

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

**In the matter of an Application for
mandates in the nature of Writ of
Certiorari and Mandamus under article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka**

Meegasdeniya Kankanamge Munidasa,
Medical Centre,
Imbulgoda,
Akuressa.

PETITIONER

CA/ WRIT/ 86/ 2014

Vs,

1. J.H.S.P. Jayamaha,
Divisional Secretary,
Divisional Secretariat Office,
Beliatta.
2. Meegasdeniya Kankanamge Sumanadasa,
No. 30, Kurunaduwaita,
Isadeen Town,
Mathara.
3. Meegasdeniya Kankanamge Karunaratne,
“Nadeewasa”,
Ridideniya Road,
Ambalantota.

4. Meegasdeniya Kankanamge Thilak,
“Magawatta”,
Unawa, Palapotha,
Beliatta.
5. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

And now,

Meegasdeniya Kankanamge Somapala,
“isuru”,
Beragama,
Ambalanthota.

INTERVENIENT- PETITIONER

Vs,

Meegasdeniya Kankanamge Munidasa,
Medical Centre,
Imbulgoda,
Akuressa.

PETITIONER-RESPONDEN

Vs,

1. J.H.S.P. Jayamaha,
Divisional Secretary,
Divisional Secretariat Office,
Beliatta.

2. Meegasdeniya Kankanamge Sumanadasa,
No. 30, Kurunaduwwatta,
Isadeen Town,
Mathara.
3. Meegasdeniya Kankanamge Karunaratne,
“Nadeewasa”,
Ridideniya Road,
Ambalantota.
4. Meegasdeniya Kankanamge Thilak,
“Magawatta”,
Unawa, Palapotha,
Beliatta.
5. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS- RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: Thilak Wijesinghe with S.W. Weerawardana for the **Intervenient-Petitioner**,
Saman Galappaththi for the **Petitioner**,
Padmi Gamage for the **3rd Respondent**,
P.L. Gunawardana with G.D.K. Karunaratne for the **4th Respondent**,
Vikum de Abrew DSG, for the **AG**.

Written Submission On: 31.08.2015 / 18.09.2015

Order On: 27.11.2015

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner-Respondent has come before this court seeking inter alia,

- b. Grant a Mandate in the nature of Writ of *Certiorari* quashing the decision contained as an endorsement dated 30.01.1969 in the grant marked as “P1a” and the entry based on the aforesaid endorsement marked as “P4a”
- c. Grant a Mandate in the nature of Writ of Mandamus directing the 1st Respondent to alienate the land called Magawatta, Magawattekebella, Magawatte Pokuna situated in the village of Dedduwawala in the Giruwapattu West of the Hambantota District in Southern Province and depicted as lot 207 in final Village Plan No 306 in filed sheet No 1 of Surveyor General’s Plan and containing in extent of Seven Acres One Rood Fourteen Perches (7A 1R 14P) to the Petitioners,

Petitioner- Respondent complained before this court that the 1st Respondent –Respondent had failed or delayed to alienate the land in question, which was originally alienated to his father namely Meegahadeniya Kankanamge Don Andiris, by the Grant dated 19th July 1955.

The Respondent- Petitioners position before this court was that the said grant was properly registered under the provisions of the Registration of Documents Ordinance and the said Meegahadeniya Kankanamge Don Andiris nominated the Petitioner- Respondent as the successor to the said land. Subsequent to the said nomination the said permit holder had died on 12th March 1964. At the time of the death of the said Andiris, the Petitioner –Respondent was a minor and the 1st Respondent’s predecessor had alienated the said land to the wife of the said permit holder Andiris namely Peduru Wickramarathna Ratnayake Sumanawathy and the said alienation is also registered under the provisions of the Registrations of the Documents Ordinance.

The said permit holder, before her death on 13th March 2008 had nominated her four children as successors to the said land with specific instructions with regard to the alienation as follows;

1. Meegahadeniya Kankanamge Sumanadasa 4 Acres
2. Meegahadeniya Kankanamge Munidasa 2A 1R 14P
3. Meegahadeniya Kankanamge Karunaratne ½ Acre
4. Meegahadeniya Kankanamge Thilak ½ Acre

Petitioner-Respondent whilst challenging the said alienation by the predecessor to the 1st Respondent dated 30. 01. 1969 moved to quash the said decision and further moved before this court to grant a mandate in the nature of a Writ of *Mandamus* directing the 1st Respondent to alienate the said land to the Petitioner-Respondent. Petitioner-Respondent in addition to the said 1st Respondent, had also made the said Sumanadasa, Karunaratne and Thilak as Respondent-Respondents since they are necessary parties to this case.

The Intervient-Petitioner, namely Meegahadeniya Kankanamge Somapala has come before this court and moved intervention to the present case. According to Somapala the Intervient –Petitioner, he is the eldest son of the Original permit holder Andiris and his successor Sumanawathy and moved this court that, being the eldest son and the eldest brother of the Petitioner-Respondent and 2nd to 4th Respondent-Respondents he is entitled for the alienation of the said land under section 72 of the Land Development Ordinance.

The position taken up by the Intervient-Petitioner before this court was that even it was presumed that the Petitioner-Respondent has been nominated as the successor to the property in question by his father, the Petitioner-Respondent has failed to succeed to the said property in terms of section 68 (2) of the Land Development Ordinance.

In the above context the Intervient-Petitioner had further submitted that the Petitioners could have succeeded to the said property in two instances, if he had been nominated as the successor to the property by the original permit holder.

- a) Within six months from the death of the said original permit holder on 12th March 1964.

- b) Within six months from the death of the wife of the said permit holder on 13th March 2008.

The Intervenient-Petitioner had argued before this court that the Petitioner-Respondent has failed to succeed on both occasions in compliance with section 68 of the Land Development Ordinance and therefore he submitted that by operation of section 72 of the said Ordinance he becomes entitled to succeed the said property as the eldest child of the original permit holder Andiris and therefore he is a necessary party to be added to this case.

However from the material placed before the court it is evident that the Petitioner-Respondent was a minor when the original Permit holder died on 12th March 1964 (P-3) but at that time the said nomination had been properly registered under the provisions of the Registration of Documents Ordinance.

A subsequent alienation of the land had been registered under the Registration of Documents Ordinance and the validity of the said alienation is challenged by the Petitioner-Respondent before this court.

Subsequent to the said alienation, the new permit holder has made a fresh nomination, nominating the Petitioner-Respondent and 2nd to 4th Respondents as successors to the said land and therefore the Petitioner-Respondent could not have succeed the said land within six months of the death of the new permit holder, but he has made reasonable effort to succeed to the said property. This fact is evident from the documents produced marked P-8 by the Petitioner-Respondent. Under these circumstances the question before this court is the legality of the document which alienated the land to Peduru Wikramarathna Ratnayake Sumanawathy which is evinced from documents produced marked P- 1A and P- 4A.

In the case of *Illandari Devage Ranasinghe and Others Vs. Commissioner General of Excise and Others and Ven. Udawaththa Nanda Thera and Others* CA Writ Application No. 127/10 (CA minutes of 11.05.2011 the Court of Appeal followed the following criteria in considering intervention,

- a. The intervenient Petitioners must have sufficient cause and interest and are affected parties and that,

- b. It would be the interest of justice to permit intervention and that the intervention of the Intervient Petitioners would assist court in the proper administration of justice and adjudication of the matter before court.

The same issue was considered in the case *of L.U.P. Jayawardena V. Minister of Health and Other CA Writ Application No 978/2008 (CA minutes of 21.05.2009)* as follows;

“What the court at this point of time needs to consider is whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merit and demerits of the application before court”

As discussed by me earlier the Intervient-Petitioners claim will not assist the court in considering the merits or demerits of this case. The Petitioner-Respondent had made 3 others nominees as 2nd to 4th Respondent-Respondent to the present application and the court consider them as necessary parties, but the Intervient-Petitioner has failed to satisfy the court that he is a necessary party to the present case and therefore I am of the view that he has no locus standi to intervene in the present application.

Therefore I make order refusing the application by the Intervient- Petitioner for intervention in the present case.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala j

I agree,

JUDGE OF THE CUORT OF APPEAL