

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

SC/APPEAL/77/2018

SC/HCCA/LA/409 & 410/2017

NWP/HCCA/KUR/40/2015/LA

DC Kurunegala case No.8009/L

In the matter of an application for Leave to Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act, No.1990 as amended by Act, No.54 of 2006 to set aside the judgment dated 27/07/2017 of the Provincial High Court of Civil Appeals of the North Western Province.

Karunatileka Jayasundera Wickramasekara Rajapakse Wahalanayake Nisi Mudiyansele Mahen Susantha Madugalle

No.168/16, Siripura Gardens, Rajamaha Vihara Mawatha, Kotte

PLAINTIFF

VS

Karunatileka Jayasundera Wickramasekara Rajapakse Wahalanayake Nisi Mudiyansele Chula Swarna Madugalle

No. 185/1, Epitamulla Road, Pita-Kotte.

DEFENDANT

AND

Land Reform Commission

C 82, Hector Kobbekaduwa Mawatha, Colombo 07.

INTERVENIENT-PETITIONER

VS

Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Mahen Susantha Madugalle

No.168/16, Siripura Gardens, Rajamaha
Vihara Mawatha, Kotte

PLAINTIFF-RESPONDENT

Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Chula Swarna Madugalle

No. 185/1, Epitamulla Road, Pita-Kotte.

DEEFENDANT- RESPONDENT

AND

Land Reform Commission

C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

INTERVENIENT-PETITIONER-PETITIONER

VS

Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Mahen Susantha Madugalle

No.168/16, Siripura Gardens, Rajamaha
Vihara Mawatha, Kotte

PLAINTIFF-RESPONDENT-RESPONDENT

AND

Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Chula Swarna Madugalle

No. 185/1, Epitamulla Road, Pita-Kotte.

DEFENDANT-RESPONDENT-RESPONDENT

AND NOW BETWEEN

Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Mahen Susantha Madugalle

No.168/16, Siripura Gardens, Rajamaha
Vihara Mawatha, Kotte

**PLAINTIFF-RESPONDENT-RESPONDENT-
PETITIONER**

VS

1. Land Reform Commission
C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

**INTERVENIENT-PETITIONER-PETITIONER-
RESPONDENT**

2. Karunatileka Jayasundera Wickramasekara
Rajapakse Wahalanayake Nisi Mudiyansele
Chula Swarna Madugalle

No. 185/1, Epitamulla Road, Pita-Kotte.

**DEFENDANT-RESPONDENT-RESPONDENT-
RESPONDENT**

Before : Buwaneka .P. Aluwihare PC., J.
E.A.G.R. Amarasekara J.
Yasantha Kodagoda PC., J.

Counsel : Lakshman Perera, PC with Radeema Gunawardane for the Plaintiff-Respondent-Respondent-Appellant.

Hemasiri Withanachchi with Shantha Karunadhara and Shehan de Vas Gunawardane for the Defendant-Respondent-Respondent-Respondent.

Dr. Sunil Cooray for the Intervenient-Petitioner-Petitioner-Respondent

Argued on : 02/02/2021

Decided on : 09/11/2023

E. A. G. R. Amarasekara, J.

The Plaintiff-Respondent-Respondent-Petitioner (hereinafter referred to as the Plaintiff) instituted action in the District Court of Kurunegala by plaint dated 24.10.2013 against the Defendant-Respondent-Respondent (hereinafter referred to as the Defendant) seeking inter alia for a declaration of title to the paddy lands described in the schedule to the plaint (hereinafter referred to as the subject matter), for a permanent injunction preventing the Defendant, his servants, agents, or anyone acting under his authority from disturbing the Plaintiff's possession and from entering into the subject matter and/or engaging in any agricultural cultivation in the subject matter, for a judgment and decree setting aside the deed of declaration executed by the Defendant, bearing No.2091 dated 18. 06. 2012, attested by F.M. Rasheed Notary Public.

