

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

In the matter of an Application for an Order  
in the nature of Writs of *Mandamus* &  
*Prohibition* under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0129/2021**

1. Kattadige Siripala
  2. Kattadige Wasantha
  3. Kattadige Chandra Malkanthi
  4. Kattadige Amara Padminie
  5. Kattadige Dimuthu Priyantha
  6. Kattadige Prabath Nissanka
  7. Kattadige Nishan Chinthaka Sandaruwan
  8. Kattadige Rohan Deshapriya
- No. 105A, Panamura Junction,  
Panamura.

**Petitioners**

**Vs**

1. Commissioner of Land Title Settlement  
No. 1200/6, Mihikatha Medura,  
Rajamalwatta Road,  
Battaramulla.
2. Dematahenne Podi Mahattaya  
No. 553A, Walalgoda,  
Panamura.

3. R. Koralage Gunarathne  
Panamura Junction,  
Panamura.
4. Liyanage Leelawathie  
Rice Mill,  
Panamura.
5. Hon. Attorney-General  
Attorney-General's Department,  
Hulftsdorp,  
Colombo 12.

**Respondents**

Before:           **M. T. MOHAMMED LAFFAR, J.**  
                      **S. U. B. KARALLIYADDE, J.**

Counsel: Rasika Dissanayake, with Shabber Huzair for the Petitioners.  
          N. de Soyza, SC for the 1<sup>st</sup> and 5<sup>th</sup> Respondents.  
          Ashan Nanayakkara, with F. Z. Hassim for the 2<sup>nd</sup> Respondent.

Argued on:                           09.05.2023

Decided on:                         10.08.2023

**MOHAMMED LAFFAR, J.**

When this matter was mentioned in Court on 19-05-2023, the learned Counsel for the 2<sup>nd</sup> Respondent and the learned State Counsel for the 1<sup>st</sup>

and 5<sup>th</sup> Respondents raised preliminary legal objections as to the maintainability of this Application. The Court permitted all the parties to tender written submissions.

Lot No. 1052 in plan bearing No.753, marked as P6 is the corpus in this case. Admittedly, one Iranganie Dissanayake was the original owner. The said original owner had conveyed an undivided share to the 1<sup>st</sup> Petitioner by deed bearing No. 574 dated 21-08-1978 attested by Shirani Weeratratne, Notary Public marked P1. The Petitioners in paragraph 9 of the Petition states that the said original owner, for the best manifestation of the title of the 1<sup>st</sup> Petitioner, executed another deed of Transfer bearing No. 700 dated 01-09-1987 attested by W.S. Gunawardena, Notary Public marked as P2, in favour of the 1<sup>st</sup> Petitioner. Thereupon, the 1<sup>st</sup> Petitioner who became the owner of the entirety of the subject matter, by deed bearing No. 9060 dated 04-01-2019 attested by P.A. Kulasooriya, Notary Public marked as P17 conveyed his rights to his children, namely the 2<sup>nd</sup> to 8<sup>th</sup> Petitioners.

The 2<sup>nd</sup> Respondent in his statement of objections took up the position that the original owner by deed bearing No. 106 dated 25-03-1975 attested by D.Vithanage, Notary Public marked as 2R1 conveyed her undivided  $\frac{1}{2}$  share of the corpus to the 2<sup>nd</sup> Respondent. Accordingly, the 2<sup>nd</sup> Respondent has instituted a Partition Action bearing No. 14182/P in the District Court of Embilipitiya seeking to partition the land in dispute amongst the co-owners, namely the Petitioners and the 2<sup>nd</sup> Respondent.

Be that as it may, the Petitioners in this instant Application seeks, *inter-alia*, a Writ of Mandamus directing the 1<sup>st</sup> Respondent to publish in the Gazette under and in terms of the Land Settlement Ordinance confirming the settlement of Lot No. 1052 (settlement Notice 1741) in favour of the 1<sup>st</sup> Petitioner.

The 1<sup>st</sup> Petitioner in terms of the provisions of the Land Settlement Ordinance obtained the Certificate of Land Settlement dated 19-02-2002 marked as P4 pertaining to the subject matter. Subsequently, the Commissioner of Land Settlement Department by letter dated 16-07-2002 marked as P7 revoked the said certificate P4. It is the considered view of this Court that without seeking to quash P7, the Petitioners are not entitled to the reliefs as prayed for.

Undisputedly, the State is not claiming title to the subject matter. The Petitioners are claiming the entirety of the land in dispute, by deeds marked P1 and P2 and the 2<sup>nd</sup> Respondent is claiming undivided  $\frac{1}{2}$  of the same by deed marked 2R1. As the facts are in dispute the Petitioners

are precluded from invoking the Writ jurisdiction of this Court. In this regard, I refer to the judgment of **Thajudeen Vs. Sri-Lanka Tea Board (1981-2SLR-471)** where the Court of Appeal held that;

*“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”*

Moreover, Prerogative Writs are discretionary remedies, and therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available. In **Linus Silva Vs. The University Council of Vidyodaya University (64 NLR 104)**, it was observed that

*“the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy.”*

The Court of Appeal in **Tennakoon Vs. The Director-General of Customs (2004 (1) SLR p53)** held that

*“the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction.”*

In the instant Application, the 2<sup>nd</sup> Respondent has already invoked the District Court jurisdiction by instituting a partition action whereas the Petitioners having filed their statement of objections claiming the entirety of the subject matter. It is the duty of the learned District Judge in the said Partition Action to investigate the title of the co-owners. A judgment in a partition Action is a *right in rem*, binding the parties and non-parties as well. In this scenario, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court.

For the foregoing reasons, the preliminary legal objections are upheld, and accordingly, the Application is dismissed. I make no Order as to the cost of this Application.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**