

**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: 82/2021**

SP/HCCA/GA App. No: 050/2015 (F)

DC Balapitiya Case No: 1901/SPL

Vedikkara Dulsi Renuka De Silva,  
Middaramulla, Ahungalla.

**PLAINTIFF**

Vs.

Villa Ranmanika (Pvt) Limited,  
Galle Road, Ahungalla.

**DEFENDANT**

And

Villa Ranmanika (Pvt) Limited,  
Galle Road, Ahungalla.

**DEFENDANT – APPELLANT**

Vs.

Vedikkara Dulsi Renuka De Silva,  
Middaramulla, Ahungalla.

**PLAINTIFF – RESPONDENT**

**And Now Between**

Villa Ranmanika (Pvt) Limited,  
Galle Road, Ahungalla.

**DEFENDANT – APPELLANT – APPELLANT**

Vs.

Vedikkara Dulsi Renuka De Silva,  
Middaramulla, Ahungalla.

**PLAINTIFF – RESPONDENT – RESPONDENT**

**Before:** S. Thurairaja, PC, J  
Achala Wengappuli, J  
Arjuna Obeyesekere, J

**Counsel:** Sanjaya Kodituwakku for the Defendant – Appellant – Appellant  
Harsha Soza, PC for the Plaintiff – Respondent – Respondent

**Argued on:** 10<sup>th</sup> January 2024

**Written Submissions:** Tendered by the Defendant – Appellant – Appellant on 26<sup>th</sup> November 2021

Tendered by the Plaintiff – Respondent – Respondent on 14<sup>th</sup> December 2021 and 31<sup>st</sup> March 2022

**Decided on:** 6<sup>th</sup> March 2026

**Obeyesekere, J**

- (1) The Plaintiff – Respondent – Respondent [the Plaintiff] filed action in the District Court of Galle [the District Court] on 14<sup>th</sup> March 2005 claiming that her late husband, Jeewaka De Silva held 102,271 shares [**the Shares**] in the Defendant – Appellant – Appellant [the Defendant] at the time of his death on 3<sup>rd</sup> February 2003 and seeking an order that (a) the Shares be transferred in her name, and (d) the dividends declared by the Defendant from 2003 be paid to her.
- (2) By its judgment delivered on 27<sup>th</sup> August 2015, the District Court granted the Plaintiff the relief claimed by her. The Defendant thereafter invoked the appellate jurisdiction of the Civil Appellate High Court of the Southern Province holden in Galle [the High Court], but the appeal was dismissed by the High Court by its judgment dated 13<sup>th</sup> March 2019.
- (3) Aggrieved, the Defendant sought and obtained from this Court on 18<sup>th</sup> October 2021 leave to appeal on the following two **questions of law**:

- (a) Did the Judges of the Civil Appellate High Court err in law in failing to appreciate the fact that all documents of the Defendant were marked without objection at the closure of the Defendant's case and thus had become evidence for all intents and purposes?
- (b) Did the Judges of the Civil Appellate High Court err in law in failing to hold with the Defendant with regard to the procedural impropriety related to the Plaintiff's action?

### Shares in Villa Ran Menika

- (4) A private limited liability company by the name of "House Ran Menika" was incorporated on 11<sup>th</sup> November 1999 under the provisions of the Companies Act, No. 17 of 1982, as amended. According to its Memorandum of Association [P3], the said company had three subscribers, namely Elfriede Wang, a Swiss national, her daughter Manuela Stadler and Jeewaka De Silva, with each subscriber taking one share each. The said company had been named after the elephant owned by Elfriede Wang and its primary object was to operate a hotel by the same name. The name of the company has since been changed to "Villa Ran Menika Private Limited", that being the Defendant. For convenience, I shall where required refer to "House Ran Menika Private Limited" too as the Defendant.
- (5) According to Elfriede Wang, the land on which the hotel is situated was purchased with monies remitted by her. The entire cost of construction and operational costs of the said hotel too had been met by her. Although the Defendant stated that Jeewaka De Silva had not invested any monies in the construction of the hotel and did not pay for the Shares allotted to him, the fact that the Shares had been allotted to Jeewaka De Silva and that he was a Director of the Defendant is confirmed *inter alia* by the annual returns of the Defendant as at 31<sup>st</sup> December 2000 on Form 63 tendered to the Registrar of Companies on 27<sup>th</sup> August 2002 [P6] and Form 48 dated 25<sup>th</sup> October 2002 [V7].
- (6) Thus, even though no formal admissions were marked at the trial, it is not in dispute that:

- (a) 409,086 shares of Rs. 100 each in the Defendant had been issued, of which 208,634 and 98,181 shares had been issued to Elfriede Wang and Manuela Stadler, respectively;
  - (b) The 102,271 shares which are the subject matter of this appeal [the Shares] had been issued to Jeewaka De Silva;
  - (c) Jeewaka De Silva was a director of the Defendant.
- (7) Jeewaka De Silva was killed by gunmen on 3<sup>rd</sup> February 2003 while he was outside Villa Ran Menika. His widow [the Plaintiff] filed Case No. 51/Probate in the District Court of Galle and obtained letters of administration in respect of the estate of Jeewaka De Silva, which included the Shares held by Jeewaka De Silva in the Defendant. Pursuant thereto, the Plaintiff had sent a letter dated 20<sup>th</sup> November 2004 [P10] to the Defendant, requesting that the Shares held by Jeewaka De Silva at the time of his death be transferred in her name. A formal letter of demand had been sent on 28<sup>th</sup> January 2005 [P12]. While P10 has been replied by Elfriede Wang only on 21<sup>st</sup> January 2005 [P11], P12 has been responded by Elfriede Wang on 14<sup>th</sup> February 2005 [P13] and by her Attorney-at-Law on 10<sup>th</sup> February 2005 [P14]. All three letters sent on behalf of the Defendant denied the entitlement of the Plaintiff for the said shares, with P14 stating that Jeewaka De Silva had transferred the Shares to Elfriede Wang and her daughter. The Defendant thus refused to register the name of the Plaintiff as the holder of the Shares.
- (8) It is only thereafter that the Plaintiff filed action in the District Court seeking an order that the Shares be transferred in her name and that the dividends due on the Shares from 2003 be paid to her. The pleaded position of the Plaintiff, very simply was that Jeewaka De Silva was a director of the Defendant and he had been issued the Shares in the Defendant which Shares she claimed were in his name at the time of his death on 3<sup>rd</sup> February 2003.
- (9) In its answer, the Defendant took up the position that (a) Jeewaka De Silva had been removed as a director of the Defendant on 2<sup>nd</sup> December 2002, (b) the Shares held by Jeewaka De Silva were transferred by him to the other two directors of the Defendant, namely Elfriede Wang and Manuela Stadler on 2<sup>nd</sup> January 2003, and (c) Jeewaka De Silva therefore did not hold the Shares in the Defendant at the time of his death.

## Admissions and Issues

(10) While only the jurisdiction of the Court was formally admitted, the Plaintiff raised *inter alia* the following issues:

- “01. මහතුංග පීවක විජේන්ද්‍ර ද සිල්වා නැමැති අය විත්තිකාර සමාගමේ අධ්‍යක්ෂකවරයකු ව සිටියේද?
02. එකී පීවක විජේන්ද්‍ර ද සිල්වා විත්තිකාර සමාගමට රුපියල් 100 ක් වටිනා කොටස් 102271 ක් හිමිව සිටියේද?
03. එකී විජේන්ද්‍ර ද සිල්වා 2003.02.03 වන දින මිය ගියේද?
04. ඉහත විසඳනාවන්ට පිලිතුරු “ඔව්” වශයෙන් ලැබේ නම් පීවක විජේන්ද්‍ර ද සිල්වා මිය යන අවස්ථාවේදී එකී විත්තිකාර සමාගමේ අධ්‍යක්ෂකවරයකු ව සිට ඉහත කී පරිදි කොටස් කරුවකු ව සිටියේද?”

(11) The Defendant raised several issues of which the issues relevant to the 1<sup>st</sup> question of law before us are as follows:

- “13. 2002.12.02 වන දින අධ්‍යක්ෂක මණ්ඩලයේ රැස්වීම අනුව පීවක විජේන්ද්‍ර ද සිල්වා යන අය අධ්‍යක්ෂක තනතුරෙන් ඉවත් කරන ලද්දේද?
14. තවද එම පීවක විජේන්ද්‍ර ද සිල්වා යන අය සියළු කොටස් සහාපතිනියට සහ මනුලා ස්ටැම්බල් යන අයට 2003.01.02 වන දින ලේඛණයෙන් පවරා තිබේද?”

(12) The document referred to in Issue No. 14 is the Share Transfer Form [V4] that was signed by Jeewaka De Silva transferring the Shares to Elfriede Wang and her daughter. Thus, the Plaintiff was fully aware of the basis on which the Defendant was due to resist her action.

## Burden of proof

(13) I must perhaps point out at this stage that a document evidencing the transfer of shares in a private company is not a document that was required by law to be attested and hence, Section 68 of the Evidence Ordinance has no application to V4.

(14) While the Plaintiff gave evidence and led the evidence of two other witnesses, three witnesses gave evidence on behalf of the Defendant, including Elfriede Wang. I must reiterate that at the trial, the Defendant did not dispute that Jeewaka De Silva had been issued the Shares, but proceeded on the basis that Jeewaka De Silva had transferred the Shares by way of V4 to Elfriede Wang and her daughter just one month prior to his demise. Thus, the burden of proof was with the Defendant to establish that Jeewaka De Silva in fact transferred the Shares to Elfriede Wang and her daughter by V4. Considering the circumstances of this case, I am of the view that the burden extended to proving that the signature on V4 was that of Jeewaka De Silva. This is consistent with Sections 102 and 103 of the Evidence Ordinance which provides as follows:

Section 102 – *“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”*

Section 103 – *“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”*

#### Events leading to the signing of V4

(15) In order to give context to the transfer of the Shares by V4, it is important to briefly refer to the events that led to the signing of V4.

(16) It is the position of Elfriede Wang that construction of the hotel commenced in the year 2000 and with her being in Switzerland, the construction activity was carried out under the supervision of Jeewaka De Silva. The bank statements [V11] relating to the current account of the Defendant maintained by Jeewaka De Silva shows a substantial sum of money being credited by way of foreign inward remittances and withdrawals by way of cheques.

(17) Elfriede Wang states that she received information that Jeewaka De Silva was misappropriating the monies sent to the said current account of the Defendant and that she arrived in Sri Lanka in September 2002 to carry out an investigation. This exercise led to the following four events and gives context to V4:

- (a) The resignation of Samantha De Abrew, a close associate of Jeewaka De Silva as a Director of the Defendant on 21<sup>st</sup> October 2002 [V7];
  - (b) The passing of a Board Resolution on 30<sup>th</sup> October 2002 [V12] calling upon Jeewaka De Silva *“to submit a full and complete report on all unauthorised expenditure incurred by him utilizing Company finances and assets”*. This resolution confirms that the relationship between Elfriede Wang and Jeewaka De Silva had turned sour owing to the alleged financial irregularities on the part of Jeewaka De Silva;
  - (c) The passing of a Board Resolution on 2<sup>nd</sup> December 2002 [V13] resolving that:
    - (i) the services of *“Jeewaka De Silva functioning in the capacity of Operations Director should be terminated immediately ...”*; and
    - (ii) *“all matters arising from the audit checks leading to the revelations of his financial embezzlement of company assets to be handed over to the officers of law enforcement establishment in Sri Lanka (Police) for investigations on fraudulent conduct”*;
  - (d) The passing of a further resolution on 2<sup>nd</sup> January 2003 [V14] that the shares allotted to Jeewaka De Silva be transferred to Elfriede Wang and Manuela Stadler in equal proportion. V14 has been signed by Jeewaka De Silva as well in his capacity as a director, although the Defendant later stated that Jeewaka De Silva had ceased to be a director by then.
- (18) According to Elfriede Wang, on the same date as V14, she had gone with Jeewaka De Silva to the office of Robert Silva, Attorney-at-Law who later became the Company Secretary of the Defendant where V4 had been signed by Jeewaka De Silva transferring the Shares held by him to Elfriede Wang and Manuela Stadler. The Defendant relied upon the background circumstances that led to the execution of V4 and the two principal documents relating to the transfer of the Shares, they being (a) the resolution V14, and (b) V4, with both documents said to have been signed by Jeewaka De Silva on the same day, in support of its position that Jeewaka De Silva had transferred the Shares and thus, did not hold the Shares at the time of his death.

Has V4 been proved by the Defendant?

(19) This brings me to the issue of whether V4 has been proved by the Defendant.

(20) V4 was marked during the cross examination of the Plaintiff. Prior to showing V4 to the Plaintiff, the Plaintiff was asked if she knows the signature of Jeewaka De Silva to which she replied in the affirmative. She was then shown P6 which is Form 63 showing the names of the shareholders as at 31<sup>st</sup> March 2000 and asked whether the signature of Jeewaka De Silva is on P6. Having answered in the affirmative, she was shown the signature of Jeewaka De Silva on the Memorandum of Association, which had already been marked P4 and which was re-marked as V2. After she admitted that the signature on P4 is that of her husband, the signature of Jeewaka De Silva on P4 had been marked as V2a. The Plaintiff was thereafter shown V3 and she admitted that the signature on V3 is also that of her husband. The said signature was thereafter marked as V3a. Thus, by this time, the Plaintiff, who was aware of the position taken up by the Defendant that Jeewaka De Silva had signed a document on 2<sup>nd</sup> January 2003 transferring the Shares [vide P14, paragraph 6 of the answer and Issue No. 14] ought to have been aware that she was now being questioned on the signature of Jeewaka De Silva.

(21) The evidence immediately after V3a was marked, is as follows:

ප්‍ර: තවත් ලේඛනයක් පෙන්වා සිටී.

උ: අත්සන පිලි ගන්නවා.

අත්සන පොඩ්ඩක් වෙනස්

ප්‍ර: කොටස් පැවරීමේ ලේඛනය වී4 වශයෙන් ලකුණු කරනවා.

(අත්සන වී.4(අ) වශයෙන්ද, ඔප්පු කිරීමේ භාරයට යටත්ව වී4 ලේඛනය ලකුණු කරයි.)

(22) The Plaintiff was re-examined the same day, and her evidence on V4 is as follows:

ප්‍ර: වී4 කියන ලේඛනය පැමිණිල්ලේ තිබිණද මනනා තමාට පෙන්වා සිටියා?

උ: ඔව්.

ප්‍ර: වී4 (අ) වශයෙන් දැක්වා තියෙන අත්සන පෙන්වා සිටී.

ඒ අත්සන අදුරා ගන්න පුළුවන් ද?

මේ අත්සන තමාගේ ස්වාමිපුරුෂයාගේ අත්සනද, කියා පිලි ගන්න පුළුවන් ද?

උ: පිලි ගන්න බැහැ.

- (23) The burden of proving V4 in accordance with the provisions of the Evidence Ordinance was with the Defendant. In my view, with the Plaintiff having admitted that V4a is the signature of Jeewaka De Silva, there was no basis to mark V4 as being subject to proof nor has the learned Counsel for the Plaintiff explained the basis of his objection. I must also state that in my view, the subsequent denial of the signature in re-examination, which was in effect an answer suggested to the Plaintiff by her Counsel, cannot negate the aforementioned admission that the Plaintiff made during cross examination that the signature on V4 is that of her husband. I say so for the simple reason that V4 was the foundation of the case for the Defendant and which fact had been made known through P14, the answer and Issue No. 14.
- (24) V4 contained five signatures. The first is that of Jeewaka De Silva as transferor. The second is that of Elfriede Wang as transferee. The third is also that of Elfriede Wang who has signed on behalf of her daughter who is also a transferee. The other two signatures are of two persons who signed as witnesses, with Elfriede Wang claiming that one witness was an employee of Robert Silva and the other person was a friend of Jeewaka De Silva who had accompanied him to Colombo. V4 is said to have been signed in the office of and in the presence of Robert Silva, Attorney-at-Law, who had been appointed as the Company Secretary of the Defendant later that year. Robert Silva and at least one of the witnesses to V4 had been listed as witnesses before the District Court and although summons had been moved on them, neither of them had given evidence.
- (25) In her evidence, Elfriede Wang explained the circumstances that led to the signing of V4 on 2<sup>nd</sup> January 2003. Her position was that pursuant to Jeewaka De Silva agreeing to transfer the Shares [vide V14], V4 was signed the same day by Jeewaka De Silva in her presence and in the presence of the other witnesses. After V14 was marked and at the end of the examination-in-chief of Elfriede Wang, the Attorney-at-Law for the Plaintiff moved for a commission on the signature of Jeewaka De Silva

on V4 and V14 and moved that V4 and V14 together with the signatures on P2 and P3 be sent to the Examiner of Questioned Documents. The Defendant did not object to this application. Even though commission papers had been filed, the Attorney-at-Law for the Plaintiff had not taken any steps thereafter in that regard.

- (26) I have carefully examined the evidence and observe that Elfriede Wang was not questioned either on V4 or V14 nor was any suggestion made that V4 or V14 was not signed by Jeewaka De Silva or that V4 or V14 are fabrications or the version of Elfriede Wang is not correct. Thus, the testimony of Elfriede Wang has not been impeached by the Plaintiff, and her evidence with regard to the signing of V4 and V14 remain unchallenged.
- (27) Even though V4 and V14 had been marked subject to proof, at the time the case of the Defendant was closed and the documents V1 – V14 were read in evidence, the Plaintiff did not raise an objection to the said documents. It is in this background that the learned Counsel for the Defendant submitted that not only has the signature of Jeewaka De Silva on V4 been admitted by the Plaintiff and placed in the presence of Elfriede Wang, relying on the judgment of this Court in **Sri Lanka Ports Authority and another v Jugolinija – Boal East** [(1981) 1 Sri LR 18] he submitted that V4 and V14 were no longer subject to proof and that its contents including V4a has been proved. He therefore submitted that the position of the Defendant that Jeewaka De Silva has transferred his Shares to Elfriede Wang and her daughter has been established.

#### The judgment of the District Court

- (28) The District Court however was of the view that even though the Plaintiff did not object to the documents of the Defendant at the time they were read in evidence at the conclusion of the case for the Defendant, the Court could still consider their admissibility and authenticity, and thereafter proceeded to consider if V4 and V4a have been proved on a balance of probability. This view has been affirmed by the High Court.
- (29) In considering the admissibility and authenticity of V4, the District Court has:

- (a) Accepted the answer given by the Plaintiff in re-examination that the signature on V4 is not that of Jeewaka De Silva;
  - (b) Considered the evidence of the Officer from the Registrar of Companies relating to the signature of Jeewaka De Silva;
  - (c) Drawn an adverse inference from the fact that none of the witnesses to V4 had been called to give evidence on the mistaken assumption that Section 68 of the Evidence Ordinance applied to V4; and
  - (d) Acted under Section 73 of the Evidence Ordinance and compared the signature of Jeewaka De Silva appearing on V4 and V14 with his signature on P3 and P4.
- (30) The District Court has thereafter arrived at the conclusion that the signature on V4 does not tally with P3 and P4 and that the Defendant has not established the transfer of the Shares to Elfriede Wang and her daughter.
- (31) With regard to the District Court acting under Section 73, I wish to state that a trial Court must exercise caution in acting under Section 73. As pointed out by E.R.S.R Coomaraswamy in his treatise, **The Law of Evidence** [Volume 1, page 628]:

*“Where there is a conflict of direct testimony as to the genuineness of a document, it is dangerous to base a decision on a mere comparison of the document with admitted signatures. **The decision in such a case must depend on the view formed by the judge of the oral testimony.** In *Cader Saibo v Ahamadu* [(1948) 50 N.L.R. 303], the trial judge had accepted the defendant’s allegation that the promissory note in the case was a forgery and dismissed the plaintiff’s action. He formed that conclusion on a comparison by him, unaided by an expert, of the signature thereon with genuine standards produced in the case. *Basnayake J.* stated that it was unsafe to take that course. He showed that the method of comparison by formation has its shortcomings and can never be relied on as a sure guide for forming any satisfactory conclusion as to the genuineness of disputed handwriting, for several factors may affect the question, as, for example, a person can willfully distort his own signature, the posture of the writer, the*

*material on which he writes, the solemnity or informality of the occasion, an unfamiliar pen, and fear, nervousness, excitement.”*

- (32) It is the correctness of the above approach adopted by the District Court and affirmed by the High Court that has given rise to the 1<sup>st</sup> question of law, that being by virtue of the failure of the Plaintiff to object to V4 and V14 at the time V1 – V14 were read in evidence at the closure of the Defendant’s case, whether V4 and V14 had become evidence for all intents and purposes, requiring no further examination with regard to its contents.

