

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

In the matter of an application for Leave to Appeal under and in terms of Article 128 of the Constitution read with Section 5(c) of the High Court of the Provinces (Special Provisions) Act as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No.54 of 2006.

SC. Appeal No.88/2011

SC.HC.CALA NO.424/10

HCCA/ WP/COL/LA Application No.67/2009

D.C. Colombo Case No.19606/L

Palani Muruganandan
No.538/5, Aluthmawatha Road,
Colombo 15.

Plaintiff

Vs.

Inconvelt Ifisharans Lafabar
No.560/1, Aluthmawatha Road,
Colombo 15.
(Presently Deceased)

Liyana Mohottige Liyani Bernadeck Kabral
Presently foreign by her lawful Attorney,
Mervyn Joseph de Silva,
Gongithota Road,

Enderamulla and presently of,
560/1, Aluthmawatha Road,
Colombo 15.

Substituted Defendant

AND BETWEEN

Palani Muruganandan
No.538/5, Aluthmawatha Road,
Colombo 15.

Plaintiff-Respondent-Petitioner

Vs.

Inconvelt Ifisharans Lafabar
No.560/1, Aluthmawatha Road,
Colombo 15.
(Presently Deceased)

Liyana Mohottige Liyani Bernadeck Kabral,
Presently foreign by her lawful Attorney,
Mervyn Joseph de Silva,
Gongithota Road,
Enderamulla, and presently of,
560/1, Aluthmawatha Road,
Colombo 15.

Substituted Defendant-Petitioner-Respondent

AND NOW BETWEEN

Inconvelt Ifisharans Lafabar
No.560/1, Aluthmawatha Road,
Colombo 15.
(Presently Deceased)

Liyana Mohottige Liyani Bernadeck Kabral,
presently foreign by her lawful Attorney,
Mervyn Joseph de Silva,
Gongithota Road,
Enderamulla, and presently of,
560/1, Aluthmawatha Road,
Colombo 15.

Substituted Defendant-Petitioner-Respondent
Petitioner

Vs.

Palani Muruganandan
No.538/5, Aluthmawatha Road,
Colombo 15.

Plaintiff-Respondent-Petitioner-Respondent

BEFORE : **SISIRA J. DE ABREW, J.**
MURDU N.B. FERNANDO, PC, J. &
S. THURAIRAJA, PC, J.

COUNSEL : J.M. Wijebandara and Ms.Y.S. Shohani & Kalpani
Kalpani Pathirage for the Substituted Defendant-
Petitioner-Respondent-Petitioner.

V. Thevasenathipathy for the Plaintiff-Respondent-
Petitioner-Respondent.

ARGUED &

DECIDED ON: 13.02.2021.

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases. This is an appeal against the judgment of the Civil Appellate High Court dated 15.11.2010. This Court by its order dated 29.06.2011 granted Leave to Appeal on questions of law set out in paragraph 21 (i), (ii) and (iii) of the Petition of Appeal dated 21.12.2010 which are set out below,

1. Has not the learned Additional District Judge of Colombo erred in law and fact in setting aside that the consent decree which had been entered without precision of the corpus?
2. Have the honorable Judges of the High Court of Civil Appeal erred in law and fact in affirming the consent decree which had been entered without a subject matter (the roadway) being ascertained in terms of law?
3. Have the honorable Judges of the High Court of Civil Appeal misconceived in law and fact in concluding that the roadway is depicted in Plan bearing No.829?

Facts of this case may be briefly summarized as follows;

The Plaintiff-Respondent-Appellant-Respondent (hereinafter referred to as the Plaintiff-Respondent) filed a case in the District Court of Colombo stating that his roadway has been blocked by the Defendant-Petitioner-Respondent-Appellant (hereinafter referred to as the Defendant-Appellant). The parties

entered into a settlement. The learned District Judge entered the consent decree on the terms of settlement suggested by the parties. The consent decree of the learned District Judge contained the following conditions;

- 1කද සංශෝධිත පැමිණිල්ලේ ආයාචනයේ “අ” ඡේදයේ ඉල්ලා ඇති පරිදි පැමිණිලිකරුගේ වාසියට හඬුව තිත්දු කිරීම සම්බන්ධයෙන් විත්තිකරුවන් එකගත්වය පලකර සිටිනද
- 2කද තවදැණී විත්තිකරුවන් විසින් සඳහන් කර සිටින එකී ප්‍රවේශ මාර්ගයට බාධා ඇතිවර වන ආකාරයට දැනට කිසිදු කටයුත්තක් කර නොමැති බවත් ඉදිරියටත් බාධා ඇතිවර කිරීම් නොකරන බවටත් විත්ති කරුවන් එකගතාවය පල කරයිකද
- 3කද වෙනත් දිමනා හෝ හඬු ගාස්තු නොමැති බවටත් පාර්ශවකරුවන් එකග වේ.

This consent decree was entered on 17.08.2006. After the consent decree was entered the Defendant-Appellant filed papers in the District Court to vacate the said consent decree. Then the learned District Judge by order dated 29.06.2009 vacated the consent decree.

Being aggrieved by the said order of the learned District Judge dated 29.06.2009 the Plaintiff-Respondent appealed to the Civil Appellate High Court. The Civil Appellate High Court by its judgment dated 15.11.2010 set aside the said order of the learned District Judge dated 29.06.2009. Being aggrieved by the said judgment of the Civil Appellate High Court the Defendant-Appellant has appealed to this Court.

The main argument of the learned Counsel for the Defendant-Appellant is that there is no corpus in this case. Therefore, he contends that the consent decree was a mistake. I now advert to this contention. Was there a mistake in the consent decree? Learned Counsel contended that there is no corpus in this case. But the Defendant-Appellant in paragraph 4 of his amended answer dated 14.02.2006 has admitted that there is an access road. Thus, the contention of learned Counsel for the Defendant-Appellant that there is no corpus fails in limine. Further, the Defendant-Appellant in the consent decree has admitted that there is an access road. Thus, even on the basis of condition

No.2 of the consent decree, the contention of learned Counsel fails. Therefore, the contention that there was a mistake in the consent decree is hereby rejected.

In the case of Gunasekara Vs. Leelawathie Srikantha Law Report Volume 5 page 86 Court of Appeal held as follows;

“A compromise decree is but a contract with the command of a judge superseded to it. It can therefore be set aside on any of the grounds, such as fraud, mistake, misrepresentation etc., on which a contract may be set aside.”

The main argument of the learned Counsel for the Defendant-Appellant is that there was a mistake in the consent decree. I have rejected the said contention. Thus, applying the principle laid down in the case of Gunasekara Vs. Leelawathie (supra), I hold that the learned District Judge could not have set aside the consent decree in this case. We therefore hold that the learned Judge was in error when he set aside the consent decree. For the above reasons, we answer the 1st question of law as follows,

“The learned District Judge has erred in law”.

We answer the 2nd question of law in the negative. The 3rd question of law does not arise for consideration. For the above reasons, we hold that the learned Judges of the Civil Appellate High Court were correct when they set aside the learned District Judge’s order dated 29.06.2009.

For the aforementioned reasons, we affirm the judgment of the learned Judges of the Civil Appellate High Court and dismiss this appeal with costs fixed at

Rs100,000/-. In addition to this cost the Plaintiff-Respondent is entitled to recover the cost ordered by the Civil Appellate High Court.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Mks