

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

1. Jayasekara Mudalige Mahinda
Mohottimulla, Dankotuwa.
 2. Jayasekara Mudalige Leela
Piyasili Rajawatta, Sembukuttiya,
Madampe.
 3. Jayasekara Mudalige Nalani
Chandra, IA, Yatiyana,
Minuwangoda.
 4. Jayasekara Mudalige Lalitha
Janaki, Temple Road,
Yogiyana, Dankotuwa.
- Plaintiff-Respondent-Petitioners

SC/APPEAL/175/2025

WP/HCCA/NEG/23/2018(F)

DC NEGOMBO 6337/L

Vs.

1. Hitihami Appuhamilage
Karunanayaka.
 2. Hitihamy Appuhamilage
Jayalakshmi Karunanayake.
 3. Hitihamy Appuhamilage
Jayalakshman Karunanayake.
 4. Kulanda Arachchige Padma
Mallika Karunanayake.
All of No.19/A, Minuwangoda
Road, Dunagaha South,
Dunagaha.
- Defendant-Appellant-
Respondents

Before: Mahinda Samayawardhena, J.
Dr. Sobhitha Rajakaruna, J.
Sampath K. B. Wijeratne, J.

Counsel: Harith De Mel with Vihitha Lekamge for the Plaintiff-
Respondent-Appellant.

Ishan Alawathurage with Ms. Kethmini Hasara
Dharmasena for the Defendant-Appellant-Respondents.

Argued on: 09.03.2026

Decided on: 17.03.2026

Samayawardhena, J.

The plaintiffs instituted this action in the District Court of Negombo against the defendants seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendants therefrom, and damages. The defendants filed answer seeking dismissal of the plaintiffs' action on the basis that they are entitled to the land on deeds and prescription. After trial, the District Court entered judgment for the plaintiffs.

On appeal by the defendants, the High Court of Civil Appeal of Negombo set aside the judgment of the District Court on the ground that the plaintiffs' title deed No. 12343 marked P8 had not been proved in accordance with section 68 of the Evidence Ordinance. Hence this appeal by the plaintiffs. This Court granted leave to appeal against the judgment of the High Court on the question whether the High Court erred in law in holding that deed P8 had not been proved in accordance with section 68 of the Evidence Ordinance.

In the present case, when deed P8 was marked in evidence, the defendants merely stated that it should be marked subject to proof. Section 68 of the Evidence Ordinance provides as follows:

“If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.”

The plaintiffs did not call the two attesting witnesses in order to prove deed P8. Instead, they called the notary who attested the deed in order to prove its execution.

Where a deed executed before a notary is sought to be proved, the notary can be regarded as an attesting witness within the meaning of section 68 of the Evidence Ordinance if the notary knew the executant personally and can testify that the signature on the deed is that of the executant. (*Marian v. Jesuthasan* (1956) 59 NLR 348; *Wijegoonetileke v. Wijegoonetileke* (1956) 60 NLR 560; *The Solicitor General v. Ahamadulebbe Ava Umma* (1968) 71 NLR 512 at 515–516; *Thiyagarasa v. Arunodayam* [1987] 2 Sri LR 184; *Wijewardena v. Ellawala* [1991] 2 Sri LR 14 at 35, *Gamini Ranaweera v. Dharmasiri and Others* SC/APPEAL/56/2020, SC Minutes of 20.05.2022)

In the formal attestation of deed P8, the notary has not specifically stated whether he knew the executants. In his evidence, he stated that the failure to mention in the attestation that he knew the executants was a lapse on his part, but that he knew the three executants personally for about twenty-five years. Explaining this further, he stated that the said executants were parties to testamentary case No. 719/T in which he appeared as the Attorney-at-Law for the second executant, while the first and third executants were non-contesting respondents. A certified copy of the said testamentary proceedings was marked P6. It is significant to note that the notary was not cross-examined on these matters at all. Nor was it at least suggested to him that he was giving false evidence or that he did not in fact know the executants personally. Hence there was no reason for the District Court to reject his uncontradicted evidence.

In the execution of deeds, the requirements of section 2 of the Prevention of Frauds Ordinance are mandatory, and non-compliance with that section renders a deed invalid. In contrast, non-compliance with the Rules made for notaries under section 31 of the Notaries Ordinance does not invalidate a deed. This is expressly provided for in section 33 of the Notaries Ordinance, which states “*No instrument shall be deemed to be invalid by reason only of the failure of any notary to observe any provision of any rule set out in section 31 in respect of any matter of form.*”

The matters relating to attestation and the form of attestation of a deed are set out in sections 31(20) and 31(21) of the Notaries Ordinance. If the formal attestation of a deed is defective and does not comply with those provisions, the notary can be prosecuted under the Notaries Ordinance. However, this has no bearing on the validity of the deed. Despite such defects in the formal attestation, the validity of the deed remains unaffected. (*Weeraratne v. Ranmenike* (1919) 21 NLR 286; *Thiyagarasa v. Arunodayam* [1987] 2 Sri LR 184 at 188–189; *Asliya Umma v. Thingal Mohamed* [1999] 2 Sri LR 152; *Wijeyaratne v. Somawathie* [2002] 1 Sri LR 93; *Pingamage v. Pingamage* [2005] 2 Sri LR 370.)

E.R.S.R. Coomaraswamy, in *The Conveyancer and Property Lawyer* (1948) Vol. 1, Part 1, at page 94, observes that “*The formal attestation by the notary is not part of the deed but it is the duty of the notary to append it.*”

In *Weeraratne v. Ranmenike* (1919) 21 NLR 286 at 287–288, De Sampayo J. went to the extent of stating that “*the absence of the attestation clause does not render a deed invalid.*”

For the foregoing reasons, I hold that the High Court erred both in law and in fact in dismissing the plaintiffs’ action on the basis that the plaintiffs’ title deed P8 had not been proved in terms of section 68 of the Evidence Ordinance merely because the notary had not stated in the attestation that he knew the executants personally. I hold that deed P8

has been proved in accordance with section 68 of the Evidence Ordinance.

Accordingly, I answer the question of law on which leave to appeal was granted in the affirmative. The judgment of the High Court is set aside and the judgment of the District Court is restored. The appeal is allowed with costs.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court