

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

In the matter of an application for orders in the nature of writs of certiorari and mandamus under Article 140 of the Constitution.

1. Rankadu Arachchilage Sunil Shantha,
“Rangiri”, Welewatte, Monaragala.
2. Rankadu Arachchilage Dharmasena of
No.08E, Hulanawa North, Monaragala.

PETITIONERS

CA/Writ/No.14/2014

Vs.

1. J.M.U.K. Jayasekera, Divisional Secretary,
Divisional Secretariat, Monaragala.
2. A. Pathinathan, District Secretary,
Monaragala District, Secretariat,
Monaragala.
3. R.D. Punchi Wedikkara, Assistant Divisional
Secretary, Divisional Secretariat,
Monaragala.

4. Provisional Land Commissioner – Uva Province, Land Commissioner's Department, Badulla.
5. Land Commissioner General, Land Commissioner General's Department, "Mihikatha Madura", No.1200/6, Rajamalwatte Road, Battaramulla.
6. Rankadu Arachchilage Malani of No.08, Hulandawa North, Monaragala.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Dr Coorey (A.A.L) with Anne Hettiarachchige (A.A.L)
(for the Petitioner)

Suranga Wimalasena (S.S.C)
(for the 1 – 5th Respondent)

Thushani Machado (A.A.L)
(for the 6th Respondent)

Argued on: By Written Submission

Decided on: 27.10.2021

K.K.A.V. SWARNADHIPATHI, J

JUDGMENT

The Petitioners have filed this application seeking for Writs of Certiorari and Writ of Mandamus. They have prayed for a Writ of Certiorari to declare null and void and to quash alienation of Lot 342 in the Final Village Plan No.172 to the 6th Respondent by the 1st Respondent.

A Writ of Certiorari to quash the permit marked as [P16] registered in the Volume/Folio LDO/A2/69 at the Land Registry of Monaragala granted to the 6th Respondent. A Writ of Mandamus directing 1st Respondent and one or more of the 2nd to 4th Respondents to grant a permit in terms of Land Development Ordinance in favour of the 2nd Petitioner regarding the land referred to in Grant bearing No. MO/Pra 44081. These being the main reliefs sought, they had prayed for few other reliefs as well.

The Petitioners state that Petitioners and the 6th Respondent are Rankadu Arachchige Kirinaide and Konara Mudiyanseelage Baby Nona issues. There is no dispute regarding this fact among the parties. Their father, Kirinaide, was granted a permit bearing No.16965 in favour of Lot No.342 in the Final Village Plan No.172. All parties accept this fact. Kirinaide had passed away in 1973. Document marked [P3(c)] an Affidavit purporting to be declared by Baby Nona states that her husband, R.A. Kirinaide passed away on the 8th of January 1973 at Monaragala District hospital.

According to the Petitioners, Baby Nona, their mother, was granted the land, shown as Lot 342 in the Final Village Plan No.172 on the 31st of October 1997 by the then President of Sri Lanka. They have marked this document as [P1A]. There is no dispute regarding the identification of the land among the parties.

There is an issue regarding the grant in favour of Jane Nona. The 1st, 2nd, and 5th Respondents had taken up the position that the grant in favour of Baby Nona was made subject to the

conditions. She only held a life interest as the spouse of Kirinaide. The Petitioners deny this fact.

The Petitioners state their mother intended to divide the land among all children equally and, in fact, had written to the authorities seeking their intervention into the matter. To indicate Nona's intention, documents marked [P3A], [P3B], [P3C] and [P4] were filed. The application marked [P4] was signed by the Grama Niladari on the 3rd of December 2008 with his recommendation. He had recommended the application of Baby Nona, and the reason for recommendation was written as "recommend as children of the family".

In the said [P4] following details are included among others;

Name in the Swarnabumi grant	- K.M. Baby Nona
Name of the spouse	- R.A. Kirinide
Is spouse living	- Diseased
Date of death	- 08.01.1973
Has a nomination been made	- No

What took place after the application has not been informed to this court by any party. Whether the application was rejected or not is also a fact kept in the dark. The Respondents, especially the 1st, 2nd and the 5th Respondents, are silent regarding this application of Baby Nona.

Baby Nona's letter addressed to the Divisional Secretary of Monaragala, marked as [P3A], can be seen with some endorsements calling for the record. The Respondents have not denied this document. Paragraph 9 of the Objections of the 1st, 2nd, and the 5th Respondents admit receiving the letter by the predecessor of the 1st Respondent.

The said Respondents contend that request of [P3A] cannot be considered or acted upon by them in terms of the provisions of the Land Development Ordinance. Another reason for not considering the letter of request by [P3A] is that Baby Nona cannot alienate the grant as she only had a life interest.

