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

In the matter of an Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006.

SC Appeal No: 49/2023
SP/HCCA/MA No. 06/2016 (F)
DC Matara Case No: 8039/L

1. Nalini Perera nee Samarasinghe,
   Millakandeniya, Maramba, Akuressa.

2. Amarawathie Wijeywantha nee Samarasinghe,
   Digalawatte, Maramba, Akuressa.

3. Sumanawathie Abeywickrema nee Samarasinghe,
   Kandalagewatta, Henagama, Akuressa.

4. Ranjith Mahasen Samarasinghe,
   Digalawatte, Maramba, Akuressa.

5. Sahan Dhaja Samarasinghe,
   Colombawatte, Maramba, Akuressa.

6. Nilanthi Samarasinghe,
   Maramba, Akuressa.

PLAINTIFFS

Vs.

Amara Ponnamperuma nee Jayasinghe,
No. 126, Richmond Hill Road, Galle.

DEFENDANT

And

Amara Ponnamperuma nee Jayasinghe,
No. 126, Richmond Hill Road, Galle.

DEFENDANT – APPELLANT

Vs.

1. Nalini Perera nee Samarasinghe,
   Millakandeniya, Maramba, Akuressa.

2. Amarawathie Wijeywantha nee
   Samarasinghe,
   Digalawatte, Maramba, Akuressa.

2A. Amara Wijeywantha
2B. Thamara Wijeywantha
2C. Samara Kumari Wijeywantha

   Digalawatte, Maramba, Akuressa.

3. Sumanawathie Abeywickrema nee
   Samarasinghe,
   Kandalagewatta, Henagama, Akuressa.

4. Ranjith Mahasen Samarasinghe,
   Digalawatte, Maramba, Akuressa.

5. Sahan Dhaja Samarasinghe,
   Colombawatte, Maramba, Akuressa.

6. Nilanthi Samarasinghe,
   Maramba, Akuressa.

PLAINTIFFS – RESPONDENTS

And Now Between

1. Nalini Perera nee Samarasinghe,
   Millakandeniya, Maramba, Akuressa.

1A. Waragoda Mudalige Dhammika Lalini
   Wijesekera nee Perera,
   230, Sri Dhammawansha Mawatha,
   Walpola, Matara

1B. Waragoda Mudalige Nihal Dharmasiri Perera,
   Millakandeniya, Maramba, Akuressa.

1C. Waragoda Mudalige Kalinga Perera,

Thalgahakanatta, Maramba, Akuressa.

1D. Waragoda Mudalige Maheswari Wijesiriwardhena nee Perera,
9, 6th Cross Lane, Wergampitiya, Matara.

1E. Waragoda Mudalige Prasad Perera,
Millakandeniya, Maramba, Akuressa.

1F. Waragoda Mudalige Sujeewa Perera,
Millakandeniya, Maramba, Akuressa.

2. Amarawathie Wijeywantha nee Samarasinghe,
Digalawatte, Maramba, Akuressa.

2A. Amara Wijeywantha,
Digalawatte, Maramba, Akuressa.

2B. Thamara Wijeywantha,
Digalawatte, Maramba, Akuressa.

2C. Samara Kumari Wijeywantha,
Digalawatte, Maramba, Akuressa.

3. Sumanawathie Abeywickrema nee Samarasinghe,
Kandalagewatta, Henagama, Akuressa.

4. Ranjith Mahasen Samarasinghe,
Digalawatte, Maramba, Akuressa.

5. Sahan Dhaja Samarasinghe,
Colombawatte, Maramba, Akuressa.

6. Nilanthi Samarasinghe,
Maramba, Akuressa.

PLAINTIFFS – RESPONDENTS – APPELLANTS

Vs

Amara Ponnamperuma nee Jayasinghe,
No. 126, Richmond Hill Road, Galle.

DEFENDANT – APPELLANT – RESPONDENT

Before: **S. Thurairaja, PC, J**
Yasantha Kodagoda, PC, J
Arjuna Obeyesekere, J

Counsel: Manohara De Silva, PC with Riad Ameen, Harithriya Kumarage and Sajith Nawaratne for the Plaintiffs – Respondents – Appellants

Sanjaya Kodituwakku for the Defendant – Appellant – Respondent

Argued on: 28th July 2025

Written Submissions: Tendered by the Plaintiffs – Respondents – Appellants on 28th August 2023 and 4th September 2025

Tendered by the Defendant – Appellant – Respondent on 1st September 2023 and 1st September 2025

Decided on: 19th March 2026

Obeyesekere, J

(1) The Plaintiffs – Respondents – Appellants [the Plaintiffs] instituted action in the District Court of Matara [the District Court] on 29th April 1993 against the Defendant – Appellant – Respondent [the Defendant] seeking, *inter alia* the following relief:

(a) A declaration that Deed of Gift No.47 dated 08th December 1991 attested by Bathigama Arachchige Wilbert, Attorney-at-Law [**P1 / Deed No. 47**] is not a document signed by Bandusena Samarasingehe Gunapala Siriwardane *alias* Bertie Samarasinghe [Bertie Samarasinghe] and that Deed No. 47 is a forged document;

(b) A declaration that Deed No. 47 be struck off the register maintained at the District Registrar's Office, Matara;

(c) A declaration that the Plaintiffs are entitled to the property described in the Schedule to the Plaint in the manner prayed for in the prayer to the plaint; and

(d) To eject the Defendant from the said land and to handover vacant possession to the Plaintiffs.

(2) By its judgment delivered on 24th August 2015, the District Court granted the reliefs prayed for by the Plaintiffs. The Defendant thereafter invoked the appellate jurisdiction of the Civil Appellate High Court of the Southern Province holden in Matara [the High Court]. By its judgment dated 17th October 2019, the High Court allowed the appeal and set aside the judgment of the District Court.

(3) Aggrieved, the Plaintiffs sought and obtained leave to appeal from this Court on 16th February 2023 on two questions of law which I have re-produced in paragraph 92 of this judgment. The principal submission of the learned President's Counsel for the Plaintiffs and the learned Counsel for the Defendant was focused on the applicable law relating to the admission of expert handwriting evidence.

Bertie Samarasinghe – the 'laird'

(4) It is admitted that the property that is the subject matter of this action was owned by Bertie Samarasinghe. Known as "දීගල වලව්ව" [Deegala Estate], it was approximately 52 Acres in extent and situated in Akuressa. The land consisted of tea, coconut and paddy plantations and a large bungalow which was occupied by Bertie Samarasinghe.

(5) Bertie Samarasinghe was an only child. His mother had passed away a few days after he was born. His father had remarried and the 1st – 4th Plaintiffs are the children from his father's second marriage. The 5th and 6th Plaintiffs are the children of another child from the second marriage who had passed away at a relatively young age. The Plaintiffs are thus Bertie Samarasinghe's half-brothers, half-sisters, nephew and niece.

(6) It is admitted that the said property was initially owned by Don David Gunapala Siriwardena, the maternal grandfather/granduncle of Bertie Samarasinghe. It is said that Bertie Samarasinghe grew up with his grandfather/granduncle at the Deegala Estate, and that his grandfather/granduncle had subsequently gifted the entire property to Bertie Samarasinghe. The Plaintiffs did not live at Deegala Estate but had lived with their parents in a much smaller property situated about quarter of a mile from Deegala Estate.

(7) Having been educated at Richmond College, Galle, Bertie Samarasinghe was a bachelor and had lived a carefree luxurious life in the large bungalow. It was in evidence that he had many employees to care for his needs, had a wide circle of

friends including several lawyers, maintained the bungalow in a manner that befitted estate bungalows of that era and was dependent on the income earned from the said property to maintain his lavish lifestyle.

Departure from Deegala Estate and the death of Bertie Samarasinghe

(8) During the insurrection in 1988-1990 which gripped the Southern Province, Bertie Samarasinghe had feared for his personal security. Thus, not wanting to live in Akuressa due to security concerns, in July 1988, he had moved in with the Defendant, who was his mother's brothers daughter, and her husband at their house situated in Galle. During this period, with the consent of Bertie Samarasinghe, Deegala Estate had been used by the Army and the Police and they had been stationed at the Estate. It is not in dispute that despite leaving his house, Bertie Samarasinghe continued to visit Deegala Estate and managed the plantations on the property through his employees. Even though the insurrection had been suppressed by the end of 1990, Bertie Samarasinghe could not immediately return to his home in Akuressa as it needed repairs after occupation by the Army and Police personnel. Hence, he had continued to live in the house of the Defendant.

(9) Bertie Samarasinghe passed away on 21st December 1991 whilst living with the Defendant. The Plaintiffs state that having been informed by the Defendant of his death, they had attended to the funeral arrangements of Bertie Samarasinghe and the funeral had been held at Deegala Estate. The seven day almsgiving too had been held at Deegala Estate and the Plaintiffs had met the costs. The Plaintiffs state that Bertie Samarasinghe had taken all his belongings including his valuable documents with him to the Defendant's house and for that reason, the Plaintiffs had visited the house of the Defendant a few days after the almsgiving and asked for the personal documents of Bertie Samarasinghe from the Defendant but had been informed that the documents cannot be traced. The Plaintiffs state further that approximately a week after the demise of Bertie Samarasinghe, the 4th Plaintiff had spoken to the Defendant with regard to the filing of a testamentary case pertaining to the estate of Bertie Samarasinghe, but had not received any response. It is pertinent to note that at that stage the Defendant had not referred to the existence of a Deed of Gift in her favour having been executed by Bertie Samarasinghe.

(10) Since Bertie Samarasinghe did not have any immediate family and there was no evidence that he had left a last will, and on the basis that they are the lawful heirs of the estate of Bertie Samarasinghe, the Plaintiffs had filed a testamentary action in the District Court of Matara on 8th January 1992. Deegala Estate too had been included in the inventory among other assets. The Defendant, who until then had kept silent with regard to the property, had intervened in the testamentary case by filing a petition dated 24th February 1992 in which she disclosed for the first time the existence of Deed No. 47 which is said to have been executed thirteen days before the death of Bertie Samarasinghe and by which Bertie Samarasinghe is said to have gifted Deegala Estate to the Defendant subject to his life interest. The Defendant had accordingly sought an order from Court to exclude Deegala Estate from the inventory of the testamentary case.

(11) The Plaintiffs claim that:

(a) Although he was 69 years of age, Bertie Samarasinghe had never been hospitalized for any illness, was relatively in good health and therefore was not living in anticipation of death which warranted a disposal of his most valuable asset by way of a gift;

(b) Bertie Samarasinghe needed the income from Deegala Estate for his livelihood and would therefore have retained it without gifting it;

(c) Even if Bertie Samarasinghe intended to pass on property after his death, being a bachelor dependent on the income generated by the property, he would not gift his most valuable asset thereby being unable to mortgage or sell the asset in whole or in part in order to raise funds to meet his lavish lifestyle;

(d) If Bertie Samarasinghe intended the Defendant or anyone else to receive the property after his death, then he would have executed a last will; and

(e) The fact that Bertie Samarasinghe did not execute a last will demonstrates that he was not expecting to die any time soon and that testamentary disposition was not in his contemplation.

