

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

In the matter of an application for a Revision and Restitutio-in-Integrum under Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/RII/01/2023

D.C. Kuliypitiya Case
No: 8013/L

1. Samuel Herbert Liyanaarachchi
“Sirilena”, No.01, Wennawatta,
Wellampitiya.

Substituted 1st
Defendant-Petitioner

-Vs-

1. Adikari Mudiyansele
Chandradevi
(Married name De Silva),
No.401/E/1, 1st Lane,
Bogahavila Road,
Kottawa, Pannipitiya

Substituted Plaintiff-
Respondent

2. Mohammad Sharuk
No.28/1, Penthenigoda,
Naranmala.

Substituted 3rd
Defendant-Respondent

Before: Hon. D.N. Samarakoon, J.

Counsel: Mr. Jagath Wickramanayake P.C., instructed by Mr. RasikWellappili for the 1st Defendant -Petitioner.

Mr. R. Nayakaratne for the Substituted-Plaintiff-Respondent.

Argued on: 19.01.2024

Written submission tendered on: 19.01.2024 by the Substituted 1st Defendant-Petitioner.

24.03.2023 by the Substituted Plaintiff-Respondent.

Decided on: 02.02.2024

Hon. D. N. Samarakoon J.,

The plaintiff (who has now acquired the epithet “original” because he is dead) wanted the District Court of Kuliyaipitiya in case No. 8013/L to enter decree, among other things, declaring that following deeds are null and void.

- (i) Deed bearing No. 600/25.03.1985
- (ii) Deed bearing No. 601/25.03.1985

Both attested by Mr. Gunarathne Banda Senanayake, N. P. (Attorney at Law)

This was granted by a judgment of that court dated 01.10.2018.

It is not required for this Court to examine whether that judgment is correct or not.

The substituted 01st defendant petitioner Samuel Herbert Liyanaarachchi does not ask for it.

He contests the order of the district court dated 01.08.2016.

The original plaintiff Adikari Mudiyansele Dingir Banda died on 08.01.1991.

The above order on substitution marked as P.13 made Adikari Mudiyansele Chandra Devi the substituted plaintiff.

The present substituted 01st defendant petitioner, who was the 2nd respondent to the application for substitution objected.

He said the above Chandra Devi had no relationship to the deceased plaintiff.

The learned district judge in P.13 considered the judgment (P.05) and letters of administration (p.09) [*These markings are before the district court*] in case No. 540/Testamentary in the same court, by which Chandra Devi has been appointed the administratrix. He also considered that the appeal by the present petitioner, the 02nd respondent in that application, to set aside the order made in the testamentary case appointing Chandra Devi as the administratrix to the Civil Appellate High Court of the North Western Province as well as the appeal to the Supreme Court have been dismissed without taking up for argument. Although the present petitioner (2nd respondent) alleged before the learned district judge, that, above judgments have been obtained by misrepresenting facts, the learned district judge considering that the 2nd respondent (petitioner) is bound by the above judgments, considered section 394(2) of the Civil Procedure Code.

It says,

“

[Law 53,
20 of (2) For the purposes of this Chapter -
1977.]

" estate" means the gross value of the estate of the deceased; and
" legal representative " means an executor or administrator, or in
the case of an estate below the value of twenty thousand rupees,
the next of kin who have adiated the inheritance.

Hence he rejected the application of the present petitioner and substituted Chandra Devi in plaintiff's stead.

The judgment in District Court Kuliyaipitiya case No. 540/Testamentary/97 dated 29.03.2000 written by **Mrs. J. M. T. M. P. U. Tennakoon**, learned District Judge shows, that, Chandra Devi claimed that deceased Dingiri Banda was her father's younger brother. She (Mrs. Tennakoon) decided, that, Chandra Devi is the soul heir of deceased Dingiri Banda.

In the petition before this Court, the petitioner claimed, that,

- (i) Chandra Devi claimed that deceased Dingiri Banda's parents were Punchi Banda and Ran Menika
- (ii) Tikiri Banda (the former 01st defendant deceased) and Dingiri Banda were brothers
- (iii) Dingiri Banda died issueless
- (iv) Ran Hami was the brother of Punchi Banda (father of Dingiri Banda)
- (v) Chandra Devi is the grand child of Ranhami
- (vi) Hence the "next of king" of Dingiri Banda is Chandra Devi

Now the present petitioner has made a discovery. That is, that, the birth certificates of Dingiri Banda and Tikiri Banda, marked as P. 15 and P.16, in the former dated 09.01.1928 (in regard to Dingiri Banda) does not give the name of the father although mother is Ran Menika and the latter dated 29.03.1916 (in

regard to Tikiri Banda) gives the name of father as Punchi Banda and mother was Benthara Liyanage PesiyaThilakaratne.

So it is argued, that, Dingiri Banda was no son of Punchi Banda and hence Punchi Banda's brother Ranhami's grand daughter (as Chandra Devi claims her to be) is not an heir of Dingiri Banda.

The substituted plaintiff respondent in this case Chandra Devi relies upon the appointment of herself as the administratrix in 540/Testamentary.

Now the definition of the "legal representative" under section 394(2) has following persons,

- (a) Executor
- (b) Administrator
- (c) In case of estates below Rs. 20,000/-, the next of kin who had adiated to the inheritance.

The learned District Judge Mrs. Tennakoon in the judgment of 540/Testamentary in answering issue No. 03 in the affirmative has decided that Chandra Devi has a right to be appointed as the administratrix of the intestate estate of Dingiri Banda.

It also appears from page 05 of that judgment, that, the present substituted 01st defendant petitioner was the 01st respondent in that case. There were three admissions and they are,

- (i) The deceased (Dingiri Banda) was a person governed by Kandyan law
- (ii) He died on 08.01.1991 and
- (iii) He died intestate unmarried and issueless

The above page 05 of the judgment says, that, the 01st respondent Samuel Herbert Liyanaarachchi in giving evidence has admitted, that, Dingiri Banda's father was Adikari Mudiyansele Punchi Banda. He has not accepted that the mother was Ran Menika.

The learned judge has considered evidence that there were two marriages of Punchi Banda, the first one with Pesiya Thilakarathne and the second with Ran Menika and Tikiri Banda was the child in the first marriage whereas Dingiri Banda was the child from the second marriage.

The above admission made by the present petitioner in his testimony in 540/Testamentary that Dingiri Banda's father was Punchi Banda is an admission between same parties as in this case; and in addition to Chandra Devi could be substituted as per the order of the learned district judge dated 01.08.2016, due to provisions in section 394(2) of the Civil Procedure Code, this is also a reason that the petitioner cannot now claim on the strength of the blank space in the 04th column of P.15, that, Punchi Banda was not the father of Dingiri Banda.

It is too late in the day to challenge the district court's order on substitution both in law and facts.

Hence the application of the substituted 01st defendant petitioner is dismissed with costs.

Judge of the Court of Appeal.