

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

Edinadurage David Silva,  
of Kudaheella, Beliatta.

**Plaintiff**

**Vs.**

**C.A. Case No: DCF-0943-97**

**D.C. Tangalle Case No: 2136/P**

1. Edinadurage Adarahamy,  
of Kudaheella, Beliatta.
2. Watte Arachchige Theris Appu,
3. Watte Arachchige Darmadasa,
4. Watte Arachchige David,
5. Watte Arachchige Ariyadasa,
6. Watte Arachchige Pelis Singho,
7. Watte Arachchige Ramadasa,
8. Watte Arachchige Karunawathi,  
All of Kudagahahena, Kudaheella,  
Beliatta.
9. Hewa Batagodage Piyadasa,  
of Pahala Watta, Kudaheella, Beliatta.
- 9A. Hewa Batagodage Sammy,  
of Pahala watta, Kudaheella, Beliatta.
- 9A1. Hewa Batagodage Nandasena,  
of Pahala watta, Kudaheella, Beliatta.
10. Piyadasa Kodituwakku,  
Mahaheella, Beliatta.
- 10A. Yasalal Kodituwakku,  
Mahaheella, Beliatta.
11. Hewa Batagodage Hinnihamy,  
Pahala Watta, Kudaheella, Beliatta.
12. Somapala Samaranayake Weerasinghe,  
of Mahaheella, Beliatta.
13. Hewa Batagodage Heen Appu Somapala,  
of Pahala Watta, Kudaheella, Beliatta

**1<sup>st</sup> – 13<sup>th</sup> Defendants**

**AND NOW BETWEEN**

10A. Yasalal Kodituwakku,  
Mahaheella, Beliatta.

**Substituted 10 A Defendant-Appellant**

**VS.**

Edinadurage David Silva,  
of Kudaheella, Beliatta.

**Plaintiff-Respondent**

1. Edinadurage Adarahamy,  
of Kudaheella, Beliatta.
2. Watte Arachchige Theris Appu,
3. Watte Arachchige Darmadasa,
4. Watte Arachchige David,
5. Watte Arachchige Ariyadasa,
6. Watte Arachchige Pelis Singho,
7. Watte Arachchige Ramadasa,
8. Watte Arachchige Karunawathi,  
of Kudagahahena, Kudaheella,  
Beliatta.
9. Hewa Batagodage Piyadasa,  
of Pahala Watta, Kudaheella, Beliatta.
- 9A. Hewa Batagodage Sammy,  
of Pahala watta, Kudaheella, Beliatta.
- 9A1. Hewa Batagodage Nandasena,  
of Pahala watta, Kudaheella, Beliatta.
11. Hewa Batagodage Hinnihamy,  
Pahala Watta, Kudaheella, Beliatta.
12. Somapala Samaranayake Weerasinghe,  
of Mahaheella, Beliatta.
13. Hewa Batagodage Heen Appu Somapala,  
of Pahala Watta, Kudaheella, Beliatta
- 13A. Hewa Batagodage Freddie Samantha,  
of Kudaheella, Beliatta.

**Defendant-Respondents**

**Before:**

M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

**Counsel:**

Asthika Devendra with Milindu Sarathchandra for the Plaintiff-Respondent

Manohara De Silva, P.C. with Ms. Hirosha Munasinghe and Ms. Dilmini De Silva for the 10<sup>th</sup> to 12<sup>th</sup> Defendant-Appellant

**Written submissions tendered on:**

02.12.2022 by the Plaintiff-Respondent

06.12.2022 by the 10A Defendant-Appellant

**Argued on:** 05.10.2022

**Decided on:** 25.05.2023

**S.U.B. Karalliyadde, J.**

This appeal is against the judgement dated 24.09.97 of the learned District Judge of Tangalle in a partition action in which the learned District Judge decided to partition the subject matter. The substantive issue that the District Judge had to decide was whether 1/7<sup>th</sup> share of the subject matter owned by one Allis should devolve as per the pedigree of the Plaintiff-Respondent (the Plaintiff) or as per the pedigree set out by the 10<sup>th</sup> Defendant-Appellant (the 10<sup>th</sup> Defendant). The learned District Judge has decided that Allis's share should devolve as per the Plaintiff's pedigree. This appeal of the 10<sup>th</sup> Defendant is against that decision.

According to the Plaintiff's pedigree, Allis's 1/7<sup>th</sup> share had been devolved on Luwishamy on the Fiscal's Conveyance No. 2849 dated 10.03.1900 marked as P1. That Fiscal's Conveyance had been executed by virtue of a writ of execution issued by the Court of Request of Tangalle in case No.1401 filled by Luwishamy against Allis. Thereafter, Luwishamy transferred his rights to Dineshamy by Deed No. 3562 dated 13.07.1900 marked as P4/P5. Dineshamy's rights had devolved on the Plaintiff as described in the plaint. While P1 was not registered in the Land Registry, P4/P5 was registered on 13.07.1900. According to the 10<sup>th</sup> Defendant's pedigree, Allis had mortgaged his 1/7<sup>th</sup> share by deed of mortgage No. 22866 dated 24.02.1895 marked as 9V1 to Hendrik. Thereafter Hendrik had bought the rights of Allis on a Fiscal's Conveyance No. 3048 dated 09.05.1902 marked as 9V2 when the writ was executed in case No. 1462 of the Court of Request of Tangalle. That action had been instituted by Hendrik against Allis to recover the money owed by him from Allis on the mortgage bond marked as 9V1. Hendrik's rights had devolved on the 10<sup>th</sup> Defendant as per his statement of claim. 9V1 and 9V2 had been registered in the Land Registry.

In this Appeal, the only question that this Court has to decide is whether the deeds produced on behalf of the 10<sup>th</sup> Defendant marked as 9V1 and 9V2 will get the benefit of prior registration over the deeds of the Plaintiff marked as P1 and P4/P5. The learned President's Counsel appearing for the 10<sup>th</sup> Defendant relying on section 7 of the Registration of Documents Ordinance No. 23 of 1927 (as amended) argued that since 9V1 and 9V2 were registered in the Land Registry and 9V1 was prior to the execution of P1 and P4/P5, the benefit of prior registration should be given to 9V1 and 9V2. The learned President's Counsel further argued that in terms of the 'same source' principle, to claim the benefit of prior registration the competing deeds should be executed by the same person. He pointed out that, in the instant action, even though, the Plaintiff's title

deed marked as P4/P5 had been registered in 1900 that deed is not entitled to acquire the benefit of prior registration over the 10<sup>th</sup> Defendant's title deed marked as 9V2 which was registered in the Land Registry subsequent to P4/P5 for the reason that the title which flows on P4/P5 is not from Allis but from Luwishamy.

The learned Counsel appearing for the 10<sup>th</sup> Defendant also relying on section 7 of the Registration of Documents Ordinance argued that 'same source' does not mean that the competing deeds should be executed by the same person but could be any other person who is in the line of succession. Therefore, the position of the learned Counsel for the Plaintiff was that since Allis's rights had devolved on P1 on Luwishamy, the deed marked as P4/P5 which Luwishamy had executed should be considered as originated from the 'same source'.

Section 7 (1) of the Registration of Documents Ordinance as applicable to the instant action is as follows;

*“An instrument executed or made on or after the 1st day of January 1864, ... shall, unless it is duly registered under this Chapter, ... be void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent instrument which is duly registered under this Chapter ...”*

In the instant case, Allis had mortgaged his rights to Hendrick in 1895 by the mortgage bond marked as 9V1 which was registered in the Land Registry. Thereafter, Allis's rights to the property had been transferred to Luwishamy on the Fiscal's Conveyance executed in 1910 marked as P1. P1 was not registered in the Land Registry. The Registration of Documents Ordinance is concerned with the priority of deeds and it does not invalidate the unregistered instruments.

In the case of *Massilamany Vs. Santiago*<sup>1</sup> Van Langenberg, A.J., had held that “*The only effect of registration was to give priority to the subsequent deed. The earlier deed is not affected in any way, save that it has to take second place.*” Therefore, even though, P1 had not been registered in the Land Registry, the rights of Allis should devolve on Luwishamy on that deed subject to the mortgage marked as 9V1. Luwishamy had transferred his rights on the property in the same year, *i.e.*, in 1910 on P4/P5 which was registered in the Land Registry to Dineshamy, the predecessor in title of the Plaintiff. The Mortgagee in 9V1 Hendrick had bought Allis’s rights at a Fiscal’s Sale in 1902 on 9V2 which was registered in the Land Registry on 10.07.1907.

Hendrick was the predecessor in title of the 10<sup>th</sup> Defendant. Even though Hendrick had mortgage rights on the property since 1895, he had acquired legal title to the property in 1902 on 9V2 which was registered in the Land Registry on 10.07.1907. Dineshamy, the predecessor in title of the Plaintiff became entitled to the property on 13.07.1900 by P1 which was registered in the Land Registry on 19.12.1900.

Under the said circumstances, when the deeds which were registered in the Land Registry regarding the title of the land are concerned, it is clear that P4/P5 had been registered prior to 9V2. Therefore, P4/P5 should get the benefit of prior registration over 9V2. In the case of *Silva Vs. Silva*<sup>2</sup>, B having been the mortgagee of a property himself purchased it in February 1893 at the execution sale and entered into possession. He delayed obtaining the Fiscal’s Conveyance till 1893 and it was registered in the same year. Meanwhile A, the mortgagor sold the property to C in 1892, who registered his deed in 1892. In a contest between B and C as to the title to the property court held that C’s title was superior.

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<sup>1</sup> (1911) 14 NLR 292.

<sup>2</sup> 1 NLR 28.

The learned President's Counsel appearing for the 10<sup>th</sup> Defendant citing the authority *Mutturamen Vs. Massilamany*<sup>3</sup> argued that since the mortgage bond marked as 9V1 had been registered prior to P1 and P4/P5, the learned District Judge should have decided the question of prior registration in favour of the 10<sup>th</sup> Defendant. In that case, the court had to decide in a contest between a purchaser under a mortgage decree on one hand, and a party claiming under an instrument registered subsequently to the mortgage bond but before the Fiscal's Conveyance on the other hand, – should the first named party be considered to claim his adverse interest by virtue of the mortgage bond, or by virtue of Fiscal's Conveyance in his favour? The facts of the case were as briefly as follows; the joint owners of a land leased it in 1905 to the defendant of the case and that lease agreement was registered in the Land Registry on 22.2.1910. After the lease and during the period in which the lease was in operation the joint owners again mortgaged the property on 11.10.1907 on a mortgage bond to C. The mortgage bond was registered in the Land Registry on 14.10.1907, i.e., prior to the registration of the lease agreement. In a suit against the joint owners over the mortgage bond by C, the property was sold to the plaintiff on a Fiscal's transfer dated 19.08.1910 and the Fiscal's transfer was registered in the Land Registry on 25.08.1910. Firstly, the court had to decide whether the lease agreement or the mortgage bond should get priority in registration. The Court considered two documents which had created similar types of encumbrances on the property, *i.e.*, the mortgage bond and the lease agreement which does not have an effect on the legal title of the property.

In the instant action, the deed which was dealt with the legal title of the land and should get priority in registration is P4/P5. Since the mortgage bond had been registered prior to P4/P5, the rights passed on P4/P5 should be subject to the mortgage bond.

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<sup>3</sup> 16 NLR 289.

Nevertheless, no points of contest have been raised at the trial before the District Court on the mortgage bond.

In the case of *Lairis Appu Vs. Tennakoon Kumarihamy*<sup>4</sup> Sinnetamby, J., held as follows;

*“Our Registration Ordinance provides for the registration of documents and not for the registration of titles. If it had been the latter, then, from whatever source the title was derived, registration by itself would give title to the transferee. When, however, provision is made only for the registration of documents of title, the object in its simplest form, is to safeguard a purchaser from a fraud that may be committed on him by the concealment or suppression of an earlier deed by his vendor. The effect of registration is to give the transferee whatever title the vendor had prior to the execution of the earlier unregistered deeds”.*

The learned President’s Counsel also argued that to be entitled to the benefit of prior registration, the competing deeds should be executed by the same person and since P4/P5 had been executed by Luwishamy but not by the original owner Allis, P4/P5 had not originated from the ‘same source’. Therefore, the learned President’s Counsel argued that P4/P5 is not entitled to acquire the benefit of prior registration over 9V1. To substantiate that argument, the learned President’s Counsel cited the authority, *James Vs. Carolis*<sup>5</sup>. In that case, A conveyed the land to B. After A’s death, his heir C transferred his inheritance rights of the property from A to D. That transfer deed was registered before the registration of B’s deed. In an action between B and D, the court had held that since D’s deed was registered before B’s deed, D is entitled to the benefit of prior registration. When considering the above facts of that case, it is clear that ‘same source’ means any person who belongs to the chain of title to the land but not the same

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<sup>4</sup> (1958) 61 N.L.R. 97.

<sup>5</sup> 17 NLR 76.



person. Be that as it may, in the case of *Lairis Appu Vs Tennakoon Kumarihamy* (Supra), Basnayake, C.J has held as follows;

*“Under our Ordinance whether the competing deeds be from the same source or not if they relate to the same land the unregistered deed is void as against all parties claiming an adverse interest thereto under the subsequently registered instrument.*

*Although under the Registration Ordinance, there is no express provision that competing documents must be traced to the same source for the priority created by section 7 of the Ordinance to operate, it is well recognized that this must necessarily be so. As Sampayo, J. observed in James v. Carolis<sup>6</sup>*

*"There is no question that under the law relating to registration, the competing deeds must proceed from the same source, nor, on the other hand, is there any question that they need not be granted by the same person.*

*In that case, the competing deeds were one executed by the owner during his lifetime and the other by his heir after his death.*

*Our Registration Ordinance (Cap. 101) provides for the registration of documents and not for the registration of titles. If it had been the latter, then from whatever source the title was derived registration by itself would give title to the transferee. When, however, provision is made only for the registration of documents of title the object, in its simplest form, is to safeguard a purchaser from a fraud that may be committed on him by the concealment or suppression of an earlier deed by his vendor. The effect of registration is to give the transferee whatever title the vendor had prior to the execution of the earlier unregistered deeds. This was the principle enunciated in *Warburton v Loveland*<sup>7</sup>*

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<sup>6</sup> (1914) 17 NLR 81.

<sup>7</sup> (1831) 2 Dow & Clark 480.

*which was adopted and followed in James v. Carolis (supra). It does not give him a title which is in any way better than the title the vendor had. Thus if his vendor had no title the vendee by mere registration would get none at all and if the vendor had a defeasible title he would get only a defeasible title. Indeed, section 7 (4) expressly states that registration of an instrument does not confer on it any effect or validity it would not otherwise have except priority. This, I venture to think, is how the principle of "the same source " originated in the application of the Registration Ordinance to competing documents." (Emphasis added)*

Therefore, it is clear that the competing deeds should not necessarily be originated from the 'same source' and the Court cannot agree with that argument of the learned President's Counsel. Under the above-stated circumstances, I hold that there are no merits in the arguments of the learned President's Counsel appearing for the 10<sup>th</sup> Defendant. Hence, I affirm the impugned judgment of the learned District Judge dated 24.09.1997 and dismiss the Appeal. The 10<sup>th</sup> Defendant should pay Rs. 75,000/= to the Plaintiff as costs of this Appeal.

***Appeal dismissed with costs.***

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**