

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

S.C. Appeal 116/2010
Supreme Court
Leave to Appeal No.100/09
Ratnapura Civil Appeals
High Court Leave to Appeal
Application No. LA09/2008)
D. C. Ratnapura
Case No.22669/Land)

In the matter of an application under
Article 127(2) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka for Leave to Appeal.

Hapugastenne Plantation Limited,
No.186, Vauxhall Street,
Colombo 02.

Plaintiff

-Vs-

Kitnan Karunanidi,
Hapugasthenna Estate,
Gallella.

Defendant

AND BETWEEN

Kitnan Karunanidi
Hapugastenna Estate,
Gallella.

Defendant-Petitioner

-Vs-

Hapugastenne Plantation Limited,
No.186, Vauxhall Street,
Colombo 02.

Plaintiff-Respondent

AND NOW BETWEEN

Hapugastenne Plantation PLC,
No.186, Vauxhall Street,
Colombo 02.

Plaintiff-Respondent-Petitioner

-Vs-

Kitnan Karunanidi
Hapugastenna Estate,
Gallella.

Defendant-Petitioner-Respondent

BEFORE: S.E.WANASUNDERA, PC, J.
B.P.ALUWIHARE, PC, J. &
SISIRA J. DE ABREW, J.

COUNSEL: Hilary Livera for the Plaintiff-Respondent-Appellant.
Anuruddha Dharmaratne for the Defendant-Petitioner-Respondent.

ARGUED ON: 23.03.2015

DECIDED ON: 03.02.2017

Aluwihare PC.J

Plaintiff-Respondent-Petitioner (hereinafter referred to as the Plaintiff) instituted action before the District Court seeking an interim injunction among other reliefs, restraining the Defendant-Petitioner-Respondent (hereinafter referred to as the Defendant) from gemming, extracting minerals and damaging cultivation of the paddy field, on the land described in the 2nd schedule to the plaint.

The learned District Judge issued an enjoining order on 6th November,2007 as prayed for and after objections were filed by the Defendant, the learned District Judge issued an interim injunction as prayed for, on 21st January,2008.

Defendant then moved the High Court of Civil Appeals by way of leave to appeal, against the said order.

The High Court of Civil Appeals by its order dated 22nd April,2003 set aside the order of the learned District Judge and vacated the interim injunction.

The Plaintiff aggrieved by the said order of the High Court of Civil Appeals sought leave to appeal from this Court and leave was granted on the following questions of law:

- (a) Whether the Plaintiff-Respondent-Petitioner had established a *prima facie* case against the Defendant-Petitioner-Respondent.
- (b) Whether the Plaintiff-Respondent-Petitioner had established that the balance of convenience, is with the Petitioner.

Court also granted leave on the following question of law raised on behalf of the Defendant-Appellant-Respondent:

- (c) Is the Plaintiff-Respondent-Petitioner entitled to any relief, in view of the material suppression and misrepresentations contained in the Plaintiff and accompanying affidavit filed in the District Court.

Facts of the case, briefly, are as follows:

Sri Lanka State Plantations Corporation (hereinafter referred to a SPC) became owners of the Hapugastenne tea estate and in 1992, the said tea estate was leased for a period of 99 years to Hapugastenne Plantations Ltd., the Plaintiff-Respondent-Petitioner-Appellant (Hereinafter referred to as the Plaintiff)

Subsequent to the execution of the Indenture of Lease (between the SPC and the Plaintiff company) in the year 2000, SPC transferred a portion of Hapugastenne Estate in extend of 1 Rood and 20 Perches to the Defendant. The land so transferred happened to be a paddy land. It must be noted that the SPC is not a party to these proceedings or the proceedings before the lower courts.

The dispute arose when the Defendant, in 2007 obtained a licence for gemming on the said property and commenced mining. The Plaintiff contended that the licence issued for gemming was subsequently suspended. The defendant, however, continued gemming operations and as a result caused irreparable loss to the Plaintiff due to soil erosion and landslide caused by the mining operations.

As referred to earlier the interim injunction issued by the learned District Judge restraining the defendant from gemming on the impugned property was vacated by the learned Judges of the High Court of Civil Appeals.

In his short order, the learned District Judge had held with the Plaintiff, mainly on two grounds:

Firstly, in terms of the indenture of lease, the lessor (the SPC) can transfer or convey part of the leased property only upon obtaining the permission of the lessee, that is the Plaintiff, and secondly, that he is satisfied that the Plaintiff had made out a *prime facie* case.

I am of the view that the court would have been in a better position to determine this issue had the SPC been made a party to these proceedings. The gravamen complained of is entirely an issue between the plaintiff and the SPC the lessor of the estate. The transaction (sale of the impugned property) between the SPC and the Defendant has nothing to do with the terms and conditions of the lease entered into between the Plaintiff and the SPC. For all intents and purposes the transfer of the impugned property to the Defendant seems lawful.

The second ground was that the defendant had continued with activities relating to gemming, even after the licence issued by the Gem and Jewellery Authority had lapsed. This again is a matter that comes within the province of the Gem and Jewellery Authority, the regulator in that area of activity. If a person is engaged in activities relating to gemming without proper authority, then the Plaintiff ought to have brought it to the notice of the proper authority who has the power to deal with it. There is nothing to indicate that has happened in the instant case.

The learned District Judge had held that irreparable loss would be caused to the Plaintiff, being the lessee of the impugned property, if the Defendant was permitted to continue gemming on the property. The learned District Judge however had not considered the fact that the Defendant was the rightful owner of the block of land in issue which was not challenged by the Plaintiff. All what the Plaintiff stated is that the transfer of the land to the defendant by the SPC was conditional on it being used only for agricultural development. The condition referred to again is a matter between the Defendant and the SPC who was not a party to this case. To claim or waive the rights of the seller, in the instant case the SPC, is a prerogative of that party, and to my mind cannot be a ground to grant injunctive relief. Although not of much relevance to decide the issues in

this case, it had transpired that the impugned paddy field was transferred to the Defendant to give effect to the policy of the State to transfer rights relating to paddy fields to 'Ande' cultivators, who had worked the land. It had also transpired that, way back in 2004, the Plaintiff had prayed for a writ of certiorari against the Gem and Jewellery Authority to quash the Gemming Licence issued to the Defendant and the Court of Appeal having gone into the matter, had dismissed the application (CA Writ Application No.978/2004).

The High Court of Civil Appeals had come to a finding that the plaintiff had failed to establish a *prima facie* case to obtain injunctive relief.

In the case of Hubbard V. Vosper 1972 2 QB 84, Lord Denning stated that in considering whether to grant an interlocutory injunction, the right course for a judge, is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence and then decide what best to be done. If the case is weak or is met by a strong defence the court will refuse the injunction.

In the instant case, the defendant had title to the paddy land referred to, in the 2nd schedule to the plaint and he had obtained a licence to mine for gems from the proper authority. The land in question is a distinct land and demarcated by clear boundaries as per the deed marked and produced as V1. Furthermore, the surveyor plan marked and produced as V2 depicts the land described in the 2nd schedule to the plaint and according to the said plan, the boundaries had been pointed out by the Superintendent of Hapugastenne Estate.

In fact the learned District Judge himself had come to a finding that no irreparable loss could be caused to the plaintiff if the land were mined for gems, provided such activity were carried out confined to the area specified in the

licence. The learned District Judge had in fact granted an enjoining order restraining the defendant mining outside his own boundary. The Plaintiff had not asserted that the Defendant was mining outside the land described in schedule 2 to the plaint; the land transferred to the Defendant, by the SPC.

The injunction sought by the Plaintiff is to prevent the Defendant mining on the land described in schedule 2, to prevent damage to the paddy cultivation on the land described in the said schedule – Prayer 9 of the plaint. The position of the Defendant was that, after the land was transferred to him, it had been *aswaddumised* for some time and the land was barren when the mining commenced.

In order to obtain injunctive relief under our law the party seeking the relief not only must establish a *prima facie* case in which a serious matter relating to their legal right to be tried at the hearing of the case but also that they have a good likelihood of winning the case.

Considering the material placed before court the Plaintiff in my view had failed to establish a legal right, but had only relied on alleged violations of conditions imposed on the Defendant both by the SPC and to an extent the Gem and Jewellery Authority who are not parties to this case.

I hold therefore, that the learned Judges of the High Court of Civil Appeals had not erred when they held that the Plaintiff had not established a *prima facie* case against the Defendant. Consequently I answer the 1st question of law on which leave was granted in the negative.

In determining the balance of convenience, when issuing an interim injunction, the court weighs the possible inconvenience or loss to the respective parties. The

competing factors and weight to be attached to each such factor, no doubt varies from case to case. In the instant case, the defendant has established that he is the owner of the property in question and he had obtained a licence to mine for gems from the Authority which is empowered to do so. The Defendant had the right therefore, to engage in mining, an occupation which is lawful and a right, guaranteed under Article 14(1) of the Constitution. Hence unless there were compelling reasons, in my view, restraining the Defendant in engaging in mining is not justified.

The Plaintiff had averred in paragraph 17 of the plaint filed before the District Court that, if the defendant were to permit continue mining, it would have a considerable adverse effect on the tea plantation by upsetting the daily routine of the labourers who work on the estate. Further the Plaintiff had asserted that, the mining process had led to soil erosion as well and the damage is irreparable.

The Plaintiff, however, as referred to earlier, in the prayer had sought an injunction against the defendant, in order to avoid damage being caused to the paddy cultivation on the land described in the 2nd schedule, which property is owned by the Defendant. As such when one considers the factors in favour of each party, I am of the view that the balance of convenience lies with the Defendant and the judges of the High Court of Civil Appeals were correct in deciding it was so. Thus, with regard to the 2nd question of law on which leave was granted, I hold that the Plaintiff had not established that the balance of convenience was with the Plaintiff.

Considering the above I see no reason to interfere with the findings of the High Court of Civil appeal on the two questions referred to.

As to the 3rd question on which leave was granted, which was raised by the Defendant, I see no purpose in delving into the issue as I have already held that the learned Judges of the High Court of Civil Appeals have not erred in deciding the matters raised before them.

For the foregoing reasons, I dismiss the appeal and the Defendant-Petitioner-Respondent would be entitled to the cost of the appeal.

JUDGE OF THE SUPREME COURT

JUSTICE EVA WANASUNDERA P.C

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SISIRA J DE ABREW

I agree

JUDGE OF THE SUPREME COURT

