

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

1. Chandrika Kamalika Koralage,
2. Udeni Chandrika Hikkadu
Koralage,
Both of No. 30, Skelton Road,
Colombo 5.

Petitioners

C.A. No. 798 / 2000 F
D.C. Colombo No. 35633/99/MS

Vs.

1. Kodikara Arachchige Ranjith
Kodikara,
2. Srimathie Lalitha Kodikara alias
Srimathie Lalitha Perera
Okandapola,
Both of No. 981,
Sri Jayawardenapura Mawatha,
Welikada, Rajagiriya.
3. Registrar General of Lands,
Office of the Registrar General,
Duplication Road, Colombo 3.

Respondents

AND NOW BETWEEN

1. Kodikara Arachchige Ranjith
Kodikara,
2. Srimathie Lalitha Kodikara alias
Srimathie Lalitha Perera
Okandapola,
Both of No. 981,
Sri Jayawardenapura Mawatha,
Welikada, Rajagiriya.

Respondent Appellants

Vs

1. Chandrika Kamalika Koralage,
2. Udeni Chandrika Hikkadu
Koralage,
Both of No. 30, Skelton Road,
Colombo 5.

Petitioner Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : D.M.A. Kannangara for the Respondent
Appellants
Samantha Vithana with Sujatha Dikkumbura
for the Petitioner Respondents

ARGUED ON : 05.11.2012

DECIDED ON : 10.07.2013

UPALY ABEYRATHNE, J.

The Petitioner Respondents (hereinafter referred to as the Respondents) have instituted an action against the Respondent Appellants (hereinafter referred to as the Appellants) in the District Court of Colombo by way of summary procedure seeking for cancellation of Caveats registered in Volume M 1209 at folio 165 (M/1209/165) and Volume M 2319 at folio 147 (M/2319/147). The Appellants have filed their statement of objections seeking for a dismissal of

the said action of the Respondents. The learned Additional District Judge by order dated 29.09.2000 has held in favour of the Respondents. The Appellants have appealed to this Court from the said order.

At the hearing of this appeal the learned counsel for the Appellants submitted that the action of the Respondents should have been dismissed *in limine* since the affidavit filed with the Petition was bad in law. I now advert to the said submission.

In terms of section 437 of the Civil Procedure Code whenever evidence on affidavit is required for production in any application or action of summary procedure, whether already instituted or about to be instituted, an affidavit or written statement of facts conforming to the provisions of section 181 may be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any court or Justice of the Peace or Commissioner for Oaths within the local limits of whose jurisdiction he is at the time residing, and the fact that the affidavit appears to be entitled in an action in a competent court shall be sufficient authority to such court or Justice of the Peace or Commissioner to administer the oath or affirmation.

The Respondents in their affidavit has stated that “..... we being Buddhist Solemnly, sincerely and truly declare as follows;” It appears that the Respondents being Buddhist have not affirmed before making the declaration. According to form 75 of the first schedule to the Civil Procedure Code if a Buddhist person makes an affidavit, it should be commenced with an affirmation to the effect that “ being a Buddhist Solemnly, sincerely and truly affirm and declare as follows;” In the alleged affidavit the Respondents have been referred to

as mere declarants. A mere declaration in my view would not tantamount to an affirmation. The sanctity attached to an affirmation is clearly lacking.

The learned counsel submitted that even the jurat clause is without an affirmation. I have perused the jurat of the affidavit. It is amply clear that the Commissioner for Oaths has not administered an affirmation as required by law. The law requires that the jurat must mention the fact of an oath being admitted or affirmation made. Section 437 of the Code provides that an affidavit must be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any court, Justice of the Peace or Commissioner for Oaths.

In the said circumstances I am of the view that the affidavit filed by the Respondents is not an affidavit which has any legal validity or sanctity and hence there was no affidavit as required by law filed with the petition. Therefore the Respondents' action needs to have been rejected *in limine* resulting in the absence of a proper affidavit under Chapter xxiv of the Civil Procedure Code.

For the forgoing reasons I set aside the order of the learned Additional District Judge dated 29.09.2000 and dismiss the action of the Respondents. The Appeal of the Appellants is allowed with costs.

Appeal allowed.

Judge of the Court of Appeal