

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

Pemawathie Andaraweera,
No. 18, Dalugahahena,
Kiula, Hungama.

Plaintiff

Vs.

C.A. No. 794 / 2000 F

D.C. Hanbatota No. 18/93 / L

Ariyadasa Andaraweera'
Aluth Ela Road,
Kiula, Hungama.

Defendant

And Now Between

Ariyadasa Andaraweera'
Aluth Ela Road,
Kiula, Hungama.

Dfendant-Appellant

Vs

Pemawathie Andaraweera,
No. 18, Dalugahahena,
Kiula, Hungama.

Plaintiff -Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : M.S.A. Wadood with Palitha Subasinghe for
the Defendant appellant
Gamini Senanayake for the Plaintiff
Respondent

ARGUED ON : 23.07.2013

DECIDED ON : 15.10.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) has instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Hambantota seeking for a declaration that she is entitled to possession of the land described in the schedule to the plaint as the nominee under and in terms of a land permit bearing No. LL 32353 (P 1). The Appellant has filed an answer denying the averments contained in the plaint and praying inter alia for a dismissal of the Respondent's action. The case proceeded to trial on 11 issues. After trial the learned District Judge has delivered a judgement in favour of the Respondent. Being aggrieved by the said judgement dated 25.04.2000 the Appellant has preferred the present appeal to this court.

The Appellant took up the position that his father did not nominate a successor till his death on 04.02.1992 and the alleged nomination of the Respondent was fraudulent. The Appellant further averred that since there had been no nomination of a successor the eldest male child of the Appellant's father should become the owner of the land in dispute and since the eldest child was not

claiming the title to the land, the Appellant being the next male child was the person entitled to succession under the provisions of the Land Development Ordinance. The learned counsel for the Appellant further contended that the Respondent has not been legally nominated by the father of the Respondent.

The Appellant has raised issue No. 8 challenging the authenticity of the alleged nomination of the Respondent as the successor to the land in suit. Hence a burden cast on the Respondent to prove that she had been duly nominated as the successor to the land in suit by her father. The Land Development Ordinance No.19 of 1935 stipulates the procedure in relation to the nomination of a successor. Section 56 of the said Ordinance reads thus;

- 56(1) The nomination of a successor and the cancellation of any such nomination shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a divisional Assistant Government Agent, or a notary, or a Justice of the Peace.
- (2) The provisions of subsection (1) shall not apply to any nomination or cancellation of a successor made by last will in the manner hereinafter provided, or to the nomination and cancellation of a successor to a land alienated on a permit made in the manner provided in section 87.
- (3) A document by which the nomination of a successor or the cancellation of any such nomination is effected under subsection (1) shall not be deemed to be an instrument affecting land for the purposes of the Registration of Documents Ordinance, nor shall the provisions of Chapter II of that Ordinance apply to any person before whom any such document is executed.

According to Section 60 of the said Ordinance no nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit-holder.

At the trial the Respondent has led evidence of Gam Aacharige Gunadasa and Sauneris Saranasinghe Edirisuriya Patabendige. Gam Aacharige Gunadasa who gave evidence on behalf of 'Janapada Niladari' has testified that the

father of the Respondent who was the permit holder of the land in suit had not made any request to nominate the Respondent as successor to the land and the nomination of the Respondent as successor to the land had been made upon a letter requesting to nominate the Respondent as the successor to the land, sent by the Grama Niladari, Kiula North. The said official witness has produced the said letter of the Grama Niladari, Kiula North marked V 2. No doubt that the said procedure followed in nominating a successor was in violation of Section 56 of the said Ordinance. Apart from that the Respondent has not adduced any evidence to show that her nomination had been registered under Section 60 of the Land Development Ordinance.

It is clear from the said evidence that the Respondent has failed to prove that her nomination as the successor to the land in dispute had been made according to the procedure set out in Section 56 and 60 of the Land Development Ordinance.

In this regard the learned counsel for the Respondent submitted that since the nomination of the Respondent by the original recipient has not been challenged in a proper forum by way of a writ the Appellant is precluded in challenging the said nomination in a District Court.

I am not inclined to agree with the said submission of the learned counsel. Sections 56 and 60 of the Land Development Ordinance set out a procedure which should be followed by a permit holder when he wishes to nominate a successor. Sections 56 and 60 do not represent any administrative act which should be performed by a government officer. Therefore it is not amenable to writ jurisdiction of the Court of Appeal and any matter pertaining to the

procedure laid down in Sections 56 and 60 of the Land Development Ordinance falls within the jurisdiction of a District Court.

Hence I am of the view that the learned District Judge has failed to adhere to the provisions contained in Sections 56 and 60 of the Land Development Ordinance. In the said circumstances I dismiss the action of the Respondent and allow the appeal of the Appellant with costs.

Appeal allowed.

Judge of the Court of Appeal