

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

1. Palamuni Eresha Deepani Silva
2. Palamuni Nirosha Dilani Silva
3. Palamuni Rakhika Silva
4. Palamuni Dulanjali Deepani Silva

All of No. 230/11, Massala, Beruwala.
Plaintiffs-Respondents-Appellants

SC/APPEAL/80/2018

WP/HCCA/KAL/LA/18/2015

DC KALUTARA 5970/L

Vs.

Pearl Beach Hotels Ltd.,
Now known as
Heritance (Pvt) Ltd., No. 315,
Vauxhall Street, Colombo 2.
1st Defendant-Petitioner-Respondent

Kerakoralage Evelyn Kulathilake,
Hotel Swani Road, Moragolla, Beruwala.
2nd Defendant-Respondent-Respondent

Palamuni Dilupa Saman Priyalal Silva,
Hotel Swani Road, Moragolla, Beruwala.
3rd Defendant-Respondent-Respondent

Palamuni Lanka Ruwan Pushpika Silva,
“Nandawasa”, Near Rail Gate, Payagala.
4th Defendant-Respondent-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Arosha Silva with Narada Amarasinghe for the Plaintiff-Respondent-Appellants.
N.R. Sivendran with Ms. Fihama Hanifa for the 1st Defendant-Petitioner-Respondent.

Argued on: 17.09.2025

Written submissions:

By the Plaintiffs-Respondents-Appellants on 13.07.2018.
By the 1st Defendant-Petitioner-Respondent on 15.10.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The four plaintiffs instituted this action against the four defendants in the District Court of Kalutara on 23.04.2012, seeking the cancellation of deed of transfer No. 217 dated 10.03.1993, a declaration that no title passed to the 1st defendant under that deed, or, in the alternative, a declaration that the 1st defendant holds the property thereunder in trust for the plaintiffs, and ejectment of the 1st defendant from the land. Only the 1st defendant filed answer. The case was fixed for *ex parte* trial against the 2nd to 4th defendants.

After issues were framed, learned counsel for the 1st defendant moved to have issue Nos. 9 to 12 determined as preliminary issues, namely whether the plaintiffs' action was *prima facie* prescribed in law and whether the plaint contravened sections 40(d) and 44 of the Civil Procedure Code, thereby warranting dismissal *in limine*. The District Court answered those issues in the negative and fixed the case for further trial.

On appeal, the High Court of Civil Appeal of Kalutara set aside that order, answered the said issues in the affirmative, and dismissed the plaintiffs' action.

This Court granted leave to appeal against the judgment of the High Court on the following two questions of law:

- (a) Did the High Court err in law by holding that the plaintiffs should have disclosed why the cause of action is not barred by prescription as per section 44 of the Civil Procedure Code?
- (b) Did the High Court err in law by holding that section 40(d) of the Civil Procedure Code makes it mandatory to disclose in the plaint when the cause of action against the defendant arose?

Although the plaintiffs claimed ownership to the land by deed No. 5827 in the plaint, they were careful not to seek a declaration that they are the owners of the land by virtue of that deed. That deed is, in several respects, an unusual one. By this deed, the 2nd defendant, who is the grandmother of the plaintiffs, transferred the land to the plaintiffs subject to the life interest of herself and of her son, who is the father of the plaintiffs. At the time of the execution of that deed, the plaintiffs were minors. On the face of the deed, the land has been sold for a sum of Rs. 20,000 to the minors, yet no person is shown to have acted on their behalf. This is not a deed of gift that had been accepted by any other person on behalf of the minors.

Less than one year after the execution of the said deed, the grandmother, together with her son (the plaintiffs' father) and two others who are named as the 3rd and 4th defendants (apparently her other two sons), transferred the land by deed No. 217 to the 1st defendant, Pearl Beach Hotels Ltd. It was in this backdrop that the plaintiffs instituted the present action.

In terms of section 10 of the Prescription Ordinance, where no period of prescription is specified elsewhere in the Ordinance, and where a cause of

action is not expressly exempted from its operation, such cause of action is prescribed within three years from the date of its accrual. Where an action is instituted seeking the annulment of a notarially executed deed, it must be brought within three years from the date of execution of the deed, or, where the party seeking such relief was a minor at the relevant time, within three years of his attaining majority. If the party alleges that he was unaware of the existence of the deed, the action shall be instituted within three years from the date on which he became aware of it.

In the instant case, it is common ground that the plaintiffs were minors at the time deed No. 217 was executed, and that they did not institute the action within three years of attaining majority.

The next question is whether the plaintiffs have specifically pleaded that the action was instituted within three years of their becoming aware of the execution of the deed. They have not. Instead, the plaint contains only a vague assertion that the plaintiffs became aware of the deed recently. On the unique facts of the present case, as correctly observed by the High Court, such an averment is wholly inadequate.

Section 44 of the Civil Procedure Code provides that *“if the cause of action arose beyond the period ordinarily allowed by any law for instituting the action, the plaintiff must show the ground upon which exemption from such law is claimed.”* It is significant that the legislature has employed the word “must” and not “may” or “shall” here, thereby indicating that the requirement is mandatory.

Further, in terms of paragraph (i) of the second proviso to section 46(2) of the Civil Procedure Code, *“When the action appears from the statement in the plaint to be barred by any positive rule of law”, “the plaintiff shall be rejected [not returned for amendment]; but such rejection shall not of its own*

force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”

I must also add that, in terms of section 40(d) of the Civil Procedure Code, it is mandatory to disclose where and when the cause of action arose, a requirement that is of particular significance in the facts of the present case (*Leslie Silva v. Perera* [2005] 2 Sri LR 184). However, non-compliance with section 40(d) does not, by itself, warrant dismissal of the action *in limine*, as section 46(2) empowers the Court to return the plaint for amendment.

It is apposite at this stage to recall the observation of Chief Justice S.N. Silva in *Narendra v. Seylon Merchant Bank Ltd* [2003] 2 Sri LR 1 at 5-6, where he stated: “*It is to be generally observed that there is a tendency now to set out extensive facts in pleadings hoping to formulate a case as you go along. This tendency should be reversed in order to prevent a party from being denied appropriate redress that he may secure according to law if the pleading is correctly presented.*”

I must emphasise that the application of legal principles is not a mechanical exercise, but one that necessarily depends on the facts and circumstances of each case. Having regard to the unique facts and circumstances of the present case, I am unable to conclude that the High Court erred in law in dismissing the plaintiffs’ action *in limine*. I accordingly answer the two questions of law on which leave was granted in the negative. The appeal is dismissed without costs.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court