(12) I must state that these are only argumentative claims of the Plaintiffs and that one would never know what was on the mind of Bertie Samarasinghe two weeks prior to his death. However, viewed holistically, these are circumstances which

are probable and those that can have a bearing on the ultimate decision in this case, which should reflect the truth.

Is Deed No. 47 a forgery – proceedings before the Magistrate's Court

(13) The Plaintiffs state that upon perusing Deed No.47, they realised that the signature of Bertie Samarasinghe on Deed No. 47 was different to his regular signature. Suspecting that the signature of Bertie Samarasinghe had been forged, the 4th Plaintiff had on 7th March 1992, promptly made a complaint to the Galle Police. The said complaint resulted in an investigation by the Galle Police and the reporting of facts to the Magistrate's Court, Galle under a 'B' Report.

(14) During the course of the investigation and through the Magistrate's Court, the Police obtained sample documents containing the signature of Bertie Samarasinghe and forwarded them to the Government Analysts Department for comparison with the signature that was said to be of Bertie Samarasinghe that appeared on Deed No. 47. The Defendant too sought an opinion from a retired Examiner of Questioned Documents relating to the authenticity and genuineness of the signature of Bertie Samarasinghe that appeared on Deed No. 47 when compared with the signature of Bertie Samarasinghe that appeared on the same set of documents that the Police had forwarded to the Government Analysts Department and another set of documents produced by the Defendant herself.

(15) The opinion of both the Government Analysts Department and the retired Examiner of Questioned Documents was that the signature that appeared on Deed No. 47 as being that of Bertie Samarasinghe did not tally with the signature of Bertie Samarasinghe that appeared on the sample documents. I have discussed in detail these two reports in paragraphs 29 to 36 of this judgment.

(16) It was only thereafter that criminal proceedings were instituted in the Magistrate's Court, Galle in Case bearing No. 40234, against the Defendant and the two persons who had signed as witnesses to Deed No. 47. The Defendant was charged with forgery and cheating, and the two witnesses were charged with aiding and abetting the Defendant to commit forgery and cheating. I am at a loss to understand the reason for the prosecution to have preferred these charges since in my view, the most appropriate charge would have been one of using as

genuine a forged document. Thus, it was clear from the inception that the evidence available was not sufficient to prove those charges.

(17) Be that as it may, the learned Magistrate has only considered the expert report of the Government Analyst's Department and concluded that while the said report is relevant, the attendant circumstances do not support a finding that Deed No. 47 is a forgery. The Magistrate's Court accordingly acquitted the accused. There was no appeal against the said judgment.

Is Deed No. 47 a forgery – proceedings before the District Court

(18) Soon after the complaint to the Police, the Plaintiffs filed action in the District Court of Matara, alleging that Deed No. 47 is a forgery and seeking the aforementioned relief. The Defendant denied that Deed No. 47 was a forgery. Having raised admissions and issues, the Plaintiffs led the evidence of (a) the 4th Plaintiff who was employed at the Bank of Ceylon where Bertie Samarasinghe maintained an account and therefore was familiar with the signature of Bertie Samarasinghe, (b) the Registrar and the Record Keeper of the Magistrate's Court, Galle in order to produce the record of the Magistrate's Court that contained the applications by both parties seeking the opinion of the Examiner of Questioned Documents and the two Reports, (c) Mr. C. D. Kalupahana, the Examiner of Questioned Documents who had signed P16, and (d) Mr. Arthur Sirimanne, the Investigation Officer. The Defendant gave evidence on her behalf and led the evidence of (a) Chrishantha Wickremasinghe, who was her brother-in-law and who had signed as a witness to Deed No. 47, (b) her 1st cousin who managed Deegala Estate during the period that Bertie Samarasinghe was living in Galle, (c) her brother, (d) the Attorney-at-Law who attested Deed No. 47, and (e) a medical doctor who had treated Bertie Samarasinghe.

(19) The Plaintiffs also relied on the two reports prepared by the aforementioned two handwriting experts for the purposes of the Magistrate's Court case, in support of their position that Deed No. 47 is a forgery. The Plaintiffs led the evidence of Mr. C. D. Kalupahana, Assistant Examiner of Questioned Documents at the Government Analysts Department who had prepared the report upon the application of the Police.

(20) By its judgment, the District Court held that Deed No. 47 is a forgery and granted the Plaintiffs the relief claimed for. It is that judgment which resulted in an appeal being filed in the High Court which led to the delivery of the judgment impugned in these proceedings.

(21) In order to give context to the findings of the District Court, the High Court and the questions of law that must be determined in this appeal, I shall first consider the legal position relating to the evidence of an expert and the manner in which a Court of law is required to act when considering the evidence of an expert.

Section 45 of the Evidence Ordinance

(22) Section 45 of the Evidence Ordinance provides as follows:

> "***When the Court has to form an opinion as to*** *foreign law, or of science, or art, or as to identity or* ***genuineness of handwriting*** *or finger impressions, palm impressions or foot impressions,* ***the opinions upon that point of persons specially skilled in such*** *foreign law, science, or art, or in questions as to identity or* ***genuineness of handwriting*** *or finger impressions, palm impressions or foot impressions,* ***are relevant****.*
>
> *Such persons are called experts*."
>
> *"Illustration (c) – The question is, whether a certain document was written by A. Another document is produced which is* ***proved or admitted*** *to have been written by A. The opinion of experts on the question whether the two documents were written by the same person or by different persons, are relevant."*

(23) An 'expert' witness is permitted by law to give 'opinion' evidence, which entitlement no other witnesses are permitted, because a Judge, though assumed to be learned in the law, and on men, matters and worldly affairs, does not possess the competence to form an opinion on matters such as foreign law, science, art, handwriting and finger, palm or foot impressions. As a prelude to giving 'opinion evidence', an expert witness is called upon to give 'factual evidence' on matters of fact, such as his observations, tests carried out by him, outcome of such tests, his analysis based on principles and criteria, and thereafter the conclusions reached together with the opinion reached by him.

(24) As illustration (c) to Section 45 requires, the expert must compare the impugned document with one or more other documents, **proved or admitted to have been written by the person concerned**, and to state whether in his opinion, the two documents were written by the same person or by different persons.

(25) Referring to the expression "persons specially skilled", E.R.S.R. Coomaraswamy in his treatise **The Law of Evidence** [Volume 1] states as follows:

> *"The expression is, in this context, synonymous with the word, "expert". Experts are persons who on account of special studies or experience, are conversant with matters of science and/or professional skill which are beyond the range of the tribunal. Such a person must be one, who from his circumstances and employment, possesses exceptional means of knowledge, has given the subject particular consideration, and is more than ordinarily conversant with its details. The term "expert" seems to imply both superior knowledge and practical experience in the art or profession."* [page 589-590]
>
> *"The question whether a person is specially skilled or not is a question of fact, and* ***the opinion of the expert is also a question of fact***." [page 590; emphasis added]
>
> **"***The court has often in the course of an inquiry to be informed on some matter, which is material to the decision, and which involves knowledge of a special, technical or scientific character.* ***This information can only be supplied by someone who is specially versed or skilled in the subject****. Thus, common questions of this nature that arise are: What is the law of a foreign country on some point? What are the symptoms of a particular poison or of a particular disease? Is one specimen of handwriting written by the same hand as another? Such specially skilled persons are called experts.* ***An expert is a person who has specialized knowledge on any matter by reason of his special study or experience***." [page 588; emphasis added]

(26) In **Davie v Edinburgh Magistrates** [(1953) S.C. 34 at 40], Lord President Cooper referring to the function of an expert witness stated that, "*Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as* ***to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence***." [emphasis added]

(27) Coomaraswamy goes onto state as follows:

> "*When an expert is called to give evidence, the side calling the witness should elicit from him his qualifications and experience in order to establish to the satisfaction of the court that he is a person who is specially skilled in the science in which he is called to give expert testimony. …*
>
> *The court has to decide on the competency of a witness. It is the duty of the judge to decide whether the skill of any person in the matter on which evidence of his opinion is offered is sufficient to entitle him to be considered an expert, and, therefore, competent to give evidence. Such competency must be challenged in the trial court*." [page 591]

(28) I must perhaps state that of the two expert reports, one was prepared on an application made by the Police and has been signed by the then Examiner of Questioned Documents and countersigned by his Assistant. The other report was prepared at the request of the Defendant by Mr. A.D.H Samaranayake, a retired Examiner of Questioned Documents. While the credentials, qualifications, experience and expertise of those who prepared the first report was led in evidence without any contest on the part of the Defendant, the credentials, qualifications, experience and expertise of Mr. Samaranayake was never in dispute.

<u>Reports of the Examiner of Questioned Documents</u>

(29) Through the Registrar of the Magistrate's Court, Galle, the Plaintiffs tendered the 'B' Report filed in Case No. 40234 on 29th April 1992 [P12]. According to 'P12', Inspector of Police Arthur Sirimanne who (a) at that time was functioning as the Officer-in-Charge of the Fraud Bureau, Galle, (b) had conducted the investigations into the complaint, and (c) gave evidence before the District Court, had moved the Magistrate's Court that the original, duplicate and the protocol of Deed No. 47 be sent to the Government Analysts Department [Examiner of Questioned Documents] for comparison of the seven signatures of Bertie Samarasinghe that appeared thereon, with the signature of Bertie Samarasinghe that appeared on a series of other documents, which in Police and Court parlance is referred to as 'normal course signatures'. While the original, duplicate and the protocol of Deed No. 47 had been marked before the Magistrate's Court as *P1, P2* and *P3*, the documents that had been sent for purposes of comparison had been marked *P4*

– *P15*. It must be noted that *P6* did not bear a signature of Bertie Samarasinghe and hence had not been examined, even though it had been sent to the Examiner of Questioned Documents.

(30) I must state that the documents that were sent to the Examiner of Questioned Documents were re-marked before the District Court but that the markings that I have referred to in this judgment – i.e., *P1 – P15* and *V1 – V16* - are the markings given to such documents before the Magistrate's Court and in the reports of the Examiner of Questioned Documents. To avoid any confusion, in this judgment, I have italicised the marking given to such documents in the Magistrate's Court.

(31) With no objection being raised by the Defendant who had been noticed to appear in the Magistrate's Court either to the aforesaid application of the Police or to the documents *P1 – P15* , and having led the evidence of Mr. Sirimanne [referred to as primary evidence], the Magistrate's Court had made an order that the said documents be forwarded to the Examiner of Questioned Documents to determine:

(a) If the signatures on *P1, P2* and *P3* have been placed by one person;

(b) If the signatures on *P4 – P15* have been placed by one and the same person; and

(c) If the purported signature of Bertie Samarasinghe that is said to appear on *P1, P2* and *P3* are comparable with the signature of Bertie Samarasinghe that appears on *P4, P5, P7 – P15*.

(32) The report of the Examiner of Questioned Documents [**P16**] dated 30th June 1992 has been signed by Mr. P. H. Manatunga, who was the Examiner of Questioned Documents at that time and Mr. C.D. Kalupahana, Assistant Examiner of Questioned Documents. While Mr. Kalupahana gave evidence before the District Court, their findings are as follows:

(a) Documents marked *P4*, *P5* and *P7 – 15* have been signed by one person;

(b) The signatures on *P4, P5* and *P7 – 15* are different from the signatures that appear on *P1, P2* and *P3*, [තත්වයෙන්, ඇළවු ආකාරයෙන්, වේගයෙන්, පරතරයෙන්, සමානුපාතයන්ගෙන්, නිර්මාණයන්ගෙන් සහ ලාක්ෂනික අංග අතින් වෙනස් කම් දක්වන බවයි]; and

(c) **The person who signed *P4, P5* and *P7 – 15* has not signed *P1, P2* and *P3***.

(33) With P16 having put into serious doubt and thrown wide open the genuineness of Deed No. 47, the Defendant moved on 3rd February 1993 that the same set of documents that were sent by the Magistrates Court to the Examiner of Questioned Documents at the request of Mr. Sirimanne and on which P16 was based, be sent to Mr. A.D.H Samaranayake, a retired Examiner of Questioned Documents, **along with sixteen other documents** that had been provided by the Defendant [*V1 – V16*] and the mandate and signature cards signed by Bertie Samarasinghe at the time he opened bank accounts at People's Bank and the Sampath Bank and which documents were in the custody of the said banks, and to call for a report on whether the signatures that appeared in *P4 – P15*, *V1 – V16* and the documents at the two banks are similar to the signatures that appear on *P1, P2* and *P3*. While the prosecution had not objected to the said application, what is important is that the Defendant did not have any issue either with regard to the genuineness of the sample documents that were sent to Mr. Samaranayake or the source from which such documents were obtained.

(34) The report of Mr. Samaranayake, dated 10th May 1993 [**P18**], contains the following conclusions:

(a) The signatures on *P1, P2* and *P3* bear evidence of tremor, hesitation, penlights, added strokes, sudden changes in direction and halts. **These features are all inconsistent with genuine execution**;

(b) The signatures on *P1, P2* and *P3* have all been signed on the same date – i.e., 8th December 1991. The signatures on *P4, P5, P7 – P15* and *V1 – V16* have been signed over almost twenty years commencing from 1971. The signatures of Bertie Samarasinghe on *P1, P2* and *P3* differ from the signature of Bertie Samarasinghe *on P4, P5, P7 – P15, V1 – V16* and the documents kept in the custody of the People's Bank and Sampath Bank in line quality, relative size, speed, slope, proportions, formations and characteristic features **pertaining to the involuntary habits in the execution of the individual letters** of the signature 'Bertie Samarasinghe';

(c) The signatures on *P4, P5, P7 – P15, V1 – V16* and the documents kept in the custody of the People's Bank and Sampath Bank have all been signed by one and the same person;

(d) The signatory to the signatures which read 'Bertie Samarasinghe' on *P4, P5, P7 – P15, V1 – V16* and the documents kept in the custody of the People's

Bank and Sampath Bank did not place the signatures 'Bertie Samarasinghe' on *P1, P2* and *P3*.

(35) If the report of Mr. Kalupahana was damaging to the position of the Defendant, the report of Mr. Samaranayake obtained at her insistence was damning.

(36) Thus, both Mr. Kalupahana, the expert whose services were sought by the Police, and Mr. Samaranayake, whose services were sought by the Defendant, had opined that what appeared on all three copies of Deed No. 47 as being the signature of Bertie Samarasinghe did not tally with the signature of Bertie Samarasinghe that appeared on the documents that had been obtained by the Police [i.e. *P4 – P15*]. Mr. Samaranayake went one step further when he stated that the signatures on the three copies of Deed No. 47 were not placed by the person who placed the signatures on the documents that the Defendant made available for comparison purposes [*V1 – V16*]. Furthermore, he had expressed the view that *P1, P2* and *P3* bore features that were inconsistent with genuine execution, which is a clear feature of a forgery.

(37) If I may reiterate, in terms of Section 45, the opinion of the handwriting expert is a relevant fact when the Court has to form an opinion as to the genuineness of handwriting but it is not conclusive evidence.

<u>The evidentiary weight that must be attached to the evidence of an expert</u>

(38) The applicability of Section 45 in the context of an expert in handwriting has received the consideration of our Courts for over one hundred years.

(39) In the case of **<u>Soysa v Sanmugam</u>** [(1907) 10 NLR 355; at page 359] Chief Justice Hutchinson, referring to the little value that he saw in the evidence of a person who claimed that he was an expert in handwriting, first admitted that, "*I am perhaps prejudiced as to this by my belief that comparisons of handwritings are a very untrustworthy guide*", and thereafter went on to state that, *"I have known too many instances in which experts' opinion as to identity of handwriting have been proved to be mistaken to accept them as anything more than a slight corroboration of a conclusion arrived at independently, never so strong enough as to turn the scale against the person charged with forgery, if the other evidence is not conclusive."*

(40) Having referred to the above observations of Chief Justice Hutchinson, Jayewardene, A. J, in **King v Perera** [(1930) 31 N.L.R. 449; at page 451] thereafter referred to an English case decided about ten years prior to that [Wakeford v. Lincoln (Bishop) [(1921) 90 L. J. P. C. 174] and stated as follows:

> "*Questions depending upon handwriting are in many cases doubtful and in the past have given and in the future will give cause for great anxiety in Courts of Justice. If that were the only piece of evidence, their Lordships, although without doubt in their own minds as to the authenticity of the writings, would not willingly rest their judgment on a single fact as to which error might be possible*."

(41) In **Gratiaen Perera v The Queen** [(1960) 61 NLR 522] the case against the 3rd accused was dependent almost entirely on the identity of his handwriting on the back of the impugned cheques. There was no evidence of any person who witnessed these endorsements, or who saw the 3rd accused write the particulars on the pay-in-slips. The only evidence was the evidence of the handwriting expert.

(42) Having referred to Soysa v Sanmugam [supra], Sinnetamby, J cited **Mendis v Jayasuriya** [(1930) 12 CLR 44] where according to Sinnetamby, J, Akbar, J. "*took the view that the expert evidence should be used only* ***in corroboration of a conclusion arrived at independently****, and not to convict a person on a charge of forgery if the other evidence is not conclusive. It would create some kind of suspicion but would not go beyond it*." [page 523; emphasis added]

(43) Sinnetamby, J thereafter went on to state as follows [page 524]:

> "*While I would not go to the extent of saying that an expert's evidence would only afford "some slight corroboration of the conclusion arrived at independently" I would hesitate to act solely upon it. If there is other independent evidence in support of the conclusion reached, recourse need not be had at all to the expert's evidence.* ***I think, the modern view is to accept the expert's testimony if there is some other evidence, direct or circumstantial, which tends to show that the conclusion reached by the expert is correct; provided, of course, the Court, independently of the expert's opinion, but with his assistance, is able to conclude that the writing is a forgery***." [emphasis added]

(44) Explaining the manner in which the trial Judge should proceed where the prosecution is relying on expert evidence relating to handwriting, Sinnetamby, J stated as follows [pages 524 – 525]:

> "*The Judges of our Courts, as well as of the Indian Courts, have made it clear that it is the function of the Court, with the assistance of an expert, to decide on the similarity of handwriting, and that it is not proper to act solely on the opinion of the expert. A Court cannot, of course, without the assistance of an expert, come to an opinion on so difficult a question; …*
>
> *At the same time the decision being the Judge's, he should not delegate his function to the expert. The opinion of the expert is relevant, but the decision must, nevertheless, be the Judge's. …*
>
> *In this case the Judge has accepted the handwriting expert's opinion, and had made no attempt, himself, to decide whether the grounds on which the opinion was formed are satisfactory.*
>
> *In the result, the Judge merely adopted the opinion of the expert and this, it seems to me, he was not entitled to do. A Court is not justified in delegating its function of judging to an expert and acting solely on the latter's opinion*."

(45) In **Samarakoon v The Public Trustee** [65 NLR 100], the issue before Court was whether the last will produced by the appellant was a forgery. Responding to a submission that the District Judge attached too much importance to the evidence of the handwriting expert and accepted his opinion too readily, and that in doing so he acted contrary to the principles laid down in Soysa v Sanmugam [supra] and Mendis v Jayasuriya [supra] as to the manner in which expert evidence relating to the identity of handwriting should be considered by a Court and the value to be attached to such evidence, Weerasooriya, J, who had agreed with Sinnetamby, J in Gratiaen Perera v The Queen [supra] stated that:

> "*But, if I may say so with respect, some of the dicta in the two cases cited above* ***appear to go too far in that they unduly minimise the value of expert evidence relating to the identity of genuineness of handwriting****; and I would prefer to accept the (following) observations of my brother Sinnetamby,J in the recent case of Gratiaen Perera v. The Queen [(1960) 61 N. L. R. 522] as setting out more correctly the manner in which such evidence should be regarded by a Court of law.*" [page 114]

(46) In **Charles Perera and another v Motha and another** [(1961) 65 NLR 294; pages 295-296], Chief Justice Basnayake stated as follows:

> "*Under our law (Evidence Ordinance, Section 5) "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant and of no others."*
>
> *Opinions of persons as to the identity or genuineness of handwriting are declared to be relevant facts by sections 45 and 47 of the Evidence Ordinance. The former section declares that the opinions as to identity or genuineness of handwriting of persons specially skilled in such questions are relevant facts, while the latter section declares that the opinion of any person acquainted with the handwriting of another that it was written or signed by that other is a relevant fact. In practice the class of persons whose opinions are declared to be relevant under section 45 are described "experts". As we are here concerned with the opinion of an "expert" on handwriting I shall confine what I have to say to the opinions of "experts" on handwriting. In the first place for the opinion of an "expert" on handwriting on the question of the identity or genuineness of handwriting to be a relevant fact in a given case, it should be one in which the Court is called upon to form an opinion as to the identity or genuineness of handwriting. Secondly the person who gives oral evidence as to the identity or genuineness of handwriting must be one who is specially skilled in questions as to the identity or genuineness of handwriting. Whether he is a person specially skilled in such questions is a question of fact to be decided by the Court. If he is not such a person his opinion would not be a relevant fact in the case.*
>
> *The fact which is declared to be relevant by section 45 stands in the same position as any other relevant fact which the Court has to take into consideration in forming its opinion as to the identity or genuineness of the handwriting in question.* ***It is important to remember that it is the Court that is called upon to decide the question of identity or genuineness of handwriting and not the "expert"****. The expert's opinion is only a relevant fact to be taken into account in forming the opinion of the Court.*
>
> *Cases which have come up before us in appeal indicate a tendency on the part of Judges to regard the opinion of persons who describe themselves as handwriting experts as conclusive on the question of identity or genuineness of*

handwriting and not merely as a relevant fact, like any other such fact, to be taken into account in arriving at the Court's opinion as to the identity or genuineness of the handwriting in question. A Court should guard against that tendency.

The duty of forming the opinion as to the identity or genuineness of the handwriting is on the Court and the Court alone*. The expert's opinion on the points of identity or genuineness of the writing is a relevant fact in forming its opinion.* ***The weight to be attached to such a fact would depend on the circumstances of each case****. The standing of the expert, his skill and experience, the amount and nature of the materials available for comparison, the care and discrimination with which he has approached the question on which he is expressing his opinion, the extent to which he has called in aid the advances of modern science to demonstrate to the Court the soundness of his opinion, are all matters which will assist the Court in assessing the weight to be attached to the fact of his opinion. The cross-examination of the " expert " by the opposing side, where it is properly directed, would also assist the Court in determining what weight it should attach to the fact declared relevant by section 45.*" [emphasis added]

(47) Coomaraswamy has summarised the present position of the law in **Law of Evidence** [at page 627] in the following manner:

"*The correct position as to the value of the evidence of the handwriting expert seems to be that his evidence must be treated as a relevant fact and not as conclusive of the fact of genuineness or otherwise of the handwriting. His opinion is relevant but only in order to enable the judge himself to form his own opinion. It is not in the class of the opinion of the finger print expert*."

(48) Therefore, an expert should draw the attention of the judge to the details which influenced him in reaching his decision, but the judge must not accept the expert's opinion without making an attempt himself to decide whether the grounds on which the expert's opinion is formed are satisfactory. **The opinion of the expert is relevant, but the decision must, nevertheless, be that of the Judge**. He should not delegate his function to the expert.

(49) I must perhaps make one important point prior to moving on. That is relating to the position where both parties have tendered expert reports. As pointed out by

Coomarswamy, when handwriting experts have been produced by both parties and each supports the case of the party who has called such expert and each gives technical reasons for his opinion, expert evidence may be of little help unless one of them is very convincing or is corroborated by other evidence. But where only one side has called an expert, who has given a report and gives oral evidence and his reasons in full, and there is no expert evidence to the contrary, a judge should not lightly prefer his own view of the documents and reject the expert evidence.

(50) The important point in this appeal is that even though there are two expert reports produced by either party with the documents examined by Mr. Samaranayake for comparison with Deed No. 47 emanating from the Defendant herself, both reports support the findings reached by the other expert and supports the case of the Plaintiffs. When two experts who have independently of each other arrived at the same opinion, and their integrity, advanced knowledge, special skills, experience and expertise have not been impugned and their opinion remains unassailed, in my view, a Court of Law should not lightly brush aside such opinion. This, to my mind, is a significant factor that must be borne in mind when evaluating the impugned judgments.

(51) The issue before Court is whether Deed No. 47 is a forgery by virtue of it having been executed as the Donor by a person other than Bertie Samarasinghe. That is why the purported signature of Bertie Samarasinghe becomes critical. Neither of the experts have been eye witnesses to the purported Donor having signed Deed No. 47. **Their expert opinion in that regard is <u>not</u> direct evidence but indirect evidence of circumstantial value. It is therefore up to the Court to attach evidential weight to such expert opinion evidence and arrive at an inference from such evidence**.

(52) If such inference is that a person other than Bertie Samarasinghe had signed as the Donor, then Deed No. 47 becomes a forgery and therefore a nullity. When determining the evidential weight to be attached to P16 and P18, the Court must take into consideration the following, namely:

(a) that there are two expert reports, one augmenting the findings contained in the other;

(b) the expertise of the experts, their independence, the integrity of the processes adopted by them and the fact that these processes have not been impugned; and

(c) that there is no contrary expert opinion tendered to Court.

These factors together with the suspicious circumstances surrounding the purported execution of Deed No. 47 necessitates this Court to attach a high evidential value to the expert opinions contained in P16 and P18.

Burden of proof

(53) This brings me to the next issue that I must consider, that being in a case such as this which is civil in nature but involves an allegation of forgery, whether proof of forgery must be established on a balance of probability, or as in a criminal case, beyond reasonable doubt, or perhaps something in-between, if such an '*in-between*' exists.

(54) English courts have taken the view that the standard of proof required for a criminal offence in civil proceedings is no higher than the standard of proof ordinarily required in civil proceedings, but that, within that standard, "*the more serious the allegation, the higher the degree of probability that is required.*"

(55) In **LOLC Factors Limited v Airtouch International (Private) Limited and others** [SC (CHC) Appeal No. 20/2015; SC minutes of 3rd April 2024] Samayawardhena, J with whom my brother Thurairaja, PC, J has agreed, has engaged in an extremely useful discussion on this issue. In order to give context to the final determination that I shall arrive at in this case, it is important that I re-produce the following passages from the said judgment, *albeit* lengthy:

"*In a civil case the standard of proof is on a balance of probabilities. What does this mean? In Miller v Minister of Pensions [1947] 2 All ER 372 at 374, Lord Denning declared:*

That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: "We think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not.

Are there degrees of proof within the standard of proof of the balance of probabilities? Theoretically, the answer is in the negative, but practically, such degrees do exist.

In Bater v Bater [1950] 2 All ER 458, it was held that there may be degrees of probability within the civil standard of proof of balance of probabilities; ***the degree of proof must be commensurate with the occasion and proportionate to the subject-matter****…….*

Denning L.J. stated at page 459:

> *"The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof that is required in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases.* ***The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter.*** *A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established.* ***It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.*** *Likewise, a divorce court should require a degree of probability which is proportionate to the subject matter."*

The issue in Hornal v. Neuberger Products Ltd. [1957] 1 QB 247 was the standard of proof in a civil claim for fraudulent misrepresentation. The Court of Appeal held that the trial judge's approach on standard of proof was correct. Denning L.J. referred back to the views he had articulated in Bater v. Bater and stated at page 258:

> *[T]he standard of proof depends on the nature of the issue. The more serious the allegation the higher the degree of probability that is required: but it*

need not, in a civil case, reach the very high standard required by the criminal law.

Hodson L.J. fully concurred with those views, supplementing them at page 264:

Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others.

Morris L.J. added at page 266:

It is, I think, clear from the authorities that a difference of approach in civil cases has been recognized. Many judicial utterances show this. The phrase 'balance of probabilities' is often employed as a convenient phrase to express the basis upon which civil issues are decided. It may well be that no clear-cut logical reconciliation can be formulated in regard to the authorities on these topics. But perhaps they illustrate that 'the life of the law is not logic but experience.' In some criminal cases liberty may be involved; in some it may not. In some civil cases the issues may involve questions of reputation which can transcend in importance even questions of personal liberty. Good name in man or woman is 'the immediate jewel of their souls.' But in truth no real mischief results from an acceptance of the fact that there is some difference of approach in civil actions. Particularly is this so if the words which are used to define that approach are the servants but not the masters of meaning. Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities. This view was denoted by Denning L.J. when in his judgment in Bater v. Bater he spoke of a 'degree of probability which is commensurate with the occasion' and of 'a degree of probability which is proportionate to the subject-matter.'

In Thomas Bates & Sons v. Wyndhams (Lingerie) Ltd. [1981] 1 All ER 1077 at 1085, Buckley L.J. stated:

I think that the use of a variety of formulations used to express the degree of certainty with which a particular fact must be established in civil proceedings is not very helpful and may, indeed, be confusing. The requite

*degree of cogency of proof will vary with the nature of the facts to be established and the circumstances of the case**. I would say that in civil proceedings a fact must be proved with that degree of certainty which justice requires in the circumstances of the particular case**. In every case the balance of probability must be discharged, but in some cases that balance may be more easily tipped than in others.*

A serious allegation necessitates a higher standard of proof compared to a less weighty claim. In Re H and Others (Minors) [1996] 1 All ER 1, the case concerned the care of children under the Children Act 1989 of the United Kingdom. Whilst acknowledging the degrees of the balance of probabilities, Lord Nicholls of Birkenhead in the House of Lords stated at pages 16-17:

*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, **the stronger should be the evidence** before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had nonconsensual oral sex with his underage stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.*

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thomas J. expressed this neatly in In re Dellow's Will Trusts [1964] 1 W.L.R. 451, 455:

"The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."

In R (N) v Mental Health Review Board (Northern Region) [2006] QB 468, after an exhaustive review of earlier authorities, the Court of Appeal firmly held that ***although there is a single civil standard of proof on the balance of probabilities, its application is flexible.*** *Richards L.J. at para 62 stated that* ***this flexibility is referable to the quality of evidence required*** *rather than degrees of probability:*

Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. ***Thus the flexibility of the standard lies not in any adjustment to the degree of probability*** *required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability),* ***but in the strength or quality of the evidence*** *that will in practice be required for an allegation to be proved on the balance of probabilities.*

What I endeavored to demonstrate from the above discussion is that the civil standard of a balance of probabilities is flexible, to be applied with varying degrees of strictness depending on the gravity of the matter to be proved." [emphasis added]

(56) **LOLC Factors** was cited with approval by Surasena, J [as he then was] in **Attorney General v Hemasiri Fernando** [SC (TAB) 02/2023; SC minutes of 5th November 2024].

(57) It would thus be seen that the terms, "balance of probabilities" and "preponderance of evidence" denotes a need for Court to weigh and balance the evidence presented before Court by both sides – the Plaintiff and the Defendant. That is of particular relevance in deciding this appeal.

(58) Taking into consideration the above judicial dicta, I am of the view that the Plaintiffs were not required to establish beyond reasonable doubt that the signature that appears on Deed No. 47 is not that of Bertie Samarasinghe. While proof on a balance of probability was sufficient, what was required was for the

District Court to be satisfied of the quality of the evidence led by the Plaintiff that Deed No. 47 was not executed by Bertie Samarasinghe, as opposed to the evidence presented by the Defendant that Deed No. 47 was executed by him.

Judgment of the District Court

(59) The District Court has at the beginning of its judgment correctly identified the core issue in this case, that being whether Deed No. 47 has been executed by Bertie Samarasinghe or else whether it is a forgery. Having done so, the District Court has thereafter proceeded to consider if the Defendant had proved the due execution of Deed No. 47.

(60) It was the position of the Defendant that Bertie Samarasinghe was happy to stay with them in Galle, even though he travelled to Deegala Estate regularly. It transpired in evidence that a party was held at the residence of the Defendant on 24th November 1991 to celebrate the birthday of Bertie Samarasinghe and that at this party, Bertie Samarasinghe had informed Chrishantha Wickremasinghe, the brother-in-law of the Defendant, that he was keen to gift Deegala Estate to the Defendant and to prepare the necessary paperwork. Deed No. 47 is said to have been executed fourteen days later on 8th December 1991 and Bertie Samarasinghe passed away thirteen days thereafter on 21st December 1991. Although much haste was shown in executing Deed No. 47, it had been submitted for registration only on 16th January 1992.

