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

1. Subramaniam Ramasamy,
   No. 68, Colombo Road,
   Kandy.
2. Balasubramaniam Vaitheeswaran,
   No. 74, Colombo Road,
   Kandy.

Petitioners-Respondents-Appellants

Vs.

SC/APPEAL/14/2024
CP/HCCA/KANDY/15/2015/FA
DC/KANDY/1240/2012/L

V.R. Soundararajan,
No. 40, Venkarasamy Road,
Chettiankottam,
Erode 63800,
Tamil Nadu, South India.

Respondent-Appellant-Respondent

Before: Hon. Chief Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena
Hon. Justice M. Sampath K. B. Wijeratne

Counsel: Dr. K. Kanag-Isvaran, P.C. with K.V.S. Ganesharajan, Luxmanan Jeyakumar, Mangaleswary Shanker and Vithusha Loganathan for the Petitioner-Respondent-Appellant.

M. Ikram Mohamed, P.C. with V. Puvitharan, P.C., Anusha Jayasinghe, Neomal Senatilleke and Harish Balakrishnan for the Respondent-Appellant-Respondent.

Argued on: 26.05.2025

Written submissions:

By the Petitioners-Respondents-Appellants on 31.07.2025.

By the Respondent-Appellant-Respondent on 30.06.2025.

Decided on: 27.08.2025

Samayawardhena, J.

The ancestors of the respondent, who were Chettiars from South India and carried on business in Kandy, constructed and consecrated the Sri Selvavinayagar Kovil, also known as the Pulliyar Kovil, in Kandy. Thereafter, they purchased certain properties in the name of the said Kovil.

From around 1938 onwards, the Kovil was managed by Ramanathan Chettiar, a descendant of the Ana Runa Leyna family, under a notarially executed Trust Deed marked P1 of 1939. According to the said Trust Deed, the Kovil was constructed "*in order that the said members of Ana Runa Leyna and the employers thereof may have a place of worship*." The Deed further provides that "*the right to manage the trusteeship and management of the said Temple and its endowments remained all throughout in the family of the said Ana Runa Leyna Letchimanan Chettiyar*" and that "*it shall be lawful for a trustee at any time to appoint another person to act as trustee and manager of the said Temple and its endowments jointly with him or as assistant to him, provided however that no person save a son or male descendant of the said trustee and manager can be so appointed from the Ana Runa Leyna family*." The provisions of the Trust Deed clearly establish that this is a hereditary trust, with the office of trustee intended to remain

within the Ana Runa Leyna family and to devolve upon male descendants. As the business in Kandy was discontinued around 1940, and the descendants of the said family resided in India, the Trust Deed empowered the trustee "*to appoint an attorney to act as manager of the said Temple and its endowments during the absence of the said trustee and manager from Ceylon.*"

Veerappan Chettiar, the son of Ramanathan Chettiar, appointed Govindasamy Krishnamoorthy of Kandy to manage the affairs of the Kovil and its temporalities by a letter of authority marked P2, and by a Power of Attorney marked P2A, executed in 1984.

Upon the death of Veerappan Chettiar in 1994, his son, V.R. Soundararajan, the respondent in this case, succeeded as trustee. The respondent also thereafter appointed Govindasamy Krishnamoorthy as his Attorney by a Power of Attorney dated 09.01.1995 marked P3, authorising him "*to act for me and on my behalf in the capacity of Attorney and Administrative Manager*" of the Kovil and its temporalities.

Nearly three decades after his appointment as Attorney for the successive trustees, two individuals who claimed to be devotees and beneficiaries of the temple trust (hereinafter sometimes referred to as "the petitioners") instituted these proceedings bearing Case No. L/1240/12 in the District Court of Kandy by way of summary procedure under sections 75 and 76 of the Trusts Ordinance, seeking, *inter alia*, a declaration that the office of trustee of the said temple trust had become vacant, and that Govindasamy Krishnamoorthy, together with three other outsiders be appointed as trustees and members of the board of management of the trust.

By order dated 19.11.2014, the District Court granted the reliefs sought by the petitioners. On appeal, the High Court of Civil Appeal of Kandy, by judgment dated 08.12.2023, set aside the order of the District Court. It is

against this judgment of the High Court that the petitioners have preferred this appeal, with leave having been obtained.

Section 75(1) and (2) of the Trusts Ordinance reads as follows:

> *75(1) Whenever any person appointed a Trustee disclaims, or any Trustee, either original or substituted, dies, or is absent from Sri Lanka for such a continuous period and under such circumstances that, in the opinion of the Court, it is desirable, in the interests of the Trust, that his office should be declared vacant, or is declared an insolvent, or desires to be discharged from the Trust, or refuses or is or becomes, in the opinion of the Court, unfit or personally incapable to act in the Trust, or accepts an inconsistent Trust, or is convicted of an offence under section 19C, a new Trustee may be appointed in his place by—*
> *(a) the person nominated for that purpose by the instrument of Trust (if any); or*
>
> *(b) if there be no such person, or no such person able and willing to act, the author of the Trust if he be alive and competent to contract, or the surviving or continuing Trustees or Trustee for the time being, or legal representative of the last surviving and continuing Trustee, or (with the consent of the Court) the retiring Trustees, if they all retire simultaneously, or (with the like consent) the last retiring Trustee.*
>
> *(2) Every such appointment shall be by writing under the hand of the person making it, and shall be notarially executed.*

Section 76(1) and (2) of the Trusts Ordinance reads as follows:

> *76(1) Whenever any such vacancy or disqualification occurs, and it is found not reasonably practicable to appoint a new Trustee under section 75, or where for any other reason the due execution of the Trust is or becomes impracticable, the beneficiary may, without instituting a*

suit, apply by petition to the Court for the appointment of a Trustee or a new Trustee, and the Court may appoint a Trustee or a new Trustee accordingly.

(2) In appointing new Trustees, the Court shall have regard—

(a) to the wishes of the author of the Trust as expressed in or to be inferred from the instrument of Trust;

(b) to the wishes of the person, if any, empowered to appoint new Trustees;

(c) to the question whether the appointment will promote or impede the execution of the Trust; and

(d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

The petitioners instituted the action on the basis that the Attorney of the respondent trustee, namely Govindasamy Krishnamoorthy, had been managing and administering the Kovil and its temporalities since the issuance of the letter of authority marked P2 and the Power of Attorney marked P2A. They contended that, following extensive damage to the Kovil in 1998, it was restored and developed using funds collected from the public and other sources. According to the petitioners, the respondent trustee had never visited the Kovil or even the island, had shown no interest in the management and administration of the temple, and had, in fact, impeded the fulfilment of the objects of the trust.

It must be noted, however, that irrespective of the funds collected from the public through the *Thirupani Sabai*—a committee appointed by the worshippers, in which Govindasamy Krishnamoorthy functioned as President—the right to claim trusteeship is not available to any outsider, including the petitioners, as the trust in question is a hereditary trust.

This principle was clearly expounded by Bertram C.J. in *Velupillai Arumogam v. Saravanamuttu Ponnusamy* (1924) 27 NLR 173 at 175, where His Lordship observed that the act of repairing, enlarging, or rebuilding a temple with the aid of public donations does not confer upon an outsider any hereditary right to the trusteeship:

> *From time to time it may become necessary to repair, enlarge, or rebuild such a temple. In such circumstances it is natural that subscriptions should be invited from the worshippers and other sympathizers. Such an occasion arose in the history of this temple in the year 1860. Subscriptions were gathered in, and the temple was rebuilt. Saravanamuttu, a descendant of the original founder, and father of the present defendant, who was then the undisputed manager of the temple joined with the subscribers and accepted or assumed the office of "Conductor of Works." In so doing, however, I do not think that it can be contended that he abrogated either for himself or his family the hereditary rights to the management and control of the temple, which they enjoyed under the religious custom above explained, nor do I think that the fact that the worshippers, some of whom are ancestors of the present plaintiffs, contributed to this enterprise gave them in law any right to claim to interfere in the appointment of managers, or in the control of managers when appointed.*

His Lordship further observed that where the founder of a religious trust has given no specific directions regarding the appointment of trustees, the trusteeship and the management of the temple devolve upon the heirs of the founder:

