

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

*In the matter of an appeal in terms of section 5 C of  
the High Court of the Provinces (Special Provisions)  
Act No. 19 of 1990 as amended by Act No. 54 of  
2006.*

SC Appeal 53/2021

SC/HCCA/LA Appln No : 106/2019

High Court Case No : WP/HCCA/Negombo/10/2014/LA

[Formerly WP/HCCA/Gampaha/49/2014/LA]

District Court of Negombo Case No: 7566/L

1. K. M. Hema Celsia Fernando,  
No. 48, St Joseph's Street,  
Negombo.
2. N. H. Lourds Sulani Jayasinghe,  
No. 48/1, St Joseph's Street,  
Negombo.

**PLAINTIFFS.**

**Vs.**

K. Madhuri Anuradha Rodrigo,  
No. 48/2, St Joseph's Street,  
Negombo.

**DEFENDANT.**

**AND BETWEEN**

1. K. M. Hema Celsia Fernando,  
No. 48, St Joseph's Street,

Negombo.

2. N. H. Lourds Sulani Jayasinghe,  
No. 48/1, St Joseph's Street,  
Negombo.

**PLAINTIFF - APPELLANTS.**

**Vs.**

K. Madhuri Anuradha Rodrigo,  
No. 48/2, St Joseph's Street,  
Negombo.

**DEFENDANT - RESPONDENT.**

**AND NOW BETWEEN**

K. Madhuri Anuradha Rodrigo,  
No. 48/2, St Joseph's Street,  
Negombo.

**DEFENDANT - RESPONDENT - APPELLANT.**

**Vs.**

1. K. M. Hema Celsia Fernando,  
No. 48, St Joseph's Street,  
Negombo.
2. N. H. Lourds Sulani Jayasinghe,  
No. 48/1, St Joseph's Street,  
Negombo.

**PLAINTIFF - APPELLANT - RESPONDENTS.**

Before:

**P. PADMAN SURASENA J**

**ACHALA WENGAPPULI J**

**MAHINDA SAMAYAWARDHENA J**

Counsel: Aravinda Athurupana for the Defendant-Respondent-Appellant.

Sudarshani Cooray for the Plaintiff-Appellant-Respondents.

Argued on: 04 - 08 - 2021

Decided on: 16 - 11 -2021

**P. Padman Surasena J**

The Plaintiff - Appellant - Respondents (hereinafter referred to as the Plaintiffs) filed the plaint dated 17-04-2012 in the District Court of Negombo praying inter alia for a declaration that the Defendant-Respondent-Appellant (hereinafter referred to as the Defendant) is not entitled to use as a right of way, Lot 5 and Lot 4 depicted in Plan No. 1177 dated 13-04-1982, prepared by R. I. Fernando Licensed Surveyor (hereinafter referred to as the Plan No. 1177). The said Lots are more fully described respectively in the 5<sup>th</sup> and 6<sup>th</sup> schedules to the plaint. According to the Plan No. 1177, the said Lots 5 and 4 jointly make a roadway to gives access to Lots 2 and 3 depicted in the same Plan, from St. Joseph's Street.

The 1<sup>st</sup> Plaintiff occupies Lot 1; the 2<sup>nd</sup> Plaintiff occupies Lot 2; and the Defendant occupies Lot 3 depicted in the said Plan. The said plan is a partition plan (surveyed and partitioned on 13-04-1982) prepared to partition then existed larger land called Beligahawatta amongst the three co-owners (siblings) at that time. The said three co-owners were firstly, Kurukulasuriya Maria Hema Celsia Fernando (the 1<sup>st</sup> Plaintiff), secondly, Kurukulasuriya Philip Antony Roshan Fernando and thirdly, Kurukulasuriya Micheal Joseph Rohan Fernando. The said three co-owners are the children of Kurukulasuriya Micheal Fester Fernando (father) and Kurukulasuriya Mary Meverin Florence Fernando (mother) who had owned the said larger land by virtue of deed No. 5121 attested on 02-05-1956 by P.D.F.de Croos Notary Public.

