

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

CA / Writ application No.

0159-13

In the matter of an application for a mandate in the nature of a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

M.J. Mendis

No. 164 (Old No. 118)

Kurunegala Raod, Katugastota

Petitioner

Vs

1. Hon. Bandula Gunawardena
Minister of Education
Sethsiripaya, Battaramulla
- 1(a) Hon Akila Viraj kariyawasam
Minister of Education
Sethsiripaya, Battaramulla. (Substituted)
- 1(b) Hon. Dinesh Gunawardena
Minister of Education
Youth Affairs and Sports,
Sethsiripaya, Battaramulla (Substituted)
2. D.M.N.G.G.T Karunaratne
Divisional Secretary
Mahanuwara and Gangawatakorale,
Kandy
- 2(a) B.M.P. G Palitha Bandara
Divisional Secretary
Mahanuwara and Gangawatakorale
Kandy (Substituted)
- 2(b) J.M.J.K. Jayasundera
Divisional Secretary
Mahanuwara and Gangawatakorale
Kandy

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Amarasiri Panditharatna with Laknath Peris for the Petitioner.

Ms. Amasara Gajadeera SC for the 1st and 2nd Respondents.

Written submissions tendered on:

16.07.2020, 22.01.2019, 11.12.2018 by the Petitioner.

07.01.2019 by the 1(a) and 2(a) Respondents.

Argued on: 15.03.2022

Decided on: 27.07.2022

S.U.B. Karalliyadde, J.

The Petitioner seeks a writ of Certiorari to quash the Quit Notice marked as P-19 issued by the 2nd Respondent in terms of section 3 of the State Lands (Recovery of Possession) Act, No. 7 of 1979 (hereinafter referred to as the Act). The position of the Petitioner is that the land which the Quit Notice relates is not a State land, but it is a private land belongs to him. According to the learned Counsel appearing for the Petitioner, that land is a divided lot (lot C) in the partition action bearing No. P-3931 in the District Court of Kandy. By the final decree entered in that action, lot C has been allocated to the mother of the Petitioner, Kekulawala Radallage Emily. In order to establish that fact the Petitioner has tendered the Land Registry extracts marked as P-3. Said Emily and her husband, Mendis lived in the house on the land since 1953 and the Petitioner and his three sisters lived with them from their infancy. After the demise of the mother, siblings of the Petitioner transferred their rights of the property to the Petitioner by deed of transfer No.3072 dated 02.07. 2010 marked as P-1 upon which the Petitioner claims title to the land which the Quit Notice applies.

Even though, the Petitioner has failed to tender the final decree entered in the partition action to the Court, it has been tendered by the Respondents marked as 1R1. It is evident that lot C had been allocated in the final decree to the 'school premises' but not to the mother of the Petitioner, Emily. The learned Counsel for the Petitioner submitted to the Court that the Petitioner's mother had conducted a weaving school in the premises and for that reason it has been stated in the final decree marked as 1R1 that lot C has been allocated to the 'school premises'. For the satisfaction of Court that Emily had conducted a weaving school in the building situated on the land and the Petitioner, his parents and siblings occupied that building, the Petitioner has tendered to Court the death notice of Mendis (marked as P-4), extracts of the Electoral Registers (marked as P-5) and a certificate issued by the Grama Niladhari of the area confirming the residency of the Petitioner (marked as P-6) etc. In any event a government school known as Rahula College is situated in the vicinity of the land which the Quit Notice applies and the position of the learned State Counsel appearing for the Respondents is that the school is situated next to the land which the Quit Notice relates whereas the position of the learned Counsel appearing for the Petitioner is that the school is situated about 300 or 350 meters away from the property which the Quit Notice applies.

The learned Counsel for the Petitioner further submitted to the Court that the final decree marked as 1R1 had subsequently been amended and Emily's name had been entered therein as the allottee of lot C deleting the words "school premises". Nevertheless, no amended final decree has been tendered to Court into that effect. Emily's name appears in the Land Registry extracts (marked as P-3). Nevertheless, the finality and conclusiveness effect attach to the final decrees entered in partition actions and not to the extracts maintained in the Land Registries. Therefore, the Court cannot be satisfied that the vendors in P-1 upon which the Petitioner gets title to the disputed land had title to the land and hence, the Petitioner is the owner of the land.

Be that as it may, as repeatedly held by this Court, when the major facts are in dispute writ courts will decline to exercise its writ jurisdiction.¹

A.S. CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Ed.), Vol.2, (at page 449) states thus:

"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

Referring the above stated authority, in the case of *Thajudeen Vs. Sri Lanka Tea Board and Another*² Ranasinghe J with Seneviratne J agreeing held:

" That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation³, Porraju v. General Manager B. N. Rly⁴" (at page 474).

Since the major facts in the instant action like whether the land in dispute was allocated in the final partition decree to the mother of the Petitioner or to the Rahula College, the final decree was amended subsequently inserting the name of the mother of the

¹ *A.R.H. Mohideen and 10 others Vs Colombo Municipal Council and 4 others* (C.A. Writ Application No: 466/2020), *Rupasinghe Arachchige Dona Kusumawathie and 4 others Vs W. M. B. Weerasekara, Commissioner General of Agrarian Development and 9 others* (C.A. Writ Application No: 0553/2019).

² (1981) 2 SLR 471.

³ A.I.R. 1953 Cal. 581.

⁴ A.I.R. 1952 Cal. 610.

Petitioner as the allottee of Lot C, the vendors in P-1 had rights to transfer the disputed land to the Petitioner, the mother of the Petitioner conducted a weaving school in the premises and for that reason it has been stated in the final decree marked as 1R1 that lot C has been allocated to the 'school premises' are seriously in dispute. Under such circumstances, I am not inclined to issue a writ of Certiorari to quash the Quit Notice marked as P-19. Therefore, I dismiss the Application. The Petitioner should pay Rs. 50,000 to each 1st and 2nd Respondents as costs of this application.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL