

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

In the matter of an Application for Leave to Appeal in terms of section 5C (1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read together with Article 127 of the Constitution.

Mayandi Suhumaran,  
Ward No. 03,  
Udappu.

**S.C. Appeal No. 28/2017**  
**SC/HCCA/LA No. 210/2015**  
**HC/Civil Appeal No. 122/2010 (F)**  
**D.C. Chilaw Case No. 1249/L**

Vs.

**Plaintiff**

Mookan Sathiyaseelan,  
Ward No. 03,  
Udappu.

**Defendant**

**AND BETWEEN**

Mayandi Suhumaran,  
Ward No. 03,  
Udappu.

**Plaintiff-Appellant**

Vs.

Mookan Sathiyaseelan,  
Ward No. 03,  
Udappu.

**Defendant-Respondent**

**AND NOW BETWEEN**

Mayandi Suhumaran,  
Ward No. 03,  
Udappu.

**Plaintiff-Appellant-Appellant**

Vs.

Mookan Sathiyaseelan,  
Ward No. 03,  
Udappu.

**Defendant-Respondent-Respondent**

**Before: P. Padman Surasena, J.  
A.L.S. Gooneratne, J.  
Janak De Silva, J.**

**Counsel:**

M.A. Sumanthiran PC with K. Pirabakaran and Divya Mascarrange for the Plaintiff-Appellant-Appellant

Shantha Jayawardena with Niranjana Arulpragasam for the Defendant-Respondent-Respondent

**Written Submissions tendered on:**

21.08.2017 and 19.02.2021 by the Plaintiff-Appellant-Appellant

22.06.2017 by the Defendant-Respondent-Respondent on

**Argued on: 08.03.2021**

**Decided on: 04.10.2021**

**Janak De Silva, J.**

The Plaintiff-Appellant-Appellant (hereinafter referred to as “Appellant”) instituted this action against the Defendant-Respondent-Respondent (hereinafter referred to as “Respondent”) seeking a declaration of title to the land called “Udappen Karai Kani” more fully described in the 3<sup>rd</sup> Schedule to the plaint and for his ejectment. The Respondent made a cross-claim for a declaration of title based on prescriptive title.

The learned District Judge dismissed the action on the basis that the Appellant had failed to establish his title to the corpus. The cross-claim of the Respondent was also dismissed on the same basis.

Aggrieved by the judgment of the District Court, the Appellant appealed to the High Court of Civil Appeal of the North Western Province holden in Kurunegala which appeal was dismissed and hence this appeal.

Leave to appeal has been granted on the following questions of law:

1. Have their Lordships of the High Court erred in law when they came to the finding that ‘the admission of the deeds in evidence itself is not proof of title’?
2. Have their Lordships of the High Court erred in law when they come to the finding that the admitted documents P1, P2 and P3 need further proof in terms of Section 68 of the Evidence Ordinance?
3. Have their Lordships of the High Court erred in law when they failed to appreciate that admitted documents P1, P2 and P3 are evidence for all purposes of law?

4. Have their Lordships of the High Court erred in law when they failed to appreciate that there was no further proof needed to establish the title of the Plaintiff in view of the admission of documents P1, P2 and P3?
5. Whether the objection raised in respect of the deeds marked P1, P2 and P3 prior to the commencement of the Defendant's case on 16.08.2006 is a valid and acceptable objection to the admissibility of the same?

The crux of the Appellant's case is that he obtained title to the corpus by deeds marked P1, P2 and P3 executed in his favour by Sinna Kathirkamanapillai Sella Kaliamma. These deeds were objected to when first produced and therefore were marked subject to proof but were read in evidence without any objection at the end of the case of the Appellant. It is on this basis that the Appellant contends that they are evidence for all purposes and that no further proof is required. However, the Respondent counters by claiming that the requirements in section 68 of the Evidence Ordinance have not been satisfied and hence the three deeds P1, P2 and P3 cannot be used as evidence. Questions of law Nos. 2, 3 and 5 cover these conflicting arguments.

The contrasting positions taken by the parties are based on several authorities emanating from this Court. In *Sri Lanka Ports Authority and Another v. Jugolinija-Boal East* [(1981) 1 Sri.L.R. 18 at 24] Samarakoon C.J. held that:

*"If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law. This is the *cursus curiae* of the original Civil Courts."*

This was cited with approval and followed in *Balapitiye Gunananda Thero v. Thalalle Methananda Thero* [(1997) 2 Sri.L.R. 101].

However, this Court has recently held that those authorities do not apply to a document which is required by law to be attested and that such a document can be used in evidence only if the requirements in section 68 of the Evidence Ordinance are satisfied [*Mohamed Naleem Mohamed Ismail v. Samsulebbe Hamithu* (S.C. Appeal 04/2016, S.C.M. 02.04.2018), *Dadallage Mervin Silva v. Mohamed Rosaid Misthihar* (S.C. Appeal 45/2010, S.C.M. 11.06.2019)]. Nonetheless, Amarasekera J. has in his minority judgment in *Kugabalan v. Ranaweera* [S.C. Appeal 36/2014, S.C.M. 12.02.2021] held that in a civil action, if the relevant document is not impeached or challenged through issues, the ratio in *Jugolinija-Boal East* is still valid and applies even with regard to deeds, but if the deed is impeached or challenged through an issue raised, it has to be proved as per the provisions of Evidence Ordinance.

In my view, there is no need for this court to venture into examining questions of law Nos. 2, 3 and 5 and the different views taken in the above cases.

The principal submission of the Appellant, as embodied in questions of law Nos. 1 and 4 is that once the deeds marked P1, P2 and P3 are admitted in evidence, no further evidence is required to prove the title of the Appellant.

Therefore, the matter before court can be decided by examining these two questions of law only, without consideration of questions of law Nos. 2, 3 and 5. The reason is that even where a deed of transfer can be used in evidence after having satisfied the requirements in section 68 of the Evidence Ordinance, its contents are not conclusive as to the title of the vendor.

Let me explain this statement in some detail. Section 3 of the Evidence Ordinance states that a fact is said to be “*proved*” when, after considering the *matters* before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. It goes on to state that a fact is said to be “*disproved*” when, after considering the *matters* before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

Clearly the court is directed to consider all matters before it in deciding whether a fact has been proved or not. In the case of a deed of transfer, the contents of the deed itself is not conclusive evidence of the title of the vendee as submitted on behalf of the Appellant.

For example, a deed of transfer may state that A sold to B the land more fully described therein. The recital may further state that A had good title to the land due to its sale to A by C. However the probative value of the contents of this deed, though admitted in evidence, will be impinged if evidence is led to prove that in fact C did not have good title to pass onto A.

Therefore I will examine the factual situation on the hypothesis that deeds marked P1, P2 and P3 can be used in evidence.

I observe that the title of his predecessor is set out in all three deeds relied on by the Appellant marked P1, P2 and P3.

In deed No. 17634 dated 17<sup>th</sup> November 2000 (P1) attested by M.M. Iqbal, Notary Public, the recital describes the title of Sinna Kathirkamanapillai Sella Kaliamma as follows:

*“upon inheritance from my Father-in-Law Muthu Vyran Muthurakku Pillai who possessed upon deed No. 1670 dated 1932.7.6 and attested by F. Thambyaiah of Chilaw Notary Public and by deed No. 10945 of 1924.4.15 and attested by B.N.F. Jayasekera of Chilaw Notary Public. (inheritance and undisturbed possession devolved on me though (sic) my late husband Muthu Rakku Kathikamanpillai, for well over thirty (30) years).”*

In deed No. 17635 dated 17<sup>th</sup> November 2000 (P2) attested by M.M. Iqbal, Notary Public, the recital describes the title of Sinna Kathirkamanapillai Sella Kaliamma as follows:

*“upon inheritance from my Father-in-Law Muthu Vyran Muthu Rakkupillai who possessed upon deed No. 1000 dated 1930.9.9 and attested by F. Thambyaiah of Chilaw Notary Public and by deed No. 1467 dated 1930.9.20 attested by F. Thambyaiah of Chilaw Notary Public. (The inheritance and undisturbed and uninterrupted possession devolved on me through my late husband Muthu Rakku Kathikamanpillai, for well over thirty (30) years...”*

In deed No. 17636 dated 17<sup>th</sup> November 2000 (P3) attested by M.M. Iqbal, Notary Public, the recital describes the title of Sinna Kathirkamanapillai Sella Kaliamma as follows:

*“upon inheritance from my late Father-in-Law Muthu Vyran Muthu Rakkupillai who possessed upon deed No. 575 dated 1925.6.20 and attested by F. Thambyaiah of Chilaw Notary Public, by deed No. 11335 of 1924.10.4 and deed No. 974 of 1912.7.15 and deed No. 19289 of 1935.8.3 and all three deeds attested by B.N.F. Jayasekera of Chilaw Notary Public.. (The inheritance and undisturbed possession devolved on me through my late husband Muthu Rakku Kathikamanpillai over 30 years...”*

No doubt the recital of a deed may be relevant and have some evidentiary value. In *Cooray v. Wijesuriya* (62 N.L.R. 158) it was held that where the recital of a deed sets out a family relationship of the vendor, such a statement would be very strong evidence of the family relationship. However, the probative value of the contents of a recital in a deed depends on the facts and circumstances of each case.

In the present case the recital of the three deeds P1, P2 and P3 sets out the relationship between Sinna Kathirkamanapillai Sella Kaliamma, her husband Muthu Rakku Kathikamanpillai and his father Muthu Vyran Muthurakku Pillai which may support her title by inheritance as claimed. However, the Respondent led in evidence the testamentary proceedings in D.C. Colombo Case No. 17770/T (V2) pertaining to the estate of Muthu Rakku Kathikamanpillai wherein the letters of administration was issued in favour of Sella Kaliamma Kadirgamanpillai. Admittedly the corpus is not included in the inventory filed of record therein.

Nonetheless, this by itself is insufficient to negate the alleged title of Sinna Kathirkamanapillai Sella Kaliamma to the corpus for it has been held in *Silva v. Silva* (10 N.L.R. 234) that on the death of a person, his estate, in the absence of a will, passes at once by operation of law to his heirs and the dominium vests in them. In *De Zoysa v. De Zoysa* (26 N.L.R. 472) it was held that no conveyance from the executors is necessary for the purpose of vesting title in the heirs.

Moreover, in *Hassen Hadjiar v. Levane Marikar* (15 N.L.R. 275) it was held that section 547 of the Civil Procedure Code, while it penalizes, does not prohibit, the transfer of property which ought to have been, but has not been, administered. In *W. S. Fernando v. W. E. J. Dabarera* (77 N.L.R. 127) it was held that when an action for declaration of title to a land belonging to a deceased person's estate is instituted by a person claiming to be a successor-in-title of the deceased, section 547 of the Civil Procedure Code does not expressly prohibit the maintenance of the action on the ground that the name of the land is not included in the inventory filed in the testamentary action relating to the estate of the deceased owner. This position was reiterated in *Ratnayake and Others v. Kumarihamy and Others* [(2002) 1 Sri.L.R. 65] when it was held that the non-inclusion of a land in a testamentary proceeding for the administration of an estate of a deceased, cannot in any manner, defeat the title of the deceased and his heirs.

However, the pivotal question in relation to the title of Sinna Kathirkamanapillai Sella Kaliamma arises from the affidavit she filed in the above testamentary proceedings dated 20<sup>th</sup> of July 1957. She avers, at paragraph 4 therein, that in addition to her, there are several other heirs of Muthu Rakku Kathikamanpillai. Then the question is how she alone could claim title to the corpus in the absence of any other evidence of having obtained exclusive title thereto.

Furthermore, there is also a serious question whether in fact the title to the corpus was actually vested in the father-in-law of Sinna Kathirkamanapillai Sella Kaliaamma as claimed. If the facts in the recital in deed No. 17635 dated 17<sup>th</sup> November 2000 (P2) are considered, F. Thambyaiah, Notary Public attested deed No. 1000 on 1930.9.9 and later attested deed No. 1467 on 1930.9.20 which means he had attested 467 deeds within a period of eleven days up to 1930.9.20.

This fact combined with the absence of the corpus in the inventory filed in the testamentary proceedings, the statement of Sinna Kathirkamanapillai Sella Kaliaamma in the testamentary proceedings that there are other heirs of her deceased husband Muthu Rakku Kathikamanpillai raises a serious doubt on the alleged title of the Sinna Kathirkamanapillai Sella Kaliaamma.

Moreover, all three deeds P1, P2 and P3 were attested in the year 2000, three years prior to the institution of this action, and the recitals therein refers in detail to eight deeds by which the father-in-law of Sinna Kathirkamanapillai Sella Kaliaamma allegedly acquired title to the corpus. Despite being possessed with such details, the Appellant did not seek to lead any of those eight deeds in evidence. Neither was any explanation given for the failure to do so. In fact, under cross-examination, he contended that he bought the corpus after examining all the old deeds and on the advice of his lawyer [Appeal Brief, page 123] which means the Appellant had access to the old deeds. However, no reason was given for the non-production of those deeds.

It is true that the Appellant also sought to rely on the alleged prescriptive title of Sinna Kathirkamanapillai Sella Kaliamma and her predecessors to the corpus. In *Carolis Appu v. Anagihamy* (51 N.L.R. 355) it was held that it is permissible that the period of possession of an intestate person can be tacked on to the possession of his heirs for the purpose of computing the period of ten years. Indeed upon a perusal of the recital to the three deeds P1, P2 and P3, it is clear that Sinna Kathirkamanapillai Sella Kaliamma did in fact seek to transfer the prescriptive rights allegedly acquired by her and her predecessors to the Appellant. In fact in the absence of such an intention to transfer prescriptive title as reflected in the deed of transfer, the Appellant is not entitled in law to rely on any prescriptive title of Sinna Kathirkamanapillai Sella Kaliamma [*Fernando v. Podi Sinno* (6 C.L.R. 73), *Dingirimahatmaya v. Ratnasekera* (63 N.L.R. 405)].

Nonetheless, the facts and circumstances of this case militate against the claim of prescriptive title by the Appellant. Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests fairly and squarely on him to establish a starting point for his or her acquisition of prescriptive rights [*Chelliah v. Wijenathan et al* (54 N.L.R. 337)]. No cogent evidence was given by the Appellant as to how and when Sinna Kathirkamanapillai Sella Kaliamma had possession of the corpus. In fact, the Appellant admitted that the Defendant was in possession of the corpus at the time the three deeds P1, P2 and P3 were executed in the year 2000.

Accordingly, I hold that the Appellant has failed to prove his title as required by law.

For all the foregoing reasons, I answer questions of law Nos. 1 and 4 in the negative and dismiss the appeal with costs and affirm the judgment of the learned District Judge of Chilaw dated 2010.06.30.

The Registrar is directed to take steps accordingly.

The Respondent is entitled to his costs in both the High Court of Civil Appeal holden in Kurunegala and this Court.

Judge of the Supreme Court

**P. Padman Surasena, J.**

I agree.

Judge of the Supreme Court

**A.L. Shiran Gooneratne, J.**

I agree.

Judge of the Supreme Court