#### Section 154 of the Civil Procedure Code

- (33) It is in this context that I will address the first question of law raised by the learned Counsel for the Defendant that the Judges of the Civil Appellate High Court erred in law in failing to appreciate the fact that all documents of the Defendant were marked without objection at the closure of the Defendant’s case and thus had become evidence for all intents and purposes.

- (34) I shall commence by referring to Section 154(1) of the Civil Procedure Code, in terms of which *“Every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness. ... ”*

- (35) Once a document is sought to be produced by a party, the ‘Explanation’ to Section 154 guides the Court with regard to the necessary steps that must be followed in considering the reception and admissibility of such document as evidence. The Explanation to Section 154 reads as follows:

*“If the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it.*

*If, however, on the document being tendered **the opposing party objects** to its being admitted in evidence, then commonly two questions arise for the court:-*

*Firstly, whether the document is authentic – in other words, is what the party tendering it represents it to be; and*

*Secondly, whether supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it.*

*The latter question in general is a matter of argument only, but the first must be supported by such testimony as the party can adduce. If the court is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a prima facie case of authenticity and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.*

*If, however, the court is satisfied that either of those questions must be answered in the negative, then it should refuse to admit the document.*

*Whether the document is admitted or not it should be marked as soon as any witness makes a statement with regard to it; and if not earlier marked on this account, it must, at least, be marked when the court decides upon admitting it.”*

- (36) The Explanation provides for two situations. The first is where a document is not objected to when marked in evidence during a trial. The contents of such a document is regarded as evidence of the facts stated therein and does not require further proof in admitting such document provided the said document is not forbidden by law to be received in evidence. The second situation is where a document is objected to at the time it is sought to be marked and therefore is marked subject to proof. The Explanation gives clear guidance as to how a Court shall deal with the latter situation, and requires no further elaboration.
- (37) There is a third situation which has not been referred to in the Explanation, that being the admissibility of a document that had been objected to at the time of marking it as evidence but has not been objected to when the said document was read in evidence at the closure of the case of the party who marked such document.

(38) In **Sri Lanka Ports Authority and another v Jugolinija – Boal East** [supra], at the time the document P1 was marked during the trial an objection was raised by the counsel for the defendant on the ground that the author of P1 has not been called as a witness. In other words, the substance of the objection was that P1 should not be admitted as evidence unless the author of P1 was called to prove its authenticity. However, when the counsel for the plaintiff closed its case reading in evidence P1 and P2, no objection was raised in respect of those documents.

(39) Upon an objection being taken in appeal that P1 has not been proved, Chief Justice Samarakoon stated as follows:

*“If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law. This is the *curius curiae* of the original Civil Courts. The contents of P1 were therefore in evidence as to facts therein (vide section 457 Administration of Justice Law, No. 25 of 1975) and it is too late now in appeal to object to its contents being accepted as evidence of facts.”* [emphasis added; at page 24]

(40) Similarly, in the case of **Balapitiya Gunananda Thero v Talalle Methananda Thero** [(1997) 2 Sri LR 101] document P5 was marked in evidence subject to proof. The District Court held that P5 was not proved, although P5 was read in evidence at the close of the plaintiff's case without objection. This finding of the District Court was reversed by the Court of Appeal on the basis of the decision in **Sri Lanka Ports Authority and another v Jugolinija – Boal East** [supra]. In appeal, the finding of the Court of Appeal was upheld by Chief Justice G.P.S. De Silva who held that P5 must be considered as part of the evidence in the case.

(41) Referring to the above two cases, Kodagoda, PC, J held in **Weerawarnakulasuriya Boosabaduge Shamaline Fernando v Kusalanthi Fernando and another** [SC Appeal 55/2020; 09<sup>th</sup> November 2023] that, *“In both Appeals, the Supreme Court has held that in the circumstances, the documents in issue must be treated as having been duly proved and hence their contents be taken into consideration as evidence. I would respectfully express agreement with both these findings, as in both matters,*

*the court was not required to adjudicate in appeal regarding proof of a document which was required by law to be attested.”*

- (42) Therefore, it's the *cursus curiae* of the original Courts that where a document is marked subject to proof but not objected to when tendered and read in evidence at the close of the case of the party who marked such document, its contents can be accepted as evidence without any further examination of its authenticity or admissibility.

#### Judgment of the High Court

- (43) The underlying issue forming the 1<sup>st</sup> question of law had been raised by the Defendant before the High Court and, as borne out by its judgment, has been addressed by the High Court in the following manner:

*“The Defendant’s contention is that since the Plaintiff admitted in her evidence the signature which is on V4 is the signature of her late husband and also this document was not objected at the time of the closure of the Defendant’s case, the V4 document is deemed to have been proved in law.*

*In support of this view, the Defendant submitted Sri Lanka Ports Authority and another v Jugolinija – Boal East [(1981) 1 Sri LR 18]. In that case, it was held that if an objection is taken to a document and when the case is closed the objection is not maintained such a document is deemed to have been proved in law.*

*Also in Jamaldeen Abdul Latheef v Abdul Majeed Mohammed Mansoor and another [(2010) 2 Sri LR 333] it was held that if no objection is taken to a document at the close of a case such a document is proved in law.*

*However, when this Court considers these two judgments it is true that when a document is challenged in the course of the trial is not maintained at the close of the case, it is evidence of that case and it is a proved document. However, in Jamaldeen Abdul Latheef v Abdul Majeed Mohammed Mansoor and another it was further held that according to the facts of the case whether such a document is proved or not has to be considered by a Court of law. ”*

(44) The High Court has clearly misinterpreted the finding in **Jamaldeen Abdul Latheef v Abdul Majeed Mohammed Mansoor and another** [(2010) 2 Sri LR 333]. In that case, the document marked P7 had been marked subject to proof but at the closure of the case, none of the documents that had been marked had been read in evidence. Responding to the question of law raised, i.e., “*is it mandatory to read the documents in evidence of the Respondents at the conclusion of the trial*”, Marsoof, J stated as follows [at pages 371-372]:

*“There remains, however, one more matter on which learned Counsel for the contending parties have made submissions, which was raised in the context that the usual practice of reading in evidence the documents that were marked and produced at the trial in the course of witness testimony was not followed when the case for the Respondents was closed on 27<sup>th</sup> April 1993. This is substantive question 5, which specifically focuses on this issue, namely: is it mandatory to read the documents in evidence at the conclusion of the trial? There is no provision in the Civil Procedure Code that mandates the reading in of the marked documents at the close of the case of a particular party. However, learned and experienced Counsel who have appeared in the original courts in civil cases from time immemorial developed such a practice, which has received the recognition of our courts. For instance, in Sri Lanka Ports Authority and Another v. Jugolinija - Boat East, Samarakoon, CJ., commented on this practice, and ventured to observe at pages 23 to 24 of his judgment that if no objection to any particular marked documents is taken when at the close of a case documents are read in evidence, “they are evidence for all purposes of the law.” It has been held that this is the *cursus curiae* of the original courts. See, *Silva v. Kindersle* [18 NLR 65]; *Adaicappa Chettiar v. Thomas Cook and Son* [31 NLR 385], *Perera v. Seyed Mohamed* [58 NLR 246]; *Balapitiya Gunananda Thero v. Talalle Methananda Thero* [(1997) 2 Sri LR 101]; *Cinemas Limited v. Sounderarajan* [(1988) 2 Sri LR 16]; *Stassen Exports Ltd., v. Brooke Bond Group Ltd., and Two others* [(2010) BLR 249].*

*It would therefore follow that even though the Power of Attorney marked P7 had in fact not been proved as required by law, **if the learned Counsel for the Respondents had read in P7 in evidence with the other marked documents at the close of the case for the Respondents without any objection being taken on***

*behalf of the Appellants, P7 would have been deemed to be good evidence for all purposes of the law. However, that is not what actually happened in this case. A photocopy of the power of attorney allegedly granted by Abdul Cader to Noor Lebbai was marked P7 subject to proof, no proof whatsoever was adduced to prove the aforesaid photocopy, and none of the marked documents were read in evidence at the conclusion of the Respondents' case.” [emphasis added]*

- (45) Thus, the High Court, while being in agreement with the view expressed by Chief Justice Samarakoon fell into error when it misinterpreted the judgment of this Court in Jamaldeen Abdul Latheef v Abdul Majeed Mohammed Mansoor and another [supra].

Civil Procedure Code (Amendment) Act, No. 17 of 2022

- (46) There is one other matter that I must advert to prior to concluding.

- (47) The Civil Procedure Code (Amendment) Act, No. 17 of 2022 has introduced Section 154A to the Civil Procedure Code in terms of which *inter alia* notwithstanding the provisions of the Evidence Ordinance, in any proceedings under the Code, it shall not be necessary to adduce formal proof of the execution or genuineness of any deed, or document which is required by law to be attested, other than a will executed under the Wills Ordinance, and on the face of it purports to have been duly executed, unless the execution or genuineness of such deed or document is impeached in the pleadings and an issue has been raised, or where the Court requires proof.

- (48) A transitional provision has been inserted in the Amendment Act as Section 3 and reads as follows:

*“Notwithstanding anything contained in section 2 of this Act, and provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act-*

- (a) (i) *if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence;*  
*or*

*(ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence **but not objected to at the close of a case when such document is read in evidence,***

*the court shall admit such deed or document as evidence without requiring further proof;*

*(b) if the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution of genuineness of such deed or document.”*

(49) Although Section 2 of the Amendment Act refers to a deed or document which is required by law to be attested, no such distinction has been drawn in Section 3. It therefore appears that the *cursus curiae* referred to by Chief Justice Samarakoon has been given statutory recognition by Section 3(a)(ii) of the Amendment Act.

(50) Laying specific emphasis on the application of this transitional provision to pending appeals in the context of proof of documents required by law to be attested i.e. deeds, Kodagoda, PC, J held in **Weerawarnakulasuriya Boosabaduge Shamaline Fernando v Kusalanthi Fernando and another** [Supra] that, *“If the opposing party had not objected to the admission of the deed either when it was initially tendered in evidence or when the party that produced the document closed its case and read in evidence the contents of the document, then the court is required to admit the document without insistence upon complying with the form of proof stipulated in section 68 of the Evidence Ordinance.”*

(51) The above observation of Kodagoda, PC, J, caters to the two situations referred to in Section 3(a) of the Amendment Act. Accordingly, if the opposing party (a) had not objected to the admission of a document, irrespective of whether it is a document which is required by law to be attested or not, when it was initially tendered in evidence, or (b) having objected to such a document being received as evidence does not object to the said document being read in evidence at the time the party that produced the document closed its case and reads in evidence the contents of the said document, then the Court shall admit such document without requiring further proof.

## Conclusion

(52) That being the legal position, I am of the view that (a) in the circumstances of this case, the District Court erred when it proceeded to consider the admissibility and authenticity of V4 and V14, and (b) the High Court erred when it affirmed the findings of the District Court on a misapplication of the law. I would therefore answer the 1<sup>st</sup> question of law in the affirmative. The necessity to answer the 2<sup>nd</sup> question of law does not arise. The judgments of the District Court and the High Court are accordingly set aside and the issues that are relevant to the 1<sup>st</sup> question of law which I have set out in paragraphs 10 and 11 of this judgment are answered as follows:

Issue No. 1 - Yes

Issue No. 2 - Yes but Jeewaka De Silva did not hold the shares at the time of his death

Issue No. 3 - Yes

Issue No. 4 - No

Issue No. 13 - Yes

Issue No. 14 - Yes

(53) This appeal is allowed. I make no order with regard to costs.

**JUDGE OF THE SUPREME COURT**

**S. Thurairaja, PC, J**

I agree

**JUDGE OF THE SUPREME COURT**

**Achala Wengappuli, J**

I agree

**JUDGE OF THE SUPREME COURT**