The Plaintiff, among other things, stated in the plaint as follows;

- that the original owner of the said lands was one Mrs. Chandrasekara Ekanayake Basnayake Mudiyanse Ralahamilage Mildred Sudarmha Madugalle (hereinafter Sudarma Madugalle), who was the mother of both the Plaintiff and the Defendant and she had gifted several lands including the subject matter in suit to the Defendant by deed No. 25719 dated 26.01.1972.
- that the said Sudharma Madugalle was subject to the Kandyan Law and she had revoked the gift made by the said deed in respect of the subject matter by deed No. 60073 dated 16.05.1991 and gifted the same to the Plaintiff by deed No. 60074 on the same day reserving her life interest.
- that with the demise of their mother Sudarmha Madugalle on 15. 07. 1996, the Plaintiff became the absolute owner of the subject matter.
- that the Defendant, in or around the year 2011, applied to get his name registered as the owner of the subject matter in the Agricultural Land Register.
- that the Defendant had prepared a deed of declaration No.2091 dated 18.06.2012 disputing the ownership of the Plaintiff.

The Defendant in his answer averred inter alia as follows;

- that with the revocation of the gift effected as mentioned above, Sudharma Madugalle exceeded the total extent of agricultural lands which could be owned by an individual and the subject matter in suit by operation of law got vested in the Land Reform Commission in terms of the provisions of the Land Reform Law No.1 of 1972.
- that Sudharma Madugalle did not have any rights to make the said gift by deed no. 60074 in favour of the Plaintiff.

Thus, the Defendant sought among other things a dismissal of the plaint and an order from court in terms of Section 18 of the Civil Procedure Code to add the Land Reform Commission, Interventient Petitioner Respondent Respondent (hereinafter L.R.C.) as a necessary party to the action.

The Plaintiff filed a statement of objections against the application which sought to add the L.R.C. as a party stating that the L.R.C is not necessary to adjudicate all the matters relating to the action completely and effectually. In this regard, the Plaintiff has stated in his objection marked X3 that the Defendant, in his answer, had already admitted paragraph 1,2,3,4, 5 and 6 of the Plaint. The said admissions include that their mother who was subject to Kandyan Law, was the original owner and she gifted the subject matter reserving her right to revoke it and the said gift was accepted as a valid gift by the L.R.C by its decision dated 04.01.1974 and, further, their mother revoked the said gift as aforesaid and later gifted to the Plaintiff and after that the Defendant has no right whatsoever to the subject matter.

The Plaintiff in the said statement of objections(X3) further averred that the Chairman of the L.R.C had written to the Regional Agrarian Development Officer stating that the Defendant was the owner of the subject matter in suit and, as per the letter dated 22.10.2012 written by the Commissioner General of Agrarian Services, it was informed that, based on that letter issued by the Chairman of L.R.C, an inquiry would be held. The Commissioner General of Agrarian services has informed its decision by a letter dated 01.11.2012 that the title to the subject matter is with the Defendant. The Plaintiff in the said statement of objections had further taken up the position that the Defendant had acted in collusion with the officers of the L.R.C. Moreover, it is stated that the judgment in the present action only binds the Defendant and the Plaintiff and if L.R.C has any right, it is not bound by the Judgment and it can use its powers in terms of the Land Reform Law. The Plaintiff further averred in his said objections filed against the application for addition of parties, that addition of an unnecessary party would prolong the litigation and hinder the process of administration of justice.

It appears that, later on, even the L.R.C also has preferred an application moving it to be added as a party in terms of section 18 of the Civil Procedure Code, which application was lastly amended by petition dated 16.12.2014. According to the amended petition of the L.R.C, neither the Plaintiff nor the Defendant has any right to the subject matter in suit but it is the L.R.C which has title to it. In this regard, it had stated that as per the section 18 of the Land Reform Law, statutory declaration was made on 16.11.1972 and on 03.05.1974, the extent of land belonging to said Sudharma Madugalle was conveyed to her. It was also revealed that the statutory determination relating that extent which was 50 acres and 20 perches was gazetted on 29.03 1976 in the Gazette no.206/3. In that regard, among other things, L.R.C had stated that prior to the statutory declaration, the said Sudharma Madugalle executed deed of gifts No. 25719,25720, and 25718 but the gift given by deed No. 25720 to the Plaintiff is not valid since the Plaintiff was a minor at that time and it was not accepted by anyone on behalf of the Plaintiff. It was further stated that even

the other two gifts made by deeds No. 25719 and 25718 to the Defendant and a mentally deceased daughter also had not been accepted and therefore they are not valid. Furthermore, when the deed of gift given to the Defendant was cancelled by Sudharma Madugalle, the extent of paddy land exceeded the limit that one can keep for oneself and therefore, the L.R.C. became the owner again and that Sudharma Madugalle became the statutory lessee. It is also stated that, in that backdrop, the gift made to the Plaintiff after the revocation of the gift given to the Defendant is not valid. It is also stated in the said amended petition that another case, namely No. 7873, has been filed by the Plaintiff against the L.R.C on the basis that said Sudharma Madugalle prescribed to another land around 8 1/2 acres. Thus, it appears that the position of the L.R.C. now is that the Plaintiff and the Defendant are not entitled to the subject matter in suit but the L.R.C is entitled to it, since Sudharma Madugalle, even though a statutory determination was made, had paddy lands exceeding the limit at the time when the impugned gift was made.

Before attending to the matter in issue, whether L.R.C is a necessary party to be added in the action or whether, as far as the action before the District Court is concerned, it can be completely and effectually solved through leading evidence, it must be noted that the L.R.C has placed contradictory positions before different forums. As said before, it has written to the Regional Officer of the Agrarian Services saying that the deed No.25719, by which the gift was made to the Defendant, is valid. It appears that, based on such communications, the Commissioner General of Agrarian Development has decided to remove the name of the Plaintiff from the Registers and insert the name of the Defendant. It is clear from the plaint that the Plaintiff's cause of action is based on the Defendant's conduct challenging the title claimed by the Plaintiff by his attempt to get his name inserted in the agricultural land register as the owner and by execution of his deed of declaration to indicate that he is the owner. When the Plaintiff filed the action to establish his title against the animosities caused by the Defendant to his title, now the L.R.C attempts to intervene and the Defendant attempts to get the L.R.C added as a Defendant to defeat the claim of the Plaintiff. However, if the L.R.C wants to get a declaration of title against the Plaintiff as well as the Defendant after the intervention, it must be stated here that a claim in reconvention cannot be prayed in this case against the Defendant as a claim in reconvention cannot be made against another Defendant in the same case. It must be noted that in terms of sections 73 and 75(e) of the Civil Procedure Code, a defendant can include a claim in reconvention in reply to the claim in the Plaint when the defendant does not admit the said claim made by the Plaintiff. In **Muthucumarana Vs Wimalaratne and another (1999) 1 Sri L R 139** Wigneswaran, J. held as follows;

“Opposing parties who are at variance with each other are allowed to set off their individual claims against each other in the same action, there is no express provision in the Civil Procedure Code holding out that such a right of set off extends to defendants inter se”

On the other hand, it must be noted that as mentioned above, in a different forum, for some reason, L.R.C through letters has supported the Defendant to get his name registered as the owner in the Agricultural land registers. If the intention of the L.R.C is to establish its title against the Defendant also through a decree, it cannot be achieved here by intervention and thus, allowing the intervention will not effectually and completely solve all matters relating to L.R.C's title with regard to the subject matter in suit where L.R.C had communicated letters admitting the title of the Defendant and a decision made in relation to the Defendant's deed by the L.R.C. Thus, against the Defendant, L.R.C may have to resort to another action, since for some reason, it has already admitted Defendant's title before a different forum. Anyhow, as per the submissions and the questions of laws raised, it is clear that now the L.R.C has instituted an

action in the Colombo District Court against the Plaintiff and the Defendant in this action. It is pertinent to note that addition of parties in an action is to avoid multiplicity of action. Furthermore, maintaining different cases in different forums on the same issue may give rise to different decision on the same issue and complicating the matters and causing hardships to the parties.

However, if the application for intervention by the L.R.C and the application by the Defendant to add L.R.C were intended only to defeat the claim made by the Plaintiff, it is not necessary to add L.R.C as a party since the Defendant also has now taken up the position that the subject matter in suit belongs to the L.R.C, and that, if correct, can be proved by adducing evidence in that regard. The action filed by the Plaintiff is a kind of *quia temet rei vindicatio* action based on his alleged ownership while anticipating intrusions by the Defendant. In such a situation, proof of the fact that the title is with a third party (*jus tertii*) is sufficient to defeat the claim made by the Plaintiff, and the Defendant even need not prove his title. As far as the Plaintiff's case is concerned, his case is based on an alleged cause of action that was arisen due to the conduct of the Defendant challenging his title by attempting to get his name included as the owner in the Agricultural Register and the Defendant's act of executing a deed of declaration. The Defendant's position in this regard in his answer was that the title is with L.R.C. Since *Jus tertii* is a valid defence in a *rei vindicatio* action, to completely and effectively adjudicate the case presented by the Plaintiff and the Defendant, I do not think that there is any necessity to add L.R.C as a party as it can be decided by leading evidence in relation to the ownership of the L.R.C. If it is a separate cause of action accrued to L.R.C against the Defendant and the Plaintiff, L.R.C has to institute a separate action based on that cause of action as L.R.C cannot make a claim in reconvention against the Defendant in this action.

If the confirmation of the Defendant's entitlement to the Agrarian Services Development Department by the L.R.C is a mistake or an error, it is questionable as to why the L.R.C is silent about any steps taken with regard to the correction of the outcome of that mistake or the error. Perhaps, L.R.C has not taken any meaningful step in that regard and in the event any step has been taken to correct the decision made for the benefit of the Defendant due to an act of the L.R.C, the Plaintiff may not even proceed with the present action, because mere deed of declaration made by the Defendant himself cannot have any effect on the rights of the Plaintiff. If the L.R.C conveyed its present position to the inquiry in relation to the correction of Agricultural Land Register and L.R.C was inserted as the owner, the Plaintiff could have advised himself whether to institute an action against L.R.C in that regard. The Defendant with the assistance of communication from the L.R.C has taken steps to get his name registered as the owner in the agricultural land register and as such, the Defendant has created a situation that may pose a threat to the alleged ownership rights of the Plaintiff. *Rei Vindicatio* action is basically to evict the Defendant who is in possession against the rights of ownership. As per the Plaintiff, it appears, the Defendant is not in possession. As said before, it is filed as a *quia timet* action anticipating threats to the alleged rights of ownership while praying for a permanent injunction against the Defendant. In my view it is not necessary to add all who assisted the Defendant in his attempt get his name inserted in the Agricultural Land Registry. Impending threat is from the Defendant. Therefore, the action is against the Defendant.

It is true in some of the decided judgments,¹ *rei vindicatio* action has been described as an action in rem. This may be based on the Johannes Voet's explanations in his *Commentary on the Pandects* (6.1.1) and (6.1.2) which read as follows;

¹ See Latheef Vs Mansoor (2010) 2 Sri L R 333 at 350

“To vindicate is typically to claim for oneself a right in re. All actions in rem are called vindications, as opposed to personal actions or condicions”.

“From the right of ownership springs the vindication of a thing, that is to say, an action in rem by which we sue for a thing which is ours but in the possession of another.”

It must be observed that a *rei vindicatio* action is based on ownership which is held against all others as proof of ownership of a third party makes the action unsuccessful. However, like in a partition action, no wider publicity through public notices is given in *rei vindicatio* actions in Sri Lanka. Thus, in my view one cannot say that the whole world is bound by a decision given in a *rei vindicatio* action. Hence, the L.R.C will not be prejudiced by not making it a party in this action as it is not bound by the decision between the Plaintiff and the Defendant when it is not a party.

Whether the gifts made by Sudharma Madugalle were accepted by the relevant donee or on behalf of them can be ascertained through evidence. It must be noted that acceptance of a gift can be done in many ways and not limited to the placing of the signature on the deed itself. Whether Sudharma Madugalle had lands or paddy lands exceeding the ceiling also can be ascertained through evidence. On the other hand, allowing intervention may extend the case beyond the cause of action presented by the Plaintiff and the case presented by the Defendant in reply when no relief has been prayed against the L.R.C by the Plaintiff. Even if intervention is allowed it is questionable whether the L R C can make a claim in reconvention since there is no direct relief prayed against the L R C in the Plaint since no cause of action against the L R C is revealed in the Plaint. It must be observed that what is allowed in claim in reconvention is what can be set off or mutually adjusted with the claim made by the Plaintiff- vide **Silva V Perera 5 N L R 265, Muthucumarana Vs Wimalaratne and Another (1999) 1 Sri L R 139.**

DC Order

The learned Additional District Court Judge of Kurunegala after considering the applications to add and intervene, by order dated 18.09.2015 refused to add L.R.C as a party intervenient. The learned Additional District Judge’s conclusion is that since *Jus Tertii* is available as a defense and it is for the defendant to prove it and place evidence in that regard, it is not necessary to add L.R.C to proceed with the action.

High Court (Civil Appellate) Judgment

Being aggrieved by the order of the learned Additional District Judge dated 18.09.2015, the L.R.C. preferred an Appeal in the High Court of the Northwestern Province Holden in Kurunegala (Exercising Civil Appellate Jurisdiction) to set aside the order of the Learned Additional District Judge and upon the parties making their respective written submissions and upon considering the said submissions of the parties the Learned Judges of the said High Court delivered the Judgment dated 27.07.2017. By that Judgment learned High Court judges set aside the order of the Learned Additional District Judge and held that the L.R.C be made a party to the District Court action in terms of Section 18 (1) of the Civil Procedure Code. The learned High Court Judges while referring to narrow and wider constructions applied by courts in various decisions in relation to addition of parties and indicating its preference to apply wider or liberal approach, has stated following among other things in its judgment;

- The Plaintiff has stated that the L.R.C and the Defendant took contradictory positions before the officers of Agrarian Services Department and they are acting in collusion.

- The L.R.C has instituted a declaration of title case no. DLA 16/2016 in the District Court of Colombo after withdrawing the previous case no. DLA 55/2015 filed by the L.R.C.
- The Plaintiff, while relying on **Appuhamy V Lokuhamy (1892) 2 Cey. L.R. 57, Sinnalebbe et. Al, V Mustapha et.al, 51 N L R 541, and The Chartered Bank V L. N. De Silva and others 67 N L R 135**, has contended that since the L.R.C claims title against the Plaintiff and Defendant now, L.R.C cannot be made a party.
- The Defendant's position is that the L.R.C is a necessary party under section 18 of the Civil Procedure Code and wider construction should be applied and the narrow construction should be rejected.

After referring to the case laws on narrow construction and wider construction and what has been stated in those cases, at the end, the learned High Court Judges have stated that the cases referred to by the Plaintiff are based on the narrow constructions which had been denied by Superior Courts. While stating that the learned District Judge ought to have considered the wider construction, the High Court set aside the order made by the learned District Judge and ordered to add L.R.C as a party.

It appears while commenting on wider construction relating to addition of parties that the learned High Court Judges have highlighted following matters;

- If the Court see that, in the transaction brought before it, rights of one of the parties will or may be affected and other actions may be brought in respect of that transaction, the Court has power to bring all the parties before it and determine the rights of all in one proceeding.
- Where there is one subject matter out of which several disputes arise, all parties may be brought before the court and all those disputes may be determined at the same time without the delay and expenses of several trials.
- A necessary party means a party whose presence before the court may be necessary for effectual and complete adjudication of all the questions involved in the action and the Court has the jurisdiction to add such a party and not otherwise. Such added party is bound by the result of the action and the question to be settled must be a one that cannot be effectually and completely settled unless he is a party. What the Court ought to see is whether there is anything which cannot be determined owing to the absence of the party proposed to be added or he will be prejudiced by not being joined as a party.
- Addition of parties is there to avoid multiplicity of actions and to diminish the cost of litigation.
- In the instant case, the Defendant has taken the defence of *Jus Tertii*. Though the Plaintiff has stated that L.R.C has filed an action in District Court of Colombo for a declaration of title, that fact has not been agitated before the trial judge. Since the matter before the Colombo District Court had not been decided by that time 'Res Judicata' would not be applied.
- As per the Plaintiff's stance the L.R.C has taken two contradictory stances, if added this can be clarified and combated by the Plaintiff, hence his rights would not be prejudiced.
- If the L.R.C is not added the final outcome would affect the rights of the L.R.C.

Above shows that the learned High Court Judges identified certain criteria for addition of parties which are discussed under wider construction, namely;

- Avoidance of multiplicity of actions,
- The need to save money and time,
- The need to adjudicate matters in issue effectually and completely,

- The need to add only the necessary parties for such effective and complete adjudication etc.

The above criteria are reflected in the decisions in **Byrne Vs Brown and Diplock (1889) 22 QBD 657** and **Montgomery Vs Foy, Morgan and Co. (1895) 2 QB 321** which have been referred to in the learned High Court Judges' Judgment as well as in the written submissions of the Defendant. The learned High Court Judges in their judgment as well as the Defendant in his written submissions has mentioned **Weeraperuma Vs De Silva 61 N L R 481, The Chartered Bank Vs De Silva 67 N L R 135, Arumugam Coomaraswamy Vs Andiris Appuhamy (1985) 2 Sri L R 219, Hilda Perera V Somawathi (2000) 3 Sri L R 219** etc. to indicate that lately our courts also have preferred wider construction. Even the relevant section, namely section 18 of the Civil Procedure Code empowers the court to add *any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved* in the action. However, it must be said that, as per the plaint, this is an action to establish the alleged ownership of the Plaintiff and to vindicate such rights but not an action to get the different stances taken by the L.R.C clarified.

In my view, the question is not whether the narrow construction or wider construction should have been applied but whether the learned High Court Judges correctly applied the said criteria in evaluating the order of the original court. As said before in this judgment, the cause of action contained in the plaint based on the Defendant's alleged acts and the defence contained in the answer in reply to averments in the plaint can be completely and effectually solved without adding the L.R.C but by allowing to lead evidence to prove that the title is with a third party, namely L.R.C. because the defence taken by the answer is *Jus Tertii*. *Jus Tertii* is one of the defence that can be taken in a *rei vindicatio* action which has to be proved by the Defendant and it can be proved by placing necessary evidence. A Court need not add the third party who is said to have title merely because *jus tertii* is pleaded. By adding L.R.C, what happens is that the Court opens the gate to adjudicate a cause of action that the L.R.C may have against the Plaintiff and the Defendant, to meet which the Plaintiff may have to amend its pleadings. Such a situation may change the complexion of the case from a case against the Defendant based on his alleged acts to a case based on the added defendant's cause of action or a cause of action against the added defendant.

On the other hand, as explained above, owing to the fact that the L.R.C cannot make a claim in reconvention against the Defendant, addition of L.R.C may not solve all the questions that may be brought in with the intervention of L.R.C. To solve issues against the Defendant, the L.R.C may need another action to be filed against the Defendant and it also may have to take steps to correct the decision made by the officers of Agrarian Development Department.

It is pertinent to note, if no other action is filed by the L.R.C, but intervene and file an answer only to defeat the claim of the Plaintiff, and as a result Plaintiff loses his case, the Defendant will be able to enjoy the fruits of the decision by the Officers of the Agrarian Development Department even if the said decision is based on a misrepresentation made by the L.R.C. As per the stances taken by the Defendant and the L.R.C in the matter at hand the representation made by the L.R.C at the inquiry before the said department cannot be a correct stance. From the facts, it appears that the L.R.C intervention in the matter at hand was unwarranted.

On the other hand, as said before, in the matter at hand, the L.R.C cannot make a claim in reconvention against the Defendant. A claim in reconvention has the same effect as a plaint- vide section 75 (e) of the

Civil Procedure Code. In a situation where the L.R.C cannot make a claim in reconvention against the Defendant, if it intervenes and make a claim in reconvention only against the Plaintiff in the guise of settling all the disputes involved, the L.R.C may be placed in a precarious position with regard its claims against the Defendant due to section 34(2) of the Civil Procedure Code as no other action is available for what is omitted or relinquished.

Anyhow, by the time the High Court was hearing the appeal, the L.R.C had filed an action in the Colombo District Court. However, all these factors indicate that the intervention or addition of L.R.C would not serve to avoid multiplicity of action. However, now, due to the case filed in the District Court Colombo, the addition of the L.R.C in the case at hand may pose the danger of having contrastive decisions from different forums which is one factor that may be considered in deciding whether the addition would help effectual and complete adjudication. It is pertinent to mention the principal *nemo debet bis vexari pro una et eadem causa* which translates as “No one should be tried twice in respect to the same matter”. This principle is behind the doctrine of *Res Judicata* as well as *lis alibi pendence*- See **Mudiyanse et al V Appuhamy (1937) C.L.Rec 254, 256**. In this regard, to indicate that two actions can be maintained, the Counsel for the L.R.C has referred to **Muthuranee V Thuraisingham (1984) 1 Sri L R 381** and **Mudiyanse et al V Appuhamy (1937) C.L. Rec 254,255**. The relevant statement of law cited from **Muthuranee** case refers to the seeking of same relief against same party in two different actions but based on different causes of action. **Mudiyanse et al V Appuhamy** relates to two different situations, namely one action based on section 247 of the Civil procedure Code and the other as a *rei vindicatio* action. It appears actions filed under section 247 had been withdrawn with liberty to file fresh action subject to objections that can be taken against the fresh institution. There is no indication that the action in the District Court of Colombo would be withdrawn. Thus, those two cases can be distinguished. On the other hand, it is worthwhile to observe that in **Mudiyanse et al V Appuhamy at 256 and 257**, in relation to the right to litigate before different tribunals, it is said that such a right is subject to the control of court to prevent its process being abused.

This Court observes that the learned Additional District Judge has made the impugned order in the matter at hand on 18.09.2015. The L.R.C had tendered its original petition dated 10.10.2014 praying for intervention. It appears that L.R.C had filed its first plaint in DLA/55/15 dated 08.06.2015 before the District Court of Colombo prior to the aforesaid decision dated 18.09.2015 made by the learned District Judge Kurunegala. Therefore, it cannot be said that due to the refusal of intervention, the L.R.C filed the application in the District Court of Colombo. One may argue that institution of another action, namely DLA/16/2016, before the District Court of Colombo was not a fact before the Learned Additional District Judge of Kurunegala when he made the impugned order refusing the intervention of L.R.C to support the correctness of that order. However, as per the written submissions filed on behalf of L.R.C before the District Court, case No. DLA/55/15, which appears to have been withdrawn to file DLA/16/2016, was pending before the Colombo District Court against the Plaintiff and the Defendant. Thus, the application for intervention does not appear to be for the avoidance of multiplicity of actions. However, learned Additional District Judge has refused to allow the intervention on a different ground.

While referring to the case of **Appuhamy V Lokuhamy 2 Cey. L.R 57 K.D.P. Wickremesinghe** in his **Civil Procedure in Ceylon states** as follows;

“Before a third person can be added as a party to a pending action, he must show-

- (i) that he has an interest in the litigation and that he would be prejudiced by judgment being entered either for plaintiff or defendant;
- (ii) that his admission would prevent the same question being tried twice over; and
- (iii) that the subject matter of the action is the same as the subject matter claimed by him.

And as a general rule, a party claiming adversely to both plaintiff and defendant is not added as a party.”

It is true that the L.R.C has an interest in the litigation and it is also the subject matter of the matter at hand that it now claims. However, as explained above, as far as it is not a party, the result of this action will not prejudice the L.R.C as the Judgment between the Plaintiff and the Defendant cannot bind it. Furthermore, as clarified above in this judgment, since L.R.C cannot make a claim in reconvention against the Defendant, all matters involved with regard to the stance of the L.R.C cannot be completely and effectually solved in this action filed in the District Court of Kurunegala. Thus, the intervention cannot prevent multiplicity of actions and in fact there is another action filed by the L.R.C in the Colombo District Court. However, the case presented by the plaintiff and the case presented in reply by the answer can be completely and effectually solved by submitting evidence regarding the title of the third party, namely L.R.C. Moreover, an addition may change the complexion of the case which is based on alleged acts of the Defendants to a case based on a cause of action accrued to the L.R.C or Cause of action accrued to the Plaintiff against L.R.C.

The learned High Court Judge appears to have refused to follow **Appuhamy V Lokuhamy** stating that it is a case that gives a narrow construction approach to the addition of parties without giving adequate reasons. What is quoted above indicates that the said decision considers many aspects such as prejudice that may be caused to the third party who is proposed to be added as a party, prevention of multiplicity of action etc. On the other hand, as at present, if it is permitted, addition of L. R. C may allow two separate proceedings to be conducted in two forums giving an opportunity to reach different conclusions at the end which may be averse to the requirement contained in section 18 of the Civil Procedure Code, namely effectual and complete adjudication. In my view, even if one does not consider the fact that there is another litigation, namely DLA/16/2016, before the Colombo District Court as that fact was not before the Learned Additional District Judge of Kurunegala, still the learned Additional District Judge was correct in refusing to add L.R.C as a party as the dispute L.R.C wants to present cannot be completely and effectually solved as L.R.C cannot make a claim in reconvention against the Defendant. However, as a matter of fact, case No. DLA/ 55/2015 was pending before the District Court of Colombo at the time written submissions were tendered to District Court. If the intention for intervention is only to defeat the claim of the Plaintiff, presenting evidence of third-party title (*Jus Tertii*) as identified by the learned Additional District Judge would completely and effectually solve the matter presented before the District Court by the Plaintiff and the Defendant. Finally, the general principal referred to above which states that a party claiming adversely to both plaintiff and defendant shall not be added as a party, in my view, does not emanate from the narrow construction but may relate to the incapability of a Defendant in our law to make a claim in reconvention against another Defendant except in special actions such as partition actions where statements of claims that pray for partition are treated as plaints.

In the Supreme Court

Being aggrieved by the Judgment of the High Court, the Plaintiff has appealed to this Court and leave to appeal was granted on the following questions of law raised in subparagraphs e, f (i), (ii)(a)(b)(c) and (d) of paragraph 13 of the petition dated 06.09.2017. They are answered as follows;

e) has the Learned Judge of the High Court erred in his failure to recognize the fact that the Interventient Petitioner who disputes the rights of both the Plaintiff and Defendant cannot be made a party to this action?

A. Answered in the affirmative

f) (i) has the Court failed to consider that the Land Reform Commission is claiming adversely to both the Plaintiff and the Defendant and therefore, ought not, as a general rule to be added as a necessary party?

A. Answered in the affirmative

(ii) (a) has the Court failed to consider that the land Reform Commission filed action in DC Colombo case No. DLA 16/2016 for the same land forming the corpus in DC Kurunegala case No. 8009/L?

A. Case no. DLA 16/2016 has been filed after the decision of the Learned Additional District Judge. Thus, it could not have been considered in evaluating the correctness of the decision of the learned Additional District Judge. Therefore, this question of law does not arise. However, learned High Court Judge failed to observe that there had been a previous case pending, namely DLA/55/15, filed in the Colombo District Court prior to the decision of the Learned Additional District Judge.

(b) in view of the land Reform Commission filing action in DC Colombo Case No. DLA 16/2016, is the land reform Commission not a necessary party as it is not bound by the determination of the pending action?

A. Since DLA 16/2016 was filed after the decision of the learned Additional District Judge, the Learned High Court Judges could not have considered it in evaluating the correctness of the impugned order before it. However, the learned High Court Judges failed to recognize that L.R.C is not a necessary party and it is not bound by the decision of the case filed by the Plaintiff, if it does not become a party.

(c) in view of DC Colombo case No. DLA 16/2016, is the Land Reform Commission not a necessary party since the determination of the pending action will not affect the Land Reform Commission's Legal Rights?

A. As indicated in answers above, case No. DLA 16/2016 could not have been considered in evaluating the correctness of the decision of the learned Additional District judge. However, as for the reasons given above in the judgment, Learned High Court Judges failed to recognize that L.R.C is not a necessary party and it is not bound by the judgment of the Action filed in the District Court as far as it is not a party.

(d) in view of DC Colombo case No. 16/2016, will the Land Reform Commission not be a necessary party since the determination of this action will not affect the pecuniary interest of the Land Reform Commission?

- A. As stated above learned High Court Judges could not have considered D.C. Colombo case No. 16/2016 in evaluating the correctness of the impugned order before them as it was filed after the impugned decision of the learned Additional District Judge. However, as explained above in the judgment, the decision between the Plaintiff and the Defendant cannot prejudiced the rights of the L.R.C as far as it is not made a party.

For the reasons given above in the Judgment, I allow the appeal with costs and set aside the judgment of the Civil Appellate High Court of Kurunegala dated 27.07.2017 while affirming the Decision of the Additional District Judge of Kurunegala dated 18.09.2015. The Parties in the connected matter SC.HC.CA.LA.No. 409/2017 have agreed to abide by this decision in SC. Appeal No. 77/2018.

Appeal allowed.

Judge of the Supreme Court

Buwaneka Aluwihare PC,J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda,PC,J

I agree.

Judge of the Supreme Court