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

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

Court of Appeal Case No.

CA/WRT/0027/2020

1. **Dissanayake Mudiyanselage Luxman Dissanayake**,
   'Suranivasa', Bandaranayake Mawatha,
   Kegalle.

2. **Dissanayake Mudiyanselage Upali Dissanayake**,
   'Suranivasa', Bandaranayake Mawatha,
   Kegalle.

Petitioners

Vs.

1. **Lionel Gunasiri Bandara Jayasinghe**,
   'Gurumedura', Pitawela, Hiriwadunna.

2. **Rohan Sivananda Perera Siriwardena**,
   Malpandeniya, Kegalle.

3. **The Urban Council of Kegalle**,
   The Office of Urban Council, Kegalle.

4. **K. G.S. Nishantha**,
   Divisional Secretary - Rathambalawatte,
   Kegalle.

5. **M.A. Kulathileke,**
   Grama Niladhari - Olagankanda, Kegalle.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Dhammika Piyadasa, instructed by P. B. Herath for the Petitioner.

Ms. Chaya Sri Nammuni, DSG for the Respondents.

Supported on: 31.07.2023

Written Submissions on: Not filed by the Petitioner.
Not filed by the Respondent.

Decided on: 15.11.2023

MOHAMMED LAFFAR, J.

The Petitioners are seeking *inter-alia* the relief as prayed for in paragraphs (c), (d) and (e) of the prayers to the Petition dated 11-02-2020, namely;

(c). Grant and issue an Order to declare the title of land marked as Lot 4 depicted in Plan No. 3143 (P6) situated at Welabodawatta, Bulathkohupitiya Road, Kegalle to be given to the Petitioners, 1st and 2nd Respondents.

(d). Issue a Writ of Prohibition preventing the 4th and 5th Respondents from entering, constructing or dealing in any manner whatsoever in denial of their rights in respect of their land described in P6.

(e). Issue a Writ of *Mandamus* compelling the 4th and 5th Respondents to demarcate the rightful area acquired by the state leaving the remaining residuary portion to the rightful entitlement of the Petitioners, 1st and 2nd Respondents.

On 31-07-2023, we heard the learned Counsel for the Petitioners in support of this Application. We heard the learned DSG for the Respondents as well.

The contention of the Petitioners is that the Petitioners, 1st and 2nd Respondents are the co-owners of the land, namely Lot 2 in Plan marked as P1(a) and the partition action bearing No. 28609/P has been instituted in the District Court of Kegalle to partition the said corpus amongst the co-owners. The Petitioners state that the 4th and 5th Respondents unlawfully decided to enter into the land owned by them and attempted to construct a building. The Petitioners further state that the 4th and 5th Respondents attempted to dispose of valuable flora under the guise of the said unauthorised construction. In the said Partition action, the Petitioners sought an interim injunction against the Respondents restraining the 4th and 5th Respondents from cutting trees and constructing buildings on the land in dispute, whereas the learned District Judge on 16-05-2018 dismissed the said application. Being aggrieved by the said Order of the learned District Judge of Kegalle, the Petitioners preferred an appeal to the Civil Appellate High Court of Kegalle in case No. SP/HCCA/KEG/19/2018(LA), whereas the High Court on 02-05-2019 dismissed the said appeal. The Petitioners have sought a special leave to appeal from the Supreme Court against the said Order of the High Court in case No. SC/HCCA/LA 204/19.

In a nutshell, the Petitioners allege that the 4th and 5th Respondents are attempting to encroach on the subject matter owned by the Petitioners, 1st and 2nd Respondents. Admittedly, there is a partition action pending before the District Court of Kegalle in respect of the land in dispute. In terms of the provisions of the Partition Law, it is the duty of the learned District Judge to identify the corpus to be partitioned and the rightful owners of the same. It is trite law that the partition decree is a *decree in rem* binding everybody. In these circumstances, it is the view of this Court that the dispute advanced in this Application could be resolved in the said pending partition action.

It is necessary to adduce oral and documentary evidence to determine the boundaries of the purported land owned by the Petitioners. The facts are in dispute and therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court. In this regard, I refer to the judgement of **Thajudeen Vs. Sri-Lanka Tea Board (1981-2SLR-471)** where the Court of Appeal held that;

"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available."

In prayer (c) of the Petition, the Petitioners are seeking a declaration of title to the subject matter which could be granted by a District Court in a declaratory or *re-vindicatio* action, not in a Writ application. Moreover, it appears to this Court that there is an alternative remedy available to the Petitioners pertaining to the instant dispute and the Petitioners have already invoked the District Court Jurisdiction by way of a Partition action where they can obtain adequate remedy and therefore, invoking the Writ jurisdiction of this Court on the same issue is erroneous and misconceived in law.

Prerogative Writs are discretionary remedies, and therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to them. In **Linus Silva Vs. The University Council of Vidyodaya University**[1] it was observed that

"the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy."

The Court of Appeal in **Tennakoon Vs. The Director-General of Customs**[2] held that

[1] 64 NLR 104.

[2] 2004 (1SLR) 53.

> "*the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction.*"

For the foregoing reasons, I hold that the Petitioners are not entitled to proceed with this Application. I refuse to issue notices on the Respondents and dismiss the Application. No costs.

Application Dismissed. No costs.

JUDGE OF THE COURT OF APPEAL