

**SC. Appeal No. 116/2017**

**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 the Provisions of Section 5(c) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read together with the Provisions of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Judgment of their Lordship of the Civil Appellate High Court Central Province holden at Kandy delivered on 15.12.2015.

**SC. Appeal No. 116/2017**

SC.HC.CALA. Application  
No. 43/2016

Appeal No. CP/HCCA/Kandy/ 78/13(FA)

DC. Matale Case No. L/ 6019

Enasalmada Aluth Gedara Ariyasinghe,  
Malgamma, Gangeyaya, Maraka.

**Defendant-Respondent-Petitioner**

-Vs-

Enasalmada Aluth Gedara Wijesinghe,  
No.17, Malgamma, Maraka.

**Plaintiff-Appellant-Respondent**

**Before:**                    **Sisira J.de Abrew, J**  
**Priyantha Jayawardena, PC, J &**  
**Nalin Perera, J**

Counsel:                Nadvi Bahudeen for the Defendant-Respondent-Petitioner.  
Prinath Fernando for the Plaintiff-Appellant-Respondent.

Argued &  
Decided on:            05.02.2018

**Sisira J. de Abrew, J**

Heard both counsel in support of their respective cases. The Plaintiff in this case filed a case in the District Court asking for a declaration inter alia that he be declared as the lawful successor of the land. Learned District Judge after trial dismissed the action of the Plaintiff. Being aggrieved by the said Judgment of the learned District Judge, the Plaintiff appealed to the Civil Appellate High Court. The Civil Appellate High Court by its Judgment dated 15.12.2015 set aside the judgment of the learned District Judge and decided the case in favour of the Plaintiff. Being aggrieved by the said Judgment, the Defendant-Respondent-Petitioner-Appellant ( hereinafter referred to as the Defendant-Appellant) filed an appeal in this Court. This Court by its order dated 13.06.2017 granted leave to appeal on the questions of law set out in paragraph 25 (i), (ii), (iii), (vi) and (vii) of the Petition of Appeal dated 25.01.2016 which are set out below.

(1) Have their Lordships of the Civil Appellate High Court based their judgment on section 72 of the Land Development Ordinance ignoring the fact that the plaint was presented and the ownership was claimed in terms of the rights provided in Section 49 of the Land Development Ordinance ?

(2) Did their Lordships of the Civil Appellate High Court act beyond their jurisdiction in delivering their judgment based on Section 72 of the Land Development Ordinance ?

(3) Has the Respondent failed to establish by evidence that due procedure had been followed in appointing him as the successor following Section 56,58,60 and including Section 87 of the Land Development Ordinance ?

(4) Even if a due nomination has been made in terms of section 49, if sections 56,58 and 60 of the Land Development Ordinance are not followed, is the said nomination invalid in Law in terms of section 75 of the Land Development Ordinance ?

(5) Is the nomination of the Respondent as successor by the Land Officer invalid as the provisions of the Land Development has not been followed ?

At the trial the Plaintiff-Appellant-Respondent-Respondent ( hereinafter referred to as the Plaintiff-Respondent) raised several issues and the 1<sup>st</sup> issue is to the following effect.

“ Whether the Plaintiff-Respondent has been nominated as the lawful successor of the land in dispute as described in paragraph 04 of the plaint ”.

According to paragraph 04 of the plaint, the Plaintiff has been nominated as the lawful successor to the land and it had been entered in the ledger. Therefore the most important question that must be decided in this case is whether the Plaintiff's name has been entered as the lawful successor to the land in the ledger maintained in the Land Commissioner's Office. I will now examine whether the Plaintiff's name has been entered in the said ledger as the lawful successor to the land. The Land Officer in his evidence at pages 82 at 87 of the brief has stated that the Plaintiff-Respondent's name has been entered in the ledger as the lawful successor to the land. In the document marked P5 (page 182) the Land Officer has stated that the Plaintiff's name had been entered in the ledger as the lawful successor to the land. In the document marked P12 which is at page 194 and 195 of the brief, the Assistant Land Commissioner has also stated that the Plaintiff's name has been entered in the ledger as the lawful successor to the land. From the above evidence it is very clear that the name of the Plaintiff-Respondent has been entered in the ledger as the lawful successor to the land. Therefore the issue No. 01 has to be answered in the affirmative. But the learned District Judge has answered the said issue in the negative. We therefore hold that the said answer given by the learned District Judge to issue No. 01 is wrong. The Assistant Land Commissioner in the said letter marked P12 (letter dated 12.03.2007) has also observed that in the absence of any nomination, the Plaintiff-Respondent becomes entitled to succeed to the land as he is the eldest son of the original permit holder. According to section 72 of the Land Development Ordinance also in the absence of any nomination, the elder son becomes the successor to the land. The Assistant Land Commissioner in the said letter after referring to the above matters has stated that the Plaintiff's name had been entered in the ledger. Considering all these matters we hold that the learned District Judge's answer

given to issue No. 01 is wrong. The Learned Judges of the Civil Appellate High Court have considered the above material and have decided to set aside the judgment of the learned District Judge . When we consider all the above matters, we are of the opinion that the conclusion reached by the learned Judges of the Civil Appellate High Court is correct. We also note from the evidence that the father of the Plaintiff-Respondent has nominated his wife ( the mother of the permit holder) as the person who is entitled to succeed as the life interest holder )

Considering all these matters we are of the opinion that the conclusion reached by the learned Judges of the Civil Appellate High Court is correct. In view of the conclusion reached above, we answer the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> questions of law above in the negative. The 3<sup>rd</sup> and 4<sup>th</sup> questions of law do not arise for consideration. For the aforementioned reasons, we affirm the Judgment of the Civil Appellate High Court and dismiss this appeal.

Considering the facts of this case, I do not make an order for costs.

*Appeal dismissed.*

**JUDGE OF THE SUPREME COURT**

**Priyantha Jayawardena, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**Nalin Perera, J**

I agree.

**JUDGE OF THE SUPREME COURT**

kpm/-