

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

- 1A. Palihawardana Arachchige
Shiroma Dilrukshi Jayawardena
- 1B. Virendri Sajani Waranasuriya
Jayawardena
Both of No. 251/1,
Dharmapala Mawatha,
Colombo 7.
Substituted Defendant-
Respondent-Appellants

SC APPEAL NO: SC/APPEAL/39/2017

SC LA NO: SC/HCCA/LA/424/2014

HCCA NO: WP/HCCA/COL/3/2011 (LA)

DC COLOMBO NO: DLM/127/2010

Vs.

1. H.J. Shalana Rodrigo,
No. 109/1, Gothami Road,
Borella.
2. H.C.S. Romesh Rodrigo,
No. 109/A, Gothami Road,
Borella.
3. H.M. Sharon Rodrigo,
No. 48/1, Gothami Road,
Borella.

4. H.M. Shanali Rodrigo,
No. 133/27,
Gothami Road,
Borella.
5. Union Chemist Property
Development Limited,
No. 460, Union Place,
Colombo 2.

Plaintiff-Petitioner-Respondents

Before: Vijith K. Malalgoda, P.C., J.

Achala Wengappuli, J.

Mahinda Samayawardhena, J.

Counsel: Niranjan Arulpragasam for the Substituted
Defendant-Respondent-Appellants.

Rohan Sahabandu, P.C., with Surekha Withanage
for the Plaintiff-Petitioner-Respondents.

Argued on : 29.10.2021

Decided on: 20.05.2022

Mahinda Samayawardhena, J.

The Plaintiff-Petitioner-Respondents (Plaintiffs) filed this action against the Defendant-Respondent-Appellant (Defendant) in the District Court of Colombo seeking as the substantive relief a declaration that the Plaintiffs, their agents, customers and suppliers are entitled to use the right of way described in the second schedule to the plaint to enter the land described in the first schedule to the plaint. Pending determination of the action,

the Plaintiffs also sought an interim injunction preventing the Defendant from disturbing the Plaintiffs' use of the said right of way. The District Court refused the interim injunction and, on appeal, the High Court of Civil Appeal granted it. The Defendant has now come before this Court against the Judgment of the High Court of Civil Appeal.

This Court granted leave to appeal against the Judgment of the High Court of Civil Appeal on three questions of law. The first question is whether the High Court erred in law in granting the interim injunction. The second and third questions (i.e. whether the Plaintiff failed to establish a *prima facie* case and whether the balance of convenience lies with the Defendant) are encapsulated in the first question.

In my view, the High Court erred in granting the interim injunction which allows the Plaintiffs, their agents, customers and suppliers to use the 20-foot-wide road depicted as Lot 7 in Plan No. 1095 (D2) to enter the land described in the first schedule to the plaint. This I say on first principles. Let me explain.

It is clear that the disputed right of way (Lot 7 in Plan No. 1095) is a private road in extent of 23.1 perches starting from Dharmapala Mawatha; but, unfortunately, this is not the right of way described in the second schedule to the plaint. The second schedule refers to a portion of land in extent of 0.1 of a perch lying outside the disputed right of way.

The land described in the first schedule to the plaint is Lot X1 in Plan No. 2363 (P3), which is bounded on the North by premises bearing assessment No. 460 on Union Place (belonging to the

Plaintiffs); East by premises bearing No. 251/11 on Union Place; South by Lot Y1 of the same Plan; and West by the remaining portion of Lot X. The extent of Lot X1 is 1 perch.

The land described in the second schedule to the plaint is Lot Y1 in Plan No. 2363, which is bounded on the North and East by Lot X1 of the said Plan (referred to in the first schedule to the plaint); South by a private road (the private road in dispute); and West by Lot Y. The extent of Lot Y1 is 0.1 of a perch.

In short, although the disputed right of way is Lot 7, neither the schedules to the plaint nor the substantive relief sought by the plaintiff refer to Lot 7.

The issuance of interim injunctions by our Courts is mainly regulated by section 54 of the Judicature Act, No. 2 of 1978, as amended, and sections 662-667 in Chapter 48 of the Civil Procedure Code. The former deals with jurisdiction and the latter with procedure.

In an interim injunction application, the Plaintiff shall demonstrate that the act of the Defendant is in violation of the Plaintiff's legal rights in respect of the subject matter of the action and would tend to render the Judgment nugatory in the event of the Plaintiff's success in the suit. An interim injunction has no independent survival. It is dependent upon the substantive relief sought. The interim injunction is issued to protect the substantive relief and ceases to exist with the entering of the Judgment. A necessary corollary of this is that a party cannot by way of an interim injunction ask for more than what he has asked for as substantive relief. No Court has jurisdiction to grant interim relief incapable of being accommodated in the final relief. (*Mallika De*

Silva v. Gamini De Silva [1999] 1 Sri LR 85, Haji Omar v. Wickremasinghe [1999] 1 Sri LR 82) As the plaintiff's action is presently constituted, the interim relief granted cannot be preserved in the final judgment.

The application for interim injunction is misconceived in fact and law. There is no necessity to go into the finer details of the matter.

Although the District Court refused the interim injunction on different grounds, I agree with the conclusion of the learned District Judge. I set aside the Judgment of the High Court of Civil Appeal. The substituted Defendant-Respondent-Appellants are entitled to costs in all three Courts.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court