1978 and Supreme Court Rules (conduct and Etiquette for Attorneys at Law) 1988 are as follows,

**Section 42 (2)** Every person admitted and enrolled as an Attorney-at-Law who shall be guilty of any deceit, malpractice, crime, or offence may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together.

**Rule 60** An Attorney-at-Law must not conduct himself in any manner which would be reasonably regarded as disgraceful or dishonorable by Attorneys-at-Law of good repute and competency or which would render him unfit to remain an Attorney-at-Law or which is inexcusable and such as to be regarded as deplorable by his fellows in the profession.

**Rule 61** An Attorney-at-Law shall not conduct himself in any manner unworthy of an Attorney-at-Law.

The standard of proof in an inquiry relating to a Rule issued under Rule 42 (2) of the Judicature Act No. 2 of 1978 was discussed in ***Daniel V. Chandradeva [1994] 2 Sri LR 1*** by *Amarasinghe J* as follows;

“Where the conduct of an attorney is in question in disciplinary proceedings, it requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that a just and correct decision has been reached. The importance and gravity of asking an attorney to show cause make it impossible for the Court to be

satisfied with the truth of an allegation without the exercise of caution and unless the proofs survive careful scrutiny. Proof beyond a reasonable doubt is not necessary, but something more than a balancing of the scales is necessary to enable the Court to have the desired feeling of comfortable satisfaction. A very high standard of proof is required where there are allegations involving a suggestion of criminality, deceit or moral turpitude.”

When considering whether the 1<sup>st</sup> Respondent was guilty of deceit and/or malpractice, it appears that, as already observed, in this Judgement, the 1<sup>st</sup> Respondent who is the beneficiary of the Deed No 726, was well aware of the preparation of the 3 Deeds, 705, 706 and 707 attested by the 2<sup>nd</sup> Respondent, his wife. The husband of the declarant who is only the domestic servant of the late A.G. Fonseka was known to the 1<sup>st</sup> Respondent during this time. A separate declaration was made by the declarant with regard to a 7 perch block by Deed No 706 and later transferred to the 1<sup>st</sup> Respondent by Deed No 726 attested by the 2<sup>nd</sup> Respondent. The next transaction with regard to the same plot of land was done before Notary Mervin Samaraweera at the residence of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents, where the Notary Samaraweera had indicated the same address as his office address in the Deed attested by him. This clearly shows as to how secretly these transactions had taken place between the parties.

Even though the 1<sup>st</sup> Respondent transferred the property by Deed No. 2428 to Niroshan Company (Pvt) Ltd. he and his wife who attested Deed Nos. 726 and 706 had become the beneficiaries of the said transaction since they were the only Directors of Niroshan Company (Pvt) Ltd. at that time. Several other incidents that took place thereafter (as discussed in this Judgment) clearly show the interest the 1<sup>st</sup> Respondent displayed even after the proceedings in the instant Rule matter was commenced. The 1<sup>st</sup> Respondent while giving evidence before this Court admitted that he had a civil practice for several years and therefore it is evident that the 1<sup>st</sup> Respondent had a clear understanding with regard to the transactions that were referred to in this judgment.

On a careful examination of the contention of the 1<sup>st</sup> Respondent (along with the Deceased 2<sup>nd</sup> Respondent) as revealed from the evidence of the Complainant, the 1<sup>st</sup> Respondent, and the documents tendered before us, it is well founded that the allegation of misconduct referred to under paragraphs (a) (f) and (g) of the amended Rule had been established and the 1<sup>st</sup> Respondent is guilty of deceit and malpractice within the ambit of section 42 (2) of the Judicature Act No. 2 of 1978.



When considering the nature of malpractice and deceit committed by the 1<sup>st</sup> Respondent, I am reminded of the following passage by Mookerjee J in ***Emperor Vs. Rajani Kanta Bose and Others (AIR 1922 Calcutta 515)*** to the effect;

“The practice of the law is not a business open to all who wish to engage in it; it is a personal right or privilege limited to selected persons of good character with special qualifications duly ascertained and certified; it is in the nature of a franchise from the state conferred only for merit may be revoked whenever misconduct renders the pleader holding the license unfit to be entrusted with the powers and duties of his office”

There is no doubt that the above conduct of the 1<sup>st</sup> Respondent has brought the legal profession into disrepute and it is plainly dishonourable, disgraceful, and unworthy of an Attorney-at-Law. Hence it is clear that the 1<sup>st</sup> Respondent has also breached Rules 60 and 61 of the Supreme Court (Conduct and Etiquette for Attorney-at-Law) Rules 1988.

This Court in the case of ***In Re: D.S. Bodhinagoda SC Rule 01/2010 (SC minute 20.02.2013)*** considered how the Court should decide as to what cause of action should be taken against an Attorney-at-Law who is found guilty for similar Conduct as follows;

“Considering the nature of the malpractice and deceit committed by the Respondent the legal profession has been brought into disrepute. The Respondent’s conduct is plainly dishonourable and disgraceful and certainly unworthy of an Attorney-at-Law. Hence the Respondent has breached Rules 60 and 61 of the Supreme Court (Conduct and Etiquette for Attorney-at-Law) Rules 1988.”

The sentence that should be considered against an Attorney-at-Law, when the Attorney-at-Law was found guilty of professional misconduct was discussed by Basnayake CJ in the case of ***In Re Fernando (1959) 63 NLR 233 at Page 234*** as follows;

“The power to remove or suspend a proctor from his office is one that is meant to be exercised for the protection of the profession and the public and for the purpose of maintaining a high code of conduct among those whom this court holds out as its officers to whom the public may entrust their affairs with confidence.”

Considering the conclusion this Court has already made, the Rule issued on the 1<sup>st</sup> Respondent is made absolute. I order that the 1<sup>st</sup> Respondent Jayantha Attanayake Attorney-at-Law be removed from the office of an Attorney-at-Law of this Court and that his name be struck off the Roll of Attorney-at-Law.

Registrar of this Court is to take steps accordingly.

Rule made absolute and the 1<sup>st</sup> Respondent struck off the Roll of Attorney-at-Law.

**Judge of the Supreme Court**

**Justice Murdu N.B. Fernando, PC**

I agree,

**Judge of the Supreme Court**

**Justice S. Thurai Raja, PC**

I agree,

**Judge of the Supreme Court**