

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

In the matter of an application
for a writ of Certiorari in terms
of Article 140 of the Constitution.

C.A. (Writ) Application No. 571/2011

1. S.N.K. Gunasoma,
"Manjula", Eth Oya,
Ratnapura.
2. S.N.K. Heenmenike,
"Sri Nivasa", Eth Oya,
Ratnapura
3. R.P. Malani Rajapaksa
4. Umesha Prarthana
Narayana, Both of
"Shamali", Eth Oya,
Ratnapura
5. S.N.K. Mallikaratne
Menike,
6. S.N.K. Loku Menike,

7. S.N.K. Heen Menmenike
alias Chandra Narayana,

8. S.N.K. Punchi Menike,

9. S.N.K. Seetharatne
Menike, All of No.44,
Gnanalankara Mawatha,
Gatangama, Ratnapura.

10. K.H. Sumanasena, No.
370, Colombo Street,
Ratnapura.

PETITIONERS

Vs.

1. National Gem & Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.
2. Wimalaratne Muthugala,
Senior Regional Manager,
Regional Officer of the Gem &
Jewellery Authority,
Ratnapura.

3. R.H.S. Samaratunga,
Secretary,
Ministry of Environment,
"Sampathpaya",
No.82, Rajamalawatta,
Battaramulla.
4. L. Kiriella,
Legal Officer,
Ministry of Environment,
"Sampathpaya" , No.82,
Rajamalwatta,
Battaramulla.
5. J. M. M. Sumendra Tissa,
Kumara,
"Vijaya Niwasa",
Eth Oya, Ratnapura,
6. S.N.K.PodiMenike,C/o.Ranjanath
Senaratne,Pillewa
Walawwa,Bogahawatta,
Kirindiwela.
7. S.N.K. Gunaratne Menike,
8. S.N.K.Jayaratne Menike,
Both of "Sri Nivasa",
Eth Oya, Ratnapura.
9. Chanika Nishadi Narayana,
10. Nuwan Praeep Narayana,
11. Kushan Prabeep Narayana,
All of "Shamali", Eth Oya,
Ratnapura.

RESPONDENT

BEFORE : S. SRISKANDARAJAH, J (P/CA)
P.W.D.C. JAYATHILAKE, J

COUNSEL : Harsha Soza P.C. with A. Chamara
Abesingha For the Petitioners.
Vikum de Abrew SSC for the 3rd
Respondent
Shantha Karunadhara with Gaithri de
Silva for the 5th Respondent.

Argued On : 28.11.2012

Decided On : 30.05.2013

P. W. D. C. Jayathilake J.

This is an application for a writ of certiorari in terms of article 140 of the constitution quashing the decision of the 3rd Respondent R. P. Malani Rajapaksha, directing the 1st Respondent S. N. K. Gunasoma to issue a

gem mining licence to the 5th Respondent J.M.M. Sumendrathissa Kumara, in respect of the land called and known as Dikdeniya Kumbura, Hunugaldeniya and Dangahadeniya Kumbura situated at Kahahenagama depicted as lots, 11,13 and 14 in partition Plan No : 1849 dated 30.05.1954 made by D. J. Hettiarachchi licensed surveyor, partitioned in D.C. Ratnapura Case NO : 7220/P.

According to the Petitioners, said land was allotted to S.N.K. Dingiri Mudiyanse Sri Narayana under the final decree (P1(a)) entered in the said case (said final plan is annexed to the petition as P1 (b)). Sri Narayana during his life time disposed of lot 12 and on his death intestate an issue less the other lots were devolved on his brothers S.N.K. Gunarathna Nilame and S.N.K. Gunasekara Nilame Subject to the life interest of his widow Beatrice Matilda Wijekoon. Upon the death of the said Gunarathna Nilame his rights in the said land were devolved upon the 1st and 2nd Petitioners and 6th , 7th and 8th Respondents and one S.N.K. Somarathna who jointly became entitled to an undivided $\frac{1}{2}$ of the said land. The said S.N.K. Somarathna died intestate leaving his 4 children Nuwan Pradeep Narayana (10th Respondent) Kushan Pradeep Narayana (11th Respondent) Umesha Prarthana Narayana (The 4th Petitioner) and his widow Malani Rajapaksha (3rd Petitioner) as his heirs.

Upon the death of the aforesaid S.N.K. Gunasekara Nilame, his undivided $\frac{1}{2}$ in the said land was devolved upon the 5th to 9th Petitioners, and S.N.K. Chandrasiri and S.N.K. Piyarathna. The said S.N.K. Chandrasiri and S.N.K. Piyarathna transferred their rights to the 1st Petitioner and subsequently the said right was transferred to the 10th Petitioner. Petitioners stated accordingly the 1st to 10th Petitioners and 11th Respondent are the co-owners of the said land.

1st Petitioner and the 5th Respondent applied to the 1st Respondent for a licence for gemming on said land and after an inquiry informed that the title was not clear. Therefore both applications were rejected. Then the 1st, 2nd, 3rd Petitioners and 6th, 7th and 8th Respondents instituted an Action (P23) in the District Court of Ratnapura seeking a declaration of title to the land against the 5th Respondent. However as the 1st Petitioner was informed by the 1st Respondent in the year 2006 that had been decided to grant the licence to the 5th Respondent, 1st and 2nd Petitioners and 6th, 7th and 8th Respondents filed a writ application but by that time as it was brought to the notice of the court the licence issued had lapsed that writ application was withdrawn. Then the 5th Respondent made a fresh application for the licence and Petitioners objected to it. Petitioners received P33(a) from the 1st Respondent subsequent to an inquiry. Thereafter the 5th Respondent preferred an appeal to the 3rd Respondent and the 3rd Respondent had given his decision on 27.07.2011 on the basis that the 5th Respondent had title to the land. (P34, P35 and P36). By this time 1st to 4th Petitioners 6th, 8th and 11th Respondents had instituted a partition Action in the District Court of Ratnapura to partition the land. (P33(b))

The Petitioners state in their petition that the 3rd Respondent in arriving at the decision has stated the following.

- i. The Petitioners have not taken up a position in any court that the 5th Respondent is not the heir of the said Sri Narayana.
- ii. That in the Testamentary case No – 2074 the 5th Respondents had got ½ of the said property.

- iii. That in terms of the decree in the Testamentary case and on rights by virtue of marriage, Beatrice Matilda Wijekoon has got the other $\frac{1}{2}$ and she has gifted that $\frac{1}{2}$ of the said land to the 5th Respondent.
- iv. The oral and documentary evidence show that the 5th Respondent has got full title to the land.
- v. Court has not issued an injunction restraining the issuance of Gemming licence.

But Petitioners alleged that Sri Narayana being person governed by the Kandyan Law he could legally adopt the 5th Respondent only if he had followed the procedure laid down in Section 7(1) of the Kandyan Law Declaration and Amendment Ordinance, and the affidavit tendered (P37) in that respect was a fraudulent document. With regard to the Testamentary action Petitioners have taken up the position that it confers no title to the property.

Petitioners complain that the 3rd Respondent has decided on a matter which was subjudice and has erred by failing to appreciate and consider the fact that the District Court cannot issue an injunction Restraining the 1st Respondent issuing in a Gemming licence under and in terms of the Provisions of the National Gem and Authority act NO : 50 of 1993.

It appears that there has been a long standing dispute between the Petitioners and the 5th Respondent in regard to the ownership of the land in dispute. Despite the fact that Petitioners were continuously opposing the 5th Respondent being able to obtain the Gemming licence for the said land. The matter in issue to be decided in between Petitioners and the 5th Respondent by the Civil court would be whether the 5th Respondent is a legally adopted child of Narayana or not. But it has been taken several

years for this litigation without a final solution. Therefore the 3rd Respondent has decided to issue the Gemming licence to the 5th Respondent taking into consideration fundamental material available in favour of the 5th Respondent. Accordingly this court does not find any irregularity or error of the 3rd Respondent arriving at the decision in issue. For these reasons this Court dismisses this application with cost.

JUDGE OF THE COURT OF APPEAL

S. SRISKANDARAJAH, J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL