

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

In the matter of an Application for Special Leave to Appeal from the Judgment of the Court of Appeal under Article 128 (2) of the Constitution.

The Attorney General  
Attorney General's Department  
Colombo 12.

**Plaintiff**

**SC (SPL) LA 145/2014**  
**CA LA 06/2009**  
**HC-Colombo 1649/2004**

**Vs.**

1. Herath Mudiyansele Sarath Wijewardene,  
No. 35, Migunagama, Mahiyangana.
2. Algama Koralage Sumedha Perera,  
No. 270C, 14B, Dickland Estate,  
Hokandara Road, Talawatugoda.

**Accused****And between**

Stanley Christoffel Asoka Obeysekere,  
No.11/5, Rajakeeya Mawatha,  
Colombo 07

**Aggrieved Party -Appellant****Vs.**

1. Herath Mudiyansele Sarath Wijewardene,  
No. 35, Migunagama, Mahiyangana.

2. Algama Koralage Sumedha Perera,  
No. 270C, 14B, Dickland Estate,  
Hokandara Road, Talawatugoda.

**Accused-Respondents**

The Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent**

**And Now Between**

1. Herath Mudiyansele Sarath Wijewardene,  
No. 35, Migunagama, Mahiyangana.
2. Algama Koralage Sumedha Perera,  
No. 270C, 14B, Dickland Estate,  
Hokandara Road, Talawatugoda.

**Accused-Respondents-Petitioners**

**Vs,**

Stanley Christoffel Asoka Obeysekere,  
No.11/5, Rajakeeya Mawatha,  
Colombo 07

**Aggrieved Party -Appellant-Respondent**

The Attorney General  
Attorney General's Department  
Colombo 12.

**Respondent- Respondent**

**Before: Justice Vijith K. Malalgoda, PC**  
**Justice Murdu N. B. Fernando, PC**  
**Justice P. Padman Surasena**

**Counsel: Faisz Musthapha, PC, for the Accused-Respondent-Petitioners**  
**Romesh de. Silva, PC, for the Aggrieved Party-Appellant-Respondent**  
**Thusith Mudalige, DSG, for the Hon. Attorney General**

Argued on 27.01.2020

**Order on 26.06.2020**

### **Vijith K. Malalgoda PC J**

Heard the learned President's Counsel for the Accused-Respondent-Petitioners in support of the instant Special Leave to Appeal Application. The main argument of the learned President's Counsel was based on section 16 (2) of the Judicator Act, whether the Aggrieved Party-Appellant-Respondent before this Court is in fact an Aggrieved Party within the meaning of the Judicator Act.

During his reply the learned President's Counsel for the Aggrieved Party-Appellant-Respondent, relied on the following passage from Weeramanthri on property at page 873;

“In Ceylon the property of a deceased person whether testate or intestate vests immediately on the death in his heirs, subject to payment of just debts, to the extent of which the personal representative as such has a claim upon the property.”

In support of his contention he further relied on the decisions in *Silva Vs. Silva 10 NLR 242* and SC Appeal 28/2013 decided on 14<sup>th</sup> January 2016

As observed by this court, the Court of Appeal when refusing the preliminary objection raised on behalf of the Accused-Respondent-Petitioners had not considered the above position, which in our opinion, is very relevant to the maintainability of the main appeal before the Court of Appeal.

Considering all the matters raised by both parties we are not inclined to grant Special Leave in this matter.

Application for Special Leave is refused.

As agreed by parties the order of the Court of Appeal shall stand altered to read as only as overruling the Preliminary Objection raised against the maintainability of the Leave to Appeal application on the ground that the Petitioners in the application before the Court of Appeal has no locus standi. Further Court of Appeal Order must not be taken to have granted Leave to Appeal to the said Petitioners despite the references to that effect.

Thus, the Court of Appeal is directed to hear the parties and decide the question whether it should grant Leave to Appeal for the Aggrieved Party-Appellant-Respondent to proceed with the appeal.

This application is accordingly dismissed. No Costs

**Judge of the Supreme Court**

**Justice Murdu N. B. Fernando, PC**

**I agree,**

**Judge of the Supreme Court**

**Justice P. Padman Surasena**

**I agree,**

**Judge of the Supreme Court**