> *It was proved by the evidence beyond doubt that this temple is one of those foundations which have been established and endowed by pious donors in past generations for the worship of particular deities. In such cases, in the absence of any directions by the founder, the temple and*

> *the lands dedicated in connection with it remain the property of the founder and his heirs, subject to a religious trust for the carrying on at the temple of the worship of the deity to whom it is dedicated. In such cases, if the founder has given no directions for the appointment of trustees, or, as they are generally called, managers, the devolution of the trusteeship and the management of the temple remains in the heirs of the founders. But as in most cases it is not convenient that they should all be managers, a system has grown up under which one person, generally the eldest male descendant of the last person who has acted in the office, with the consent of the other members of the family, acts as manager and trustee. This person, again with the presumed consent of the other heirs, often appoints some descendant of his own to succeed him in the managership, and in some cases to be associated with him in the managership until his death. I think that there can be no question that this is the religious law and custom with regard to such temples in the peninsula of Jaffna and that the temple now under consideration was a temple of this character.*

It was also noted by L.J.M. Cooray in his book *The Reception in Ceylon of the English Trust* (1971) Lake House Printers and Publishers, at page 155:

> *Where a temple is built by an individual on his land with his own funds or with subscribed funds, and the temple is a public and not a private one, and is maintained by subscribed funds, it has been held that the owner of the property and his heirs are trustees under a charitable trust.*

Hence, Attorney Govindasamy Krishnamoorthy cannot seek appointment as a trustee, together with certain others who claim to be devotees and beneficiaries of the Kovil, on the basis that he has managed and administered the Kovil diligently, while the respondent trustee has not even visited Sri Lanka to attend to its affairs.

It is undisputed that the successive trustees permanently resided in India, and that the Trust Deed expressly provides for the appointment of a person in Sri Lanka as an Attorney to manage the affairs of the Kovil and its temporalities. In that context, the fact that Krishnamoorthy, as Attorney, managed the Kovil to the best of his ability while the trustee remained abroad, cannot, in itself, justify a claim to trusteeship either by him or by those supporting him. The Attorney functions solely as the representative of the trustee in Sri Lanka and is empowered to act only on behalf of the trustee in the management and administration of the Kovil and its temporalities. His authority is entirely derivative and does not confer upon him any independent right or claim to the office of trustee.

Did the respondent trustee demonstrate a lack of interest in the management and administration of the trust property? On the one hand, where the respondent trustee has appointed an Attorney to manage and administer the trust property on his behalf, there arises no necessity for the trustee to be personally involved in its day-to-day affairs. On the other hand, a perusal of the averments in the petition and the affidavit dated 31.01.2012 submitted by the petitioners to the District Court in this action—particularly paragraphs 18, 20, 22, 23, and 25—reveals that the respondent was, in fact, effectively prevented from interfering with the management and administration of the temple by *ex parte* Court orders obtained against him through multiple lawsuits filed by Attorney Krishnamoorthy and his supporters, who claimed to be devotees and beneficiaries of the trust.

The actions filed against the respondent include: Case No. 257/99 filed in a Court in South India in 1999; Case No. 19687/L filed in the District Court of Kandy in 1999; Case No. 20547/L filed in the District Court of Kandy in 2001; Leave to Appeal Application No. 240/2002 filed in the Court of Appeal in 2002.

In these circumstances, Attorney Krishnamoorthy and his supporters, including the petitioners in the present action, cannot now be heard to complain of the respondent's lack of involvement or disinterest in the affairs of the trust, having themselves taken steps to obstruct his participation in its management and administration.

When was the Power of Attorney granted to Attorney Krishnamoorthy revoked? The Power of Attorney marked P3, granted by the respondent, expressly reserves the respondent's right to revoke, modify, or cancel the said instrument whenever he deems it necessary to do so. This is not disputed by Attorney Krishnamoorthy.

In paragraph 21 of the petition and affidavit dated 31.01.2012 tendered to the District Court, the petitioners, by producing the document marked P8, stated that the respondent had published a notification in the *Daily News* dated 24.08.2001, informing the general public that he had relinquished his position as trustee and had appointed one Vairam S. Vadivelu Chettiar, resident in India, as the trustee of the temple. It was further stated that the said Vairam Chettiar, together with the respondent, had appointed one Ramanathan Vairavan, another person resident in India, as his Attorney. Having stated so, the petitioners emphasised in the petition and affidavit that "*this was contrary to sections 72 and 73 of the Trusts Ordinance and was of no legal validity*."

The fact that the documents marked P8, dated 24.08.2001—relating to the alleged relinquishment, the appointment of a new trustee, and the appointment of an Attorney—are null and void *ab initio* has been emphatically emphasised in paragraphs 32 to 40 of the plaint filed against the respondent in District Court of Kandy Case No. 20547/L marked P9 as well.

It is important to note that, more than ten years after the alleged relinquishment, the petitioners did not institute this action on the basis

that the respondent had relinquished his position as trustee and that a vacancy had thereby arisen. Although the document marked P8 was tendered to Court, the petitioners proceeded on the premise that the office of trustee had become vacant due to the respondent's alleged lack of interest in the affairs of the temple, his failure to visit Sri Lanka to oversee its management, and his conduct as trustee, which, according to them, was contrary to the interests of the temple.

Attorney Krishnamoorthy and the petitioners cannot change positions from time to time to suit the occasion. Having initially taken a firm stance that the alleged relinquishment was invalid in law, they cannot now be heard to contend that a vacancy in the office of trustee arose as a result of the respondent having relinquished his position.

The doctrine of estoppel, and more specifically the doctrine of approbation and reprobation—which is a species of estoppel—precludes a party from asserting inconsistent positions in judicial proceedings to suit the occasion. A litigant cannot, at one time, affirm the validity of a transaction in order to derive a benefit from it, and thereafter disavow that same transaction as invalid in order to secure a different or further advantage. The law does not permit a party to approbate and reprobate, affirm and disaffirm, or to blow hot and cold, as it pleases.

E.R.S.R. Coomaraswamy, in *The Law of Evidence*, Vol I, page 163 states:

> *Estoppel arises where a party has by his previous conduct disqualified himself from making particular assertions in giving evidence. The law has the right to require consistency in its litigants. An estoppel may be defined shortly as a rule of law whereby a party is precluded from denying the existence of some state of facts, which he has formerly asserted.*

In *Ranasinghe v. Premadharma* [1985] 1 Sri LR 63 at 70, Sharvananda C.J. observed:

> *In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts one, he cannot afterwards assert the other; he cannot affirm and disaffirm.*

The doctrine of approbation and reprobation was extensively discussed by the Queen's Bench Division of the High Court of England and Wales in *MPB v. LGK* [2020] EWHC 90 (TCC), at paragraphs 52 to 58:

> *The doctrine of approbation and reprobation prevents a party from electing to take and pursue inconsistent stances. So, for instance, a party cannot simultaneously approbate and reprobate the decision of an adjudicator. He cannot "blow hot and cold" about whether it is valid.*
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> *In Codrington v Codrington [1875] LR 7 HL 854 at 866, Lord Chelmsford referred to the doctrine in these terms:*
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> *"He who accepts a benefit under an instrument must adopt the whole of it, confirming to all its provisions and renouncing every right inconsistent with it."*
>
> *(…..)*
>
> *More recently, the doctrine has been expressed more generally and in broader terms. Notably, in Express Newspapers Plc v News (UK) Ltd & others [1990] 1 WLR 1320, a breach of copyright case concerned with mutual copying of news stories, the Court held that the claimant's resistance to judgment on the counterclaim was wholly inconsistent with its own claim and that on the basis of the doctrine of approbation*

and reprobation the claimant was not permitted to put forward two inconsistent cases. When giving judgment, Sir Nicolas Browne-Wilkinson VC put the doctrine in these terms:

"The fact is that if the defences now being put forward by the defendants in relation to the "Daily Star" article are good defences to the Ogilvy case, they were and are equally good defences to the claim by the "Daily Express" against "Today" newspaper relating to the Bordes claim. I think that what Mr. Montgomery describes as what is sauce for the goose is sauce for the gander has a rather narrower legal manifestation. There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance.

To apply that general doctrine to the present case is, I accept, a novel extension. But, in my judgment, the principle is one of general application and if, as I think, justice so requires, there is no reason why it should not be applied in the present case."

(…..)

All the same, certain principles arise from the case law taken as a whole:

i) The first is that the approbating party must have elected, that is made his choice, clearly and unequivocally;

ii) The second is that it is usual but not necessary for the electing party to have taken a benefit from his election such as where he has taken a benefit under an instrument such as a will;

iii) Thirdly, the electing party's subsequent conduct must be inconsistent with his earlier election or approbation.

In essence, the doctrine is about preventing inconsistent conduct and ensuring a just outcome.

The Supreme Court of India, in *Rajasthan State Industrial Development and Investment Corporation Ltd. & Another v. Diamond and Gem Development Corporation Ltd. & Another* (decided on 12.02.2013), observed at paragraphs 9 and 10 as follows:

A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. (Vide: Nagubai Ammal & Ors v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Madras v. Mr. P. Firm Muar, AIR 1965 SC 1216; Ramesh Chandra Sankla etc. v. Vikram Cement etc., AIR 2009 SC 713; Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., AIR 2011 SC 1869; Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420; and V. Chandrasekaran & Anr v. The Administrative Officer & Ors., JT 2012 (9) SC 260).

Thus, it is evident that the doctrine of election is based on the rule of estoppel – the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions,

or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

As seen from documents marked P14, the respondent revoked the Power of Attorney given to Govindasamy Krishnamoorthy in December 2011.

Did the High Court err in fact and in law by making reference to the birth certificate of the respondent's son, which was filed along with the respondent's written submissions in the District Court? Although the action in the District Court was instituted under summary procedure, the parties did not strictly adhere to the procedure set out in Chapter XXIV of the Civil Procedure Code. Instead, following the filing of objections, the matter was disposed of by way of written submissions. The procedure thus adopted, with the concurrence of both parties, was *sui generis* in nature—neither strictly summary nor regular. In such circumstances, a deviation from the prescribed procedure, where it does not result in prejudice to the opposing party, is permissible if it facilitates the Court in arriving at a just determination. As Jayasinghe J. observed in *Weerasekera v. Wansapala* (CALA/179/2000, CA Minutes of 30.10.2000), "*when the inquiry was dispensed with and the parties agreed to tender written submissions, the documents are tendered to assist the learned District Judge to come to a finding*."

A copy of the birth certificate of the respondent's son was tendered solely for the purpose of establishing that the respondent has a male descendant eligible to succeed to the trusteeship in terms of the Trust Deed. In paragraphs 37 and 38 of the plaint filed as far back as 2001 against the respondent in District Court of Kandy Case No. 20547/L marked P9, the plaintiffs themselves averred that the respondent has the said son, along with several other siblings, and set out even their names. The respondent merely produced the birth certificate in affirmation of those averments, and not in contradiction of them.

In the circumstances, the High Court cannot be faulted for having referred to that document in the course of its judgment.

The questions of law on which leave to appeal was granted and the answers thereto are as follows:

(a) Is the judgment of the High Court of Civil Appeal of the Central Province Holden in Kandy contrary to law and against the materials placed before the Court?

A. No.

(b) Did the learned Judges of the High Court err in law in not considering the fact that the petitioners were entitled as a matter of fact and law to invoke the jurisdiction of the District Court under and in terms of sections 75 and 76 of the Trusts Ordinance?

A: No.

(c) Did the learned Judges of the High Court err in fact and in law in failing to consider at all the document "P8"?

A: No.

(d) Did the learned Judges of the High Court err in fact and in law in coming to the conclusion that the respondent revoked the Power of Attorney only in the year 2011?

A: No.

(e) Did the learned Judges of the High Court in err in fact and in law in relying on documents appended to the written submissions of the respondent and not produced with the statement of objections of the respondent?

A: No.

(f) Did the learned Judges of the High Court err in holding that the petitioners' relief was only by way of the provisions of section 102 of the Trusts Ordinance?

A: The High Court did not clearly state so.

The judgment of the High Court is affirmed, and the appeal is dismissed with costs.

Judge of the Supreme Court

P. Padman Surasena, C.J.
I agree.

Chief Justice

M. Sampath K. B. Wijeratne, J.
I agree.

Judge of the Supreme Court