

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

In the matter of an application for a mandates
in the nature of writs of Certiorari and
Mandamus under and terms of Article 140 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Nihal Munasinghe,
Sampath Mawatha,
Hidallana, Ratnapura.

PETITIONER

CA WRIT APPLICATION

NO: 291/20

vs.

1. P.M.H. Priyadharshani,
Commissioner General of Land Title
Settlement,
No. 1200/6,
Mihikatha Medura,
Rajamalwatta Road, Battaramulla.

2. Nilmini U. Nawarathna,
Registrar of Title,
Registrar General's Department,
Land and District Registry,
Ratnapura.

3. A.L.S.C.Perera,
Surveyor General,
Sri Lanka Survey Department,
No. 150,
Kirula Road,

Narahenpita,
Colombo 05.

4. Rajapaksha Gedara Salika Milinda
Rajapaksha,
Manikdiwela, Doluwagama,
Nugamale.

5. Sunethra Abeywardhana,
No 56/31,
Baddegedara Watta,
Kospelawaththa Road,
Ratnapura.

RESPONDENTS

AND NOW BETWEEN

In the matter of an Application for
intervention.

Jayatunga Arachchilage Buddhiesha
Thamaranath Jayatunga,
No. 136/2,
Edandawala,
Kuruwita.

INTERVENIENT-PETITIONER

Vs.

Nihal Munasinghe,
Sampath Mawatha,
Hidallana, Ratnapura.

PETITIONER-RESPONDENT

Vs.

1. P.M.H. Priyadharshani,
Commissioner General of Land Title
Settlement,
No. 1200/6,
Mihikatha Medura,
Rajamalwatta Road, Battaramulla.

2. Nilmini U. Nawarathna,
Registrar General's Department,
Land and District Registry,
Ratnapura.

3. A.L.S.C.Perera,
Surveyor General,
Sri Lanka Survey Department,
No. 150,
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Rajapaksha,
Manikdiwela,
Doluwagama,
Nugamale.

5. Sunethra Abeywardhana,
No 56/31,
Baddegedara Watta,
Kospelawaththa Road,
Ratnapura.

RESPONDENTS- RESPONDENTS

Before: D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel: Anuruddha Dharmaratne with Upendra Walgampaya for the Interventient-Petitioner
Dr. Jayathissa de Costa, PC with Chanuka Ekanayake for the Petitioner
Shemanthi Dunuwila, SC for the State.

Inquiry On : 02.12.2022

Written 23.01.2023 (by the Petitioner)

Submissions: 23.01.2023 (by the Interventient Petitioner)

On

Order On : 21.02.2023

B. Sasi Mahendran, J.

This Order concerns whether to permit the intervention of the Interventient Applicant in this application.

The Petitioner of the original application (hereinafter referred to as “the Petitioner”), by amended Petition dated 3rd August 2021, seeks a Writ of Certiorari to quash the decision of the 1st and/or 2nd Respondents to register and issue a certificate of First-Class Title of Absolute Ownership to the late Ananda Sarath Abeywardhana (“P6a”), pertaining to the Land Parcel No. 0055 in the Cadastral map bearing No. 620283 dated 31st October 2014 (“P5a”); a Writ of Mandamus to compel the 1st and/ or 2nd Respondents to issue a fresh certificate of First Class Title of Absolute Ownership to the Petitioner after conducting an inquiry.

The Petitioner states that the said Ananda Sarath Abeywardhana (hereinafter sometimes referred to as “the Testator”) died intestate on the 26th of April 2016 (“P7”). Testamentary proceedings (Case No. 2292/T) commenced in the District Court of Ratnapura for the administration of his estate. As a result of the erroneous decision of the Respondent authorities, it is alleged that, the land which the Petitioner claims ownership

has been included in the estate of the Testator. The administratrix in the said Testamentary proceedings (Case No. 2292/T) i.e., the 5th Respondent has been made a party to this application.

The Interventient Applicant, one Jayatunga Arachchilage Buddhisha Thamaranath Jayatunga, by a motion dated 25th January 2022 filed papers (Intervention Petition dated 24th January 2022, with the affidavit and supporting documents) seeking to intervene in the proceedings. The Petitioner objected to this application. The 1st to 3rd and the 5th Respondents did not object to this intervention.

The matter was fixed for inquiry to determine whether the intervention should be allowed. We must now consider whether to permit this intervention.

According to the Interventient Applicant, the said Sunethra Abeywardhana (the 5th Respondent) as Administratrix of the late Ananda Sarath Abeywardhana's intestate estate executed Administratrix' Conveyance No. 540 dated 08th December 2020 and conveyed an undivided 1/3rd share in each of the immovable properties (including the Land Parcel in dispute) to the said Sunethra Abeywardhana, Sunanda Abeywardhana and Chandra Abeywardhana, the three heirs of the intestate Testator. Thereafter, the said Chandra Abeywardhana conveyed her undivided 1/3rd share to the Land Parcel, which is the subject matter of this dispute, to the Interventient Applicant. Further, he states that his undivided 1/3rd rights in the Land Parcel No. 0055 in the Cadastral map bearing No. 620283 has been registered on 29th January 2021. He obtained a Certificate of Title in respect of that share of the land. Further, he alleged that if the particular title is to be quashed, he will be affected by the order.

Accordingly, as the testamentary action has concluded and the properties of the Testator have been duly administered, we are of the view that the Petitioner should have taken steps to amend the caption and include the persons who are beneficiaries of the testamentary action. In the instant application, as the Interventient Applicant is the successor in title to one of the beneficiaries and has a direct interest in the matter as an owner of 1/3rd share of the property in dispute his intervention is permitted.

We direct the Petitioner to amend the caption and include the beneficiaries of the Testator's estate.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL