

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

10. Ranjani Hettiarachchi,
(now deceased),
No.15, Sarana Mahal,
Kurunduwatta Road,
Izadeen Town,
Matara.

10A. Sarana Guptha Hettiarachchi
Gamage,
No.15, Sarana Mahal,
Kurunduwatta Road,
Izadeen Town,
Matara.

And Several Others

Substituted 10th Respondent-
Appellants

CASE NO: CA/196/2000/F

DC MT. LAVINIA CASE NO: 89/1994/T

Vs.

Suranjith Abeysekara,
No. 224/9,
High Level Road,
Nugegoda.

Petitioner-Respondent

And Several Other Respondent-
Respondents

Before: A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Ranjan Gunaratne for the 10th Respondent-
Appellant.
Romesh De Silva, P.C., with Sugath Caldera
for the Petitioner-Respondent.

Argued on: 28.10.2019

Decided on: 14.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this action in the District Court of Mt. Lavinia in order to prove the Last Will of her mother and to have it admitted to probate. In addition to the petitioner son, the testator has had ten daughters, who are the respondents to the case. Out of them, nine have consented to the application of the petitioner, and only one, who is the 10th respondent, has objected to it on the basis that the Last Will is a forgery.

After trial, the learned District Judge by order pronounced on 11.01.2000, decided that the Last Will has been duly proved as an act and deed of the capable testator, and issued Probate to the petitioner who is the executor of the Last Will. Being dissatisfied with the said order, the 10th respondent (hereinafter “the appellant”) has filed this appeal seeking to set aside that order.

At the argument before this Court, the learned counsel for the appellant candidly admitted that the appellant failed to prove the allegation of forgery, and therefore the impugned order of the learned District Judge can stand and the appeal can be dismissed.

However, the learned counsel further submitted that, once the appeal is so dismissed, the petitioner, who is the sole beneficiary of the Last Will, shall confine his claim to the properties described in the schedule to his original petition tendered to the District Court, which the learned counsel described as “the inventory”.¹

It is the submission of the learned counsel that the petitioner cannot deal with the properties of his father who predeceased the mother (the testator in this case) until the petitioner produces the Probate in respect of the father’s Last Will.

As the learned President’s Counsel for the petitioner submitted, this is not the proper forum to canvass that matter.

This appeal is against the order of the District Court whereby the Last Will was declared proved and Probate issued to the petitioner. If the appellant now decides not to challenge the said order, appeal shall be dismissed, and the matter shall end there.

What is described in the schedule to the original petition is not “the inventory”. The inventory is required in law to be filed subsequent to the issuance of the Probate, which has not happened in this case yet, notwithstanding the order has been

¹ Vide page 66 of the brief.

made by the learned District Judge. The inventory, according to section 539(1) of the Civil Procedure Code, shall be tendered to Court within one month from the date of the taking oath of an executor.

Section 539(1) of the Civil Procedure Code reads as follows:

In every case where an order has been made, by a District Court declaring any person entitled to have probate of a deceased person's will, or administration of a deceased person's property granted to him it shall be the duty of the said person, executor or administrator, in whose favour such order is made, to take within fifteen days of the making of such order, the oath of an executor or administrator as set out in form No. 92 in the First Schedule, and thereafter to file in court within a period of one month from the date of taking of the oath, an inventory of the deceased person's property and effects, with a valuation of the same as set out in form No. 92 in the First Schedule and the court shall forthwith grant probate or letters of administration, as the case may be.

Whether disputed proprietary claims can be decided in the testamentary case itself is another issue, which need not be gone into in this appeal.

The submission of the learned counsel for the appellant regarding what shall be included in the inventory cannot be entertained by this Court in this appeal. That is a premature submission.

The appeal of the 10th respondent-appellant is dismissed with costs.²

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal

² The appeal of the substituted 3rd respondents (CA/195/2000/F) has been dismissed by this Court by order dated 10.05.2018.