

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

*In the matter of an appeal in terms of
Article 128 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

SC APPEAL NO. 49/2020

SC/SPL/LA Application No. 278/2019

CA 1010/2000 (F)

DC MOUNT LAVINIA 366/95/L

1. K. Dona Nimalawathie
2. H. Dona Nilusha Pasandika
3. H. Dona Nilanka Naduni Shyamanika

All of No. 64,
De Silva Road,
Kalubowila,
Dehiwala.

PLAINTIFFS

-Vs-

P. H. Dayananda,
No. 40,
Nandimithra Place,
Pamankada.

DEFENDANT

AND THEN BETWEEN

P. H. Dayananda,
No. 40,
Nandimithra Place,
Pamankada.

DEFENDANT-APPELLANT

-Vs-

1. K. Dona Nimalawathie

2. H. Dona Nilusha Pasandika
 3. H. Dona Nilanka Naduni Shyamanika
- All of No. 64,
De Silva Road,
Kalubowila,
Dehiwala.

PLAINTIFF-RESPONDENTS

AND NOW BETWEEN

1. K. Dona Nimalawathie
 2. H. Dona Nilusha Pasandika
 3. H. Dona Nilanka Naduni Shyamanika
- All of No. 64,
De Silva Road,
Kalubowila,
Dehiwala.

**PLAINTIFF-RESPONDENT-
APPELLANTS**

-Vs-

P. H. Dayananda,
No. 40,
Nandimithra Place,
Pamankada.

**DEFENDANT-APPELLANT-
RESPONDENT**

BEFORE : **P. PADMAN SURASENA, J.
JANAK DE SILVA, J.
ARJUNA OBEYESEKERE, J.**

COUNSEL : Ikram Mohomed, PC with Charitha Jayawickrama
instructed by Mallawarachchi Associates for the

Plaintiff-Respondent-Appellants.

Manohara De Silva, PC with Hirosha Munasinghe and Ms. Nadeeshani Lankatilleka instructed by Mr. Nimal Hippola for the Respondent.

ARGUED ON : 27-08-2024

DECIDED ON : 22-05-2025

P. PADMAN SURASENA, J.

Court heard the submissions of the learned President's Counsel for the Plaintiff-Respondent-Appellant (hereinafter referred to as the Plaintiff) and also the submissions of the learned President's Counsel for the Defendant-Appellant-Respondent (hereinafter referred to as the Defendant) and concluded the argument of this case.

The Plaintiffs have filed this action in the District Court seeking a declaration of title to the land described in the Schedule to the Plaint and to eject the Defendant therefrom. The Defendant in his answer has prayed for the dismissal of the Plaintiff's action and also prayed for a declaration that he is the owner of a part of the said land which he identified as Lot A3B depicted in the Plan No. 1049 dated 19-02-1980 prepared by P. R. Boteju, Licensed Surveyor. The Defendant has produced this Plan No. 1049 marked **Đ. 1**.

The Defendant has admitted that the late husband of the 1st Plaintiff (father of 2nd and 3rd Plaintiffs) was the owner of the land referred to in the Plaint. However, it is the position of the Defendant that the late husband of the 1st Plaintiff (father of 2nd and 3rd Plaintiffs) at one point of time by deed No. 9305 dated 13-01-1972, sold the undivided fifteen perches to his brother, Hindurangalage Don Karunadasa. The Defendant has produced the said Deed No. 9305 marked **Đ. 13**. According to the Defendant, said Hindurangalage Don Karunadasa has thereafter sold the said fifteen perches to the Defendant by the Deed No. 3132 dated 03-09-1980. The Defendant has produced the said Deed No. 3132 marked **Đ. 2**, which has clearly stated that the plot of land transferred was Lot A3B depicted in the Plan No. 1049 dated 19-02-1980 prepared by P. R. Boteju, Licensed Surveyor.

The learned District Judge delivered the judgment dated 20-11-2000 for the Plaintiff on the basis that the Defendant has failed to prove his title Deeds marked **D. 2.** and **D. 13.** despite the fact that the said Deeds were only allowed to be marked subject to proof.

Aggrieved by this judgment, the Defendant appealed to the Court of Appeal challenging the said judgment pronounced by the learned District Judge. The Court of Appeal after conclusion of the said appeal has delivered the judgment dated 20-06-2019 directing the learned Additional District Judge to enter judgment for the Plaintiffs declaring that the Plaintiffs are the owners of the land described in the Schedule to the Plaint subject to the grant of relief to the Defendant, a declaration of Court that the Defendant is the owner of Lot No. A3B depicted in Plan bearing No. 1049 dated 19-02-1980.

Aggrieved by the said judgment, the Plaintiffs have sought Leave to Appeal from this Court. This Court has granted Leave to Appeal on the following questions of law:

- 1. Did their Lordships of the Court of Appeal err in law in allowing the appeal by granting the reliefs in favor of the Defendant holding that Deeds marked D2 and D13 had been proved as no objection to those documents had been taken at the closure of the case, which is contrary to the principle of law laid down by Your Lordships' Court and binding on the Court of Appeal that failure on the part of a party to object to a document during the trial does not permit Court to use the document as evidence if the documents which should be proved in accordance with the procedure laid down in section 68 of the Evidence Ordinance has not been proved?*
- 2. Did the Court of Appeal err in law in granting reliefs to the Defendant based upon the said deeds marked "D2" and "D13" which have not been proved in terms of section 68 of the Evidence Ordinance?*
- 3. Have the parties proved their respective title deeds before the District Court?*

It is clear that the Defendant's claim is primarily based on the two Deeds marked **D. 2** and **D. 13**. When the Defendant marked those documents, the Plaintiff has stated that they can be marked subject to proof. However, at the time the Defendant closed his case reading the documents in evidence, the Plaintiff has not objected to those documents being tendered in evidence. It is on that basis that the Court of Appeal has decided to set aside the conclusion

of the learned District Judge that the Defendant has failed to prove these documents. The Court of Appeal in its judgment has proceeded to hold that *'it is well settled law that, in a civil case, if an objection has not been taken at the closure of the case of the opposite party that the documents marked subject to proof were not proved and therefore be rejected, they become evidence for all intents and purposes without the requirement of further proof despite the subject to proof objection taken at the time of marking the said documents.'* In doing so, the Court of Appeal has referred to several judgments to wit: *Sri Lanka Ports Authority v. Jugolinija Boal East* [1981] 1 Sri LR 18, *Balapitiya Gunananda Thero v. Talalle Methananda Thero* [1997] 2 Sri LR 101, *Stassen Exports Limited v. Brooke Bond Group Ltd* [2010] 2 Sri LR 36, *Jamaldeen Abdul Latheef v. Abdul Majeed Mohamed Mansoor* [2010] 2 Sri LR 333, *Samarakoon v. Gunasekera* [2011] 1 Sri LR 149.

The proceedings dated 20-04-2000 clearly shows that the Plaintiff, at the closure of the Defendant's case, has only objected to **Đ. 03, Đ. 05, Đ. 08, and Đ. 10** on the basis that those documents have not been proved. However, the Plaintiff has not objected to the title deeds marked **Đ. 2 and Đ. 13**.

Section 154 of the Civil Procedure Code deals with tendering of documents in evidence in the course of a trial. The explanation given at the end of that section would be relevant in this regard. It is as follows :

Explanation to Section 154 of the Civil Procedure Code.

If the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it.

If, however, on the document being tendered the opposing party objects to its being admitted in evidence, then commonly two questions arise for the court:-

- *Firstly, whether the document is authentic—in other words, is what the party tendering it represents it to be; and*
- *Secondly, whether, supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it.*

The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the court is of opinion that the testimony adduced for this purpose, developed and tested by cross- examination, makes out a prima facie case of authenticity and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.

If, however, the court is satisfied that either of those questions must be answered in the negative, then it should refuse to admit the document.

Whether the document is admitted or not it should be marked as soon as any witness makes a statement with regard to it ; and if not earlier marked on this account, it must, at least, be marked when the court decides upon admitting it.

In the instant case, as the Plaintiff has not objected to the title deeds marked **Đ. 2** and **Đ. 13**, the provision of law set out in Section 154A (3) of the Civil Procedure Code, as amended by Section 3 of the Civil Procedure Code (Amendment) Act No. 17 of 2022, would apply. The part relevant to the above instance is as follows:

3. *Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act –*

(a)

- (i) If the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or*
- (ii) If the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence,*

The court shall admit such deed or document as evidence without requiring further proof;

(b) If the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document.

Thus, in terms of the law I have set out above, the title deeds marked **Đ. 2** and **Đ. 13**, by the Defendant shall be admitted as evidence without requiring further proof in the face of the Plaintiff not objecting to those title deeds at the closure of the Defendant's case. This is in view of the provision of law set out in Section 154A (3) (a) (ii) of the Civil Procedure Code as amended by the Act No. 17 of 2022.

The Act No. 17 of 2022 has specifically stated that the above provision of law shall apply to the appeals pending on the date of coming into operation of that Act. Moreover, it has stated that it shall apply notwithstanding anything contained in the provisions of the Evidence Ordinance. Therefore, although there is a reference to Section 68 of the Evidence Ordinance in the first two questions of law, Section 154A (3) (a) (ii) of the Civil Procedure Code as amended by the Act No. 17 of 2022 shall apply to this appeal.

For the foregoing reasons, I answer the first two questions of law in the negative. In view of the above conclusion, I do not think it would be necessary to consider the third question of law. I affirm the judgment dated 20-06-2019 pronounced by the Court of Appeal and proceed to dismiss this appeal without costs.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT