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

Vijayavani Wijayawardena,
No. 37/1A, Bullers Lane,
Colombo 7.
Petitioner-Petitioner-Appellant

SC/APPEAL/229/2025
HC (CIVIL) 09/2021/CO

Vs.

1. Cinemas (Private) Limited,
   No. 545, Sri Sangaraja Mawatha,
   Colombo 10.
2. Gunaratnam Rabindranath Pathmaraj,
   No. 67/2, Gregory's Road,
   Colombo 7. (deceased)
3. Sanjayaraj Randheer Pathmaraj,
   No. 67/2, Gregory's Road,
   Colombo 7.
   And of No. 5/2, Grandsburg Apartment, 152, Kynsey Road,
   Colombo 7.
4. Kamala Gunaratnam,
   No. 7, 1/1, Barnes Place Residencies,
   Barnes Place, Colombo 7. (deceased)
5. Sarojini Gunaratnam,
   No. 3/24, Renown Avenue,
   Wiley Park, Sydney, NSW 2195,
   Australia.
   Presently at, 9/5, Crescat Apartment,
   Galle Road, Colombo 3.

Also 1-11/3, “Platinum Apartments”,
1 Bagatale Road, Colombo 3.

6. Sharmini Mahendran,
9, Strath Connan Place,
Wheelers Hill, Victoria 3150,
Australia.

7. Rajendran Rajah Mahendran,
175, Inner Flower Road, Colombo 3.
(deceased)

8. Rajendran Mahendran,
23/4, Guildford Crescent,
Colombo 7.

9. Universal Marketing Services (Pvt) Ltd., No. 545, Sri Sangaraja Mawatha, Colombo 10.

10. Secretarial Advisory Services (Pvt) Ltd., No. 545, Sri Sangaraja Mawatha, Colombo 10.

11. Kingsley Newton Jayalath,
Kingsley Jayalath & Co.,
Chartered Accountants,
43/3, Sri Saranankara Road,
Dehiwala.

<u>Respondents-Respondents-Respondents</u>

Priyadarshini King,
39/198, Natakorn Park, Soi Nichada Thani, Samakee Road, Amphur Pakkret, Nonthaburi 11120,
Thailand.
And of 37/1A, Buller’s Lane,
Colombo 7.

<u>Petitioner-Petitioner-Respondent</u>

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna
Hon. Justice Sampath K.B. Wijeratne

Counsel: Ali Sabry, P.C., with Ruwantha Coorey, Naamiq Nafath, Rodney Vaz, Vijukthi Karunarathne and Akash Rafeek for the Petitioner-Petitioner-Appellant.

Dr. Romesh De Silva, P.C., with N.R. Sivendran for the 1st Respondent-Respondent-Respondent.

Priyantha Alagiyawanna with Tharushi Weerasekera for the 3rd Respondent-Respondent-Respondent.

Niranjan De Silva with Shane Foster and Thulith Bandara for the 5th Respondent-Respondent-Respondent.

Akiel Deen with Tharushi Jayaratne for the 6th Respondent-Respondent-Respondent.

Niranjan Arulpragasam with Lasika Udayangani and Ashenka de Silva for the 10th Respondent-Respondent-Respondent.

Zahara Hassim for the Petitioner-Petitioner-Respondent.

Argued on: 06.05.2026

Written submissions:

By the Petitioner-Petitioner-Appellant on 08.06.2026 and 15.06.2026.

By the 1st, 9th and 11th Respondent-Respondent-Respondents on 10.04.2026, 15.06.2026 and 24.06.2026.

By the 3rd Respondent-Respondent-Respondent on 03.02.2026 and 15.06.2026.

By the 5th Respondent-Respondent-Respondent on 06.05.2026 and 15.06.2026.

By the 6th Respondent-Respondent-Respondent on 23.03.2026.

Decided on: 02.09.2026

Samayawardhena, J

The Petitioner and another shareholder instituted this action in the Commercial High Court on 24.11.2020 against eleven Respondents alleging oppression of them as shareholders of the 1st Respondent Company and mismanagement of the affairs of the Company in terms of sections 224 and 225 of the Companies Act, No. 7 of 2007. Pending the determination of the action, the 2nd, 4th and 7th Respondents passed away.

Consequently, by two joint applications dated 30.06.2022, the Petitioners sought (a) the substitution of the 3rd Respondent, who had obtained limited letters of administration to the estate of the deceased 2nd Respondent, in place of the deceased 2nd Respondent in terms of section 394 of the Civil Procedure Code; and (b) permission, in terms of section 396 of the Civil Procedure Code, to proceed with the application against the surviving Respondents without substituting any person in place of the deceased 4th and 7th Respondents, on the basis that no relief had been sought against them.

There was no objection to the application under section 396. However, the 1st, 3rd, 9th and 11th Respondents opposed the application for substitution under section 394. Following an inquiry conducted by way of written submissions, the learned Judge of the Commercial High Court, by order dated 06.09.2024, dismissed the application for substitution. Aggrieved by that order, the Petitioner has preferred this appeal.

The Petitioners' case, in summary, is as follows. Following the death of their father in 1989, the 2nd Respondent, being the eldest son, assumed control of the 1st Respondent Company as its Managing Director. The Petitioners allege that thereafter he embarked upon a continuous course of conduct designed to consolidate his personal control of the Company at the expense of the other shareholders. It is alleged that he procured a number of unlawful transfers of shares belonging to deceased shareholders and shares forming part of the estate of the late father, thereby substantially increasing his own shareholding and obtaining effective control of the Company.

The Petitioners further allege that the 3rd Respondent was unlawfully appointed as a Director of the Company despite not possessing the qualifications prescribed by the Articles of Association and having failed to acquire the requisite share qualification within the stipulated period. They also challenge the issue and allotment of 100 shares to the 3rd Respondent on 09.11.2016, alleging that the allotment was made in contravention of section 53 of the Companies Act and the Articles of Association, thereby diluting their voting and proprietary interests.

The Petitioners further complain that, on 26.03.2019, the 2nd and 3rd Respondents caused the existing Articles of Association to be repealed and new Articles of Association to be adopted at an Extraordinary General Meeting convened without proper notice to the Petitioners and certain other shareholders and without a valid quorum. It is alleged that the principal object of that amendment was to exclude the statutory pre-emptive rights conferred by section 53 of the Companies Act and thereby facilitate the subsequent issue and allotment of 147,000 shares to the 2nd Respondent.

The issue and allotment of those 147,000 shares on 27.03.2019 constitute the principal complaint against the deceased 2nd Respondent. The Petitioners contend that the allotment was unlawful, unsupported by any legitimate commercial justification and deliberately designed to dilute the shareholding of the existing shareholders, thereby effecting a material change in the ownership of the shares and control of the Company in a manner oppressive to the minority shareholders and prejudicial to the interests of the Company.

The Petitioners have raised several other allegations of oppression and mismanagement. However, for the purpose of determining the present appeal, it is unnecessary to refer to them in detail.

The Petitioners sought, *inter alia*, the following reliefs in the main application:

1. Declarations that the affairs of the 1st Respondent Company had been conducted in a manner oppressive to the Petitioners as shareholders and prejudicial to the interests of the Company.

2. A declaration that the appointment of the 3rd Respondent as a Director of the Company was unlawful and void, together with consequential orders removing him from the Share Register and the Board of Directors.

3. Declarations that the issue and allotment of 100 shares to the 3rd Respondent and 147,000 shares to the 2nd Respondent were unlawful, illegal and void, together with consequential rectification of the Share Register.

4. A declaration that the amendment to the Articles of Association adopted on 26.03.2019 was unlawful and void, together with an order expunging the impugned provision excluding the statutory pre-emptive rights contained in section 53 of the Companies Act.

5. A declaration that the 2nd Respondent had persistently failed to comply with the Companies Act, together with consequential orders removing him from the offices of Managing Director and Director of the Company.

6. An order appointing the 1st Petitioner as a Director of the Company.

7. An order directing the 2nd Respondent to account for and pay rent in respect of the Company's property situated at No. 67/2,

Gregory's Road, Colombo 7, which he is alleged to have occupied without payment.

8. An order under section 228(b) of the Companies Act requiring the Company to purchase the shares and interests of the 2nd Respondent.

9. Costs and such further and other relief as to Court may seem meet.

The learned Judge of the Commercial High Court dismissed the application for substitution principally on the following grounds:

1. The allegations made against the deceased 2nd Respondent were purely personal in nature and, applying the maxim *actio personalis moritur cum persona*, the cause of action did not survive his death. Accordingly, the proceedings against him came to an end upon his death and no question of substitution arose.

2. Upon the death of the 2nd Respondent, the 147,000 shares devolved upon the 3rd Respondent by virtue of the nomination made under section 544 of the Civil Procedure Code. Consequently, those shares did not form part of the estate of the deceased 2nd Respondent.

3. Oppression and mismanagement, being personal to the alleged oppressor, came to an end upon the death of the 2nd Respondent. Any subsequent conduct on the part of his successors might give rise to fresh causes of action, but the existing cause of action did not survive his death.

I regret my inability to agree with the reasoning and the conclusion reached by the learned Judge.

There are several allegations against the 2nd Respondent in the main application, and the Petitioners seek a variety of reliefs. I accept that some of those allegations, and the corresponding reliefs sought, are personal in nature and do not survive the death of the 2nd Respondent. Those reliefs need not be granted.

However, an application alleging oppression and mismanagement is not directed merely at the past conduct of an individual shareholder or director. Its focus is the continuing affairs of the Company. Accordingly, where the impugned acts are alleged to continue to affect the ownership of the shares or the control, governance or affairs of the Company, and the relief sought is directed at remedying those continuing consequences, the cause of action may survive the death of the alleged wrongdoer. If those consequences continue, the Court is entitled, and indeed obliged, to take cognisance of them in determining an application under sections 224 and 225 of the Companies Act. Whether the cause of action survives in a given case necessarily depends upon the nature of the allegations and the reliefs sought.

As I observed at the outset, the gravamen of the Petitioners' complaint is the issue and allotment of 147,000 shares to the 2nd Respondent. The Petitioners contend that the allotment was wrongful, unlawful and void *ab initio*, and was deliberately engineered to dilute the interests of the existing shareholders, thereby effecting a material change in the ownership of the shares and control of the Company in a manner oppressive to the minority shareholders and prejudicial to the interests of the Company. If those allegations are established, the wrong is of a continuing character.

The Companies Act confers a broad remedial jurisdiction upon Court in applications alleging oppression and mismanagement. Where the statutory grounds are established, the Court is empowered to make such interim or permanent orders "as it thinks fit" and such orders as are "just and equitable in all the circumstances of the case". The jurisdiction is therefore directed not merely towards adjudicating upon past misconduct, but towards remedying continuing prejudice to the Company and its shareholders.

The statutory scheme governing applications for oppression and mismanagement reinforces the conclusion reached above. Sections 224 and 225 confer upon Court a broad remedial jurisdiction where the affairs of a company are alleged to have been conducted in a manner oppressive to shareholders or prejudicial to the interests of the Company, or where a material change has occurred in the management or control of the Company. In each instance, the Court is empowered, "with a view to remedying" or "remedying or preventing" the matters complained of, to make "such order as it thinks fit". Pending the final determination of the proceedings, the Court may also make such interim orders as it considers necessary for regulating the conduct of the Company's affairs upon such terms and conditions as appear to it to be "just and equitable".

The breadth of that jurisdiction is further emphasised by section 228. Without prejudice to the generality of the powers conferred by sections 224 and 225, section 228 authorises the Court, *inter alia*, to regulate the future conduct of the Company's affairs, order the purchase of shares or interests of shareholders, terminate, set aside or modify agreements entered into by the Company with its Managing Director, Directors, Board of Directors, Secretary, Manager or other persons, and make provision for "any other matter" which, in the opinion of the Court, it is "just and equitable" to provide for in all the circumstances of the case. The language employed by Parliament is of the widest amplitude and demonstrates that the Court has been entrusted with comprehensive powers to remedy the matters complained of and to make such orders as are necessary to protect both the Company and its shareholders.

The same legislative policy is reflected in sections 233 and 521. Section 233 empowers the Court to grant restraining orders to prevent a company or its directors from engaging in conduct that would contravene the Articles of Association or the Companies Act and, pending the final determination of such an application, to grant appropriate interim relief.

Section 521 supplements that jurisdiction by conferring general power upon the Court to grant interim orders, including restraining orders, in proceedings under the Companies Act.

Collectively, these provisions demonstrate intention of the legislature to confer upon Court flexible and effective powers to prevent, regulate and remedy corporate misconduct and its continuing consequences.

The breadth of the powers conferred upon Court should not obscure the exceptional nature of the jurisdiction. The Court's function is remedial, not managerial. The Court does not sit as a supervisory board of directors or as an arbiter of every disagreement between shareholders. Mere personal animosity, family discord or differences of commercial opinion do not, without more, constitute oppression or mismanagement within the meaning of the Act. The jurisdiction is engaged only where the complaint concerns the conduct of the affairs of the Company in a manner oppressive to shareholders or prejudicial to the interests of the Company, or where the statutory conditions for intervention are otherwise satisfied. The Court will not interfere with the internal management or commercial decisions of a company merely because another course of action might have been preferable. So long as the affairs of the Company are conducted within the framework of the Companies Act and the Articles of Association, and in the absence of oppression, prejudice or any other statutory ground for intervention, the Court shall exercise its jurisdiction with great caution and restraint. Even where intervention is warranted, it should go no further than is necessary to remedy the matters complained of.

I am unable to accept the argument advanced on behalf of the 3rd Respondent that, upon the death of his father, the 2nd Respondent, the 147,000 shares devolved upon him by operation of section 544 of the Civil Procedure Code by virtue of his nomination and, consequently, ceased to form part of the estate of the deceased 2nd Respondent.

Section 544 of the Civil Procedure Code enables a person to nominate another to whom specified movable property, including shares of a Company, may be transferred upon the nominator's death. The purpose of the provision is to facilitate the transmission of the nominator's interest upon death. It is not a validating provision. It neither enlarges nor perfects the title of the nominator, nor does it cure any defect in the manner in which the nominator acquired the property.

The Petitioners' case is that the issue and allotment of the 147,000 shares to the 2nd Respondent were unlawful and void *ab initio*. If that allegation is ultimately established, the 2nd Respondent acquired no valid title to those shares capable of passing to a nominee under section 544. A nominee cannot acquire a better title than that possessed by the nominator. The well-established maxim *nemo dat quod non habet* that no one can convey a better title than he himself possesses applies with full force.

To hold otherwise would produce manifestly unjust results. A person who has acquired property through fraud, forgery or some other illegality could simply nominate another person under section 544 and, upon his death, the nominee would obtain an indefeasible title notwithstanding the invalidity of the original acquisition. Such a construction would enable section 544 to confer validity upon a title that is defective or otherwise invalid in law, a consequence which the legislature could never have intended.

Lord Denning succinctly explained the legal consequence of a void act in *Macfoy v. United Africa Co. Ltd.* [1961] 3 All ER 1169 at 1172:

> *If an act is void, then it is in law a nullity... And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.*

Although sections 224 and 225 of our Companies Act differ in their language from the unfair prejudice jurisdiction under section 994 of the

UK Companies Act 2006, the English authorities are nevertheless instructive. They proceed upon the same fundamental premise, namely that the Court's jurisdiction is directed at the manner in which the affairs of the company are conducted and at the consequences which the impugned conduct continues to have for the company and its members. Thus, in *O'Neill v. Phillips* [1999] 1 WLR 1092 and *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14, the courts emphasised that the statutory jurisdiction is concerned with the affairs of the company and the grant of appropriate relief in respect of the matters complained of. That approach is illustrated by *McCallum-Toppin v. McCallum-Toppin* [2019] EWHC 46 (Ch), where the death of one of the original shareholders did not prevent the Court from determining the petition because the matters complained of continued to affect the affairs of the company.

The decision in *Jayawardena v. Obeysekera* [2011] 1 Sri LR 349 was relied upon by the 1st, 3rd, 9th and 11th Respondents. In that case, the Supreme Court was principally concerned with the applicability of the provisions of the Civil Procedure Code relating to substitution following the death of one of several Petitioners in an application alleging oppression and mismanagement. The issue that arises in the present appeal is materially different. Here, the question is whether the legal representative of a deceased Respondent can be substituted where the principal allegations concern acts said to have continuing consequences affecting the ownership of the shares, control and affairs of the Company. To that extent, the decision is distinguishable. The judgment, however, also contains the following observation at page 360:

> *In such circumstances I am of the opinion that the right to sue does not survive to the heirs on the basis that the action requires a shareholder to form an opinion that the affairs are conducted in a manner oppressive to shareholders. With the demise of the complainant, his complaint loses sanctity. Clearly it is available to the heir or any other shareholder to make a fresh complaint. But as*

far as the original complaint is concerned, it ceases to be of effect with the death of the complainant.

With the greatest respect, I am unable to subscribe to the proposition that, as a general principle of law, an application under sections 224 and 225 of the Companies Act invariably ceases upon the death of a party. In my view, it places undue emphasis upon the personal grievance of the shareholder while insufficiently recognising the true nature of the jurisdiction conferred by sections 224 and 225 of the Companies Act. An application alleging oppression or mismanagement is not directed merely to the vindication of an individual shareholder's personal complaint. Rather, it requires the Court to examine whether the affairs of the Company are being conducted in a manner oppressive to shareholders or prejudicial to the interests of the Company, or whether a material change in the management or control of the Company has produced or is likely to produce such prejudice. The inquiry is therefore directed at the continuing affairs of the Company and the continuing consequences of the impugned conduct.

If the principal complaint concerning the alleged unlawful issue and allotment of 147,000 shares to the 2nd Respondent is established, the legal consequences of that allotment continue notwithstanding the death of the 2nd Respondent, as does the jurisdiction of the Court to remedy them.

To hold otherwise would mean that proceedings challenging continuing acts of oppression or mismanagement would automatically terminate upon the death of either the alleged oppressor or the complaining shareholder, notwithstanding that the impugned state of affairs continues unabated. The heirs or other shareholders would then be compelled to institute fresh proceedings in respect of substantially the same controversy. Such a result would be inconsistent with the remedial purpose of sections 224, 225 and 228 of the Companies Act.

It is common ground that the deceased 2nd Respondent had not filed a memorandum under section 393(1) of the Civil Procedure Code nominating one or more legal representatives for the purpose of continuing the proceedings in the event of his death pending the final determination of the action.

Section 394 specifically provides for the substitution of a deceased party where no memorandum has been filed under section 393(1). It reads as follows:

> *394(1) On the death of a party to the action who had failed to file a memorandum, any party to the action may apply to the Court by an ex parte application by way of petition supported by an affidavit requesting that an executor or administrator or, in the case of an estate which is below the administrable value, the next of kin who have adiated the inheritance of the deceased party be substituted in the place of such deceased party.*
>
> *(2) The Court may, on being satisfied that such substitution is necessary and that the cause of action survives the death of such party, appoint such person.*
>
> *(3) The person so appointed shall be bound by proceedings prior to his appointment:*
>
> *Provided that the person appointed and made a substituted party to the action may object that he is not the executor or administrator or, in the case of an estate which is below the administrable value, the next of kin who have adiated the inheritance of the deceased party, or make any defence appropriate to his character as such representative.*

Section 394(2) thus requires the Court to be satisfied of two matters before an order of substitution can be made. Firstly, the substitution shall be necessary. Secondly, the cause of action shall survive the death of the party concerned. For the reasons already set out in this judgment, both requirements are satisfied in the present case.

There is no dispute that the District Court, in Testamentary Case No. DTS/158/2021, issued limited letters of administration appointing the 3rd Respondent to represent the estate of the deceased 2nd Respondent for the purpose of the pending legal proceedings. Accordingly, the 3rd Respondent is the proper person to be substituted in place of the deceased 2nd Respondent.

For the foregoing reasons, I set aside the order of the learned Judge of the Commercial High Court dated 06.09.2024. I direct the learned Judge to substitute the 3rd Respondent in place of the deceased 2nd Respondent and thereafter proceed to hear and determine the main action expeditiously.

I should make it clear that allowing the substitution does not amount to a finding, even *prima facie*, that the allegations levelled against the deceased 2nd Respondent are true. The only question determined in this appeal was whether the requirements for substitution under section 394 of the Civil Procedure Code have been satisfied. Whether the allegations are ultimately established, and if so, what reliefs should be granted, are matters to be determined by the Commercial High Court.

Before parting with this judgment, I wish to make a brief observation regarding the conduct of the 10th Respondent, the Company Secretary, and the 11th Respondent, the Company's Auditors. They vigorously opposed the application for substitution on substantially the same grounds as the 1st and 3rd Respondents. In my view, such opposition was unwarranted. There is no proper basis for either of them to oppose the substitution of a party.

The Company Secretary and the Company's Auditors are neither directors nor shareholders of the Company. They are statutory officers of the Company performing distinct statutory and professional functions.

The Company Secretary performs statutory and administrative duties under the direction of the Board of Directors, while the Auditors are required to discharge their duties independently and objectively in the interests of the Company. Neither has a personal interest in disputes between shareholders.

Where disputes arise between shareholders, particularly in proceedings alleging oppression and mismanagement, the Company Secretary and the Company's Auditors should ordinarily maintain a position of neutrality. Save in exceptional circumstances where the interests of the Company itself require otherwise, they should not align themselves with one faction of shareholders against another. Their proper role is to assist the Court, where necessary, by producing the relevant corporate records and discharging their statutory duties impartially, rather than actively supporting or opposing claims which are essentially disputes between competing shareholders.

The appeal is accordingly 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