

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

In the matter of an Application for Leave to Appeal under Section 5(c) of the High Court of the Provisions (Special Provisions) (Amendment) Act No. 54 of 2006 read with Article 127 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/Appeal No. 155/2010

SC/HCCA/LA No:64/2010

Case No. WP/HCCA/MT/17/2009 (L.A)

DC. Mount Lavinia Case No. 1272/T

Dombagahawattage Ranjith Wanigaratne
No. 331, High Level Road, Pannipitiya.

Presently of 62, Old Road, Pannipitiya.

**Petitioner-Respondent-Petitioner-
Petitioner**

-Vs-

Wijesekara Arachchige Gunawathie
No.401, High Level Road, Pannipitiya.

**1st Respondent-Petitioner-Respondent-
Respondent**

Before: **Tilakawardane, J,**
Ratnayake, PC, J &
Imam, J

Counsel: U.de Z. Gunawardena with Ms. Sujeewa Wijeyalath
for the Petitioner.

C. T. Dharmadasa with S.M. S. Jayawardena for the
1st Respondent-Petitioner-Respondent-Respondent.

Argued on: 14.12.2011

Decided on: 03.02.2012

Hon. Shiranees Tilakawardane, J

Leave was granted on 25.10.2010 to the Petitioner-Respondent-Appellant (hereinafter referred to as the Appellant) specifically on the two following questions of law:

- a) Has the District Court erred in law in granting the interim injunction against the Appellant
- b) Did the last will in favour of the 1st Respondent not devise soil rights to her,

The Appeal is lodged against an order dated 03.02.2010 made by the Civil Appellate High Court held at Mt. Lavinia (marked as P26) and was contained in the brief. The Civil Appellate High Court by its order affirmed the order dated 16.03.2009 (marked P17) made by the District Court granting an interim injunction, in the case bearing No: District Court Mt. Lavinia 1272/T.

It is important to note at this stage, that this case was filed in the District Court by the Petitioner seeking probate, which was stated on the last will bearing no. 653 attested by Samaratapala Liyanage Notary Public dated 14.12.1984 marked as P1. His application was dismissed and the grant of probate was refused by Judgment dated 03.08.1996 and marked as P3.

The Appellant appealed against the said judgment of the learned District Judge to the Court of Appeal, which by its judgment dated 19.01.2007 marked as P5, dismissed the Appeal. An Application for leave to appeal was also refused by the Supreme Court by its order dated 10.06.2008, marked as P6. It is to be noted that the Judgment of the District Court in this case was thereby finalized and was concluded.

Significantly, at or about the same time the above case was filed in the District Court, the 1st Respondent Petitioner Respondent Respondent (hereinafter referred to as the Respondent) also filed a case in the District court of Mt Lavinia bearing No: 1223/T also seeking probate on the Last Will bearing No: 31097 attested by W.M.P. Wijesundara Notary Public dated 21.02.1982. This case has never been heard or concluded according to the unchallenged submissions of the Counsel for the Respondent. In the Appeal Court judgment reference was made to the fact that the Appellant had filed his case only after observing the publication of the notices in the testamentary proceedings of 1223/T.

During arguments in the present case learned Counsel for the Appellant drew the attention what was reflected in Journal Entry dated 02.09.2004, that Mr Muthukumaran Attorney at law, appearing for the Respondent in the court of appeal "informs court that he is accepting the validity of the Will" admission. He submitted that this was a "judicial admission", a fact that was challenged by the Respondent who stated that his client had never given any instructions to any lawyer admitting the said Will. Despite this fact the Appeal of the Appellant was dismissed.

It is therefore clear that after the dismissal of the Application for leave to the Supreme Court by the Appellant the District Court Judgment P3 was final and conclusive in its findings against the Appellant.

On or about 04.12.2008, the Respondent made an application in the same case, to the District Court of Mt Lavinia, seeking an interim injunction and a permanent injunction, and obtained an interim injunction by the Order of the District Judge dated 16.03.2009 (marked as P17) restraining the Appellants from carrying certain acts relating to the property referred to in the Last Will. The District Judge had by entertaining the application purported to re-adjudicate upon a matter in which his Court had delivered a final and conclusive decision-despite being at the time *functus officio*. Furthermore he had granted an interim injunction in a matter that had been finally concluded. It is the finding of this Court that the learned District Court Judge had no legal authority of office or competence to entertain or re deliberate on the same matter, 12 years later, where his duties and functions had been completed and accomplished and come to an end. This is especially so in the

circumstances that the Court of Appeal and the Supreme Court had ratified the judgment of the District Court.

In a circumstance where there is an imminent danger of irreparable injury and damages would not be an adequate remedy, the court may grant an interim injunction so as to preserve the position of the parties pending trial. A factor overlooked by the learned District Judge at the time he entertained the application of the Respondent and granted interim relief and made order, there was no pending trial – an indispensable condition precedent-and the trial had been disposed of 12 years before, and indeed by then, ratified by both the Appeal Court and the Supreme Court.

The question also arises as to why the 1st Respondent did not pray for an interim injunction under case no.1223/T which she filed in the District Court of Mt. Lavinia.

Learned counsel submitted that Equity is said to operate on the conscience of the defendant, so an equitable remedy is always directed at a particular person, and his knowledge, state of mind and motives may be relevant to whether a remedy should be granted or not."He who comes to equity must come with clean hands"(i.e. the court will not assist a claimant who is himself in the wrong or acting for improper motives), laches (equitable remedies will not be granted if the claimant has delayed unduly in seeking them).He submitted that the Respondent had suppressed the fact that an admission had been made in the Journal Entry adverted to above, but had not been disclosed in the application for interim Injunction. However the Respondent had marked and produced the Judgment of the Appeal Court, which refers to this fact explicitly. So the Court holds that there has been no deliberate suppression of facts.

According to the reasons given above this Court holds that the District Court erred in law in granting the interim injunction against the Appellant. The Appeal therefore should be allowed on this question of law, and therefore the court needs not go into the other question of Law.

The Appeal is allowed and this Court consequently sets aside the Judgment of the District Court dated 16.03.2009 and the Order of the Civil Appellate Court dated 03.02.2010. No costs.

JUDGE OF THE SUPREME COURT

Ratnayake, J

I agree

JUDGE OF THE SUPREME COURT

Imam, J

I agree

JUDGE OF THE SUPREME COURT