After the partition plan No. 1177 was prepared, the three co-owners executed the Deed of Partition bearing No. 404 dated 19-02-1983, attested by M John Andrew Fabian Tissera Notary Public. According to the plaint, by virtue of the said Deed of Partition No. 404, the 1<sup>st</sup> Plaintiff became the owner of Lot 1; Kurukulasuriya Philip Antony Roshan Fernando became the owner of Lot No. 2; and Kurukulasuriya Micheal Joseph Rohan Fernando became the owner of Lot No. 3.

Thereafter, Kurukulasuriya Philip Antony Roshan Fernando by virtue of deed No, 42 attested on 16-08-1994 by G. A. L. Palitha Dammika Silva Notary Public, transferred Lot 2, to the 1<sup>st</sup> Plaintiff.

Thereafter the 1<sup>st</sup> Plaintiff transferred the said Lot 2, to her daughter (the 2<sup>nd</sup> Plaintiff) by deed No. 2875 attested on 17-05-2005 by M. J. Basil A Tissera Notary Public.

Kurukulasuriya Micheal Joseph Rohan Fernando Transferred Lot 3 to Kaluarachchige Ignatious Loyola Rodrigo and Wimalawathie Sangaraja by deed No. 1699 attested on 23-03-1993 by M. J. Basil A Tissera Notary Public. Thereafter, said Kaluarachchige Ignatious Loyola Rodrigo transferred his interest in Lot No. 3 to Wimalawathie Sangaraja by deed No. 1919 attested on 06-12-1994 by M.J. Basil A Tissera Notary Public which made said Wimalawathie Sangaraja the sole owner of said Lot 3. Thereafter, said Wimalawathie Sangaraja transferred Lot 3 to the Defendant by virtue of deed No. 87279 attested on 18-01-2007 by Jayasekara Abeyruwan Notary Public making the Defendant the present owner of Lot 3.<sup>1</sup>

The said sub division was done in such a way that only the Lot 1 would have a road frontage from St. Joseph's Street, and the remaining two blocks (Lots 2 and 3) would get access from St. Joseph's Street through Lot 5 and Lot 4 reserved as a road way in the Plan No. 1177 at the time of the said sub division. Thus, when coming from St. Joseph's Street, the first block of land one would meet, would be Lot 1; the second block would be Lot 2; and the last block would be Lot 3. The Defendant is the person who at the moment occupies the last block i.e., Lot 3. The above facts make it clear that both the Plaintiffs and the Defendant derive their respective titles from one and the same source.

While the case was pending in the District Court, the Plaintiffs filed the Petition dated 25-07-2013 supported by an affidavit,<sup>2</sup> praying for an enjoining order in the first instance and an interim injunction, to prevent the Defendant or her agents or servants from using or obstructing the aforesaid roadway. The Plaintiffs in their Petition have prayed inter alia;

- a) *for an enjoining order in the first place, preventing the Defendant from using the land strip Lot 4 depicted in Plan No. 1177 as a right of way; preventing the Defendant from bringing any vehicle on to the said land strip; preventing the Defendant from placing or storing any other object on the said land strip;*
- b) *for an interim injunction thereafter, preventing the Defendant from using the land strip Lot 4 depicted in Plan No. 1177 as a right of way; preventing the Defendant from*

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<sup>1</sup> As has been pointed out by the learned District Judge at page 3 of his order, there appear to be some confusion in mentioning the Lot No.'s in the plaint.

<sup>2</sup> The date of swearing the affidavit has not been inserted (only the month & the year has been inserted).

*bringing any vehicle on to the said land strip; preventing the Defendant from placing or storing any other object on the said land strip;*

Strangely, the Plaintiffs for the reasons best known to them, had not sought/prayed to restrain the Defendant from using Lot 5 as a road. The learned District Judge having granted the enjoining order as prayed for, subsequently by his order dated 19-09-2014 refused to grant the interim order, and proceeded to dissolve the enjoining order subject to a cost of Rs. 17,500.

On an appeal, the Provincial High Court by its judgment dated 08-02-2019, had set aside the order of the learned District Judge and directed that the interim injunction be issued; hence the Defendant has preferred this appeal.

Upon the Appellant supporting the application for leave to appeal relevant to this appeal, this Court by its order dated 16-03-2021, had granted leave to appeal on three questions of law,<sup>3</sup> which are to the following effect;

- a. whether the High Court has failed to appreciate that the order made by the District court refusing to grant interim injunction had been made upon a detailed analysis of the principles of law and the matters adduced in respect of establishing a prima facie fair chance of winning the action, the balance of convenience, and the equitable considerations;
- b. whether the High Court had come to its conclusions without any evaluation, analysis or examination of the findings of the District court and without making its determination as to those findings of the District court;
- c. whether the High Court has failed to appreciate that there was no peril of any damage being caused to the roofs of the buildings of the Plaintiffs by the mere user of the said access path by the Defendant.

At the outset, I must mention that I find it difficult to follow and understand any rationale in the judgment of the learned High Court Judge. I also have to say that no lawful reason for setting aside the learned District Judge's order, is discernible from the judgment of the learned High Court Judge. However, if at all there is some reason, that must be found in the following two paragraphs because only those two paragraphs, have indicated something resembling such a reason.

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<sup>3</sup> Questions of law set out in paragraph 12 (ii), (iii), (iv) of the petition dated 21-03-2019.

*"In this case, even if Lots No. 4 and 5 are not permitted for the Defendant to use, it does not prejudice her as she has another road. This entire case is to determine whether Defendants have the right for Lots No. 4 and 5 that will be the final decision of the case. Therefore, that will be a part of the final decision. Until then, if Lots No. 4 and 5 are permitted to be used by the Defendant, there will be an irreparable loss to the Plaintiff because they are already getting a final remedy.*

*According to the Plaint, it might damage to the roofs of buildings of the Plaintiffs. Therefore, it is best to maintain the status quo of granting a permanent injunction until the final determination of the case."*

Although the Plaintiffs had only sought in their petition nothing more than an interim injunction, the learned Provincial High Court Judge (according to the second paragraph above), had granted a permanent injunction. However, in view of the qualification "*until the final determination of the case*" inserted soon thereafter, I would think that it is an interim injunction and hence would not proceed any further to discuss about that lapse in the Provincial High Court's judgment. Nevertheless, suffice it to say that the above lapse taken along with the illogical reasoning would still indicate the diligence with which the learned Provincial High Court Judge had dealt with this case.

The above two paragraphs of the judgment of the Provincial High Court indicates the followings as reasons.

- i. *'Preventing the Defendant from using Lots No. 4 and 5 does not prejudice her as she has another road';*
- ii. *'Determination whether the Defendant has the right for Lots No. 4 and 5 will be the final decision of the case';*
- iii. *'If Lots No. 4 and 5 are permitted to be used by the Defendant, there will be an irreparable loss to the Plaintiff because they are already getting a final remedy';*
- iv. *'According to the Plaint, it might damage the roofs of buildings of the Plaintiffs'.*

In the course of the argument, the learned counsel for the Defendant complained to this Court that the Plaintiffs had never complained to the District Court in their pleadings that there is a danger of damaging the roofs of the buildings of the Plaintiffs by the Defendant's use of the disputed roadway. Upon the aforesaid complaint, this Court requested the learned counsel for the Plaintiffs to point out any averment to that effect, in the pleadings of the Plaintiffs. However,

the learned counsel for the Plaintiffs was unable to point out any such averment in the affidavit filed by the Plaintiffs along with the application for the interim injunction. Thus, the assertion by the learned High Court Judge that the usage of the disputed roadway by the Defendant, would damage the roofs of the buildings of the Plaintiffs, is not supported by any evidence and hence is a perverse conclusion. It is not a part of the case advanced by the Plaintiffs as no such averment is found in the Petition which prayed for the interim injunction. Thus, I see no factual or legal basis for the fourth reason mentioned above.

Neither party had moved Court at this stage to finally determine whether the Defendant has a right for Lots No. 4 and 5. Indeed neither the learned District Judge nor the learned High Court Judge has even attempted to decide that. Thus, the second reason given by the learned High Court Judge is a nonexistent reason.

As regards the first reason above, the learned High Court Judge appears to have been satisfied with the making of such a bare statement without any reference to any fact or any evidence as against the evaluation of the evidence adduced in the inquiry by the learned District Judge which has been set out in the District Court order. Thus, the assertion that the 'prevention of the use of Lots No.4 and 5 does not prejudice the Defendant as she has another road', is a misconception by the learned High Court Judge, which is not supported by evidence.

The third reason above, is a possibility of causing an irreparable loss to the Plaintiff. However, no one is able to ascertain what that irreparable loss would be, or how such a loss could be caused to the Plaintiffs, by the mere user of the disputed roadway by the Defendant.

The above observations would be sufficient for me to re-affirm my already mentioned view that there are no lawful reasons for setting aside the learned District Judge's order, discernible from the judgment of the learned High Court Judge. In my view that is sufficient to set aside the judgment of the Provincial High Court. However, I am mindful that the correctness of the refusal of the interim injunction by the learned District Judge would be another important consideration that should be addressed.

Before I proceed to consider the learned District Judge's order, let me glance through the law relating to Injunctions, focusing in particular on Interim Injunctions. Interim injunction is an equitable remedy and is not available as of right, such injunction will be granted at the discretion of the court. The effect and the purpose of such injunction is to preserve the status quo of the subject matter of the action until the final judgment is delivered. The Civil Procedure Code has

dedicated its Chapter XLVIII for the procedure relating to applications for injunctions. Section 662 is the first section in that Chapter which is as follows.

*662. Every application for an injunction for any of the purposes mentioned in section 54 of the Judicature Act, 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.*

Section 662 is followed by few other sections in that Chapter and they form the procedure to be followed when an application for an injunction (for any of the purposes mentioned in section 54 of the Judicature Act), is made. As has been clearly stated in section 662, the 'purposes' for which such injunction may be obtained are set out in section 54 of the Judicature Act. The corollary of the above is that a Court can only grant such an injunction for the purposes set out in section 54 of the Judicature Act. This means that it is this section which vests Courts with jurisdiction to grant such injunctions.

In the case of Alubhay Vs Mohideen,<sup>4</sup> a case relating to an issuance of an interim injunction, De Sampayo J stated that it was section 87 of the Courts Ordinance No. 1 of 1889 which creates the jurisdiction of the Court to grant injunctions, and one must look to the Civil Procedure Code for the relevant procedure. Looking back at the recent legal history of the country, one could observe that the Courts Ordinance No. 1 of 1889 was replaced by the Administration of Justice Law No. 44 of 1973,<sup>5</sup> and the latter was in turn replaced by the Judicature Act No. 2 of 1978. This is why in Felix Dias Bandaranayake Vs. State Film Corporation and another,<sup>6</sup> Justice Soza stated that 'generally speaking section 54 of the Judicature Act No. 2 of 1978 is the jurisdictional section while sections 662, 664 and 666 of the Civil Procedure Code set out the procedure' for granting of injunctions. This concept has been long followed by our Courts. Thus, section 54 of the Judicature Act states the substantive law relating to injunctions in the following manner.

Section 54:

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

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<sup>4</sup> 18 NLR 486.

<sup>5</sup> Jurisdiction to grant interim injunctions was in section 42 therein.

<sup>6</sup> 1981 (2) Sri L. R. 287 at page 292.

*(a) from the plaint 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 plaintiffs 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.*

*(2) For the purposes of this section, any defendant who shall have by his answer set up any claim in reconvention and shall thereupon demand an affirmative judgment against the plaintiff shall be deemed a plaintiff, and shall have the same right to an injunction as he would have in an action brought by him against the plaintiff for the cause of action stated in the claim in reconvention, and the plaintiff shall be deemed the defendant and the claim in reconvention the plaint.*

*(3) Such injunctions may be granted at any time after the commencement of the action and before final judgment after notice to the defendant, where the object of granting an injunction will be defeated by delay, the court may enjoin the defendant until the hearing and decision of the application for an injunction but for periods not exceeding fourteen days at a time.*

The above section shows that a court may grant an injunction for one or more of the purposes set out in section 54 (1) under three limbs namely (a), (b), (c). While the aforesaid three limbs [(a), (b), (c)] set out the purposes for which injunctions may be granted, limbs (i), (ii) and (iii) appearing at the end of section 54 (1), set out what a Court can restrain by the issuance of an injunction. It is not accidentally that the same wordings found in the aforesaid three limbs [(a),

(b), (c)] have been incorporated in verbatim, in limbs (i), (ii) and (iii) appearing at the end of that section. This is why Justice Soza stated the following, in Felix Dias Bandaranayake case,<sup>7</sup>