Producing document marked [1R1] the 1st, 2nd, and the 5th Respondents state that Kirinide had nominated his daughter Malani aged ten as successor in 1966.

Now the dispute to be solved is two-fold;

01. Was Baby Nona a life interest holder only?
02. Was Malani the successor nominated by Kirinide?

The Petitioners allege that some documents were altered by one or many Respondents to facilitate getting the land in the 6th Respondent's name.

Section 58(1) of the Land Development Ordinance reads as follows: -

58(1) A document (other than the last will) whereby the nomination of a successor or of a life-holder is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the District in which the holding to which that document refers is situated.

(2) Regulations may be made prescribing the procedure for the registration of documents whereby nominations of successors or of life-holders are effected or cancelled and for all matters connected therewith or incidental thereto, including the registers which shall be kept and the fees which shall be charged for such registration.

In light of Section 58(1), the nomination should be registered. Perusing document marked [P11A] copy which the 1st, 2nd and 5th Respondents had forwarded to this court to shows that Grant MO/P 44081 dated 31.10.1997 has been registered, but the permit in the name of Kirinide was not registered. If the permit were registered, the 1st, 2nd and the 5th Respondents would not hesitate to mark a copy. Therefore, this court will have to be satisfied that the permit to Kirinide was not registered.

In the Register of Permits/Grants under the Land Development Ordinance (Chapter 464), there is a column to describe the nature and particulars of alienations and encumbrances. The date on which annual instalments shall commence the number of such instalments to be clearly and concisely given. In the said column, nothing is said of a life interest or a successor. Another column, "Grantee" Names in full and village only speaks of Konara Mudianselage Baby Nona.

Section 60 of the Land Development Ordinance reads as follows: -

"No nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a Last will) affecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the Permit-holder."

In considering Section 60 of the Land Development Ordinance, it is clear that registration should take place while Kirinaide was alive. With his death, unregistered nominations will be cancelled. When perusing the Grant to Baby Nona, marked as [P1A], it does not speak of a life interest. At the time of granting [P1A], if the authorities were aware of the nomination of Malani, they could have made the grant in her name.

One can argue that Malani was underage at the time. Our law is rich enough to safeguard minors' rights. The fact that no mention of Malani proves for 17 years, Baby Nona held the land under the document marked [1PA] as the grantee of the land. At the time this grant was made, her husband Kirinaide was long dead. Therefore, the grant made to him, marked as [1R1], had ceased to exist with the grant marked [1PA].

If anything was carried forward from [1R1], those conditions should be stipulated in [1PA]. Silence of conditions indicates that Grant [1PA] to Baby Nona is a Grant to her. Not that had been carried on from [1R1].

Nominee's endorsement was not registered during the lifetime of Kirinaide is another ground where [1R1] gets rejected with the grant of [1PA]. All correspondence after the death of

Kirinaide cannot be considered. Baby Nona was granted a Permit for reasons best known to the authorities, and she became the Permit holder.

Section 48A of the Land Development Ordinance reads as follows: -

(1) Upon the death of a Permit holder who at the time of his or her death was required to pay any annual instalments by virtue of provisions of Sub-section (2) of Section 19, notwithstanding default in the payment of such instalments, the spouse of that Permit holder whether he or she has or has not been nominated as successor by that Permit holder, shall be entitled to succeed to the land alienated to that Permit holder on the permit and the terms and conditions of that permit shall be applicable to that spouse.

The argument of the 1st, 2nd and the 5th Respondents was based on the above Section. Since the Section speaks that the spouse is entitled to get the permit in her name subject to conditions that Baby Nona had only the life interest, if that argument is to be accepted, it should appear in the grant marked as [P1A]. [P1A] is not a Permit. It is a Grant without any encumbrances.

Arguments of the Respondents were that a nomination need not be registered. Well, in that case, the grant should specify conditions. Since no conditions are stipulated in the grant, the court will accept that Baby Nona owns Lot 342 in Final Village Plan No.172. She died without nominating a successor. Therefore, Malani cannot be nominated as a successor to the said land.

The requirement further strengthens that registration of lands in land registry is to carry a pedigree of a land. Anyone may peruse and be satisfied with the owner and how he became the owner of any encumbrances attached to the land.

Therefore, since no endorsement is available, the conclusion that one can reach on perusal of the Land Registry is that Baby Nona is the owner of the said Lot. Even if Kirinaide nominated Malani as his successor with his death without registering the permit and leaving no Last will, Malani's nomination gets cancelled. Section 58(1) specify that such nomination of life holder will not be valid unless and until the Registrar of Lands has registered it.

I am satisfied that the Petitioners should be given the Writs prayed in the petition for the reasons above. Therefore, I make orders granting prayers [c], [e], and [f] of the Amended Petition dated 10th day of February 2014. No order is made regarding costs.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal