

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

**In the matter of an Appeal
from the Civil Appellate High
Court.**

1. Galagedarage Don Chandrawathie,
No. 12, Chandralekha Mawatha,
Colombo 08.
2. Galagedarage Don Premaratne alias
Pemarantne, No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.
Now of, No. 12, Chandralekha
Mawatha, Colombo 08.
3. Galagedarage Don Manel, No. 20,
Chandralekha Mawatha,
Colombo 08.
4. Galagedarage Don Dammika
Priyantha, No. 105, Dr. N.M.Perera
Mawatha, Colombo 08.

Plaintiffs

SC APPEAL 179/2015

SC/HCCA/LA/152/2015

WP/HCCA/COL/27/2015/LA

D.C.COLOMBO Case No. DLM/ 203/2014

Vs

1. Carmen Angeline de Silva alias
Angeline Naidu
2. Fathima Farzana Rafik alias
Shafik
Both of , No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.

Defendants

A N D

1. Galagedarage Don Chandrawathie,
No. 12, Chandralekha Mawatha,
Colombo 08.
2. Galagedarage Don Premaratne alias
Pematne, No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.
Now of, No. 12, Chandralekha
Mawatha, Colombo 08.
3. Galagederage Don Manel, No. 20,
Chandralekha Mawatha,
Colombo 08.
4. Galagederage Don Dammika
Priyantha, No. 105, Dr. N.M.Perera
Mawatha, Colombo 08.

Plaintiff Petitioners

Vs

1. Carmen Angeline de Silva alias
Angeline Naidu
2. Fathima Farzana Rafik alias
Shafik
Both of , No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.

Defendant Respondents

A N D N O W

1. Galagedarage Don Chandrawathie,
No. 12, Chandralekha Mawatha,
Colombo 08.

2. Galagedarage Don Premaratne alias
Pematne, No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.
Now of, No. 12, Chandralekha
Mawatha, Colombo 08.
3. Galagederage Don Manel, No. 20,
Chandralekha Mawatha,
Colombo 08.
4. Galagederage Don Dammika
Priyantha, No. 105, Dr. N.M.Perera
Mawatha, Colombo 08.

Plaintiff Petitioner Appellants

Vs

1. Carmen Angeline de Silva alias
Angeline Naidu
2. Fathima Farzana Rafik alias
Shafik
Both of , No. 109, Dr. N.M.Perera
Mawatha, Colombo 08.

Defendant Respondent Respondents

BEFORE: **S. EVA WANASUNDERA PCJ,
B. P. ALUWIHARE PCJ &
VIJITH K. MALALGODA PCJ.**

COUNSEL: Eraj de Silva with S. Janagan for the Plaintiff
Petitioner Appellant.
Ikram Mohamed PC with Padma Bandara PC
and Nadeeka Galhena for the 1st Defendant
Respondent Respondent.

ARGUED ON: 17.07.2017.

DECIDED ON: 18.09.2017.

S. EVA WANASUNDERA PCJ. - ACTING CHIEF JUSTICE

Leave to Appeal was granted on 29.10.2015 by this Court on the questions of law contained in paragraph 12 (a) to (h) of the Petition dated 24.04.2015. They are as follows:-

- a. Did the High Court wrongly hold that there was no material before court to establish that the Defendant took steps and/or were taking steps to dispose the property?
- b. Did the High Court fail to take account of the fact that the 1st Defendant had already purported to transfer a share in the property to the 2nd Defendant after the death of the said Galagederage Don Gunapala?
- c. Has the High Court failed to properly consider that the District Judge had erred in the reasoning?
- d. Has the High Court failed to properly consider the grounds of appeal urged in the Petition for Leave to Appeal before the High Court?
- e. Has the High Court failed to properly consider the irreparable loss and/or damage would be caused to the Plaintiffs unless the interim relief was granted?
- f. Has the High Court wrongly failed to consider that the Plaintiffs were still co-owners of the property in question?
- g. Has the High Court erred in not granting leave to appeal in the circumstances of this case?
- h. Has the High Court erred in not granting the interim relief sought?

This Court has also granted interim relief preventing the Defendants Respondents Respondents from alienating and/or selling and/or transferring and/or leasing out and/or otherwise disposing of the land and premises more fully set out in the schedule to the plaint or any part thereof. However the trial in the District Court is proceeding as at present.

The facts of the case in hand are pertinent. The Plaintiffs and their brother named Galagederage Don Gunapala were co-owners of a land in Colombo 8.

G.D.Gunapala died on 26.04.2014 without leaving a Last Will. The Plaintiffs have submitted that a Testamentary Case has been filed and the 2nd Plaintiff has received the letters of administration. There is documentary evidence that the case number is DTS/176/2014 and in that case it was submitted to court that the deceased Gunapala had owned as a co-owner, 9/40th share of the land which is an amalgamation of the land called Gorakagahawatta and Laymawatta, bearing Assessment numbers 20 and 12, Chandralekha Mawatha and premises bearing Assessment numbers 105, 107 and 109, Dr. N.M.Perera Mawatha, situated along Chandralekha Mawatha and N.M.Perera Mawatha within the Municipal Council Limits of Colombo, which land is marked as Lot 5 in Plan No. 1351 dated 08.03.1989 drawn by the Licensed Surveyor and Leveller, S. Rasappah **containing in extent OA 1R 04.94P.**

Then, the 1st Defendant had filed a case under Sec. 66 of the Primary Court Procedure Act against the all the Plaintiffs for the continuation of peaceful possession of the premises where she claims that she was living with the deceased Gunapala and her daughter and family. She had produced five complaints after the death of Gunapala to the Police, which she had made during the period from 1st May, 2014 to 28th May, 2014 against the Plaintiffs. In the affidavit placed before the Magistrate's Court, she had claimed that she was occupying the premises for over 25 years continuously. However the learned Magistrate had dismissed the said action on the ground that the subject matter had not been properly identified.

In the instant case the Plaintiffs had filed action in the District Court of Colombo under case No. DLM / 203/ 2014 pleading inter alia for a **declaration of title** to the particular property described in the schedule to the Plaint and **to eject the Defendants** and others who are holding under them. The Defendants are mother and daughter residing in the premises No. 109, Dr. N.M.Perera Mawatha, Colombo 8 which is on the particular property. The basis alleged for seeking ejectment is that the 1st Defendant was living in the premises as a licensee of G.D.Gunapala and when Gunapala died, **the license to live there comes to an end** and therefore she has to be ejected along with her daughter who holds the property under the 1st Defendant. The 1st Defendant takes the stance that **she is the legal wife of the deceased G.D.Gunapala.** Having produced the marriage certificate, mentioning the date of marriage as the 6th of March, 2002, she claims that **she is entitled to half of what was co-owned by Gunapala.** The Plaintiffs'

position is that the marriage certificate is false and the signature of their brother is forged in the said marriage certificate.

However, the Plaintiffs have conceded , according to their pleadings, that the deceased Gunapala was a co-owner of the property in question and that the 1st Defendant and her daughter, the 2nd Defendant, along with Gunapala had been in occupation of premises No. 109, Dr. N.M.Perera Mawatha, Colombo 8. According to the evidence by way of affidavits and documents before the trial court, it is obvious that Gunapala, the 1st Defendant, the 2nd Defendant who is the daughter of the 1st Defendant and the 2nd Defendant's husband and their children have been living in the said premises for quite some time and that the place has a boutique by the name 'Carmen Tea Room' which was carried on by the 2nd Defendant. The documentary evidence before the District Court show that Gunapala had been living with the others as a family for a long time in the premises in question.

In the Plaint filed by the Plaintiffs for a declaration of title and ejectment of the Defendants, the Plaintiffs also **prayed for interim injunctions** restraining the Defendants from alienating the property, from receiving any income out of the property, from making any structural alteration to the premises and from alienation of the movable property described in a list marked 'Y' attached to the Plaint. **The District Judge refused** the granting of **interim injunctions** sought by the Plaintiffs. Then they sought leave to appeal from the said refusal by an application made to the Civil Appellate High Court and on 27.03.2015, the **High Court refused leave to appeal affirming** the order of the District Court **refusing the grant of interim injunctions**. The Plaintiffs Petitioners Appellants have appealed to this Court from the order of the Ciivil Appellate High Court refusing leave to appeal.

The question to be decided revolves around the law pertinent to granting of interim injunctions.

Sec. 54(1) of the Judicature Act No. 2 of 1978 as amended reads as follows:-

Injunctions.

- (1) Where in any action instituted in a High Court, District Court or a Small Claims Court, it appears –

- (a) From the Plaintiff that the Plaintiff demands and is entitled to a judgment against the defendant, restraining the commission or continuance of an act or nuisance, the commission or continuance of which would produce injury to the plaintiff; or
- (b) That the defendant during the pendency of the action is doing or committing or procuring or suffering to be done or committed, or threatens or is about to do or procure or suffer to be done or committed, an act or nuisance in violation of the plaintiff's rights in respect of the subject matter of the action and tending to render the judgment ineffectual, or
- (c) That the defendant during the pendency of the action threatens or is about to remove or **dispose of his property with intent to defraud the plaintiff**, the Court may, on its appearing by the affidavit of the plaintiff or any other person that sufficient grounds exist therefor, grant an injunction restraining any such defendant from -
 - (i) Committing or continuing any such act or nuisance;
 - (ii) Doing or committing any such act or nuisance;
 - (iii) Removing or disposing of such property.

Sections 662 to 667 of the Civil Procedure Code apply to "Injunctions".

Sec.662 reads:-

Every application for an injunction for any of the purposes mentioned in Section 54 of the Judicature Act No. 2 of 1978, except in cases where an injunction is prayed for in a plaint in any action, shall be by petition, and shall be accompanied by an affidavit of the applicant or some other person having knowledge of the facts, containing a statement of the facts on which the application is based.

Sec. 663 deals with how disobedience to an injunction or an enjoining order could be punished. Sec. 664 to Sec. 667 deal with different aspects of action by court with regard to injunctions.

In the case of **Felix Dias Bandaranayake Vs the State Film Corporation and another 1981, 2 SLR 281** it was held that in deciding whether or not to grant an interim injunction the following **sequential tests** should be applied:-

1. Has the Plaintiff made out a strong prima facie case of infringement or **imminent infringement of a legal right** to which he has title, that is, that

there is a serious question to be tried in relation to his legal rights and that the **probabilities are that he will win.**

2. In whose favour is the **balance of convenience** – the main factor being the **uncompensatable disadvantage or irreparable damage** to either party?
3. As the injunction is an **equitable relief** granted in the discretion of the Court, do the conduct and dealings of the parties justify grant of the injunction? The material on which the Court should act are as the affidavits supplied by the plaintiff and the defendant. Oral evidence can be led only of consent or upon acquiescence.

In the case of **Seelawathie Mallawa Vs Millie Keerthiratne 1982, 1 SLR 384**, Justice Victor Perera reiterates what was laid down by the Supreme Court in **Jinadasa Vs Weerasinghe 31 NLR 33**. He states at page 388 that “ The principles which the Court must take into account when deciding whether to grant an injunction or not, have been formulated from time to time in decisions of our Courts and have sometimes been re-formulated on the basis of decisions of the English Courts. Generally the line of approach in exercising the Court’s discretion whether to grant an interim injunction or not has been, **first to look at the whole case before it.** The primary consideration was the relative strength of the parties’ cases. The Court must have regard not only to the nature and strength of the **plaintiff’s claim** and demand but also to the **strength of the defence.** It is when the Court has formed the opinion that the plaintiff had a strong prima facie case, that the Court had then to decide what was best to be done in the circumstances. No doubt this exercise entailed **a close examination of the merits** at times almost bordering on a trial of the action, but without deciding the main issues that will be raised at the trial. In deciding on the nature or terms of such an interim injunction, the underlying principle to be considered is that **the status quo must be maintained.** Initially the plaintiff therefore needs only to satisfy the Court that there is a serious matter to be tried at the hearing.”

In the amended Plaint the Plaintiffs prayed for **four interim injunctions**, namely, as follows:-

- i. An interim injunction restraining the Defendants and all those holding under them **from alienating**, leasing or disposing the property described in the Schedule to the plaint.

- ii. an interim injunction restraining the Defendants and all those holding under them **from obtaining an income** or benefit from the said property described in the Schedule to the plaint.
- iii. an interim injunction restraining the Defendants from making any **structural alteration** on the premises described in the Schedule to the plaint.
- iv. an interim injunction restraining the Defendants from transferring or **disposing the movable property** described in the attachment marked 'Y'.

The District Court had at the first instance **issued enjoining orders** and notices on the Defendants. Later on, after having held the inquiry the Additional District Judge of Colombo by his order dated 02.03.2015 had dissolved the enjoining orders and refused to grant any of the interim injunctions. The Civil Appellate High Court had made order refusing the application made by the Plaintiffs for leave to appeal on 27.03.2015.

This Court is bound to have a look at the **merits of both parties** in complying with the provisions of law with regard to interim injunctions as well as the legal authorities on interim injunctions as quoted above.

I find that the Plaintiffs' arguments are all on the basis that the deceased Gunapala, who was their brother was unmarried. The 1st Defendant has produced a marriage certificate dated 06.03.2002 which is prima facie proof of Gunapala being married to the 1st Defendant. It is seen from the documents that there had been many quarrels between the Plaintiffs on one side and Gunapala and the 1st Defendant on the other. At the inquiry regarding the interim injunction, the 1st Defendant had produced an I.B. extract of a complaint lodged by her at the Borella Police Station in the year 1994 with a heading 'Trouble Created', marked 'Pe 6 G' which illustrates that the 1st Defendant had been living together with Gunapala in Gunapala's house from the time that she was 42 years or earlier. She had complained that some other man living in Gunapala's grandmother's house had come in the night to her tea room asking for cigarettes and when she said that cigarettes are not available, he had scolded her in bad language. She had not known the name of the said man but had complained that he had done so at the instance of Gunapala's mother. The document 'Pe 6 H' is another I.B. extract from the Borella Police Station dated 01.11.2003 which is a complaint made by

Gunapala against his brother, the 4th Plaintiff who had run a record bar within the premises. Gunapala had lodged the complaint in fear of his threats and for his safety in the future. In that complaint Gunapala had mentioned to the Police that in his house, he is living with his wife and the daughter and placed the names of the 1st and 2nd Defendants as his wife and daughter.

So, it is evident that Gunapala had been living with the 1st Defendant for a long time and had legally got married in 2002 and in 2003 he had mentioned to the Police that she was his wife and from that time onwards upto the date of death of Gunapala in 2014, the 1st and the 2nd Defendants had been in occupation of the premises in question. The Defendants had produced receipts from tenants to whom three rooms were rented out to for over 10 years by Gunapala and the 1st Defendant. On the other hand, if the Plaintiffs challenge the authenticity of the Marriage Certificate, the burden of proof that it is a forged marriage certificate lies on the Plaintiffs. Until it is disproved, the marriage has to be presumed to be valid according to the marriage certificate. Then the 1st Defendant gets half of what belonged to Gunapala, her husband and she becomes a co-owner of the property.

After the death of Gunapala, the 1st Defendant had gifted her rights of the property to the 2nd Defendant who is her daughter by a properly executed deed. It is so alleged by the Plaintiffs and the Defendants have admitted the same.

The list of movables in the attachment marked 'Y' with the Plaintiffs are household furniture and goods belonging to Gunapala and used by Gunapala when he was living and even though the Plaintiffs claim that they are the owners of those movables, there is no evidence to show any proof of the same. There does not seem to be any reason why any movements of those movables should be stopped by an interim injunction.

The Plaintiffs have failed to establish a strong prima facie case against the Defendants for the purpose of getting interim injunctions against the Defendants as prayed for. The affidavit of one of the witnesses to the marriage stating that he never signed as witness to such a marriage cannot be taken as full proof of there not being a legal marriage between the 1st Defendant and Gunapala. The trial of the case will decide whether the Defendants are legally entitled to the property rights or not. If there is no valid legal title held by the Defendants, if they dispose

of their rights to third parties, the legal title shall not pass and therefor there is no irreparable loss which could happen to the Plaintiffs.

On the other hand the Plaintiff has claimed quantified damages at Rs. 50000/- per month from the Defendants until the final relief is granted as prayed for. Furthermore there is no imminent infringement of a legal right of the Plaintiffs, which right if infringed would cause irreparable damage to the Plaintiffs. The balance of convenience is also in favour of the Defendants. The property rights of the land and premises are admittedly still with the Defendants who are mother and daughter and they have been in possession of the premises for a very long time.

I cannot see any act of the Defendants which would render the final judgment ineffectual if the Defendants are not restrained by interim injunctions. I answer all the questions of law enumerated above, in favour of the Defendant Respondent Respondents and against the Plaintiff Petitioner Appellants. Therefore I hold that the learned High Court Judges were correct in having refused leave to appeal.

This Appeal stands dismissed. However I order no costs.

Judge of the Supreme Court

B.P.Aluwihare PCJ.

I agree.

Judge of the Supreme Court

Vijith K. Malalgoda PCJ.

I agree.

Judge of the Supreme Court

