

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

In the matter of an Application for Leave to Appeal from the Judgment dated 13-03-2012 in NCP/ HCCA/ ARP No.842/2010(F) in terms of Section 5C(1) of the Act No. 54 of 2006.

SC APPEAL NO.26/2013

SC/HCCA/LA No.154/2012

NCP/HCCA/ARP/842/2010.

D.C. Polonnaruwa case No.11585/L/06.

Hennkachchi Gedara Rasika Kumara Prematilaka Bandara.
No. 576, Kirimetiya, Galamuna.

Plaintiff

Vs.

H.G. Gnanawathie,
No. 245, Co- operative Junction,
Kirimetiya, Galamuna.

Defendant

AND THEN,

Hennkachchi Gedara Rasika Kumara Prematilaka Bandara.
No. 576, Kirimetiya, Galamuna.

Plaintiff-Appellant.

Vs.

H.G. Gnanawathie,
No. 245, Co- operative Junction,
Kirimetiya, Galamuna.

Defendant-Respondent.

AND NOW BETWEEN,

H.G. Gnanawathie,
No. 245, Co- operative Junction,
Kirimetiya, Galamuna.

Defendant-Respondent-Appellant

Vs.

Hennakatchi Gedara Rasika Kumara
Prematilaka Bandara.
No. 576, Kirimetiya,
Galamuna.

Plaintiff-Appellant-Respondent

BEFORE : **PRASANNA JAYAWARDENA, PC, J.**
P. PADMAN SURASENA, J. and
S. THURAIRAJA, PC, J.

COUNSEL : H. Withanachchi for the Defendant-Respondent- Appellant.
Lal Wijenayake for the Plaintiff- Appellant- Respondent.

ARGUED ON : 26th February 2019.

WRITTEN SUBMISSIONS: Plaintiff-Appellant-Respondent on 19th March 2019 and
28th June 2018.

Defendant- Respondent-Appellant on 06th May 2019 and
18th March 2013.

DECIDED ON : 1st of November 2019.

S. THURAIRAJA, PC, J.

The Defendant-Respondent –Appellant (hereinafter referred to as the “Appellant”),
Hennakatchi Gedara Gnanawathie filed this appeal and leave was granted on the 1st
of February 2013, on the following questions of law contained in paragraph 15(i), (v)
and (vi) of the Petition dated 24th April 2012 as amended by petition dated 23rd June
2012. For the purpose of easy reference they are reproduced as below.

- (i) *Was the Civil Appellate High Court in error by not appreciating the failure of the Respondent to discharge the burden of establishing his title to the land in dispute?*
- (v) *Did the High Court err in law, by disregarding the evidence led on behalf of the Petitioner to the effect that the impugned document (P1) relied upon by the Respondent had not been issued in compliance with the requirements of the law under the Land Development Ordinance?*
- (vi) *Were the learned High Court Judges misdirected themselves on the question of the validity of the purported insertion of the name of the Respondents as the grantee of the land in suit in "P1" in violation of the provisions of the Land Development Ordinance?*

In addition to the above Respondent suggested the following questions of law.

"Is the Defendant- Respondent-Appellant is entitled to seek possession of the subject matter of this case without an order nullifying the permit marked as P1"

Both Counsel have filed their written submissions and the matter was argued before this bench and both Counsel have filed additional written submissions.

According to the facts of this case, Hennakatchi Gedara Kiribanda (hereinafter referred to as the "original Grantee") was given a State Grant in respect of a paddy land bearing No. ෧෧/෧ 1436 dated 26/01/1982 containing in extent 4A- 0R- 23P under Section 19(6) to be read with Section 19(4) of the Land Development Ordinance. Thereafter Original Grantee namely Hennakatchi Gedara Kiribanda passed away intestate in 1998 without nominating a successor to the land. His wife Meragammana Gedara Heenamma was given life interest over the said land. The deceased Hennakatchi Gedara Kiribanda had one son and ten daughters. Grandson, Hennakatchi Gedara Rasika Kumara Prematilaka Bandara (son of the sole son of the

deceased) claimed permit to the said land from the State. After an inquiry, upon the death of the said Kiribanda, by letter of the Divisional Secretary of Lankapura bearing reference No.NCP/LP/LD/෧෧/722 the Plaintiff-Appellant-Respondent, Hennakachchi Gedara Rasika Kumara (hereinafter referred to as the "Respondent") became the permit holder/ successor to the said paddy land.

Respondent claimed that, the Appellant, H.G. Gnanawathie (a daughter of the original grantee) at the material time to this action, without leave and licence of the Respondent, was in forcible possession in respect of the said paddy land standing to the North of the entire land. The Respondent filed an action at the District Court of Polonnaruwa and asked for a declaration that,

- i. the Respondent was the Grant Holder and/or owner of the land described in the First Schedule to the Plaint,
- ii. ejectment of the appellant and the persons holding under her from the land described in the Second Schedule to the Plaint and the delivery of undisturbed possession to the Respondent,
- iii. damages in a sum of Rs. 150/- per season from June 2006.

The Respondent in his Plaint dated 16/11/2006 had averred inter alia as follows.

- i. That under the Land Development Ordinance Grant bearing No. ෧෧/෧ 1436 dated 26/01/1982 was issued in favour of the Hennakachchi Gedara Kiribanda in respect of the paddy land containing in extent 04A-00R-23P and morefully described in the First Schedule to the Plaint.
- ii. That upon the death of the said Kiribanda, by letter of DivisionalSecretary of Lankapura bearing reference No. NCP/ LP/ LD/ ෧෧/722 the Respondent became owner of the said land.

- iii. That the Appellant at the time material to this action without the leave and licence of the Respondent was in forcible possession in respect of a portion of the said land standing to the North of the entire land and described in the Second Schedule to the Plaint.
- iv. That Proceedings were held in the Hingurakgoda Primary Court under No.16910 in relation to the dispute between the Respondent's mother and the Appellant in respect of the subject matter in the instant action described in the Second Schedule to the Plaint.
- v. That the Appellant had failed to respond to the notice issued to the Appellant demanding her to quit the land in dispute.

The Appellant filed her answer dated 25/02/2008 stating inter alia as follows.

- i. That the Appellant with leave and licence of her father came to the possession of the land referred to in the Grant bearing No. ෧෧/෧ 1436 during the life of her father and the Appellant allowed the Respondent's father to possess 2 Acres of the land.
- ii. That the father had eleven children and the Respondent's son was the sole male child of her family.
- iii. That the Appellant was restored to the possession of the land in dispute by order dated 04/01/2006 in the proceedings held in Hingurakgoda Primary Court between the Appellant and the Respondent's mother.
- iv. That the life interest in the Grant bearing No. ෧෧/෧ 1436 was passed to her mother, Meeragammana Gedara Heenamma after the death of her father and the said Heenamma had not relinquished her life interest to the property in suit.
- v. That upon the delivery of the order in case No.16910 in favour of the Appellant, several inquiries were held before the Divisional Secretary of

Lankapura and the Appellant objected to the change of the original title in respect of the Grant bearing No. ෧෧/෧ 1436.

- vi. That the Divisional Secretatry of Lankapura had not complied with the provisions of the Land Development Ordinance at the time of the issue of document marked “෧෧ 1” and hence the said document was null and void.
- vii. That the Appellant had made improvements to the value of Rs. 200,000/- to the land referred to in the Grant bearing No. ෧෧/෧ 1436.

After the trial learned District Judge delivered the judgment on 23/07/2010 in favour of the Appellant and dismissed the Respondent’s action. Learned District Judge, among other grounds, based her decision on the following grounds.

- i. That as per the evidence, all the parties were not present at the inquiry held in order to transfer the right to the Respondent and a statement had not been recorded from the Appellant at the said inquiry.
- ii. That the document marked “෧෧ 1” had no validity in law by reason that it was not issued in compliance with the provisions of the Land Development Ordinance.
- iii. That the Respondent had failed to establish his title based on a valid document issued in terms of the provisions of the Land Development Ordinance.

Being aggrieved with the said judgment Respondent appealed to the Provincial High Court of North Central Province (hereinafter referred to as the ‘High Court’). Thereafter High Court delivered the judgment on 13/03/2012 and allowed the appeal. Learned High Court Judges among other things based their decision on the following grounds;

- i. That the Respondent had established his title upon documents produced and the evidence led at the trial and hence action should be decided in favour of the Respondent
- ii. That the Appellant had failed to challenge the evidence to the effect that, Heenamma had transferred her rights to the land in dispute to the Respondent.
- iii. That the Appellant could not challenge the validity in relation to the transfer of title to the Respondent in the District Court and the Appellant could have challenged the validity thereof only by way of writ in a competent court namely Court of Appeal.

Being aggrieved with the said, the Appellant had filed this appeal before this Court.

I have carefully considered the material before the District Court and the learned Judges of the Provincial High Court, I observed that, the Divisional Secretary who issued the said permit and his officials had given evidence before the Learned District Judge (appear at pages 60-109 of the appeal brief). There it was stated and evidenced that, all the relevant parties namely, the Appellant and the other daughters were summoned for an inquiry and relevant parties did not object and gave their consent to grant the leave and licence to the Respondent. Being convinced with the materials before him the Divisional Secretary using his authority had decided that the Respondent is entitled to succeed under Section 72 of the Land Development Ordinance which is read with Rule 1 of the third Schedule of the Ordinance as amended.

Third schedule to the Section 72 reproduced as follows;

"72. If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this

Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual sum by virtue of the provisions of subsection (3) of section 19A or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.

1. (a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.

(b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.

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| <i>i. Sons.</i> | <i>vii. Brothers.</i> |
| <i>ii. Daughters</i> | <i>viii. Sisters.</i> |
| <i>iii. Grandson</i> | <i>ix. Uncles.</i> |
| <i>iv. Granddaughters.</i> | <i>x. Aunts.</i> |
| <i>v. Father.</i> | <i>xi. Nephews.</i> |
| <i>vi. Mother.</i> | <i>xii. Nieces.</i> |

In this rule, "relative" means a relative by blood and not by marriage."

Respondent has proved before Court on balance of probability that he is the lawful successor to the disputed land.

Under the Declaration of Title action a person is expected to submit a title if available. There, the Respondent had submitted the letter of Grant, granted by the Divisional Secretary of Lankapura to him.

In **Piyasena vs. Wijesinghe and other (2002) SLR Vol 2, page 242** it was held that,

"Issuance of a grant changes the status of a permit holder to that of a 'owner' who derives title to the land in question. The owner - includes the permit holder who has paid all sums which he is required to pay. The satisfaction of paying all sums and complying with all conditions entitles that permit holder to a grant which 'shall' be issued in terms of s. 19 (4)."

In **Bandaranayake vs. Karunawathie (2003) SLR Vol 3 page 295** it was held that,

"Permit-holder under the Land Development Ordinance enjoys sufficient title to enable him to maintain a vindicatory action against a trespasser."

It is settled law that in Declaration of title actions the plaintiff must prove his title. In establishing his title the plaintiff cannot rely on the weakness of the defendant's title. In this appeal I have to consider whether the plaintiff has established his title or not and I am of the view that, Respondent had established his title.

The Judgment of the learned District Judge questioning the validity of the succession of the plaintiff to this land has no acceptable basis. The learned Judge of the High Court correctly held that, the learned Judge of the District Court has erred. Hence, I answer the first question of law negatively.

The question of law raised by the Respondent namely, whether "the Defendant-Respondent is entitled to seek possession of the subject matter of this case without

an order nullifying the permit marked as P1", will not arise on considering the above circumstances. Hence, I find this question need not be answered.

Considering all facts and circumstances I find that, all these questions of law raised before this Court cannot be sustained hence all are answered in the negative. I find there is no merit in this appeal. Therefore, I dismiss the appeal with costs and I fix the cost at Rs. 25,000/.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

PRASANNA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT