

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

1. T.I.G. Suriyaarachchi,
2. D.N. Suriyaarachchi,
3. P.N. Suriyaarachchi,

All of

Halpathota, Baddegama.

Plaintiffs

SC APPEAL NO: SC/APPEAL/39/2021

SC LA NO: SC/SPL/LA/221/2018

CA NO: CA/272/97 (F)

DC COLOMBO NO: 17364/L

Vs.

1. L.C. Liyanage alias Gunawardena,
No. 5/5A,
Sri Naga Vihara Road,
Pagoda,
Nugegoda.
2. People's Bank,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

Defendants

AND BETWEEN

1. T.I.G. Suriyaarachchi,
 2. D.N. Suriyaarachchi,
 3. P.N. Suriyaarachchi,
- All of
Halpathota, Baddegama.
Plaintiff-Appellants

Vs.

1. L.C. Liyanage alias Gunawardena,
No. 5/5A,
Sri Naga Vihara Road,
Pagoda, Nugegoda.
2. People's Bank,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.
Defendant-Respondents

AND BETWEEN

1. T.I.G. Suriyaarachchi
Halpathota, Baddegama.
1st Plaintiff-Appellant-Appellant

Vs.

1. L.C. Liyanage alias Gunawardena,
No. 5/5A,
Sri Naga Vihara Road,
Pagoda, Nugegoda.

2. People's Bank,
Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.
Defendant-Respondent-
Respondents

2. D.N. Suriyaarachchi,
3. P.N. Suriyaarachchi, (Deceased)
- 3A. K.G. Ananda Ratnasiri,
All of Halpathota, Baddegama.
2nd and 3rd Plaintiff-Appellant-
Respondents

AND NOW BETWEEN

1. T.I.G. Suriyaarachchi
Halpathota, Baddegama.
1st Plaintiff-Appellant-Appellant-
Appellant

Vs.

1. L.C. Liyanage alias Gunawardena,
No. 5/5A,
Sri Naga Vihara Road,
Pagoda, Nugegoda.
2. People's Bank,
Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.
Defendant-Respondent-
Respondent-Respondents

2. D.N. Suriyaarachchi,
3A. K.G. Ananda Ratnasiri,
All of,
Halpathota,
Baddegama.
2nd and 3rd Plaintiff-Appellant-
Respondent-Respondents

Before: P. Padman Surasena, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: Harith De Mel for the 1st Plaintiff-Appellant-
Appellant-Appellant.
P. Narendran for the 1st Defendant-Respondent-
Respondent-Respondent.
Kavinda Dias Abeysinghe for the 2nd Defendant-
Respondent-Respondent-Respondent.

Argued on : 07.07.2021

Written submissions:

by the 1st Plaintiff-Appellant-Appellant-Appellant on
12.07.2021.

by the 1st Defendant-Respondent-Respondent-
Respondent on 20.07.2021.

by the 2nd Defendant-Respondent-Respondent-
Respondent on 22.07.2021.

Decided on: 15.10.2021

Mahinda Samayawardhena, J.

The plaintiffs filed this action against the two defendants seeking mainly a declaration of title to the land described in the schedule to the plaint. The 1st and 2nd defendants filed separate answers seeking dismissal of the plaintiffs' action. At the commencement of the trial, two admissions were recorded, followed by issue Nos. 1-4 raised by the plaintiff, 5-10 raised by the 1st defendant, and 11-17 raised by the 2nd defendant.

In terms of section 147 of the Civil Procedure Code, learned counsel for the defendants moved the District Court to try issue Nos. 5-7 raised on behalf of the 1st defendant as preliminary questions of law before evidence was recorded. The District Court after affording an opportunity to file written submissions, answered these three issues in favour of the defendants and dismissed the plaintiffs' action.

Being aggrieved by this order, the plaintiffs preferred an appeal to the Court of Appeal. The Court of Appeal by Judgment dated 08.06.2018 held that the District Court erred in law when it answered the said three issues in favour of the 1st defendant.

However, the Court of Appeal did not stop at that. It went one step further and *ex mero motu* decided issue No. 14 raised by the 2nd defendant as a preliminary question of law in favour of the defendants and dismissed the plaintiffs' action. This appeal by the plaintiffs is against this finding in the Judgment.

This Court granted leave to appeal predominantly on the question whether the Court of Appeal erred in law when it proceeded to decide issue No. 14 in the face of issue No. 11 raised by the 2nd defendant.

Issue No. 14 reads as follows:

Have the plaintiffs no legal right to institute and maintain this action in view of section 71(3) of the Finance Act, No. 16 of 1973 and section 22 of the Interpretation Ordinance, No. 18 of 1972?

The position of the 2nd defendant is that the land in suit was acquired by the 2nd defendant in terms of section 71 of the Finance Act.

The Court of Appeal answered issue No. 14 in the negative on the premise that in view of the ouster clause contained in section 71(3) of the Finance Act, the District Court lacks jurisdiction to hear this action.

The pivotal argument of learned counsel for the plaintiffs is that in answering issue No. 14 in the negative, the Court of Appeal erroneously assumed that the parties were not at variance on the fact of acquisition of the land. Learned counsel draws the attention of Court to issue No. 11 by which the 2nd defendant himself has put this matter in issue. I am impressed by this argument.

Issue No. 11 reads as follows:

(a) Was the land described in the schedule to the plaint acquired by the 2nd defendant after conducting an inquiry on Application No. P.R. 1846 made by the father of the 1st defendant to the 2nd defendant under Finance Act 1963?

(b) Was the said acquisition published in the Gazette dated 17.12.1982?

This seems to me to be the reason why learned counsel for the 2nd defendant did not move the District Court to try issue No. 14 as a preliminary question of law.

In justification of the Judgment of the Court of Appeal, learned counsel for the 2nd defendant states in the written submission that by tendering a letter received by the 1st plaintiff marked X, the plaintiffs by paragraph 8 of the plaint “*have thereby admitted or must be deemed to have admitted that they were aware that the 2nd Respondent bank was claiming that it had acquired the said property.*” The fact that the plaintiffs became aware upon receipt of the letter X that the 2nd defendant was claiming the property by acquisition cannot be construed to mean that the plaintiffs admit the fact of acquisition *per se*. If that was so, it could have been recorded as an admission at the trial. The fact that the 2nd defendant himself raised it as an issue goes to prove that the parties were at variance on this point.

An issue can be tried as a preliminary issue if and only if it can be disposed of without recording any evidence. A pure question of law can be tried as a preliminary issue. Nevertheless, when an issue of law is linked or dependent upon another with which the parties are at variance, it cannot be tried as a preliminary question of law.

I answer the questions of law in respect of which leave was granted in the affirmative.

I set aside the Judgment of the Court of Appeal insofar as it deals with issue No. 14 and direct the learned District Judge to proceed with the trial from where it was stopped. The costs of this appeal will be costs in the cause.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court