

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

**In the matter of an Application for mandates in the
nature of Writ of *Certiorari* and *Mandamus* under
and in terms of Article 140 of the Constitution of The
Democratic Socialist Republic of Sri Lanka**

Senerath Kumarasiri Perera Balasuriya,
No.362, High Level Road,
Pannipitiya. (Deceased)

PETITIONER

CA/ WRIT/315/2013

Vs,

1. People's Bank,
Sri Chittamplam A. Gardiner Mw,
Colombo 02.
2. K.W.M.M. Sarojini,
Inquiry Officer/ Senior Legal Officer/ Manager,
Lands Redemption Department,
People's Bank, 220, Deans Road,
Maradana, Colombo 10.
3. Heeralu Arachchige Dona Swarnaseeli,
No. 15,
Anganuwa, Padukka.
4. Ariyasiri Wickramasinghe,
No. 57, St. Peter's Estate,
Imagira, Ingiriya.

5. Gamini Senarath,
Chairman,
People's Bank.
6. Jehan P. Amarathunga,
Director
7. Ms. Lakshmi Kumari Sangakkara,
Director
8. Mrs. Dharma N. Gammanpila,
Director
9. Mr. Pawara Dissanayake,
Director
10. G.K.D. Amarawardena,
Director
11. R.M.P. Rathnayake,
Director
12. Piyadasa Kudabalage- Director,
All Directors of the People's Bank,
No.75, Sri Chittamplam A. Gardiner Mw,
Colombo 02.

RESPONDENTS

An application for Substitution on behalf of the Deceased Petitioner

1. Amarasinghe Arachchige Swarna Perera
2. Sanjeewa Warnasiri Perera Balasuriya
3. Sumith Amarasiri Perera Balasuriya
4. Sidath Jayasiri Perera Balasuriya

All of No. 362, High Level Road,
Pannipitiya.

PETITIONERS

Vs,

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Sri Chittamplam A. Gardiner Mw,
Colombo 02.
2. K.W.M.M. Sarojini,
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Chairman,
People's Bank.
6. Jehan P. Amarathunga,
Director
7. Ms. Lakshmi Kumari Sangakkara,
Director

8. Mrs. Dharma N. Gammanpila,
Director

9. Mr. Pawara Dissanayake,
Director

10. G.K.D. Amarawardena,
Director

11. R.M.P. Rathnayake,
Director

12. Piyadasa Kudabalage- Director,
All Directors of the People's Bank,
No.75, Sri Chittamplam A. Gardiner Mw,
Colombo 02.

RESPONDENTS

Before : **Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel : Ranjan Suwandartne with Ranjith D. Perera for the 1st to 4th Petitioners,
Kushan de. Alwis for the 1st, 5th to 12th Respondents
Roshan Dayaratne with Aruni de. Silva for the 4th Respondent

Written Submissions On: 31.03.2016

Order On: 22.07.2016

Order

Vijith K. Malalgoda PC J (P/CA)

Senerath Kumarasiri Perera Balasuriya the Original Petitioner to the present application had come before this court seeking inter alia,

- b) To issue a writ in the nature of writ of Certiorari against the 1st and 5th Respondents quashing the decision contained in exhibit A22 dated 18th September 2013.
- c) To make an order directing the 5th to 12th Respondents to consider the entire evidence led at the inquiry in relation to the application made by the Petitioner and to arrive at a decision adopting the recommendations contained in the decision of the 2nd Respondent dated 21st September 2011 marked A-17 and/or make an appropriate order considering the factual evidence led at the inquiry held before the 2nd Respondent.

As observed by this court the dispute between the Original Petitioner and the 3rd and 4th Respondents had arisen with regard to a property owned by the Original Petitioner to the extent of 6.6 perches at Godigamuwa, Maharagama.

The Original Petitioner had obtained a loan of Rs. 94,000/- from the 3rd Respondent after executing a Conditional Transfer against the said property. The said Conditional Transfer was executed in December 1999 and in January 2004 the 2nd Respondent had transferred the said property to the 4th Respondent for sum of Rupees 550,000/-. Several disputes have arisen between the Original Petitioner who was in possession of the said land and the 4th Respondent during this period and the Petitioner in April 2004 made an application bearing No. 2927 at the People's Bank Land Redemption Department.

The said inquiry was proceeded for nearly 7 years and the recommendations of the inquiry officer, the 2nd Respondent was submitted to the 1st Respondent bank in the year 2011.

When the said recommendations were pending for a decision with the 1st Respondent bank the 4th Respondent came before this court seeking a writ of *Certiorari* to quash the said application, was dismissed when the Learned Counsel for the Petitioner in the said application (4R to the present application) moved to withdraw the said application admitting, that the said application was made premature, prior to the Board of Directors of the 1st Respondent bank taking a decision with regard to the said recommendation.

The Board of Directors of the 1st Respondent bank had thereafter taken a decision to direct a fresh inquiry in the said matter and the said decision was conveyed to the Original Petitioner by letter dated 08.09.2013 by the inquiry officer (A-2).

It is the said decision which was challenged before this court by the Petitioner to the Loan Redemption Inquiry No. DR 2927 by the present application.

The present application seeking a writ of *Certiorari* to quash the said decision was filed before this court in October 2013 and all the parties to the present application had filed their pleadings before this court and the matter was fixed for argument before this court on 27.03.2015. However it was brought to the notice of this court, the death of the Original Petitioner on that day, and the Learned Counsel moved to substitute the Original Petitioner.

It is the said substitution, which was objected by the 4th Respondent is pending for consideration by this court now

When the wife and the three children of the Original Petitioner moved to intervene in the proceedings as Substituted Petitioners before this court, the 4th Respondent had objected to the said substitution in the absence of a marriage certificate to establish the marriage between the Deceased Original Petitioner and the 1st Substituted Petitioner.

In their Petition filed before this court the substituted Petitioners have submitted that, the Petitioner Senarath Kumarasiri Perera Balasuriya had died interstate on or about 18th November 2014 (X-1) leaving as his heirs, widow Amarasinghe Arachchige Swarna Perera and three children namely Sajeewa Warnasiri Perera Balasuriya, Sumith Amarasiri Perera Balasuriya and Sidath Jayasiri Perera Balasuriya.

The Substituted Petitioners have submitted the birth certificates of the three children indicating the Deceased Petitioner as father and the 1st Substituted Petitioner as the mother but failed to submit the marriage certificate but submitted that “the Petitioner took all and every effort to obtain the marriage certificate between the Deceased Petitioner and 1st Substituted Petitioner but Registrar General’s Office has still not issued the said certificate in relation to the said marriage as they have indicated the particular register where this marriage is registered is lost or misplaced”.

However when this position was challenged by the 4th Respondent in his objections, the Substituted Petitioners have submitted along with their counter objections a “nil report” with regard to the marriage between the Original Petitioner and the 1st Substituted Petitioner for the period 01.06.1981 to 01.09.1981 for the Maligakanda Registrar’s Office. As observed by this court this report does not refer to any difficulty in tracing the books but it only indicates that the outcome of the search which is ended up with no results or in other words no such marriage was registered at the said office during the period referred to above.

As the Substituted Petitioners submitted that there was a registered marriage between the Original Petitioner and the 1st Substituted Petitioner, the 4th Respondent had taken up the position before us that the basis of the application for substitution by the 1st to 4th Substituted Petitioners were that there was a legal marriage registered in terms of the General Marriages Ordinance, but in the absence of official document in proof of the said position the Intervient Petitioners have deliberately and intentionally mislead this court.

As observed by this court even in the counter objections filed before this court the Substituted Petitioners have taken up the position that,

“These Petitioners state that the deceased Petitioner was lawfully married to the 1st Petitioner around August 1981 at Maligakanda but the said marriage certificate is presently not traceable due to situations beyond the control of these Petitioners.”

However the Substituted petitioners have further taken up the position that, the fact the deceased Original Petitioners name had been found in the birth certificates of the three children as the father, and in the said birth certificates under cage 6, it is stated that the parents are legally married, is sufficient proof of a lawful marriage under the General Marriages Ordinance.

In support of the above contention the said Petitioners have further submitted extracts of Electoral Registers for the premises No. 45/4 Devala Lane, Kotte, where the names of the 1st Substituted Petitioner and the deceased Original Petitioner appear along with several other names and two affidavit from the two sisters of the deceased Original Petitioner informing that the deceased Original Petitioner had married the 1st Substituted Petitioner somewhere in 1982, they had three children from their marriage born in 1983, 1985 and 1991 and lived together as husband and wife until his death.

Our courts have recognized both, the marriage by habit and repute and the registered marriage under the General Marriages Ordinance, but the Substituted Petitioners have never pleaded before this court that the marriage between the deceased Original Petitioner and the 1st Substituted Petitioner was a marriage by habit and repute. As observed by this court the Substituted Petitioners have sought intervention as the legal heirs of the deceased Original Petitioner based on the lawful marriage registered under the General Marriages Ordinance. In the absence of any material for this court to satisfy that there was a lawful marriage registered under the General Marriages Ordinance, this court is reluctant to use its discretion when granting permission for substitution by the 1st to 4th Substituted Petitioners in the place of the deceased Petitioner.

For the reason set out above the application for substitution by the 1st to 4th Substituted Petitioner are dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL