

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

**In the matter of an Appeal from a judgment
of the Civil Appellate High Court of the
Sabaragamuwa Province holden in Kegalle.**

WeligalleWedarallageDevarAshoka
Gunawardena of Weligalla Road,
Mawanella.

Plaintiff

**SC Appeal No. 95/2010
SC/HCCA/LA No. 164/2010
SP/HCCA/Kag/41/LA
D.C.Kegalle Case No.952/L**

Vs

PradeshiyaSabhava of Mawanella

Defendant

AND

WeligalleWedarallageDevarAshoka
Gunawardena of Weligalla Road,
Mawanella.

Plaintiff Appellant

Vs

PradeshiyaSabhava of Mawanella

Defendant Respondent

AND NOW BETWEEN

PradeshiyaSabhava of Mawanella

Defendant Respondent Appellant

Vs

WeligalleWedarallageDevarAshoka
Gunawardena of Weligalla Road,
Mawanella

Plaintiff Appellant Respondent

In the matter of an Appeal from a judgment
of the Civil Appellate High Court of the
Sabaragamuwa Province holden in Kegalle.

WeligalleWedarallageMadhawaSisira
Kumara,
Of No. 527, Anwarama, Mawanella.

Plaintiff

Vs

PradeshiyaSabhava, Mawanella

Defendant

**SC Appeal No. 98/2010
SCHC(CA)LA No.165/2010
SP/HCCA/Kag/44/2009LA
D.C.Mawanella No.948/L**

AND

WeligalleWedarallageMadhawaSisira
Kumara, of No. 527, Anwarama,
Mawanella.

Plaintiff Appellant

Vs

PradeshiyaSabhava of Mawanella
Defendant Respondent

AND NOW BETWEEN

PradeshiyaSabhava of Mawanella

Defendant Respondent Appellant

Vs

WeligalleWedarallageMadhawaSisira
Kumara, of No. 527, Anwarama,
Mawanella.

Plaintiff Appellant Respondent

**BEFORE : S. EVA WANASUNDERA PCJ.
U. ABEYRATHNE J.
H.N.J.PERERA J.**

COUNSEL: Priyantha Gamage for the Defendant Respondent
Appellant.
Dr. Sunil Cooray for the Plaintiff Appellant Respondent.

ARGUED ON: 17. 10. 2016.

DECIDED ON: 30. 11. 2016.

S. EVA WANASUNDERA PCJ.

When these Appeals were argued, the parties to the Appeals agreed to abide by one judgment written in SC Appeal 95/2010. Therefore only the said Appeal was taken up for hearing and concluded. This Judgement shall bind all the parties in both SC Appeal 95/2010 and SC Appeal 98/2010.

The Plaintiff Petitioner Respondent (hereinafter referred to as the Plaintiff) instituted action against the Defendant Respondent Appellant (hereinafter referred to as the Defendant) , the Pradeshiya Sabha of Mawanella seeking inter alia a declaration of title to the land described in the Schedule to the Plaint, a declaration that the Defendant does not have a right to construct a roadway within the said land **and for a permanent injunction to prevent the same.**

At the end of the inquiry regarding the interim injunction to stay the construction of the road by the Defendant Pradeshiya Sabha, the **District Judge delivered order refusing the interim injunction** as prayed for by the Plaintiff. The Plaintiff appealed to the Civil Appellate High Court against the order of the District Judge and at the end of the hearing, the learned **High Court Judges** delivered Judgment allowing the appeal and set aside the order of the learned District Judge and **granted the interim injunction** as prayed for by the Plaintiff. The Defendant Pradeshiya Sabha has appealed from the Judgment of the High Court to the Supreme Court and this Court granted leave to appeal on the following questions of law to be decided:-

1. Have the Hon. High Court Judges failed to appreciate that the Respondent had not established a prima facie case?
2. Have the Hon. High Court Judges failed to appreciate that the equitable considerations favour the refusal of the Interim Injunction prayed for?

The Plaintiff has proved his title to the portion of a land which is a paddy field. His land is also part of a whole big area of paddy lands. He received this paddy field by virtue of deed No. 2768 dated 14.09.1982. There is no dispute with regard to his title and the fact that he has also acquired prescriptive title to the

same. Along the Southern boundary of the land there is a water way , namely Kaheruwa Ela. As usual next to an Ela is an Ela Wella, meaning a road way anyone can walk on. This is also accepted by the Plaintiff. The subject matter of this case is the roadway which runs between the Kaheruwa Ela and the Kaheruwa Kumbura.

As alleged by the Plaintiff, on 29.12.2008, the officers of the Pradeshiya Sabha had marked a 24 feet wide roadway through the Plaintiff's land. The Plaintiff had complained to the Police. In the statement to the Police by the Plaintiff, which was marked as Pe 2, the Plaintiff who is a professor of a university had mentioned that the demarcations were about 12 feet wide and about 10 or 12 wooden poles had been planted along the edge of the land which is a paddy field named Kaheruwa Kumburu Yaya which belongs to him and his family members, meaning his brothers and sisters. According to the Plaintiff they had been owners for over twenty five years.

The Defendant Pradeshiya Sabha stated that notices in terms of Section 24 of the Pradeshiya Sabha Act, was given to the Plaintiff and that there existed a road way which had been gazetted in the year 1971. The said gazette was marked as **V 10** by the Defendant at the interim injunction inquiry. In **V 10**, namely gazette No. 14979 dated 08.10.1971. Part iv , under Division 15 – Weligalla – item 6 reads as “ the **road** from the Kandy Road to Uthuwankanda Road across Udatthawa Wela, 12 feet wide and 45 chains long”. It is a fact to be reckoned that there was a road demarcated along the Kaheruwa Ela by a government gazette as far back as in 1971. Later on, the same road was gazetted again in 2006 widening it up to 24 feet. This gazette was dated 30.06.2006 and marked in evidence by the Defendant as **V 13**. In that gazette again, it is specifically mentioned that the road **goes across the Kaheruwa Paddy Field (=Kaheruwa Wel Yaya = Kaheruwa Kumburu Yaya), and the width is 24 feet and the length is 780 meters.**

Sec. 17 of the Interpretation Ordinance provides as follows:

“ Where any Enactment whether past, before or after the commencement of this Ordinance, confers power on any authority to make rules, the following provisions shall, unless the contrary intention appears to have effect with reference to the making and operation of such rules;

- (a) All rules shall be published in the Gazette and shall have the force of law as fully as they had been enacted in the enactment of the Legislature and

(b) The production of the copy of the Gazette containing any rules or of any copy of any rule purporting to be printed by the Government Printer shall be prima facie evidence in all Courts and for all purposes whatsoever of the due making and tenor of such rule.”

Therefore the Court should take judicial notice of the fact that, the road in issue had been used by the public from the year 1971 and it was widened and printed in the Gazette in 2006.

The photographs of the existing road was marked in evidence by the Defendant as V1 to V8. An affidavit signed by **200 persons** which can be considered as a large number **who use that road** was marked as V9 stating therein further that in 2006, the Timber Corporation felled the Jak trees etc. along the demarcated road and removed them in the same year. The ‘Viharadhipathi’ or the Chief Incumbent Prelate of the village temple of the area called Habbunkaduwa had given an affidavit confirming that he is aware that the said road was gazetted in 1971 and people have been using the said road for a very long time and demarcating the 24 feet wide road which had been in use without any objection by others whose lands/paddy fields are bordering the roadway, does not in anyway damage the paddy field claimed by the Plaintiff, in his opinion. He has also mentioned that he also happens to be one of the co - owners of the big area covered by the paddy fields, i.e.’ the Wel Yaya’ but he is not objecting to the roadway being developed for the benefit of the villagers from three villages, namely Habbunkaduwa, Udatthawa and Dehimaduwa who had been using the same since it was gazetted in the year 1971. He adds that it is a very old road as well as the existence of the road bordering the lands/paddy fields does not in any way cause any damage to the paddy fields. The said Affidavit was marked as V11 and produced as part of the evidence at the inquiry.

I observe that, what the Plaintiff claims in his plaint is that the development of the roadway causes irreparable damage to his paddy field.

Moreover an ‘ order made by the District Judge in case No. 227/Land on 23.08.1999, regarding the existence of a roadway along the Kaheruwa Ela, after making a visit to see and examine the said road ‘, was produced by the Defendant as **V 12**. The visit details written down by the said judge in case No. 227/Land are very long and explains in detail how the road goes and he dismisses the suggestion made by the party who had claimed that there is no

road and had firmly made order contained in V12 to the effect that there exists a roadway which is used by the villagers. Both the 'notes and details' and the order are part of the record of the District Court case in the case in hand. The said case had been regarding the **same roadway before the same District Court from which there had not been an appeal.**

The District Judge in this case, at the end of the inquiry, made order by which he **refused** to issue an **interim injunction** against the Defendant, Pradeshiya Sabha. When the Plaintiff appealed from that order to the **Civil Appellate High Court**, the order was **reversed thus granting an interim injunction against the Pradeshiya Sabha** not to proceed with any developments of the roadway which is the subject matter of this case. The Defendant Appellant, the Pradeshiya Sabha is before this Court seeking relief.

The written law regarding the Interim Injunctions are contained in **Sec. 664 of the Civil Procedure Code**. The law on authorities created by this Court regarding interim injunctions are contained in many cases, some of which are as follows:

1. **JinadasaVsWeerasinghe 31 NLR 33.**
2. **DissanayakeVs. Agricultural and Industrial Corporation 64 NLR 283.**
3. **Bandaranayake Vs. State Film Corporation**
4. **Yakkaduwe Sri PragnaramaThero Vs. The Minister of Education and others.**
5. **JunaidVs. Seylan Bank Limited 2007 BLR 120.**

In **DissanayakeVs Agricultural and Industrial Corporation (supra)**, it was held that “ The proper question for a decision upon an application for an interim injunction is ‘ whether there is a serious matter to be tried at the hearing ‘. If it appears from the pleadings already filed that such a matter does exist, the further question is whether the circumstances are such that the 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. If a prima facie case has been made out, we go on and consider where the balance of convenience lie.”

In **Yakkaduwe Sri Pragnarama Thero Vs. The Minister of Education and Others(supra)**, it was held that “ An interlocutory injunction will not be granted if there is no likelihood of irreparable damage being caused to the Petitioner. More over the burden of proof that the inconvenience which the

Petitioner will suffer by the refusal of the injunction is greater than that, which the Respondent will suffer if the Application is granted, lies on the Petitioner. “

In the case in hand, the District Judge had analysed the evidence produced by way of affidavits and documents by the Plaintiff to find whether there is a **prima facie case to grant an interim injunction** to stay the Pradeshiya Sabha developing the roadway as submitted by the Plaintiff. The District Judge's order dated 23.07.2009 is a short order.

He had commenced his order laying down the legal principle which has to be observed when granting interim relief to a Plaintiff. In simple language, on the face of the case before Court, the Plaintiff, seeking interim relief to stop the Pradeshiya Sabha proceeding with proper demarcations on the boundary of his part of the paddy field, had not proved at all, that the damage which will be caused to the Plaintiff is more than the benefit and/or damage which will be caused to the Defendant. The District Judge further states that the Plaintiff had totally failed to prove that any damage which will be caused to his paddy field because he has failed to bring forward a survey plan demarcating his land which he claims as a paddy field and failed to show how much of his paddy field would get attached to and/or covered by the road, its value and the damage etc. I opine that the District Judge had given good legal reasons for his order.

The Civil Appellate High Court Judges' order dated 26.04.2010 is also short. The Judges have stated that the road mentioned **in both gazettes are only 10 feet wide which is factually incorrect**. Reading the gazettes which are published by the Government and of which judicial notice should be taken by any Court, I find that the **1971 Gazette states that the road is 12 feet wide and the 2006 Gazette states that the road is 24 feet wide**. It is clearly seen that the Civil Appellate High Court had clearly **erred on facts before court**. Then, the High Court had reproduced the sections in the Pradeshiya Sabha Act and concluded that V13 Gazette is in violation of the Pradeshiya Sabha Act. The question before the High Court was not whether the Gazette was null and void or whether it is legally valid. The Defendant had come before the High Court only to get the interim injunction issued by the District Court against him, out of the way. I observe that the High Court Judges **have not looked into the matter** which was legally represented before the said Court by the parties, i.e. **whether there is a prima facie case to grant interim relief for the Plaintiff or not**. The High Court has clearly **erred in law as well as in facts**.

The fact that a roadway had existed for over a long period of time has been well established and therefore the Plaintiff is not in a position to claim that this roadway does not exist. The Plaintiff who appealed against the order which did not grant an interim injunction in the District Court had received an order of granting an interim injunction from the Civil Appellate High Court, which had so far prevailed for a very long time. Therefore the Pradeshiya Sabha, the Defendant Appellant had been unable to proceed with the development of this roadway which is used by a lot of members of the public who could have benefitted by a better roadway all this time i.e. for over 8 years to date.

I hold that the learned Judges of the Civil Appellate High Court had failed to appreciate that the Plaintiff Appellant Respondent had not established a prima facie case before the District Court. They have also failed to appreciate that the equitable considerations favour the refusal of the Interim Injunction prayed for by the Plaintiff Appellant Respondent. I answer the questions of law in the affirmative in favour of the Defendant Respondent Appellant and against the Plaintiff Appellant Respondent. I do hereby set aside the judgment of the Civil Appellate High Court dated 26.04.2010 and affirm the order of the District Court dated 23.07.2009.

Appeal is allowed with costs.

Judge of the Supreme Court

Upaly Abeyrathne J.

I agree.

Judge of the Supreme Court

H.N.J.Perera J.

I agree.

Judge of the Supreme Court