

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

**S.C Appeal No.19/2011
S.C. (HC) CA LA No.261/10
WP/HCCA/Kalutara No.13/2009/LA
D.C. Kalutara No.L 5704**

Kalutara Bodhi Trust,
Galle Road,
Kalutara.

Defendant-Petitioner-Appellant

Vs.

Kalutara Multi Purpose Co-operative Society Ltd.,
No.20, Riverside Road,
Kalutara.

Plaintiff-Respondent-Respondent

BEFORE : Dr. Shirani A. Bandaranayake, CJ.
R.K.S. Suresh Chandra, J. &
S. Hettige, PC., J.

COUNSEL : Chandaka Jayasundara with
Nigel Bartholomeusz and S.A. Beling
for Defendant-Petitioner-Appellant

H. Peiris for Plaintiff-Respondent-Respondent

ARGUED ON : 08.12.2011

WRITTEN SUBMISSIONS

TENDERED ON : Defendant-Petitioner-
Appellant : 27.01.2012

Plaintiff-Respondent-
Respondent : 31.01.2012

DECIDED ON : 25.06.2012

Dr. Shirani A. Bandaranayake, CJ

This is an appeal from the Order of the Civil Appellate High Court of the Western Province held at Kalutara (hereinafter referred to as the High Court) dated 01-07-2010. By that Order, the High Court had dismissed the leave to appeal

application filed by the defendant-petitioner-appellant (hereinafter referred to as the appellant) and affirmed the Order of the District Court of Kalutara dated 05-05-2009 granting the interim injunction in favour of the plaintiff-respondent-respondent (hereinafter referred to as the respondent).

The appellant preferred an application before the Supreme Court against the said Order of the High Court on which leave to appeal, with consent of both parties, was granted on the following questions:

1. Did the High Court err in law in failing to recognize that the District Court Order was contrary to law and contrary to the evidence before Court?
2. Did the High Court err in law in holding that the respondent had a strong *prima facie* case, despite the fact that the respondent's only plea regarding ownership was based on Deed No.479, which deed *ex facie* only referred to the use of the buildings on the land and did not convey any title to the said property?
3. Did the High Court err in failing to consider the loss, harm and damage that would be caused to the appellant in weighing the balance of convenience?

The facts of this appeal, as submitted by the appellant, *albeit* brief, are as follows:

The respondent had instituted action against the appellant in the District Court of Kalutara seeking a declaration that the respondent is the owner of the land described in the Schedule to the Plaintiff. He had also sought injunctive relief

against the appellant to prevent the appellant from constructing a parapet wall surrounding the land. The respondent in the Plaintiff had pleaded that, he had claimed title to the land from the Deed of Transfer, No.479 dated 05-12-1975. The said land is referred to as Lots 1 and 6 in Plan No.1562 made by the Surveyor General and as appearing in the 2nd Schedule to the said Deed. The appellant was about to construct a parapet wall on the border of the said land belonging to the respondent and the respondent had taken the position that if the appellant is not restrained from such construction, irreparable loss would be caused to the respondent.

When the matter was taken before the District Court, learned Counsel for the appellant had objected to the grant of the interim order and had submitted that Deed No.479, referred to above, *ex facie* did not demonstrate that the respondent had any valid title over the land in question and that the respondent had no *prima facie* right to maintain this action.

However, the District Court had granted the said interim order, which was later affirmed by the High Court.

As it had been stated by the respondent before the District Court, the appellant had taken steps to construct a wall surrounding the land described in the Schedule B of the respondent's title Deed No.479 to enclose the buildings belonging to the respondent standing thereof, which would have resulted in the denial of access to the said buildings.

The appellant in its statement of objections filed before the District Court against the issuance of the interim injunction that was sought by the respondent had pleaded that the land referred to in Schedule B of Deed No.479, is not owned by the respondent and that the respondent has no title thereto and only the right to use the buildings on the said land had been given to the respondent. It was also

pleaded that the said land is a State Land, which had been leased to the appellant by Gazette No.1251 dated 23-08-2002 and the parapet wall was being constructed on the directions of the Divisional Secretary of Kalutara. The appellant had also brought to the notice of the District Court that there were persons encroaching on the said land and the appellant together with the relevant Authorities, were in the process of evicting them.

Learned Additional District Judge, after hearing both parties, had granted the enjoining order and given time for the appellant to file statement of objections to the grant of the interim injunction and Answer. The appellant had filed its statement of objections. Regarding the grant of the interim injunction, the District Court had informed parties that it would be disposed of by way of written submissions. It is not disputed that only the respondent had filed written submissions and that the appellant had informed Court that they are not filing any written submissions and are relying only on the documents filed along with the statement of objections.

Learned Counsel for the appellant contended that the State had vested the land in question in the Appellant. The contention of the learned Counsel for the respondent was that it had derived rights to the land from the Deed of Transfer No.479 dated 05-12-1975.

The only question that has to be considered in this matter is that whether the District Court had erred when it decided to restrain the appellant from building a wall, until the hearing and determination of the substantive application before the District Court.

It is not disputed that the interim injunction was granted by the District Court, when the appellant had taken steps to build a wall surrounding the land described in Schedule B of Deed No.479.

Both parties had made submissions on the basis of their individual rights to the land in question. It is to be borne in mind that the said individual rights to the land is the substantive matter that is pending before the District Court. Therefore the only issue that has to be decided presently by this Court would be the grant of the interim injunction by the District Court.

Injunctions are a well known form of equitable relief which has to be considered on the basis of the facts of each case. In **Felix Dias Bandaranayake v The State Film Corporation and Another** ([1981] 2 Sri L.R. 287), considering the instances where the Court has to issue an interim injunction during the pendency of the action, reference was made to the provisions contained in Section 86 and 87 of the Courts Ordinance.

Section 86 of the Courts Ordinance refers to the grant of an injunction in the following cases:

1. Where it appears 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 which would produce injury to the plaintiff; or

2. Where it appears that the defendant during the pendency of the action, is doing or continuing 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 plaintiff's rights respecting the subject matter of

the action and tending to render the judgment ineffectual; or

3. Where it appears 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.

It is to be borne in mind that while the Courts Ordinance created the jurisdiction for the Courts to grant injunctions, Section 662 – 667 of the Code of Civil Procedure defined the procedure that should be adopted in such instances. In **Felix Dias Bandaranayake** (Supra), the Court of Appeal had carefully considered the sequential tests that should be applied in deciding whether or not to grant an interim injunction. The said tests were as follows:

1. Has the plaintiff made out a strong *prima facie* case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a serious question to be tried in relation to his legal rights and that the probabilities are that he will win?
2. In whose favour is the balance of convenience – the main factor being the uncompensatable disadvantage or irreparable damage to either party?
3. As the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction. The material on which the Court should act as the affidavits supplied by plaintiff and defendant. Oral

evidence can be led only of consent or upon acquiescence.

Having a *prima facie* case and reasonable prospects of success in the matter at issue, along with the balance of convenience in his favour, has been regarded as the necessary grounds for the grant of an interim injunction. In **Gulamhusein v Cohen** ([1995] 2 Sri L.R. 365) it was held that;

“ . . . the principal question to be considered is whether the plaintiff has made out a *prima facie* case that there is a serious matter in relation to their legal rights to be tried at the hearing of the action and that they have a good chance of winning.”

The question that should be taken into consideration prior to the grant of an interim injunction was examined by H.N.G. Fernando, J. (as he then was) in **Dissanayake v Agricultural and Industrial Credit Corporation** ((1962) 64 N.L.R. 283), where it was stated thus:

“ In an application for an interim injunction the proper question to decide is “whether there is a serious matter to be tried at the hearing”. If it appears from 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.”

However, as could be seen on an examination of these decisions, the establishment of a *prima facie* case alone would not be sufficient for the grant of

an interim injunction. Court would have to pay serious attention to the questions of irreparable damage as well as the balance of convenience. Prior to the grant of an interim injunction, although a party would have satisfied the necessary ingredients for such an injunction, it would be necessary for the Court to consider whether the aspects of comparative equities have been satisfied.

In doing so, the Court should consider and satisfy itself whether by the grant of the interim injunction the *status quo* would be preserved or altered. Simultaneously, it would be necessary to consider that if the interim injunction is not granted whether that would cause irreparable or serious injury to the party aggrieved.

It is also necessary for the Court to consider on which side the balance of convenience lies and the type of loss the party aggrieved would suffer if the said injunction is not granted. Considering all these grounds for the grant of an interim injunction, G.S. Gupta (Law of Injunctions, 7th edition 2011, pg. 175) had stated that,

" The purpose behind the grant of temporary injunction is to protect the legal rights and to avoid future injury during the pendency of litigation and thus maintain the matters in *status quo* until the matter is finally disposed of. It is also intended as a step in aid of the final relief that is to be ultimately granted

Prior to the granting of an interim injunction a Court must be satisfied that the claim of the petitioner is not frivolous or vexatious and that it is founded on good grounds. The Court must be satisfied that there is a serious question to be tried and that there is fair

chance of the petitioner succeeding in the suit. The Court must weigh the respective needs of the parties and in whose favour a *prima facie* case and balance of convenience lies."

It is to be noted that when the question of interim injunction was before the District Court, after perusing the written submissions and the documents filed, the learned Additional District Judge had made order stating that if the appellant could agree to the conditions laid down by the District Court, that it could proceed with the desired construction. The said condition was to the effect that, the appellant could construct the wall, but at the end of the Trial if the appellant is not given any rights claimed, the constructions effected by the appellant will have to be removed by the appellant at its own cost. The appellant had not agreed to the said suggestion.

The main contention of the appellant before the District Court was that the land in question is a Crown Land. However, learned Additional District Judge had clearly stated in his Order that according to the submissions made and the documents produced before that Court, the appellant had failed to produce any documents to prove that the land in question was either vested in the Government or whether it was acquired by the State.

The High Court had considered this matter on the basis of the Order made by the Additional District Judge. In considering the issue, the High Court was of the view that the main requirements for the grant of an interim injunction, viz., having a *prima facie* case, the balance of convenience and the conduct of parties, had been well considered by the District Court and the necessary requirements had been established by the respondent.

On an examination of the submissions made by the parties before the Supreme Court, the Orders of the District Court and the High Court, it is apparent that all aspects pertaining to the grant of an interim injunction had been carefully considered.

For the reasons aforesaid the three (3) questions on which leave to appeal was granted by this Court are answered in the negative.

The order of the District Court dated 05-05-2009 and the Order of the High Court dated 01-07-2010 are therefore affirmed. This appeal is accordingly dismissed.

I make no order as to costs.

Chief Justice

R.K.S. Suresh Chandra, J.

I agree.

Judge of the Supreme Court

S. Hettige, PC., J.

I agree.

Judge of the Supreme Court