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

In the matter of an appeal under an in terms of Article 127 of the Constitution read with Section 5(c) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

SC/Appeal No. 01/2016
SC/SPL/LA /116/2014
CA No. 111/99 (F)
D.C. Hambanthota Case No. 1189/L

1. Saranasin Patabandigei Jayatissa,
   Puhulgaya Road, Ambalanthota.

2. Saranasin Patabandigei Sirisena,
   Malpettawa, Ambalanthota.

PLAINTIFFS

vs

Saranasin Patabandigei Justin,
Karagasara, Kudabolana,
Ambalanthota.

DEFENDANT

AND BETWEEN

1. Saranasin Patabandigei Jayatissa,
   Puhulgaya Road, Ambalanthota.

2. Saranasin Patabandigei Sirisena,
   Malpettawa, Ambalanthota.

PLAINTIFF-APPELLANTS

vs

Saranasin Patabandigei Justin, (**Deceased**)
Karagasara, Kudabolana,

Ambalanthota.

Saranasin Patabandigei Jayasena,
Karagasara, Kudabolana,
Ambalanthota.

SUBSTITUTED DEFENDANT-RESPONDENT

AND NOW BETWEEN

1. Saranasin Patabandigei Jayatissa (**Now Deceased**)
Puhulgaya Road,
Ambalanthota.

1st PLAINTIFF-APPELLANT-PETITIONER-APPELLANT

1a. Loku Yaddehige Malani Chandralatha,
Puhulyaya Road,
Ambalanthota.

1b. Saranasin Patabandigei Damith Chaminda
Puhulyaya Road,
Ambalanthota.

1c. Saranasin Patabandigei Manjula Priyadarshani,
Puhulyaya Road,
Ambalanthota.

1d. Saranasin Patabandigei Nirosh Shaminda,
Puhulyaya Road,
Ambalanthota.

1e. Saranasin Patabandigei Sanjula Prasadini,
Puhulyaya Road,
Ambalanthota.

1f. Saranasin Patabandigei Osani Sajeewani,

Puhulyaya Road,
Ambalanthota.

SUBSTITUTED 1a-1f PLAINTIFF-APPEALLANT-PETITIONER-APPELLANTS

vs

2. Saranasin Patabandigei Sirisena
(Deceased)
Malpettawa, Ambalanthota.

2a. Saranasin Patabandigei Palika,
No. 917/1C, Agirikula Road,
Kottawa, Pannipitiya.

SUBSTITUTED 2a PLAINTIFF-APPELLANT-PETITIONER-APPELLANT

vs

Saranasin Patabandigei Justin (**Deceased**)
Karagasara, Kudabolana,
Ambalanthota.

Saranasin Patabandigei Jayasena,
Karagasara, Kudabolana,
Ambalanthota.

SUBTITUTED DEFENDANT-RESPONDENT RESPONDENT-RESPONDENT

BEFORE : Yasantha Kodagoda, P.C., J.
A.L. Shiran Gooneratne, J.
M. Sampath K. B. Wijeratne J.

COUNSEL : Rohan Sahabandu, P.C., with Chathurika Elvitigala

and S. Senanayake instructed by Koggala Wellala Bandula for the Substituted Plaintiff-Appellant-Petitioner-Appellants.

Samhan Munzir with Uthpala Karunasinghe instructed by Nilu Welgama for the Substituted-Defendant-Respondent-Respondent-Respondent.

ARGUED ON : 30.09.2025

DECIDED ON : 03.03.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Plaintiffs-Appellants-Appellants (hereinafter referred to as the "Plaintiffs-Appellants") filed the action bearing No. 1189/L in the District Court of Hambantota against the Defendant-Respondent-Respondent ("the Defendant-Respondent") by plaint dated June 24, 1991 and later filed an amended plaint on February 03, 1992. Plaintiffs-Appellants sought, *inter alia*, a declaration that the Plaintiffs Appellants are the lawful owners of the land in dispute and to evict the Defendant-Respondent from the said land who alleged to have been in unlawful and forcible possession. In his answer, the Defendant denied several averments in the Plaint and sought the dismissal of the Plaintiffs–Appellants' action, while also claiming a declaration that he, the Defendant–Respondent, has succeeded to the interests of the subject matter in question upon the demise of his mother, Karalenchinahamy. The Learned District Judge after trial, dismissed the action of the Plaintiffs-Appellants holding in favour of Defendant-Respondent.

