

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

1. G.W. Podimenike,  
No. 18/1,  
Yodha Ela,  
Hingurakgoda.  
And 4 Others  
Petitioners

**CASE NO: CA/WRIT/48/2016**

Vs.

1. R.M.D.P. Pushpakumari,  
Divisional Secretary,  
Divisional Secretariat,  
Hingurakgoda.  
And 4 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Athula Perera for the Petitioner.  
Chaya Sri Nammuni, S.S.C., for the 1<sup>st</sup>-3<sup>rd</sup>  
Respondents.  
Chatura Galhena for the 4<sup>th</sup> and 5<sup>th</sup>  
Respondents.

Decided on: 15.03.2019

Samayawardhena, J.

The petitioners filed this application basically seeking a writ of certiorari to quash the decision of the 1<sup>st</sup> respondent (Divisional Secretary) dated 09.12.2014 marked X4 whereby the 2<sup>nd</sup> petitioner (Wimalawathie Jayasinghe) was informed to resolve the dispute through Court; and a writ of mandamus directing the 1<sup>st</sup> respondent to appoint the heir of G.W. Jayasinghe as the successor subject to the life interest of the 2<sup>nd</sup> petitioner (widow of G.W. Jayasinghe); or, in the alternative, a writ of mandamus directing the 1<sup>st</sup> respondent to hold a fresh inquiry to decide the successor in terms of the provisions of the Land Development Ordinance.

This application concerns of the question of succession under the Land Development Ordinance. However there is no dispute between the parties about the applicable law in that regard (basically section 72 read with the 3<sup>rd</sup> schedule to the Ordinance). The question is in relation to factual matters. To be specific, who is the eldest son of Appuhamy and Ran Manike who died basically without nomination? Is it G.W. Jayasinghe—the late husband of the 2<sup>nd</sup> petitioner or G.W. Ariyasinghe—the late husband of the 4<sup>th</sup> respondent? The contest is between those two parties. If that question is solved, the question of succession is solved and the whole matter ends there.

A number of inquiries had been held and a number of orders have been issued and suspended etc. by the 1<sup>st</sup> respondent on this matter. Thereafter the 4<sup>th</sup> respondent to the present application (together with her son, the 5<sup>th</sup> respondent) has filed a writ application in this Court (CA/WRIT/326/2012) making the

same Divisional Secretary and the 2<sup>nd</sup> petitioner to the present application as respondents seeking a writ of mandamus directing the Divisional Secretary to transfer the land in issue to the 4<sup>th</sup> respondent. That application has been dismissed by this Court by Judgment dated 30.04.2014 on the basis that when the facts are in dispute this Court cannot compel the Divisional Secretary to decide in favour of the 4<sup>th</sup> respondent.

It is relevant to note that the aforesaid writ application was filed after the inquiry before the Divisional Secretary and after his decision that he is unable to decide on the matter. These decisions are part of the aforesaid writ application. (The entire case has been marked as X)

It is noteworthy that this Court did not dismiss that application on the basis that the 4<sup>th</sup> respondent to the present application did not prove that her late husband was the eldest son of Appuhamy and Ran Manike or the 2<sup>nd</sup> petitioner proved that her late husband was the eldest son of Appuhamy and Ran Manike, but because the question of who the eldest son was still in dispute and undecided. The situation has not changed up to now. In that Judgment this Court has observed that the said question could be solved by obtaining a declaration from the District Court.

This Court cannot make a different order.

The learned counsel for the petitioners states that in terms of the provisions of the Land Development Ordinance, District Court is not vested with jurisdiction to decide succession. The District Court need not decide on succession, but certainly it

can decide on who the eldest son of Appuhamy and Ran Manike was—vide section 217(g) of the Civil Procedure Code.

It appears that both parties at the inquiry tendered competing documentary evidence to establish their standpoints and the Divisional Secretary could not come to a firm decision. Thereafter the Divisional Secretary has suggested and the parties have agreed to obtain a ruling on that matter from Court. That has been approved by this Court in the former writ application. No purpose is served by compelling the Divisional Secretary to hold another inquiry afresh.

I dismiss the application of the petitioners. Let the parties bear their own costs.

Judge of the Court of Appeal