

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

In the matter of an application for orders
in the nature of Writs of Certiorari,
Prohibition, and Mandamus under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Dandeni Mudiyanseelage Sisira Perera.
No. A/B/1-13,
Ranpokunugama,
Nittambuwa.

PETITIONER

C.A. Case No. WRT-0178/20 Vs.

1. Manjari C. Chandradasa.
Divisional Secretary – Mahawilachchiya,
Divisional Secretariat Office– Mahawilachchiya,
Oyamaduwa, Pemaduwa.
2. N. H. R. Nishantha.
Divisional Secretariat,
Thalawa Divisional Secretariat Office,
Thalawa, Anuradhapura.
- 2A. Anuradha Dissanayake.
Divisional Secretariat,
Thalawa Divisional Secretariat Office,
Thalawa, Anuradhapura.
3. Sandya N. G. Abeysekara.
Commissioner of Lands (Inter Province),
Land Commissioner's (Inter-Provincial)
Office, District Secretariat,
Maithreepala Senanayake Mawatha,
Anuradhapura.

3A. E. M. M. Ekanayake.

Commissioner of Lands (Inter Province),
Land Commissioner's (Inter-Provincial)
Office, District Secretariat,
Maithreepala Senanayake Mawatha,
Anuradhapura.

4. R. M. C. M. Herath.

Commissioner General of Lands,
Land Commissioner General's Department,
'Mihikatha Madura',
No. 1200/6, Rajamalwatta Road,
Battaramulla.

4A. G. D. Keerthi Gamage.

Commissioner General of Lands,
Land Commissioner General's Department,
'Mihikatha Madura',
No. 1200/6, Rajamalwatta Road,
Battaramulla.

5. H. E. M. Tikiri Kumarihami.

No. 64, Helabodugama,
Galnewa.

RESPONDENTS

BEFORE : **M. SAMPATH K. B. WIJERATNE, J**
 WICKUM A. KALUARACHCHI, J

COUNSEL : Jagath Wickramanayake PC, with Keishara Perera,
 for the Petitioner.
 Suranga Wimalasena DSG, for the 1st, 2A, 3A, and
 4A Respondents.

ARGUED ON : 20.07.2023 and 09.11.2023

DECIDED ON : 16.01.2024

WICKUM A. KALUARACHCHI, J.

In this Writ application, the following reliefs have been prayed for by the petitioner.

- i. Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing the decision made by the 2nd respondent to reject the claim made by the petitioner in respect of the ownership to the subject properties which is in direct violation of the provisions of the Land Development Ordinance;
- ii. Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing the decision made by the 2nd respondent awarding the life interest of the subject properties unto the 5th respondent;
- iii. Grant and issue a mandate in the nature of a **Writ of Prohibition** prohibiting the 1st to 4th respondents from granting the life interest of the subject properties unto the 5th respondent;
- iv. Grant and issue a mandate in the nature of a **Writ of Mandamus** directing one or more of the 1st to 4th respondents to act strictly and promptly in terms of Rule 1 of the Third Schedule of Section 72 of the Land Development Ordinance to register the name of the petitioner as the lawful owner of the subject properties;

In 1958, the petitioner's father, Dandeni Mudiyanseelage Peter Perera, had been issued a permit under the Land Development Ordinance for a highland and a paddy land. In 1982 March 16, a grant was issued in respect of the said highland and the said paddy land to the petitioner's

father, Peter Perera. In the said grants, no successor had been nominated.

On 17th December 1990, Peter Perera died. As the petitioner's mother, H.M. Bisomanika, was not in a position to maintain and develop the subject properties, the petitioner stated that his younger brother, Dandeni Mudiyanseelage Karunaratne, cultivated the said paddy land and resided in the premises situated on the highland. However, the said D.M. Karunaratne too passed away on 19th May 2008. The petitioner's mother permitted his widow, H.A. Leelawathi, and her children to reside in the premises situated on the highland and to cultivate the said paddy land. The petitioner's mother, H.M. Bisomanika, also passed away on 01st August 2011. The petitioner further stated that, said Leelawathi has abandoned the subject properties since 2015.

An inquiry was held by the 2nd respondent in respect of the title to the aforesaid subject properties and decided that Dharmadasa was the eldest son of Peter Perera. Accordingly, it was decided further that the title to the subject properties should be devolved on Dharmadasa. As the said Dharmadasa passed away, the life interest of the subject properties was granted to his wife, the 5th respondent by the letter marked P-9.

The petitioner's complaint was that the said Dharmadasa was not a legitimate child of the petitioner's father, Peter Perera and thus, the 5th respondent is not entitled for the life interest of the subject properties. Therefore, the petitioner claims, as the eldest surviving son of the said Peter Perera, that he is the lawful owner of the subject properties in terms of Rule 01 of the Third Schedule of Section 72 of the Land Development Ordinance. The learned President's Counsel for the petitioner contended that irrationally and unreasonably, the life interest of the subject properties was granted to the 5th respondent on the decision of the 2nd respondent.

The learned Deputy Solicitor General appearing for the 1st to 4th respondents contended that the marriage certificate of Dharmadasa (marked R-6) and birth certificates of the sons of Dharmadasa (marked R-7 and R-7A) demonstrate that Peter Perera is the father of Dharmadasa. Anyhow, the learned Deputy Solicitor General requested the Court to go through the relevant documents of the case and determine the matter.

The learned President's Counsel for the petitioner does not dispute the fact that Bisomanika was the mother of Dharmadasa. His contention was that Peter Perera was not his father and therefore, the ownership of the subject properties does not devolve on Dharmadasa.

P-5 is the birth certificate of the petitioner. Initially, only the mother's name, Bisomanika, was mentioned in his birth certificate, and the father's name was not mentioned. P-7 is the birth certificate of said Dharmadasa. In the said birth certificate also, the mother's name appears as Bisomanika, but the father's name is not mentioned.

After obtaining the order dated 28.12.1971 by filing the case bearing No. B 1273 in the District Court of Anuradhapura, the petitioner's birth certificate was amended by inserting Peter Perera's name as the father of the petitioner. In the birth certificate of Dharmadasa, the name of his father has never been inserted.

Submitting the case of ***Ubeyratne v. Karunawathi and others*** – (1999) 3 Sri L.R. 16, the learned President's Counsel contended that the names of the parents mentioned in the birth certificate of the child are conclusive proof regarding the legitimacy of the child. It is stated in the aforesaid judgment that *“as the 2nd, 3rd, and 4th plaintiff-respondents were born during the continuance of a valid marriage between the parents mentioned in their respective birth certificates, that fact is to be deemed as conclusive proof that they are the legitimate children of their putative father.”* I agree with the contention of the learned President's

Counsel that it is evident from the amendment to the birth certificate of the petitioner that Peter Perera was the father of the petitioner.

The learned President's Counsel for the petitioner contended further that for the purpose of amending the petitioner's birth certificate by inserting the father's name, the father himself had to make the application according to the proviso to Section 28 of the Births and Deaths Registration Act No. 17 of 1951 as amended by the Act No. 22 of 1955. I regret that I am unable to agree with that contention because the proviso to Section 28(1) of the Act states that an application for any alteration or insertion of the name of the person whose birth was registered could only be made by the person desiring his name to be so altered or inserted. The proviso does not state that the father himself must make the application to insert his name as the father in the birth certificate of his child. For clarity, relevant portions from Section 28(1) of the Births and Deaths Registration Act prevailed at that time are reproduced below. (Subsequently, Section 28 was amended)

28(1) A person whose birth has been registered (whether under this Act or under any past enactment), or his parent or guardian, or a person aggrieved by any particulars in the entry relating to that birth may make a written application to the District Court of the District in which the birth occurred for an order directing -

- (a) the alteration or insertion of the name of the person whose birth was registered, if, but only if, such person's age at the date of the application is not less than twenty-one years; or
- (b) the alteration of all or any of the particulars in the register relating to the name, race, rank, or profession of the father of such person or for the omission of such particulars or for the insertion of fresh particulars, in any case where the original particulars had been falsely or improperly entered;
- (c) the insertion of the name of the father of such person, in any case where such name was omitted at the time of the original entry; or

(d) ...

(e) ...

(f) ...

Provided, however, that an application for any alteration or insertion referred to in **paragraph (a) of this subsection** may be made to the District Court only by the person desiring his name to be so altered or inserted. (Emphasis added)

However, after Bisomanika and Peter Perera got married, the petitioner went before the District Court of Anuradhapura, obtained an order and inserted Peter Perera's name as his father in his birth certificate. Hence, undoubtedly, the petitioner is a legitimate son of Peter Perera.

However, Dharmadasa has not taken steps to insert Peter Perera's name as the father of Dharmadasa in his birth certificate. The petitioner made this application on the basis that Dharmadasa's mother is Bisomanika, but his father is not Peter Perera and thus Dharmadasa is not entitled for the subject properties.

In the birth certificates of the petitioner as well as the said Dharmadasa, the father's name was not mentioned initially. Only the name of the mother Bisomanika was mentioned in both birth certificates. When Peter Perera's name was inserted in the birth certificate of the petitioner, it is mentioned that the parents got married later. Peter Perera's name was inserted in the birth certificate of the petitioner in 1971. It conforms that Peter Perera and Bisomanika were married by 1971. Peter Perera died in 1990. Within this period, if Peter Perera was his father, Dharmadasa could have taken steps to insert Peter Perera's name as his father in his birth certificate as well. But Dharmadasa has never taken steps to insert Peter Perera's name as his father in his birth certificate. The contention of the learned Counsel for the petitioner was that it is evident from not inserting the name of Peter Perera as the

father in the birth certificate of Dharmadasa that Peter Perera was not the father of Dharmadasa.

Bisomanika and Peter Perera were not married at the time that the petitioner was born. After they got married, the petitioner took steps to insert Peter Perera's name as his father in his birth certificate. Dharmadasa, was older than the petitioner. If Dharmadasa was also Peter Perera's son, he could have taken steps to insert Peter Perera's name in his birth certificate after the marriage of Peter Perera and Bisomanika. But Dharmadasa has never taken such steps.

As it was held in the aforesaid judgment of *Ubeyratne V. Karunawathi and Others*, the parents' names mentioned in the birth certificate of the child are conclusive proof regarding the legitimacy of the child. The birth certificate is the best evidence to demonstrate that the child was born to the parents whose names appear on the birth certificate as the father and mother. When Dharmadasa had every opportunity to insert Peter Perera's name as his father in his birth certificate but he did not, it naturally raises the doubt whether Peter Perera was not the Dharmadasa's father. In any case, the aforesaid circumstances clearly demonstrate that Dharmadasa does not have the best evidence to establish paternity.

What was pointed out by the learned Deputy Solicitor General appearing for the 1st to 4A respondents was that in the marriage certificate of Dharmadasa, Peter Perera's name is mentioned as Dharmadasa's father. In addition, R-7 and R-7A are the birth certificates of Dharmadasa's children. The elder child was born in 1971, and the younger child was born in 1976. In both birth certificates of the children of Dharmadasa, the learned DSG pointed out that their grandfather's name is mentioned as Peter Perera. Drawing the attention of the Court to the aforementioned documents, the learned DSG

requested to determine the matter considering all the documents presented to the Court.

In a marriage registration, the parties who entered into the marriage provide the required information for the registration. In the marriage certificate of Dharmadasa (R-6) he may have informed the Registrar that his father's name is Peter Perera. The Registrar of Marriages would not go in to verify the accuracy of that information. If Dharmadasa had mentioned some other name as his father's name, that name would be mentioned as his father's name in his marriage certificate. Therefore, Dharmadasa's marriage certificate does not establish that he is a legitimate child of Peter Perera. It is obvious that Peter Perera's name would be mentioned as the grandfather's name in the birth certificates of Dharmadasa's children when Peter Perera's name is entered in the marriage certificate of Dharmadasa as his father. Therefore, the birth certificates of Dharmadasa's children also do not establish that Peter Perera is the father of Dharmadasa. In the circumstances, there is no proof that Dharmadasa is the elder son of Peter Perera.

The Court drew the attention of the learned Counsel for both parties to Section 3 of the Legitimacy Act No. 3 of 1970 wherein it is stated that "A valid marriage to which this Act applies shall be deemed at all times, whether before or on or after the date of the commencement of this Act, to have rendered, and to render, legitimate any child procreated by the parties prior to such marriage, whether or not such child was so procreated in adultery".

The reply of the learned President's Counsel appearing for the petitioner was that the said section would not apply to this case because Dharmadasa has not been procreated by both parties, the father and the mother. He contended that the above section would apply when the child is procreated by both parties prior to the marriage. In the case at hand, he contended that the mother Bisomanika got married to Peter

Perera but not to the father of Dharmadasa. Although, it is not proved that Dharmadasa's father is someone else, other than Peter Perera, in the absence of proof that Peter Perera was the father of Dharmadasa, Section 3 of the Legitimacy Act cannot be applied.

The 2nd respondent has made the decision contained in P-9 in terms of Rule 1 of the Third Schedule of Section 72 of the Land Development Ordinance on the basis that Dharmadasa was the elder son of Peter Perera. However, for the reasons stated above, there is no sufficient material to come to the conclusion that Peter Perera was the father of Dharmadasa. Accordingly, I hold that the decision contained in P-9 made by the 2nd respondent is erroneous.

In view of the aforesaid facts and circumstances, only the petitioner has been proved as the surviving son of Peter Perera. Hence, the petitioner should be the lawful owner of the subject properties in terms of Rule 1 of the Third Schedule of Section 72 of the Land Development Ordinance.

Accordingly, Writs of Certiorari are issued as prayed for in the prayers (c) and (d) of the petition. A Writ of Prohibition is issued as prayed for in the prayer (e) of the petition. A Writ of Mandamus is issued as prayed for in the prayer (f) of the petition.

The application is allowed. No costs.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL