

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

CA No: 993/96(F)

H.A.D. Wijepol
Negombo Road,
Kandana.

And Others

Appellants

Vs.

Kalubowilage Dona Sumanawathi
No: 577,
Negombo Road,
Kandana.

Respondent

C.A. 993/96(F)D.C.Negombo No793/T

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : Intervenient –Petitioner-Appellants are absent
and unrepresented.

Sudharshanie Cooray for the Petitioner-
Respondent and the 1st and the 2nd
Respondent-Respondents.

ARGUED AND

DECIDED ON : 17th June, 2013

K. T. CHITRASIRI, J.

When this matter was mentioned on 03.05.2013, both the intervenient-petitioner-appellants were absent and unrepresented. Accordingly, the Court directed the Registrar to send notices on those two appellants directing them to be present in Court today as their appeal is to be taken up for argument. Those two notices had been returned with an endorsement that the two appellants are not found at the addresses given on the two envelopes. The two addresses are the addresses furnished by them in the notice of appeal and also in the petition of appeal. In the circumstances this appeal is taken up for consideration in their absence.

This is an appeal seeking to set aside the order dated 26th August 1996 where an application, to issue letters of administration to the two petitioner-appellants was refused. The said application by the two petitioner-appellants is found at page 49 in the appeal brief. In that, the two appellants have made an application to have letters of administration issued to the 2nd appellant on the basis that their mother is the wife of the deceased person namely H.A.D.Benadict whose estate is being subjected to, in this case. The learned District Judge having held an inquiry on this application has rejected their claim and has issued the letters of administration to the petitioner-respondent namely, K.D. Sumanawathie on the basis that she is the lawful wife of the deceased H.A.D.Benadict.

At the inquiry, the marriage certificate to establish the marriage between the deceased H.A.D.Benadict and the petitioner Sumanawathie had been marked as "P2" (page 150 of the appeal brief) On the other hand, no marriage certificate to prove the existence of a marriage between the mother of the two appellants and the deceased Benadict was produced at the inquiry. The appellants have relied upon the document marked "V3" to establish their claim (page 160 of the appeal brief). In that document, it is stated that no marriage between the deceased Benadict and Sumanawathie had been registered on the **22nd of August**

1980. The learned District Judge has looked at this document carefully and had found that the marriage between the petitioner-respondent namely Sumanawathie and Bennadict has taken place on **05th August 1980.** Therefore, it is clear that the two appellants had only the document marked "V3" to disprove the existence of the marriage between the deceased Benadict and the petitioner Sumanawathie. Therefore, it is correct to issue the letters of administration to the petitioner Sumanawathie relying upon the document marked "P2" which is the marriage certificate, produced to establish the marriage between the deceased Benadict and the petitioner Sumanawathie.

In the circumstances, I do not see any error on the part of the learned District Judge when he refused the application made by the petitioner-appellants. Accordingly, I am not inclined to interfere with the said decision dated 26.08.1996 of the learned District Judge. For the aforesaid reasons this appeal is dismissed with costs.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Kwk/=