

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

Application for Revision in terms of Article 138 of the Constitution, read with section 11 of the High Court of the Provinces (Special Provisions) Act No 19 of 1990.

Halpandeniya Hewage Alice Nona,
Muttetuwwatte, Naranowita,
Porawagama.

Petitioner (deceased)

Epa Kankanamge Charlotte
Muttetuwwatte,
Porawagama.

Substituted Petitioner

**Court of Appeal Revision
Case No:50/2009**

Vs

**High Court (Civil Appeal)
of the Southern Province
Holden in Galle Case No: Writ 01/2004**

**Originally High Court of Balapitiya
Case No:86/writ**

1. S. Wahalawatte
Land Commissioner (Southern
Province),
Land Commissioner's Office,
Galle.
2. Kulasena Samarasinghe
Divisional Secretary,
Divisional Secretariat,
Niyagama.
3. W.K. Piyasena
Grama Niladhari,
No.35, Porawagama,
Porawagama.

4. A.K. Rohini Damayanthi De Silva
Kumburuwatte, Kirimetiya,
Watapola.

Respondents

NOW BETWEEN

Halpandeniya Hewage Alice Nona,
Muttetuwwatte, Naranowita,
Porawagama.

Petitioner (deceased)

Epa Kankanamge Charlotte
Muttetuwwatte,
Porawagama.

Substituted Petitioner-Petitioner

Vs

1. S. Wahalawatte
Land Commissioner (Southern
Province),
Land Commissioner's Office,
Galle.
2. Kulasena Samarasinghe
Divisional Secretary,
Divisional Secretariat,
Niyagama.
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Grama Niladhari,
No.35, Porawagama,
Porawagama.
4. A.K. Rohini Damayanthi De Silva
Kumburuwatte, Kirimetiya,
Watapola.

Respondent-Respondents

BEFORE : SISIRA DE ABREW, J. &
K.T. CHITRASIRI, J.

COUNSEL : Mahinda Ralapanawe with Chandima Gamage and
Chamila Herath for the Petitioner.

Yuresha de Silva, S.C., for the 1st - 3rd Respondents.

ARGUED &
DECIDED ON : 20.05.2011.

SISIRA DE ABREW, J.

Heard both Counsel in support of their respective cases.

By virtue of the grant signed by Her Excellency the President (then) on 28.06.1996, Epa Kankanamge Carolis became the owner of the land described in the schedule of the said grant. This grant was produced as 'P1' in the High Court. After the death of said Carolis his wife Alice Nona continued to possess the said land. Whilst said Alice Nona was in possession of the said land, Grama Sevaka of the area by letter dated 04.10.2004 directed the daughter of the said Alice Nona to hand over the possession to one Rohini Damayanthi de Silva who is the daughter-in-law of said Carolis. According to the said letter of Grama Sevaka, the 2nd respondent has decided to hand over the possession of the said land to said Damayanthi de Silva. The said decision of the 2nd respondent has been conveyed to the Grama Sevaka by letter dated 29.09.2004 by the 2nd respondent (the Divisional Secretary). The petitioner Alice Nona

thereafter filed a petition in the High Court challenging the said decision of the 2nd respondent. She by way of a Writ of Certiorari moved the High Court to quash the said decision of the 2nd respondent. It appears from the above facts the 2nd respondent has taken a decision to hand over the possession of the said land to the 4th respondent, whilst the wife of said Carolis (the petitioner) was in occupation of the land. According to Section 48 B (1) of the Land Development Ordinance Alice Nona being the wife of Carolis becomes entitled to succeed to the said land. Learned State Counsel appearing for the respondents before us admits that the possession should have been given to the said Alice Nona the wife of Carolis in accordance with Section 48 B. When we consider Section 48 B (1) of the Land Development Ordinance we find that the decision of the 2nd respondent to hand over the possession to Damayanthi de Silva who is the daughter-in-law of Carolis is erroneous. On this basis itself learned High Court Judge should have intervened in the matter and quashed the said decision of the 2nd respondent. Learned High Court Judge without going into the merits of the case dismissed the petition of the petitioner on the basis that he has no jurisdiction to hear the case as the subject matter of the case is not a devolved subject. When we consider Section 48 B of the Land Development Ordinance we hold the view that the learned High Court Judge should not have dismissed the petition of the petitioner on the said basis. The petitioner has also moved High Court to issue a permit relating to the possession of the land in favour of the petitioner by way of a Writ of Mandamus.

The learned High Court Judge took up the position that he has no jurisdiction to hear the case as the subject of the case is not a devolved subject. He was of the opinion that he has no jurisdiction to hear the case since the subject matter relates to a state land. The petitioner was, in the High Court, seeking to quash the decision of the 2nd respondent who directed to hand over the possession of the land to the 4th respondent. This was the subject matter of the case. In our view this is a matter for the learned High Court Judge to decide after considering the merits of the case. We are therefore unable to agree with the contention of the learned High Court Judge when he decided that he had no jurisdiction to hear the case. For the above reasons, we hold that the decision of the learned High Court Judge to dismiss the petition is erroneous. We therefore set aside the judgment of the learned High Court Judge dated 19.02.2009 and direct the learned High Court Judge to hear the case on its merits.

JUDGE OF THE COURT OF APPEAL

K.T. CHITRASIRI, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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