(61) The District Court had expressed suspicion not only with the speed at which the impugned deed had been executed, especially by a person who according to the Defendant was in good health and who had no apprehension of death at that time, but also with the fact that it was strange for someone who lived a luxurious life to part with his most valuable asset that brought him the income to maintain his lifestyle. The District Court had also agreed with the Plaintiff that Bertie Samarasinghe could well have executed a last will, if he had a genuine intention of making available Deegala Estate to the Defendant, so that the Defendant could have benefitted after his death. It must perhaps be mentioned that the Defendant did not have any children, and that she was 51 years of age at the time Deed No. 47 had been purportedly executed in her favour.

(62) The District Court also expressed suspicion with the selection of the Attorney-at-Law who notarially attested the execution of Deed No. 47. It was in evidence that Bertie Samarasinghe had cases before the Labour Tribunal and that he had associated several senior lawyers in Galle, including Attorney-at-Law Mr. Thilina Panditharatne, with whom he had even exchanged correspondence [*P4, P5* and *P6*] a few months prior to his death and whom Bertie Samarasinghe is said to have met in the morning of 8th December 1991. Bertie Samarasinghe however had not revealed to Thilina Panditharatne that he was intending to execute a deed that day or had already executed a deed. In spite of these connections, Deed No. 47 had been attested before an Attorney-at-Law who had been in practice only since 1987 and who had up to that point only attested 46 deeds. The question had thus arisen as to why Bertie Samarasinghe would retain the services of a junior Attorney-at-Law without much experience and whom he had never met, when he had the opportunity of obtaining the services of a much senior and experienced Attorney-at-Law, well known to him.

(63) This suspicion was aggravated by three factors. The first is that the said Attorney-at-Law in his evidence admitted that he knew one of the two witnesses to Deed No. 47, Chrishantha Wickremasinghe prior to the execution thereof. Chrishantha Wickremasinghe, the other witness to Deed No. 47 and the Defendant were the accused in the Magistrate's Court case filed by the Police. The second factor is that, (a) the Attorney-at-Law admitted that he did not know Bertie Samarasinghe, (b) he had "met Bertie Samarasinghe" only twice, once prior to the execution of the deed and again at the time of the execution, and (c) on both occasions he did not speak to the person who came before him claiming to be Bertie Samarasinghe.

(64) The third and most important factor is that **the Attorney-at-Law admitted that he did not check the identity of the person who came before him** to sign a deed to gift a property which had immense value at that time claiming to be Bertie Samarasinghe and the owner of that property. The District Court has quite correctly taken serious note of this factor that the Attorney-at-Law was unable to confirm the identity of the person who came before him and who signed as Bertie Samarasinghe. This is not a mere omission in terms of the Notaries Ordinance, but goes to the root of the issue that was before the District Court.

(65) It is for this reason that the District Court had concluded as follows:

> "එකී සියලු කරුණු සමස්ටයක් ලෙස ගත්කල "බර්ට් සමරසිංහ" යන අය, ආධුනික නොතාරිස්වරයෙකු ලෙස විත්තිකාරිය හා හිතවත් "බතිගම" නොතාරිස්වරයා "ක්‍රිශාන්ත වික්‍රමසිංහ" යන සාක්ෂිකරුගේ හඳුන්වා දිම මත යොදාගෙන තිබීම, බැලු බැල්මට බරපතළ සැක සහිත බවක් ජනිත කරයි.
>
> එසේම දැඩිලෙස රෝගි තත්ත්වයක්ද නොමැතිව සිටියදී, මරණය අපේක්ෂා කරන්නකු ලෙසද කිසිදු, අවස්ථාවක ක්‍රියා කළ බවක් පෙනි නොයන "බර්ට් සමරසිංහ", තමාගේ ප්‍රධානම හා විශාලම දේපල 1වන විත්තිකාරියට ලිවීමට චේතනා කිරීම හා එය ඔහු මියගිය දිනට සති දෙකකට පමණ පෙර සිදු කර තිබීමද, තරමක් සැක සහිතය."

(66) Thus, the District Court expressed deep suspicion not only over the selection of a junior Attorney-at-Law known to Chrishantha Wickremasinghe and the Defendant, but with regard to the necessity for a man who did not suffer from any serious illness to gift his most valuable asset and that too, just two weeks prior to his death.

(67) The next factor that was considered by the District Court was the conduct of the Defendant and Chrishantha Wickremasinghe which revolved around three circumstances that occurred soon after the passing away of Bertie Samarasinghe. The first was that Chrishantha Wickremasinghe had not come either for the funeral or the almsgiving of Bertie Samarasinghe. The District Court had noted that this is suspicious, since according to the Defendant, (a) Bertie Samarasinghe had stood guarantee to a loan taken by Chrishantha Wickremasinghe, and (b) it is to him that Bertie Samarasinghe turned to when he wanted to gift Deegala Estate. The second circumstance is that the Defendant did not disclose to the Plaintiffs the execution of Deed No. 47 either at the funeral, the almsgiving that followed or any time thereafter. This becomes significant when one considers the evidence of the Plaintiffs that they went to the house of the Defendant looking for the documents that Bertie Samarasinghe is said to have brought with him to Galle, only to be told by the Defendant that they cannot trace the documents. This is the third circumstance considered by the District Court. To my mind, these three circumstances demonstrate the guilty mind of the Defendant and Chrishantha Wickremasinghe, arising from the intention of preparing and the preparation of Deed No. 47.

(68) It is only after the District Court formed the view that, taken as a whole, the execution of Deed No. 47 was suspicious, that it proceeded to consider the reports of the experts. This is clearly in line with Section 45 where when the Court

has to form an opinion as to the genuineness of handwriting, which would include the placement of the signature, the opinions upon that point of persons specially skilled in the genuineness of handwriting are relevant.

(69) In my view, the learned District Judge was aware of the applicable legal position in evaluating the evidence in a case of this nature. This is borne out by the following passage:

> "එකි සියළු කරුණු තුල ප්‍රශ්ණගත ඔප්පුව ලියා සහතික කිරීම පිළිබඳ දැඩි අසාමාන්‍ය හා සැක සහිත බවක් මතුවේ. නමුත් ඉහත පරිවේෂණිය සාක්ෂි පමනක් "බර්ට් සමරසිංහ", ඔප්පුව ලියා සහතික නොකරන ලද බවට නිශ්චිතව නිගමනය කිරීමට ප්‍රමාණවත් නැත. විශේෂයෙන්ම ඔප්පුවේ සාක්ෂිකරුවන් දෙදෙනා, සාක්ෂිකරුවන් ලෙස යම් යම් උණතා, හෝ පක්ෂග්‍රාහිත්වයක් පැවතියද "බර්ට් සමරසිංහ" අත්සන් තැබු බවට සාක්ෂි කියා ඇති බැවිනි.
>
> පැමිණිල්ල විසින් මතු කරන සැක සහිත කරුණුවලට සාපේක්ෂව "බර්ට් සමරසිංහ" අදාළ ඔප්පුවෙහි කතෘ බවට හා එසේ ලිවීමට ඔහුට අභිප්‍රේරණයක් වු බවට විත්තිය පෙන්වා දීමට උත්සහ දරයි. ඒ අනුව බොහෝදුරට පැමිණිල්ල හා විත්තිය විසින් ඒ පිළිබඳ ඉදිරිපත් වාචික සාක්ෂියට එරෙහිව වාචික සාක්ෂිය පවති.
>
> කරුණු එසේ විද්දි ඉහතින් සාකච්ජා කල අංක 47 දරන ඔප්පුව ලියා සහතික කිරීමට අදාල සමස්ත පරිවේෂණිය කරුණුවල පැන නැගි ඇති සැක සහිත භාවයේ වාසියට තවත් ප්‍රබල බලපෑමක් කළ හැකි සාක්ෂිය වනුයේ, පැ.16 හෙවත් අත්අකුරු පරීක්ෂක වාර්ථාවයි."

(70) Thus, the District Court was satisfied that there existed circumstantial evidence supporting a grave suspicion with regard to the genuineness of the signature on Deed No. 47 but was mindful of the evidence of the witnesses to Deed No. 47 as well. It is in that background that the District Court stated that P16 becomes relevant.

(71) The District Court was also mindful that the report of an expert is a relevant fact but is not conclusive, and that it is the function of the Court to examine the evidence and arrive at a conclusion. This is evident from the following paragraph of its judgment:

> "අත්අකුරු පරීක්ෂක වාර්තාව යනු යම් කරුණක් සම්බන්ධව මතයක් අධිකරණයට ඇති කර ගැනිම සඳහා සහය වන්නාවු විශේෂඥ මතයක් මිස, එය තීරණාත්මක නිගමනය නොවන බව අධිකරණය නඩු තීන්දු වලදි පිළිගත් තත්ත්වයයි. ප්‍රශ්ණගත අත්සනක් හෝ අත්අකුරු පිළිබඳ අවසානාත්මක නිගමනයකට එළඹීමෙහිලා අධිකරණය සතුව පවතින කාර්ය භාරය අත්අකුරු පරීක්ෂක වෙත අනුයෝජනය කල නොහැකි බව, අධිකරණයන්හි පිළිගත් මතය බව පාර්ශව විසින් ඉදිරිපත් කර ඇති නඩු තීන්දු, ප්‍රකාරවම මනාව පැහැදිලිවේ. එනම් යම් නිගමනයකට එළැඹෙනුයේ අධිකරණය බවත් විශේෂඥ මතය අධිකරණය විසින් ඒ සඳහා එළැඹීමේදි සැළකිමට ගන්නා අනුකුල කරුණක් බවත්ය. විශේෂඥ සාකිෂිකරු යම් මතයක් දැරීමට පදනම් වු කරුණු දක්වා නොමැති විට හා, විශේෂඥ මතය ඉදිරිපත් කිරීමට පදනම් වු කරුණු සැහෙන්නේදැයි තීරණය නොකොට, අධිකරණය විශේෂඥ මතය පිළි නොගත යුතුවේ."

(72) Furthermore, the District Court was mindful that the documents that were used for comparison purposes must be proved. The District Court has carefully considered the manner in which *P 4 – P15*, containing the normal course signatures of Bertie Samarasinghe, had been collected by the Police for purposes of examination from the places where the documents were kept and their genuineness, and stated as follows:

> "ඒ අනුව අංක 2719 ඔප්පුව හැර සෙසු සියලු ලේඛණ, ඒවා තබා තිබිය යුතු භාරකාරත්වයන්ගෙන්, අධිකරණ නියෝග මත, තමා විසින් ලබාගත් බවට හා අත්අකුරු පරීක්ෂණය සඳහා ඉදිරිපත් කළ බවට "ආතර් සිරිමාන්න" සාක්ෂිදි ඇත. අංක 2719 ඔප්පුවද ඉඩම් කාර්යාලයෙන් ලබාගෙන ඉදිරිපත්ව ඇති ලේඛණයකි. පොලිස් සාක්ෂිකරු විසින් ඒ සම්බන්ධව ලබාදි ඇති සාක්ෂිය, කිසිවිටකත් ප්‍රතික්ෂේප වී හෝ භබ වී හෝ අභියෝග වී හෝ නැත. ආදාල කරුණු සම්බන්ධයෙන් විමර්ශන පැවැත්වූ පොලිස් නිලධාරියකු වශයෙන් එම නිලධාරි තැනට අසත්‍ය හෝ පක්ෂග්‍රාහි සාක්ෂිදීමේ අවශ්‍යතාවයක් තිබූ බවටද, පෙනි නොයයි. විමර්ශන සිදුකළ පොලිස් නිලධාරියෙකු ලෙස ඔහු සිය නිල කටයුතු නිසි පරිදි සිදුකර ඇති බවට නිගමනය නොකිරීමට හේතුවක්ද නැත.
>
> ඔහු විසින් අත්අකුරු පරීක්ෂණය සඳහා යවන ලද, ලේඛණ, විධිමත්ව අදාල ලේඛණ පැවතිය යුතු භාරකාරත්වයන් ගෙන් ලබාගෙන, අත්අකුරු පරීක්ෂණය සඳහා, අත්අකුරු පරීක්ෂක වෙත, පැ.13 දරණ අත්අකුරු කොමිසම ප්‍රකාරව යවා ඇති බවට එකි සාක්ෂි අනුව මැනවින් තහවුරුවේ. ඒ අනුව අදාළ ලේඛණ නිසි භාරකාරත්වයෙහි තිබීම සහ එම භාරයන්ගෙන් අධිකරණ නියෝග මත, පොලිස් නිලධාරීන් විසින් ලබාගැනිම, අත්අකුරු කොමිසම සඳහා යොමු කිරීම, එකි ලේඛණ පරීක්ෂා කර පැ.16 දරන අත්අකුරු පරීක්ෂණ වාර්තාව ලැබීම යන අඛණ්ඩ ක්‍රියාදාමය ඔප්පුව් ඇත.
>
> එම ලේඛණ කිසිදු, අවස්ථාවක ඔප්පු කිරීමේ භාරයකට යටත්ව ලකුණු කරද නැත. එම ලේඛණවල ඇත්තේ "බර්ට් සමරසිංහ" යන අයගේ අත්සන නොවන බවට කිසිදු, අවස්ථාවක යෝජනා වී හෝ භබවී නැත. "ආතර් සිරිමාන්න" නිලධාරියාගේ සාක්ෂි භබවී ද නැත."

(73) Thus, the District Court was not only satisfied that the documents containing the normal course signatures of Bertie Samarasinghe were genuine, it was also satisfied that the said documents had emanated from the proper source. In other words, the District Court had no doubt with the integrity of the documents.

(74) Having observed that at least three documents [*P4*, *P5* and *P9*] had been executed by Bertie Samarasinghe a few months prior to Deed No. 47 while staying at the house of the Defendant, the District Court had stated that given the nature of the documents and the purpose for which they were prepared and signed, there is no reason to doubt that the signatures that were on *P4, P5, P7 – P15* were not that of Bertie Samarasinghe. In this regard, the District Court had observed as follows:

"එම ලේඛණ "බර්ට් සමරසිංහ" විසින් අත්සන් නොතබන ලද ලේඛණ බවට හෝ ඒවායේ භාරකාරත්වය හෝ නිසි භාරකාරත්වයෙන් එකි ලේඛණ ලබාගෙන යථා පරිදි අත්අකුරු කොමිසම සඳහා නොයවන ලද බවට හෝ කිසිදු, හබ කිරීමක් නඩුවේදි විත්තිය විසින් මතුකර නැත.

එම සියළු කරුණු අනුව අත්අකුරු කොමිසම සඳහා සපයා ඇති පැ.4 සිට පැ.15, ලෙස එම කොමිසමේ සඳහන් සහ පිළිවෙලින් මෙම නඩුව සඳහා පැ.22 සිට පැ. 24, පැ.26 සිට පැ.34 දක්වා ලකුණු කර ඇති ලේඛණවල සඳහන් වනුයේ "බර්ට් සමරසිංහ" යන අයගේ අත්සන බවට නිගමනය කිරීමට කිසිදු, බාධාවක් නැති අතර, එම ලේඛණවල ස්භාවය අනුවම ඒවා එම තැනැත්තා විසින්ම අත්සන් කල ලේඛණ බවට හැර එලැඹිය හැකි අන් අනුමිතියක් නැත. විත්තිය එය හබ නොකිරීමද ඊට සාදක සපයයි."

(75) Although the Defendant stated that Bertie Samarasinghe was happy during the time he stayed with them in Galle, she thereafter claimed that he was not in the best of health at the time he passed away and that that may have affected his signature on *P1, P2* and *P3*. The District Court has rejected this contention on the basis that the signature of Bertie Samarasinghe on all sample documents ranging from 1971 to 1991 were similar, and that in any event, there cannot be a significant variation between the signatures of Bertie Samarasinghe that appeared on *P4, P5* and *P9* signed a few months prior to his death and the signature on *P1, P2* and *P3* said to have been signed just thirteen days prior to his death.

(76) The relevant conclusion of the District Court is as follows:

"පැ.4, 5 9 ලේඛණවල ඔහු අත්සන් තබා ඇත්තේ විත්තිකාරියගේ නිවසේ සිටින කාලසිමාව තුල හා විත්තියට අනුව නම් ඔහු මානසික හා ශාරීරික වශයෙන් පිරිහිමෙන් පසුය. විශේෂයෙන්ම පැ.5 දරණ අත්සන ප්‍රශ්ණගත අත්සනට මාස 5 කට ආසන්න කාලසිමාවක් තුලදි තබන ලද්දකි. එනම් 1991.07.19 වන දිනය. නමුත් 1988 න් පසු තබා ඇති එකි අත්සන් 3 පවා "බර්ට් සමරසිංහ" මුල් කාලයේ පටන් භාවිතා කර ඇති අත්සනට සමාන වේ. අත් අකුරු පරීක්ෂකට අනුව යම් යම් ස්වභාවික විචලනයන් හැරෙන්නට සෙසු ගුණාංගයන්ගෙන් එය අතිශය ඒකාකාර බවක් හා සමානතාවයක් දරයි. එසේනම් "බර්ට් සමරසිංහ" පත්වුවේ යැයි කියනු ලබන මානසික හෝ ශාරීරික දුර්වලතා පැ.4, 5 9 අත්සන්වලට බලනොපැම සහ පැ.1, 2, 3 ලේඛණවල ප්‍රශ්ණගත අත්සන්වලට පමණක් බලපෑම, විය නොහැකිය. එය විත්තියේ ස්ථාවරය පිළිගත නොහැකි බවට පත් කරන තත්ත්වයකි."

(77) It is only thereafter that the District Court proceeded to examine the evidence of Mr. Kalupahana. Having satisfied itself that he is qualified and competent to give evidence on handwriting, a fact which had not been challenged by the Defendant, the District Court had stated as follows:

"සත්‍ය වශයෙන්ම "බර්ට් සමරසිංහ" විසින් ප්‍රශ්ණගත ලේඛණ අත්සන් තබන ලද්දේ නම් ප්‍රශ්ණගත අත්සන් 7න් එකදු, අත්සනක් හෝ බර්ට් සමරසිංහගේ බවට තහවුරුව ඇති ආදර්ශ අත්සන් සමග ගැලපිය යුතුව තිබුණද, එකි ප්‍රශ්ණගත අත්සන් සියල්ලම ගැලපී නැත.

රජයේ රස පරීක්ෂකවරු වන "කළුපහන" මහතා "මනතුංග" මහතා, "සමරනායක" මහතා යන තිදෙනාම ස්වාධීන රජයේ නිලධරයන් වන අතර ඔවුන් විශේෂඥ දැනුමෙන් යුක්ත තැනැත්තන්ය. එසේ නොවේ නම් ඔවුන් රස පරීක්ෂක දෙපාර්තමේන්තුවේ සේවය කිරීමට සාමාන්‍ය පරීපාටිය තුල ඉඩක්ද නැත. ඔවුන් තිදෙනාම ඔවුන්ගේ විශේෂඥභාවය, දැනුම, අත්දැකීම්, පළපුරුද්ද භාවිතා කරමින් ලබාදෙන මතය පක්ෂග්‍රාහී මතයක් බවට හෝ වැරදි මතයක් බවට කිසිදු යෝජනාවක් හෝ චිත්තියෙන් ඉදිරීපත්ව නැත. එසේ පක්ෂග්‍රාහිවීමේ අවශ්‍යතාවයක් ඔවුන්ට වූ බවට මෙම නඩුවේදි හෙලිදරව්වද නැත.

"කළුපහන" මහතා දිරිෂ ලෙස හරස් ප්‍රශ්ණවලට භාජනය කළද චිත්තිය ඔහුගේ සාක්ෂි හා මතය වැරදි බවට හෝ පක්ෂග්‍රාහී බවට හෝ අභියෝග කරන බවට හෝ අවම වශයෙන් යෝජනා කර හෝ නැත."

(78) Thus, the District Court was concerned that none of the seven signatures that appeared on *P1, P2* and *P3* tallied with the signature of Bertie Samarasinghe that appeared on the normal course documents. The District Court also expressed the view that all three experts [including Mr. P.H. Manatunga] were independent and qualified professionals and had no reason whatsoever to show partiality towards one party. This was supported by the fact that the Defendant did not impugn their competence, independence or integrity during cross examination.

(79) The District Court had carefully considered (a) the detailed process that had been followed by Mr. Kalupahana in comparing the signature of Bertie Samarasinghe that appeared on *P 4- P15* with those in *P1, P2* and *P3*, (b) the reasons attributed by Mr. Kalupahana for his conclusion, (c) the differences between the signatures as explained by Mr. Kalupahana, and concluded that his findings that the signatures that appear on *P1, P2* and *P3* are not that of Bertie Samarasinghe has been scientifically established. The specific findings of the District Court are as follows:

"ඉහත පරිද්දෙන් සඳහන් කළ ලක්ෂණ අධිකරණය විසින් අත්අකුරු පරීක්ෂක තැනගේ මග පෙන්වීම සහිතව, පැ.54 ලේඛණය පාදක කොටගෙන ඉහා පැහිදිලිවම නිරීක්ෂණය කරන, ප්‍රශ්නගත සහ ආදර්ශ අත්සන් අතර පවතින වෙනස්කම් බවට හඳුනාගන්නා ලක්ෂනයන්ය. යම් යම් ආදර්ශ අත්සන් අතර කාලයක් සමග යම් යම් වෙනස්කම් හට ගෙන ඇත්තේ වුවද සමස්තයක් ලෙස සළකා බලන කල ඒවායෙහි හැඩය, සහ ලාක්ෂණික අංග බොහෝදුරට එකාකාරව පවතින බවට හා යම් විචලනයන් පමණක් සිදුව ඇති බවට අත්අකුරු පරීක්ෂකවරයා ප්‍රකාශ කරන මතය, එම අත්සන් පරීක්ෂා කිරීමෙන් අධිකරණයටද පිළිගත හැකි වේ. බැලු බැල්මට පියවි ඇසට රූපමය වශයෙන් ප්‍රශ්නගත අත්සන් සහ ආදර්ශ අත්සන් අතර සමානකමක් පෙනි ගියද, අකුරෙන් අකුර විශ්ලේෂණය කොට බැලිමේදිද, අත් අකුරු විශ්ලේෂණ නිර්ණායක පාදක කරගෙන සැලකිමේදිද, ආදර්ශ අත්සන්වල සමානාත්මතාවය සහ ඊටම ආවේනිකවු ලාක්ෂණික අංග, පරතරය, නිර්මාණය, ඇලවීම, ආදි අංග යම් සුළු විචලනයන්ට යටත්ව එකාකාරව බවක් දරයි. එහි සැම කල්හිම

ස්වභාවික ගලායාමක් හා තිරණාත්මක ලක්ෂණවල නොවෙනස් බවක් දක්වන බව අත්අකුරු පරීක්ෂකගේ සාක්ෂියෙහි හරයයි.

ඉහත සියළු කරුණු සළකා බැලීමේදි අත්අකුරු කොමිසම සමග ඉදිරිපත් පැ.4, 5 සහ පැ.7 සිට 15 දක්වා වන ලේඛණවල සඳහන් අත්සන් වන පැ.54 ලේඛණයෙහි ඇති ආදර්ශ අත්සන්, පැ.1, 2, 3 ලේඛණවල අඩංගු ප්‍රශ්ණගත අත්සන් හා නොසැසඳෙන බවට අත් අකුරු පරීක්ෂක ලබා දෙන නිගමනයට එළැඹීමට පාදක වූ පැහැදිලි ප්‍රමාණවත් හේතු ඔහුගේ සාක්ෂියෙහි සපයා ඇත. ඒ අනුව පැ.4, 5 සහ පැ.7 සිට 15 දක්වා ලේඛණවල අත්සන් තබා ඇති බවට ඔප්පු වී ඇති "බර්ට් සමරසිංහ" යන අය, ප්‍රශ්ණගත පැ.1, 2, 3 ලේඛණවල අත්සන් තබා නොමැති බවට වන අත්අකුරු පරීක්ෂකවරයාගේ විශේෂඥ මතයද එම විෂයානුබද්ධව විද්‍යාත්මකව එළඹ නිගමනයක් බවට තහවුරු වී ඇත."

(80) The District Court has thereafter considered P18, the report prepared by Mr. Samaranayake at the request of the Defendant and concluded that P18 too supports the conclusions contained in P16 prepared by Mr. Kalupahana and Mr. P.H. Manatunga. I must state that Mr. Samaranayake had passed away by the time the case was taken up before the District Court and even though the Defendant had initially objected to the marking of P18, the report of Mr. Samaranayake had been admitted as evidence thereafter since P18 had been prepared at the request of the Defendant, who at that time was an accused in the Magistrate's Court case.

(81) There are two other circumstances that I have already referred to that provides support to the view expressed in P16 and P18. The first is that if Deed No. 47 was in existence thirteen days prior to the death of Bertie Samarasinghe, there was no reason for the Defendant to have suppressed its existence when the Plaintiffs came to Deegala Estate soon after the almsgiving to search for the documents or when the Plaintiffs made a Police complaint on 12th January 1992 that the brother of the Defendant is refusing them entry to Deegala estate or to have remained silent when the Plaintiffs informed the Defendant that a testamentary case would be filed or to have refrained from disclosing its existence until the filing of the testamentary case. The second circumstance is that the Defendant was not able to provide a satisfactory explanation for the signature on *P1, P2* and *P3* being different from the signatures that appeared on all sample documents. Furthermore, the Defendant offered no explanation as for Mr. Samaranayake's expert opinion that the signatures on *P1, P2* and *P3* purporting to be those of Bertie Samarasinghe showing signs of tremor, hesitation, penlights, added strokes, sudden changes in direction and halts, which are all features inconsistent with genuine execution of a signature.

(82) It is in the above circumstances that the District Court has correctly concluded that the Plaintiffs have established on a strong balance of probability [පැමිණිල්ලෙහි එකි ස්ථාවරය ඉහළ මට්ටමක සාක්ෂි වැඩිබර මත සනාථව ඇත.] that the signatures that appear on Deed No. 47 is not of Bertie Samarasinghe. It is clear that the learned District Judge had a clear understanding of the law that needed to be applied and was aware of the pitfalls that must be avoided when dealing with a case where handwriting was in issue and resort had to be made to expert evidence to assist the Court to arrive at a determination.

The judgment of the High Court

(83) The High Court had recited the factual matters on which the parties were in agreement and thereafter observed as follows:

(a) After the death of his mother, Bertie Samarasinghe had been brought up by his mothers family who had even given part of their name to him prior to gifting Deegala Estate to him;

(b) Bertie Samarasinghe had a close relationship with the relatives from his mothers side;

(c) There is not even an iota of evidence to show that Bertie Samarasinghe had a relationship with the Plaintiffs who were his half brothers and sisters;

(d) Bertie Samarasinghe lived with the Defendant and her husband for two and half years prior to his death, that "*there is ample evidence to prove their intimacy with each other*" as borne out by the many letters exchanged between them, that "*This type of love on each other in a close intimacy is somewhat showing affection and attachment on each other may be treated by a man of servile sacrifice of all his desires and passions on one woman*" and "*in this situation one can understand the circumstances under which Bertie Samarasinghe had executed the impugned deed*";

(e) Only the Defendant and her husband were there to look after Bertie Samarasinghe during his troublesome period whereas the Plaintiffs failed to prove that they looked after the desires of Bertie Samarasinghe at any stage;

(f) For these reasons, Bertie Samarasinghe gifted Deegala Estate to the Defendant, knowing well that if a testamentary action is filed, it is the Plaintiffs who will be entitled to claim.

(84) The evidence did not bear out the fact that the Defendant had an intimate relationship with Bertie Samarasinghe and thus, the basic premise that appears to have been on the mind of the learned High Court Judge that Deed No. 47 was executed as a reflection of the intimacy that Bertie Samarasinghe had towards the Defendant is ill-founded. Thus, to my mind, the above circumstances do not support a view that the impugned deed had been signed by Bertie Samarasinghe.

(85) With regard to the selection of the Attorney-at-Law, the High Court had stated that Bertie Samarasinghe did not want to make it public that he had gifted Deegala Estate and that is the reason for the non-selection of an Attorney-at-Law known to him. While such a conclusion is not supported by the evidence, the High Court has completely ignored the fact that the Attorney-at-Law failed to even verify the identity of the person who appeared before him. I have already stated that this was a critical item of evidence that gave rise to a serious doubt with regard to the due execution of Deed No. 47. I am therefore of the view that the High Court erred when it failed to address its mind to this issue.

(86) The High Court had rejected *in limine* both expert reports on the basis that the Plaintiffs failed to establish corroborative evidence to prove that Deed No. 47 is a forgery. In doing so, the High Court has completely disregarded the circumstantial evidence that was relied upon by the District Court as corroborating the two expert reports. Sadly, it appears that the High Court did not wish to deal with the two expert reports and adopted an easy path to conclude the case.

(87) Although P18, prepared at the instance of the Defendant had contradicted the case of the Defendant, the High Court appears to have brushed aside its findings on the basis that the Defendant would not have sought another opinion if she had a doubt that the signature on Deed No. 47 was not that of Bertie Samarasinghe.

(88) The High Court had thereafter re-produced the headnote in **Charles De Silva v Ariyawathie De Silva and another** [1987 (1) CALR 76; (1987) 1 Sri LR 261; hereinafter referred to as Charles De Silva] which reads as follows:

"*(1) The Court was wrong in acting on the evidence of the handwriting expert as:*

(a) The genuineness of the comparison material on which he based his opinion was in dispute and such material had not been duly proved;

(b) The photographs used by the handwriting expert had not been proved in Court;

(c) Comparison specimens both adequate in number and of a suitable kind are essential as the human hand will not reproduce the characters like a typewriter – the most suitable material being that which has been written at about the same time as the contested document on similar paper, in similar circumstances and with similar pen and ink, pencil or type writing.

(2) The Court could not reasonably have in mind the credibility and demeanour of the witnesses.

(3) There was sufficient direct and oral evidence to hold that the impugned Will had in fact been signed by the deceased testator. Where there is no doubt of the mental capacity of the testator and no element of suspicion arises a Will will be held to be proved if the witnesses who speak to the due execution and attestation are believed by Court. If there are circumstances which excite the suspicion of the Court the propounder must remove it and satisfy the Court that the testator knew and approved of the contents of the Last Will."

(89) Although the High Court re-produced the headnote, it has neither discussed the said judgment nor explained its applicability to the case before it. The High Court had thereafter concluded that the Plaintiffs have not discharged the burden of proof cast on them of establishing that Deed No. 47 is a forgery and had set aside the judgment of the District Court.

(90) It must be noted that unlike in Charles De Silva, in this appeal, there was no challenge to the genuineness of the "comparison material" submitted either to the Examiner of Questioned Documents or to Mr. Samaranayake. Furthermore, in Charles De Silva, there had been no two expert reports, one supporting the other. Thus, the context in which Charles De Silva had been decided is wholly different to the facts and circumstances of this appeal.

(91) Furthermore, the net result of the approach adopted by the learned High Court Judge has been to bring to naught the evidential value of the two expert reports, P16 and P18, without any valid reason whatsoever being assigned to such a course of action. That, in my view, was erroneous and has caused a substantial miscarriage of justice, which warrants the intervention of this Court.

Questions of Law

(92) It is in the above circumstances that leave to appeal was granted on the following questions of law:

"(1) Did the Civil Appellate High Court err in law by failing to identify any error of fact or law in the District Court judgment when it overturned the judgment of the District Court?

(2) Did the said Civil Appellate High Court err in law in failing to appreciate that the *ratio decidendi* in the Judgment in Charles de Silva v Ariyawathie de Silva and another had no relevance to this case?"

(93) Simply put, to my mind, regrettably though, it must be noted that the judgment of the High Court is incoherent. The High Court, having correctly identified the issue before it, was required to consider if the District Court had properly evaluated the circumstantial evidence that was relied upon by the District Court in order to determine whether the judgment of the District Court is based on the evidence and is correct. The High Court was also required to bear in mind that this was not the usual case where there existed a report of an expert as one item of evidence. What was unique in this case was that there existed two expert reports and very importantly, one of these reports had been prepared at the instance of the Defendant, with the sample documents having been provided by the Defendant herself. Therefore, the High Court should have attached some evidential value to the expert opinion contained in the two reports and thereafter considered the inferences arising therefrom.

(94) In order to avoid the consideration of these two reports, the High Court, to my mind, has taken the easy path by stating that the Plaintiffs have failed to establish corroborative evidence to prove the two expert reports. In doing so, the High Court has completely disregarded the items of circumstantial evidence that the

District Court had carefully considered and referred to in its judgment and the fact that such circumstantial evidence is supported by the conclusions of the two experts. Instead of identifying the grounds on which the District Court may have erred, the High Court has referred to evidence which is of no significance, before setting aside the judgment of the District Court.

(95) However, what baffles me the most is the mere citing of the headnote in Charles De Silva and thereafter not making any comment on whether the said judgment has any application or not with regard to the issues that the High Court was required to consider and leaving a whole host of issues that have been referred to in the headnote in Charles De Silva wide open and unanswered. Be that as it may, I shall now proceed to consider the second question of law, that being if the judgment in Charles De Silva is of any application or relevance to the facts of this appeal.

Judgment in Charles de Silva v Ariyawathie De Silva and another

(96) Charles De Silva was a case where a Last Will was sought to be challenged on the basis that the signature of its author [the executant] had been forged. The District Court had held that the due and proper execution of the Will had not been satisfactorily proved as it has not been shown in evidence to have been signed by its author. In appeal, the said judgment was set aside on three grounds.

(97) The first was that the specimen signatures used for purposes of comparison have not been proved or admitted. In this regard, it was held as follows in Charles de Silva [page 271]:

> *"The report of the Examiner of Questioned Documents marked 3D2 and dated the 25th of January 1974 has gone on the presumption that the genuine signatures of the deceased are to be found in the documents 3D3 to 3D6 and thereafter accepting them as specimen signatures of the deceased, has, after comparison of these with the signature found in the Last Will P1 come to the conclusion that the said Last Will P1 has not been signed by the same person who has signed the documents 3D3 to 3D6. He has also stated in his report and evidence the reasons for the conclusion he has thus arrived at:*
>
> *One important fact which has to be considered by Court is* ***whether these other specimen signatures which had been sent to the Examiner of Questioned***

Documents were legally proved *to bear the actual signatures of the deceased Seemon Appu* ***since they had been allowed in evidence by Court only subject to being correctly proved****: This important fact the 3rd Respondent has failed to prove as would have been normally required in a Court of law. ……*

Thus it will be seen that ***the very foundation and data on which the Examiner of Questioned Documents has been called upon to give an opinion as to whether the Last Will P1 has been signed by the deceased being of no legal value as the correctness of the signatures found in 3D3 to 3D6 has not been proved,*** *the report of his marked 3D2 will be of no assistance to Court and so also would be his oral evidence given at the trial."*

(98) I have already stated that:

(a) The Defendant did not object when an application was made in the Magistrate's Court to forward the documents *P1 – P15* to the Examiner of Questioned Documents on which P16 was based;

(b) The comparison material used to prepare P18 had been tendered to Court by the Defendant herself;

(c) The above documents were neither disputed nor marked subject to proof in the District Court.

(99) Therefore, the data on which the Examiner of Questioned Documents was called upon to give an opinion in this appeal has a high probative value as the correctness of the signatures found therein are admitted. In other words, there is no doubt that the signatures that appeared on the documents sent to the Examiner of Questioned Documents are the genuine signatures of Bertie Samarasinghe. This is consistent with illustration (c) to Section 45 of the Evidence Ordinance which requires the specimen documents to be proved or admitted to have been written or signed by the person concerned.

(100) Thus, the first ground on which the Court of Appeal set aside the judgment of the District Court in Charles De Silva does not arise in this case. I must state that this matter has been specifically considered by the District Court, and that the High Court has not disagreed with this finding of the District Court.

(101) The second ground on which the judgment of the District Court in Charles De Silva was set aside was that the Examiner of Questioned Documents had used photographs of the impugned signatures in comparing signatures which

photographs had not been proved. In this regard, the Court of Appeal held as follows in Charles De Silva:

> *"He has also stated in evidence that his evidence to Court is being given with the aid of the enlarged photographs of the relevant signatures that are with him. Here too we would say that the said photograph should have been duly proved in evidence before any reliance on evidence given with their aid could be accepted the fact that the signature in the Last Will P1 made by the photographer who did the said enlargement on the orders of Mr. Samaranayake. This also has not been done by the 3rd respondent and this error or defect also adds to the inability of Court to act on the report and evidence of Mr. Samaranayake."* [page 273]

(102) In this appeal, Mr. Kalupahana had directly examined the questioned documents and the specimen documents when preparing his report P16. He had thereafter taken photographs of the enlarged signatures and these were marked as P52 and P52(A) without any objection being taken thereto or the said photographs requiring any further proof. They were also presented to Court for the convenience of explaining his findings to Court and has received the specific attention of the District Court, as borne out by the following passage:

> "විශේෂඥ සාක්ෂිකරුවෙකු බවට පිළිගත හැකි බවට මීට ඉහතින්ද නිගමනය කර ඇති "කළුපහන" මහතා අත්අකුරු පරීක්ෂණයේදි අනුගමනය කරන ලද ක්‍රමවේදය පැහැදිලි කර ඇත. පලමුව එම අත්සන් ජායාරූපගත කර ඇත. එම ජායාරූප පැ.52, පැ.52අ ලෙස ලකුණු කර ඇත. කෙසේ වෙතත් සැසඳීමේ කාර්යය සඳහා මුල් පිටපත් වෙන් වෙන් වශයෙන්ද සමුහිකවද පරීක්ෂා කරනු ලැබ ඇත. එහිදි රසායනාගාරයක් තුල, නිසි ආලෝක තත්ත්වයන් යටතේ අන්වීක්ෂ, අත්කාච ආදිය භාවිතා කරමින් විශාලනය කරමින් පරීක්ෂා කරනු ලබයි. මෙම පරීක්ෂනය සඳහා එසේ අත්අකුරු දෙගුණයක් (200%) විශාලනය කර සකසන ලද ලේඛණය පැ.54 ලෙස ඉදිරිපත් කර ඇත. එම ආශ්‍රය කරගෙන තමා විසින් සිදු කරන ලද අත්අකුරු පරීක්ෂණ ක්‍රියාවලිය සහ එහිදි තම නිගමනයට ඒමට පාදක වු නිරීක්ෂණ සහ හේතු අත්අකුරු පරීක්ෂකවරයා විසින් පැහැදිලි කර ඇත. "

(103) The third ground on which the appeal was allowed in Charles De Silva was that an adequate number of specimen signatures had not been used in comparing the signature of the author of the last will. This observation was made since only three comparison specimens which had not been proved to have been those of the deceased testator were used. But in this appeal, P16 was prepared after comparing the signature of Bertie Samarasinghe on *P4, P5, P7 – 15*, which

documents had either been proved or admitted or were not disputed to contain the signature of Bertie Samarasinghe.

(104) Although the head note in Charles De Silva does not refer to it, the Court of Appeal observed that (a) the Last Will has been signed with a ballpoint pen while the other specimen documents sent for comparison were not so signed by a ball point pen, but by using a fountain pen, and (b) the expert had opined that it would serve no valid purpose to compare them for there were bound to be significant and different features in the two sets of signatures due to the different types of pens used for the writing of the respective signatures.

(105) The learned Counsel for the Defendant referred to the fact that Deed No. 47 was signed using a ball point pen. Mr. Kalupahana in his evidence has explained the types of pens used in each specimen material and has stated that the signatures in the comparison documents marked *P4, P9* and *P10* were placed using a ballpoint pen and signatures in the comparison documents marked *P8, P14* and *P15* were placed using a fountain pen. While comparison specimens of a suitable kind using both types of pens were available in adequate number in the instant case, what is important is that the expert was conscious that his findings may be affected by the type of pen that is used to place the signature.

(106) Thus, it is clear that the judgment in Charles De Silva had no application or relevance to the facts in this appeal, and that the flaws that had been addressed to in that case as affecting the credibility of the report of the expert did not arise in this appeal, either with regard to P16 or P18.

(107) Regrettably though, I must point out that this error would not have arisen had the learned Judges of the High Court instead of copy-pasting the headnote of the published judgment in Charles De Silva, read and considered the entire judgment. Doing so would have impressed upon the learned Judges the significant difference between the two cases, both in the evidence and the circumstances.

(108) The resulting conclusion arising in this appeal is that either the Attorney-at-Law who had attested the execution of Deed No. 47 had been misled to believe by the two witnesses to the said Deed that the person who signed as Bertie Samarasinghe [the executant] was in fact Bertie Samarasinghe, whereas he was not, or that such Attorney-at-Law was also a guilty participant to forgery and had given false evidence at the District Court trial. If the latter had occurred, it is a

serious act of professional misconduct on the part of the Attorney-at-Law. It is a sigh of relief to know that the amendment introduced to the Notaries Ordinance by the Notaries (Amendment) Act, No. 31 of 2022 would significantly reduce the opportunity that prevailed all this time to prepare forged deeds and that it would add the much needed sanctity and integrity to notarially executed conveyances. Thus, it is unlikely that cases of this nature would arise in the future.

Summary

(109) In judicial proceedings, when a Notarially attested conveyance (such as the deed of gift referred to in this judgment) is produced in evidence and proved according to law, it becomes a document that must be treated with a high degree of sanctity, as reflecting the truth pertaining to the transaction referred to in such conveyance relating to immovable property. Thus, a very high evidential value must be attached to the contents of such conveyance. However, the duty to do so would arise only if the conveyance has been executed and attested according to law and there are no suspicious circumstances pertaining to its preparation, contents, execution and attestation.

(110) A report of an expert containing his opinion pertaining to handwriting and/or signature of a person is admissible under and in terms of Section 45 of the Evidence Ordinance. Particularly if (i) the expert's expertise, (ii) the scientific nature and the integrity of the examination of the suspect documentation, (iii) the method adopted for the analysis of the findings, and (iv) the scientific footing on which the opinion had been arrived at, satisfies judicial scrutiny and such evidence has not been successfully impugned by the opposing party, such opinion evidence should not be treated lightly and must be judicially considered for the purpose of arriving at a judicial finding.

(111) The expert opinion of one expert can be used to corroborate the expert opinion of another expert. Considerable evidential weight must be attached to such corroborated expert opinion.

(112) Expert opinion evidence that the purported signature of the executant of a conveyance is in fact not the signature of such executant, is a strong evidential circumstance which can and must be used, when considering whether the conveyance is a forgery or not. A conclusion in that regard must be arrived at only

after considering the totality of the body of evidence in the case, in which, the expert opinion should be a striking item. If the conveyance is a forgery, it must be concluded that it has not been executed in a lawful manner.

(113) No evidential value can be attached to a conveyance which in its entirety or part thereof is a forgery, and thus must be rendered a nullity through judicial dictum. In such circumstances, the purported beneficiary of conveyance derives no rights or entitlements through such conveyance.

Conclusion

(114) In the above circumstances, I answer the two questions of law in the affirmative. The judgment of the High Court is set aside and the judgment of the District Court is affirmed, to the extent of only issuing a declaration of nullity of Deed No. 47 – i.e. the relief prayed for in the prayer to the plaint, except the relief prayed for in paragraph [ඇ] of the prayer. Accordingly, in the eyes of the law, it would be deemed that by Deed No. 47, Bertie Samarasinghe did not, during his lifetime, gift Deegala Estate to anyone. As there is no evidence of Bertie Samarasinghe having executed a last will, the devolution of title would have to be determined in terms of intestate succession.

(115) This appeal is accordingly allowed, without costs.

JUDGE OF THE SUPREME COURT

S. Thurairaja, PC, J

I agree

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J

I agree.

JUDGE OF THE SUPREME COURT