*"It is necessary first of all to have a clear picture of the legal principles that are applicable to the question before us. The jurisdictional provisions have already been noted. This is an action instituted in the District Court and the application for an interim injunction was made at the time the plaint was filed. So section 54(1) (a) and (i) of the Judicature Act No. 2 of 1978 and sections 662 and 664 of the Civil Procedure Code apply. If it appears from the plaint that the plaintiff demands and is entitled to a judgment against the defendants, restraining the commission of an act or nuisance, which would produce injury to him the Court may, on its appearing by the affidavit of the plaintiff or any other person (and that would include the defendants as I have already pointed out) that sufficient grounds exist therefor, grant an interim injunction restraining the defendants from committing any such act or nuisance. The plaintiff must therefore have a clear legal right which is being infringed or about to be infringed. ..."*

The law, namely section 662 of the Civil Procedure Code as well as section 54 of the Judicature Act, make a clear distinction between an instance where an injunction has been prayed for in the plaint itself, and an instance where an injunction is sought in a petition filed subsequent to filing of the plaint. This is evident from the phrase *"Every application for an injunction for any of the purposes mentioned in section 54 of the Judicature Act, except in cases where an injunction is prayed for in a plaint in any action, shall be by petition..."* in section 662 of the Civil Procedure Code and the following phrase in section 54 of the Judicature Act;

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

*(a) **from the plaint** that the plaintiff demands and is entitled to a judgment against the defendant,.... (Emphasis is mine)*

Thus, section 54(1)(a) applies to an instance where an injunction has been prayed for in the plaint itself. What an injunction issued in such a situation can restrain, is what has been stated in (i) appearing at the end of that section.

As the injunction in the instant case, was sought at a later stage after filing the plaint, it would be section 54(1)(b) and/or 54(1)(c) of the Judicature Act which would apply. This is also

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<sup>7</sup> Supra at page 301.

confirmed by the fact that both those limbs have the phrase '*during the pendency of the action*' which denotes that both the '*act or nuisance*' referred to in section 54(1)(b) and the '*removal or disposal of the defendant's property*' referred to in section 54(1)(c) are situations which must have arisen during the pendency of the action.

The wording in limb 54(1)(c) namely "*threatens or is about to*" clearly indicates that section 54(1)(c) caters to actions which the defendant intends taking in future. Further, section 54(1)(c) refers to a situation where the defendant '*threatens or is about to remove or dispose of his property with intent to defraud the plaintiff*'. While the Plaintiffs in the instant case have not complained of anything of that sort happening, the requirement "*with intent to defraud the plaintiff*" is also absent in this case. The Plaintiffs have sought an injunction to restrain the Defendant from using the disputed roadway and that would not be an instance falling under section 54(1)(c) of the Judicature Act. Therefore, that limb has no application to the instant case. Thus, what needs to be considered is whether the Plaintiffs in the instant case have sought an injunction for a purpose which falls under section 54(1)(b) of the Judicature Act.

In relation to the above, the relevant catch phrase in section 54(1)(b) would be '*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*'. As per this section, a plaintiff must satisfy two requirements; firstly, an occurrence of 'an act or nuisance in violation of the Plaintiff's rights in respect of the subject matter of the action'; and secondly the occurrence of the said act or nuisance would 'tend to render the judgment ineffectual'.

Although section 54 of the Judicature Act has given a wide discretion to courts to issue injunctions whenever it is just to do so, over the years our courts have developed three primary grounds or parameters or guidelines to guide themselves when deciding the question whether it should proceed to grant an interim injunction against a defendant. Those grounds could be summarized in to a brief form to read as follows.

- 1) Has the applicant made out a strong prima facie case?
- 2) Whether the balance of convenience is in his favour?
- 3) Do equitable considerations favour the grant of an injunction?

Let me pause there for a moment and turn back again to the case of Felix Dias Bandaranayake Vs. State Film Corporation and another.<sup>8</sup> His Lordship Soza J in that case, has laid down the steps

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<sup>8</sup> Supra at page 302.

the Court should follow in a chronological order. As the first step His Lordship has stated in that case thus,

*"In Sri Lanka we start off with a prima facie case. That is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the plaintiff should be certain to win. It is sufficient if the probabilities are he will win. Where however the plaintiff has established a strong prima facie case that he has title to the legal right claimed by him but only an arguable case that the defendant has infringed it or is about to infringe it, the injunction should not be granted (Hubbard v Vosper).<sup>9</sup>"*

His Lordship Justice Soza in the same case states the 2<sup>nd</sup> step to be followed when deciding whether to grant an interim injunction in the following manner.

*"If a prima facie case has been made out, we go on and consider where the balance of convenience lies- Yakkaduwe Sri Pragnarama Thero v. The Minister of Education.<sup>10</sup> This is tested out by weighing the injury which the defendant will suffer if the injunction is granted and he should ultimately turn out to be the victor against the injury which the plaintiff will sustain if the injunction were refused and he should ultimately turn out to be the victor. The main factor here is the extent of the uncompensatable disadvantage or irreparable damage to either-party. As the object of issuing an interim injunction is to preserve the property in dispute in statu quo the injunction should not be refused if it will result in the plaintiff being cheated of his lawful rights or practically decide the case in the defendant's favour and thus make the plaintiff's eventual success in the suit if he achieves it a barren and worthless victory.- see **Bannerjee** (ibid) pp. 578, 579."<sup>11</sup>*

His Lordship Justice Soza in the same case has laid down a 3<sup>rd</sup> step also when deciding on the question of granting an interim injunction. It is in the following paragraph.

*"Lastly as the injunction is an equitable relief granted in the discretion of the Court, the conduct and dealings of the parties (Ceylon Hotels Corporation v Jayatunga)<sup>12</sup> and the circumstances of the case are relevant. Has the applicant come into Court with clean*

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<sup>9</sup> [1972] 1 All E. R. 1023, 1029.

<sup>10</sup> (1969) 71 N L R 506, 511.

<sup>11</sup> Supra at page 303.

<sup>12</sup> (1969) 74 N L R 443, 446.

hands? - see *Duchess of Argyll v Duke of Argyll*.<sup>13</sup> Has his conduct been such as to constitute acquiescence in the violation or infringement of his rights as the Court of Appeal in England found in *Monson v Tussauds Limited*<sup>14</sup> or waiver of his rights to the injunction?"<sup>15</sup>

In the case of Seelawathie Mallawa Vs. Millie Keerthiratne,<sup>16</sup> His Lordship Victor Perera J, too has adopted a similar view when he stated as follows.

*"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. .... Initially the plaintiff therefore needs only to satisfy the Court that there is a serious matter to be tried at the hearing. ..."*

In the case of D. S. Dissanayake Vs. Agricultural and Industrial Credit Corporation and others,<sup>17</sup> His Lordship Justice H N G Fernando stated the same principle which can be seen in the following paragraph.

*"The proper question for decision upon an application for an interim injunction is " whether there is a serious matter to be tried at the hearing " (*Jinadasa v. Weerasinghe*1[1 (1929) 31 N. L. R. 33.]). If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued."*

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<sup>13</sup> [1967] 1 Ch. 302, 331,332.

<sup>14</sup> [1894] 1 QB 671 (C.A.).

<sup>15</sup> Supra at page 303.

<sup>16</sup> 1982 Sri L. R. 384 at 388 & 389.

<sup>17</sup> (1962) 64 NLR 283.

In a more recent case, M N Kariyawasam Vs. N W Sujatha Janaki and two others,<sup>18</sup> Her Ladyship Justice Chandra Ekanayake too has endorsed the same views. Thus, our Courts have consistently adopted the above process in many cases.

Having stated as above, a brief account of the law pertaining to granting of injunctions, let me now consider whether the refusal of the interim injunction by the learned District Judge in the instant case, is justifiable.

Although the learned District Judge has given many reasons for the rejection of the interim injunction in his painstakingly written order, for the purpose of disposing this case it would suffice to observe the clear conclusion by the learned District Judge that the plaintiffs have failed to establish a prima facie case. In that regard, as the learned District Judge has stated in his order, the Plaintiffs are yet to obtain the title of the Lots No. 5 and 4 based on prescription. Hence the burden of proving undisturbed, uninterrupted possession adverse to the title of the Plaintiffs, over the said lots, under the laws governing prescription, is on the Plaintiffs. However, as pointed out by the learned District Judge, the Plaintiffs have failed to address some of the important elements of such proof. The Plaintiffs have failed to adduce any date or any time period during which they have commenced the required adverse possession.

I also cannot find fault with the conclusion of the learned District Judge to accept and act on the affidavits of the Grama Niladhari of the area, and the Postman who on a daily basis had used the relevant road, to access the house of the Defendant to execute his official duties. In addition to the above, the learned District Judge has given in his order, number of other reasons as well. I do not find any reason to disagree with them. However, I would not venture into an exercise of analyzing all those reasons as what I have mentioned above would be sufficient for me to agree with the learned District Judge that the plaintiffs have failed to establish a prima facie case which is sufficient for the disposal of this appeal.

Thus, in my view, the evidence adduced in the inquiry by both parties do not point to or do not justify a conclusion that the Plaintiffs have established a prima facie case. Therefore, the Plaintiff's case for an interim injunction clearly does not pass the first threshold of necessity to establish a prima facie case. Therefore, the consideration of the question of balance of convenience would really not arise. However, for the sake of completeness I would albeit briefly, mention few observations on that aspect as well.

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<sup>18</sup> 2013 B A L R Vol. XX page 77.

As has been mentioned above, the Plaintiffs' claim for the Lots 4 and 5 are purely based on prescription. This is because the Defendant's title and the Plaintiffs' title both emanate from the same source and therefore the Plaintiffs do not challenge the deed of the Defendant. Roadway over Lots 4 and 5 is the roadway giving access the Defendant's Lot from St. Joseph's Street. It is the same roadway which gives access to the 2<sup>nd</sup> Plaintiff's Lot according to the plan No. 1177. Thus, the balance of convenience by preventing just one party, namely the Defendant, from using the disputed roadway is definitely not in favour of the Plaintiffs. This is because both parties can continue to use the disputed roadway until a final determination is made by Court. I cannot see how a mere usage by one party, of a roadway which merely passes just two blocks of land (outside their boundaries) could cause an irreparable damage to the other parties. There is also no evidence to establish such a claim.

In any case, the usage by the Defendant, the disputed roadway, cannot be identified as an 'an act or nuisance, the commission or continuance of which would produce injury to the Plaintiff' which warrants granting an interim injunction under section 54(1)(a) of the Judicature Act. The said act cannot also be identified as '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', which warrants granting an interim injunction under section 54(1)(b) of the Judicature Act.

As has been observed above, not granting the interim injunction against the Defendant would not anyway prejudice the rights of the plaintiffs. The plaintiffs would also not suffer an irreparable damage as a result of the Defendant's use of the disputed roadway. The learned District Judge has given extensive reasons for refusing to grant an interim injunction prayed for, by the Plaintiffs. I cannot see any basis to deviate from the conclusions arrived at by the learned District Judge. The underlying principle of granting temporary relief is to maintain the status-quo until the final determination of the suit. In those circumstances, I hold that the learned District Judge's decision to refuse to grant an interim injunction in the instant case is a well-founded one. For the aforementioned reasons the plaintiffs are not entitled to the interim injunction sought.

I answer the questions of law as follows.

- a. the learned District Judge has correctly evaluated the material when concluding that the Plaintiffs have failed to establish a prima facie case with a fair chance of winning the action and that the balance of convenience has been tilted in favour of the Defendant. The

Provincial High Court has failed to correctly appreciate the reasons given by the learned District Judge for refusing to grant the interim injunction.

- b. The Provincial High Court had come to its conclusions without any evaluation, analysis or examination of the reasons set out in the order of the learned District Judge. The Provincial High Court also has failed to give any lawful reason for setting aside the order of the learned District Judge.
- c. The Provincial High Court has failed to appreciate that the Plaintiffs have not advanced any case on any possible damage being caused to the "roofs of the buildings of the Plaintiffs. In any case there is no such danger by the mere user of the said access path by the Defendant.

For the above reasons, I set aside the judgment of the Provincial High Court dated 08-02-2019 and proceed to restore and affirm the order dated 19-09-2014 pronounced by the learned District Judge refusing to grant the interim injunction and dissolving the enjoining order. I allow this appeal with costs payable by the Plaintiffs to the Defendant.

**JUDGE OF THE SUPREME COURT**

**ACHALA WENGAPPULI J**

I agree,

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA J**

I agree,

**JUDGE OF THE SUPREME COURT**