Being aggrieved by the Judgment of the Learned District Judge, Plaintiffs-Appellants appealed to the Court of Appeal.

The instant appeal arises from the judgment of the Court of appeal dated June 03, 2014 that affirmed the judgment of the learned District Judge dated December 02, 1997.

Having considered the submissions of both the parties, this Court granted special leave to appeal on the following questions of law raised in the paragraph 23 of the petition:[1]

" *b) Did the District Court and the Court of Appeal misapply S. 60 of the Land Development Ordinance to the facts of the instant case?*

c) Did the District Court and the Court of Appeal err in not comparing the document P3 with the entries in the register of permits/grants, a careful perusal of which would reveal that the nomination had been registered in 1986, prior to the death of Karalenchihamy.

e) Did the Courts below err in not appreciating that P3 was accepted as a valid document and acted upon by the Authority concerned and registered the same as a valid nomination?

f) Could the District Court and the Court of Appeal act on the ipse dixit of the Defendant without any proof that the thumb impression is not the thumb impression of Karalenchihamy?

g) Could the Defendant challenge P3 without making the authorities concerned parties to the action?

j) Did His Lordship in the Court of Appeal when affirming the Judgement of the District Court fail to appreciate the guidelines set down in Mahavithana's case 64 NLR 217."

[1] Journal entry dated 11.01.2016.

Factual Background

The original owner of the Grant in respect of the land in question was one William, the father of both the Plaintiffs-Appellants and the Defendant-Respondent. Upon his demise, his spouse, Karalenchinahamy being the nominee, succeeded to his interests in the land.

It is the position of the Plaintiffs-Appellants that Karalenchinahamy prior to her death had nominated in writing the Plaintiffs-Appellants as nominees to succeed upon her death. However, Defendant-Respondent in his amended answer maintained that since he is the eldest son of deceased Karalenchinahamy he is entitled to succeed to her interest under the provisions of Land Development Ordinance.

The learned District Judge dismissed the action of the Plaintiffs-Appellants on the ground that there is no material before the Court to arrive at the conclusion that a valid nomination has been made according to the law, nominating Plaintiffs-Appellants to succeed to the interests of the said Karalenchinahamy. The learned judge of the Court of Appeal affirmed the conclusion of the learned District Judge.[2]

Analysis

Section 2 of the Land Development Ordinance, No. 19 of 1935, as amended, defines "holding" as a land alienated by a Grant under this Ordinance. Chapter VII of the Land Development Ordinance lays down procedural rules relating to who is entitled under this Chapter to succeed to that land or holding upon the death of the permit-holder or owner of such holding.

[2] CA/111/99 F dated 03.06.2014.

Now let me turn to the question as to who is entitled to succeed to the interests of the land when an owner of a holding dies without leaving a spouse, or if the nomination is invalid in the eyes of law.

Section 72 of the Land Development Ordinance provides that,

> Section 72- *If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule*

Scope of the law on succession prior to the amendment brought in by Amendment Act No. 11 of 2022 was in the following manner; (a) Sons (b) Daughters (c) Grandsons (d) Granddaughters (e) Father (f) Mother (g) Brothers (h) Sisters (i) Uncles (j) Aunts (k) Nephews (l) Nieces.

In the instant case both the Plaintiffs- Appellants who claimed to have been nominated to succeed to the interests of the said Karalenchinahamy, comes within the purview of groups of relatives enumerated in the Rule 1 of the third schedule and therefore, have the opportunity of being nominated as successors to such a grant. However, if such nomination turned to be invalid in the eyes of law, the defendant in this case who is the eldest son of the Karalenchinahamy, is entitled to succeed to her interests.

Law relating to Nomination of a Successor

The procedural rules relating to nomination of a successor, cancellation of a nomination, and registration are laid down in sections 52-67 of the Land Development Ordinance.

Section 56 elaborates on the manner in which a nomination is effected.

> *'56 (1) The nomination of a successor and the cancellation of any such nomination shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a divisional Assistant Government Agent, or a notary, or a Justice of the Peace.*
>
> *(2) The provisions of subsection (1) shall not apply to any nomination or cancellation of a successor made by last will in the manner hereinafter provided, or to the nomination and cancellation of a successor to a land alienated on a permit made in the manner provided in section 87.*
>
> *(3) A document by which the nomination of a successor or the cancellation of any such nomination is effected under subsection (1) shall not be deemed to be an instrument affecting land for the purposes of the Registration of Documents Ordinance, nor shall the provisions of Chapter II of that Ordinance apply to any person before whom any such document is executed.'*

Section 58 provides,

> *'58 (1) A document (other than a last will) whereby the nomination of a successor is effected or cancelled* ***shall not be valid unless and until it has been registered by the Registrar of Lands of the district***

in which the holding or land to which that document refers is situated.

(2) *Regulations may be made prescribing the procedure for the registration of documents whereby nominations of successors are effected or cancelled and for all matters connected therewith or incidental thereto, including the registers which shall be kept and the fees which shall be charged for such registration.'*

[emphasis added]

Section 60 reads as follows;

'60. No nomination or cancellation of the nomination of a successor ***shall be valid unless the document*** *(other than a last will) effecting such nomination or cancellation* ***is duly registered before the date of the death of the owner*** *of the holding or the permit-holder.'*

[emphasis added]

A careful perusal of the aforesaid sections clearly reveals that, for a successor to succeed to a holding upon the death of its owner, the nomination of such successor must have been duly registered prior to the death of the owner. Thus, the one of the cardinal questions before us is whether there exists a valid nomination that is duly registered prior to the death of the owner of the holding.

Validity of the Instrument Nominating the Successor

According to the submissions of Plaintiffs-Appellants, the nomination ('P3') was signed on **September 04, 1986** and it was registered on **October 29, 1986** whereas Karanchinahamy died on **September 08, 1989**. It is the contention of the Plaintiffs-Appellants that both District Court and the Court of Appeal mistakenly considered the entry on **February 08, 1991** which is in respect of

transferring rights to nominee as the date on which the nomination was registered (Paragraph 9 of the Petition), a fact which is also admitted by the Defendant-Respondent in his written submission. The relevant paragraphs of the submissions read as follows;

> *"3. However, the Learned District Judge as well as the Judge of the Court of Appeal reasoning in their judgment has come to* ***the finding that the nomination has been registered after the death of the mother which is wrong on the face of the document marked P2.***
>
> *4.However, even if the said reason is wrong, the purported nomination marked P3 is still not valid for the other reasons submitted elsewhere. in these submissions."* [3]

Plaintiffs-Appellants further state that as authorities have transferred the land in question by endorsement to the two Plaintiffs by giving title to the Plaintiffs, it could be assumed that 'P'3 has been properly effected and registered.

The Defendant-Respondent submit that as per section 58 of the Land Development Ordinance, no nomination is valid unless it is executed in triplicate and duly attested by the person mentioned therein and as per the evidence of the witness from Divisional Secretary's office Hambantota, purported nomination has only one copy and two other copies were never received.

However, when going through the evidence it is clearly evident that the said nomination has been duly registered and the interests of the said land also have been already transferred to the Plaintiffs-Appellants.

The evidence-in-chief of land Registrar of Hambantota also corroborate this fact.

[3] Written Submission of Defendant-Respondent-Respondent.

"පැ. 03 ඉඩම් රෙජිස්ට්‍රාර් නිකුත් කරපු එකක්. හම්බන්තොට දිසාපති තුමාගෙන් ආව එකක්. ඔප්පුවෙන් ආව එකත් ඒක සරණසිංහ පටබැදිගේ ජයතිස්ස සහ සරණසිංහ පටබැදිගේ සිරිසේන
යන අයගේ නම් ඉඩම් ලියා පදිංචි ලේඛණය අනුව 655 ප්‍රධාන පත්‍රයේ නව අයිතිකරුවන් වශයෙන් ලියා පදිංචි වෙලා තිබෙනවා. කිසිම ලේඛයක් නැහැ මෙය අවලංගු කිරීමක් හෝ පරීක්ෂණයකට කැදවා තිබෙන බවට ඉඩම් රෙජිස්ට්‍රාර් කාර්යාලයෙන්"

(Page 75 of the Appeal brief)

In the re-examination also he further vouches for the validity of the 'P3'.

> *ප්‍ර. පැ. 03 ලේඛණය මේ දක්වා වලංගු ලේඛණයක්ද අවලංගු ලේඛණයක්ද?*
> *උ- ලියාපදිංචි කිරීම අනුව වලංගුය.*
> *ප්‍රාදේශීය ලේකම් තුමාගේ ලේඛණය වලංගු ලේඛණයන් බවට පිලි අරන් ලියා පදිංචි කර තිබෙනවා*

(Page 76 of the Appeal brief)

Section 114 of the Evidence Ordinance provides as follows,

> *'114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case.*
>
> *Illustrations*
>
> (a) - (c) […]
>
> **(d)** ***the judicial and official acts have been regularly performed;***
>
> (e) - (h) […]'
>
> [emphasis added]

Accordingly, as the nomination in question has been duly registered it could be presumed that the correct procedure has been followed in doing so, unless Defendant-Respondent is able to rebut that presumption with clear and cogent evidence.

In the Instant case, Defendant-Respondent also raises doubt as to the genuineness of the thumb impression on the ground that the Justice of Peace who attested 'P3' has failed to state the thumb impression is of Karalenchinahamy.

When going through the totality of evidence the content of the nomination paper marked 'P3' clearly identifies the parties who have signed the document. The author of the document is clearly identified as Karalenchinahamy at the top of the document. Further letters sent by said Karalenchinahamy indicating her intention to nominate Plaintiffs-Appellants (documents marked 'V2', 'V3'operates rather adversely to the Defendant-Respondent who questions the genuineness of the signature which claimed to be of Karalenchinahamy. It is noteworthy that the Defendant-Respondent has not led single evidence to disprove the genuineness of the signature nor has he taken any actions against the purported forgery. The Defendant-Respondent has neither marked it subject to proof nor raised objection to admitting it as evidence at the closure of the case. In such circumstance, I am of the opinion that failure of Justice of Peace to state the thumb impression is of Karalenchinahamy does not make a significant difference as the content of the document clearly indicates who the executor is.

Plaintiffs-Appellants further assert that since 'P3' is not objected to when tendering evidence, it is evidence for all purposes of law. It is the position of the Defendant-Respondent that since, the Plaintiffs-Appellants called none of the witnesses to 'P3' nor the Justice of Peace who authenticated the document, it is inadmissible as evidence.

Before going to the substantive issue, let me first clarify the law relating to it.

Prior to the enactment of Act No 17 of 2022, whenever execution was in issue, formal proof of due execution of an instrument is necessary as per Section 68 of the Evidence Ordinance. However, in the case of ***Sri Lanka Ports Authority and another vs Jugolinija - Boal East***[4] which was decided under the old law it was held that '" *If no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the cursus curiae of the original civil courts*." This position is further clarified with the enactment of Act No 17 of 2022 with the introduction of new Section 154A.

Section 154A which was newly introduced under the said Amendment, provides as follows;

> *154A (1) Notwithstanding the provisions of the Evidence Ordinance (Chapter 14), in any proceedings under this Code, it* ***shall not be necessary to adduce formal proof of the execution or genuineness of any deed, or document which is required by law to be attested,*** *other than a will executed under the Wills Ordinance (Chapter 60),* ***and on the face of it purports to have been duly executed,*** *unless*
>
> *(a)* ***in the pleadings or further pleadings in an action filed under regular procedure in terms of this Code, the execution or genuineness of such deed or document is impeached and raised as an issue****; or*
>
> *(b) the court requires such proof*
>
> [….]"
>
> [emphasis added]

[4] (1981) 1 Sri L R 18.

This case was before the District Court prior to the enactment of the Act, and was not objected to at the time of marking. Even if it is assumed it requires proof as law stands prior to the Amendment of the Act, the transitional provision reads 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.* […]'
>
> [emphasis added]

Shiran Gooneratne J.'s dicta in the case of ***Premalal Leelananda Thilakaratne and another vs Hewa Hakuruge Wijaya Nandasiri Kumara and others***[5] clearly depicts the effect of transitional provision as follows;

> *"As the law stood at the time of the trial and the High Court appeal, these principles remained fully in force. Therefore, both the District Court and the Civil Appellate High Court were duty-bound to*

[5] SC Appeal No. 138/2009 SC Minutes on 07/08/2025.

examine whether the Deed of Gift had been duly executed in accordance with the requirements of the Evidence Ordinance and prevailing judicial authority at the time. […] In the present matter, Deed of Gift No. 1040 was marked in evidence without objection at the time of tendering or at the closure of the Plaintiff's case. Similarly, Deed of Revocation No. 39, although marked "subject to proof" when tendering, was also not objected to at the close of the case. Therefore, by operation of Section 3 of the 2022 Amendment, these documents are now deemed to be admitted as evidence."

Shiran Gooneratne J. in the same case observes that,

"The above transitional provision applies to all cases and appeals pending as of the date the law came into force, which is 17th of February, 2022. Since this appeal was pending before this Court as of that date, the transitional provision applies to it without exception. Accordingly, I am compelled to apply the procedural rules introduced by the amendment, regardless of whether the trial or appellate proceedings were concluded prior to the Amendment coming into force."

Therefore, at this juncture, the document marked 'P3' ought to be admitted as evidence for all purposes of law considering the fact that no objection was taken at the closure of the Plaintiffs-Appellants case.

In ***Mahavitharana vs Inland Revenue Commissioner***[6] where the court was confronted with the question whether the transaction concerned is an adventure in nature of trade for tax purposes, the court looked into the scope and nature of the powers in reviewing questions of fact and questions of law. Here, H. N. G.

[6] 64 NLR 217.

Fernando, J citing Indian case of ***Naidu & Co. vs The Commissioner of Income Tax***[7] held that,

*"There thus arises for consideration the scope and nature of the power which this court has, upon a Case Stated, to reject conclusions reached by the Board on questions of fact. I have in this connection derived valuable aid from a judgment of the Supreme Court of India in Naidu & Co. v. The Commissioner of Income Tax 1**[**1 1959 A. I. R. 359 (S. C.)**]** which dealt with the corresponding functions of the High Court in India upon references of questions of law under section 66 of the India Income Tax Act, 1922.*

[…]

It would seem following these dicta, with which I most respectfully agree, that it is open to this court to reconsider the correctness of the inference drawn by the Board of Review as to the assessee's intention, only-

(a) if that inference has been drawn on a consideration of inadmissible evidence, or after excluding admissible and relevant evidence,

(b) if the inference was a conclusion of fact drawn by the Board but unsupported by legal evidence, or

(c) if the conclusion drawn from relevant facts is not rationally possible, and is perverse and should therefore be set aside."

It appears to me that learned Counsel for the Petitioner-Appellant is in the view that the trial Judge had not drawn correct inferences from the evidence led. The Appeal Court can set aside those inferences only if such facts are based on

[7] **[**1 1959 A. I. R. 359 (S. C.)].

inadmissible evidence, rejection of admissible evidence or if the inferences are unsupported by evidence or conclusion reached is irrational or was perverse.

Here, the question before the learned District Judge is a mixed question of law and fact. In my view, a judge in analysing evidence must consider the totality of evidence rather than each single fact in isolation. As such, when going through the totality of evidence it is clear that there is overwhelming evidence to the effect that the nomination in question has been by a free agent with full appreciation of its consequences which I have already discussed in this judgment. Throughout this case, it is clearly evident to us that Karalenchinahamy had a rather close relationship with the Plaintiff-Appellants whereas her relationship with the Defendant-Respondent in this case is quite strained. Nonetheless, the learned District Judge has come to the conclusion that the nomination in question is invalid on mere assumptions and irrelevant material.

For the said reasons, I am of the view that the learned Judge of the Court of Appeal has failed to appreciate the fact that leaned trial judge has taken irrelevant facts into consideration while ignoring the relevant facts, thereby coming to an erroneous conclusion.

Conclusion

I answer the questions of law raised in the following manner;

"b) Did the District Court and the Court of Appeal misapply S. 60 of the Land Development Ordinance to the facts of the instant case?" **- Yes**

"c) Did the District Court and the Court of Appeal err in not comparing the document P3 with the entries in the register of permits/grants, a careful perusal of which would reveal that the nomination had been registered in 1986, prior to the death of Karalenchihamy." **- Yes**

***"e) Did the Courts below err in not appreciating that P3 was accepted as a valid document and acted upon by the Authority concerned and registered the same as a valid nomination?"*- Yes**

***"f) Could the District Court and the Court of Appeal act on the ipse dixit of the Defendant without any proof that the thumb impression is not the thumb impression of Karalenchihamy?'*- No**

***"g) Could the Defendant challenge P3 without making the authorities concerned parties to the action?"*- No**

***"j) Did his Lordship in the Court of Appeal when affirming the Judgement of the District Court fail to appreciate the guidelines set down in Mahavithana's case 64 NLR 217.*" – Yes**

For the aforesaid reasons, I allow the appeal and set aside the judgment of both the District Judge and the learned Judge of the Court of Appeal. The learned District judge is directed to enter judgment in favour of the Plaintiffs granting reliefs (ඒ) and (ඓ) of the amended plaint. This Court is of the Plaintiffs have not sufficiently proved damages and therefore not entitled to the relief in (ඒ).

Parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT