

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

1. Vithanage Dona Sreema Sarani
Swarnalatha Perera,
No. 10/B 105/10,
Mattegoda Niwasa Housing
Scheme,
Polgasowita.
2. Violet Gunawickrema,
“Dimuthu”, Palatuwa,
Malimbada.
Plaintiffs

SC APPEAL NO: SC/APPEAL/53/2016

SC LA NO: SC/HCCA/LA/519/2014

HCCA NO: WP/HCCA/COLOMBO/27/2008/LA

DC COLOMBO NO: 20939/L

Vs.

1. Kamalawathie Munasinghe alias
M.A. Kamalawathie,
2. W.D. Padmasiri alias Hemasiri
Perera,
Both of No. C-B 12/14,
Ranpokunagama,
Nittambuwa.
3. Sithy Raleena Siddique,
No. 146/18,
Aramaya Road,
Dematagoda.
Defendants

AND BETWEEN

1. Kamalawathie Munasinghe alias
M.A. Kamalawathie, (deceased)
- 1A. W.D. Padmasiri alias Hemasiri
Perera,
No. C-B 12/14,
Ranpokunagama,
Nittambuwa.
2. W.D. Padmasiri alias Hemasiri
Perera,
No. C-B 12/14,
Ranpokunagama,
Nittambuwa.
3. Sithy Raleena Siddique,
No. 114, Kollonnawa Road,
Dematagoda.

Defendant-Petitioners

Vs.

1. Vithanage Dona Sreema Sarani
Swarnalatha Perera,
No. 10/B 105/10,
Mattegoda Housing Scheme,
Polgasowita.
2. Violet Gunawickrema,
“Dimuthu”,
Palatuwa,
Malimbada.

Plaintiff-Respondents

AND NOW BETWEEN

1. Kamalawathie Munasinghe alias
M.A. Kamalawathie,
(deceased)
 - 1A. W.D. Padmasiri alias Hemasiri
Perera,
No. C-B 12/14,
Ranpokunagama,
Nittambuwa.
 2. W.D. Padmasiri alias Hemasiri
Perera,
No. C-B 12/14,
Ranpokunagama,
Nittambuwa.
 3. Sithy Raleena Siddique,
No. 114,
Kollonnawa Road,
Dematagoda.
- Defendant-Petitioner-Appellants

Vs.

1. Vithanage Dona Sreema Sarani
Swarnalatha Perera,
No. 10/B 105/10,
Mattegoda Housing Scheme,
Polgasowita.
 2. Violet Gunawickrema,
“Dimuthu”,
Palatuwa,
Malimbada.
- Plaintiff-Respondent-Respondents

Before: P. Padman Surasena, J.
Yasantha Kodagoda, P.C., J.
Mahinda Samayawardhena, J.

Counsel: Murshid Maharooof with Shoaib Ahamed for the
Substituted 1A and 2nd Defendant-Petitioner-
Appellants.
Ranjan Suwandaradne, P.C., with Anil
Rajakaruna for the Plaintiff-Respondent-
Respondents.

Argued on: 29.04.2021

Written submissions:
by the 1A, 2nd and 3rd Defendant-Petitioner-
Appellants on 11.05.2021.
by the Plaintiff-Respondent-Respondents on
01.02.2017.

Decided on: 10.06.2021

Mahinda Samayawardhena, J.

The two Plaintiffs filed this action against the three Defendants seeking a declaration that the land in suit is being held in trust by the Defendants for the two Plaintiffs and the two minor children of the 2nd Plaintiff. At the trial, the Defendants raised a preliminary question of law to the maintainability of the action on the premise that the alleged cause of action of the Plaintiffs is prescribed in law. The District Court held that the cause of action is not prescribed. It also stated in passing that in any event, prescription does not run against the two minors. The case was refixed for further trial.

On appeal, the High Court held that the action against the two Plaintiffs is prescribed but not against the two minors, and therefore the Order of the District Court is correct.

The Plaintiffs did not appeal against this Judgment but the Defendants did. This Court granted leave to appeal on the question whether the High Court erred in law when it decided to allow the action to proceed on the basis that prescription does not run against the two minors when the alleged minors are not parties to the case.

The Plaintiffs have not made the minors parties to the action notwithstanding they seek Judgment in favour of themselves and the minors. The Court knows nothing about the two alleged minors – not even their names, gender or age. Without any information, how can the Court pronounce Judgment in favour or against the minors?

When the High Court decided that the action of the two Plaintiffs is prescribed and the two Plaintiffs accepted that decision by not appealing against it, the Plaintiffs have no *locus standi* to maintain this action. After the above finding, there is no live action.

If the Plaintiffs want to maintain the action on behalf of the alleged two minors, there is a special procedure laid down in the Civil Procedure Code to follow. No such procedure was followed by the Plaintiffs in this case.

According to section 476 of the Civil Procedure Code, every action by a minor shall be instituted in the name of the minor by an adult person who in such action shall be designated in the plaint as the next friend of the minor. Section 477 of the Civil Procedure Code is also to similar effect. Such particulars shall appear in the caption of the pleadings.

In this case, the minors have not been named as Plaintiffs nor are they represented in Court through a next friend.

It shall be noted that any adult person cannot file a case on behalf of a minor with or without declaring himself the next friend. The appointment of next friend shall be made by the Court. The legislature in its wisdom has introduced such a procedure to safeguard the interests of minors.

According to section 481 of the Civil Procedure Code, a person of sound mind and full age is eligible to be appointed next friend of a minor, if his interest is not adverse to that of the minor and he is not a Defendant in the action. Such appointment has to be made on application by way of summary procedure supported by affidavit showing the required qualifications. The Defendant shall be made Respondent to the application, and the minor shall appear in Court when the application is made unless prevented by good cause.

For the purpose of disposing of this appeal, there is no necessity to analyse all the provisions in law with regard to next friends, but suffice it to say that the Civil Procedure Code *inter alia* provides for the removal of next friends.

The brief outline above goes to show that unless there is a formal appointment made by Court, a person cannot represent a minor in Court in the guise of safeguarding the interests of the minor. What I stated above is applicable when an action is filed by a minor.

The same is true when an action is filed against a minor, in which event the Court shall, under section 479 of the Civil Procedure Code, appoint an adult as guardian to defend the action on behalf of the minor.

The High Court was in error when it held that the Plaintiffs can continue with the action (despite their action being prescribed) as the reliefs have also been prayed on behalf of the minors. I answer the question of law in respect of which leave was granted in the affirmative.

The Judgment of the High Court insofar as it allowed the Plaintiffs to continue with the action on behalf of the minors is set aside and the appeal is allowed. The Plaintiffs' action in the District Court shall stand dismissed. The Defendants are entitled to costs in all three Courts.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court