

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

*In the matter of an application for a mandate
in the nature of a Writ of Certiorari and a
Writ of Mandamus under and in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

**CA Writ Application No.
144/23**

1. Kotagama Mudiyanseelage Gunawathi,
No. 114, Mahawa,
Kakunawa.

2. Abeysinghe Mudiyanseelage Ruwan
Chaminda
Nugagahahena, School Lane,
Gathaara, Kamburupitiya.

PETITIONERS

VS

1. K.P.S. Laroshani Perera,
Registrar of Lands and Districts
Land Registry,
Rest House Road, Nikaweratiya.

2. Samantha Wijesinghe
Registrar General
Registrar General's Department,

No.234/A3, Densil Kobbekaduwa Mw,
Battaramulla.

3. D. A. L. Ganepola

Senior Deputy Registrar General
(Title / Land Registration)
Registrar General's Department,
No.234/A3, Densil Kobbekaduwa Mw,
Battaramulla.

4. A. M. R. S. A. Amarakone

Assistant Registrar General (Notary)
Registrar General's Department,
No.234/A3, Densil Kobbekaduwa Mw,
Battaramulla.

5. A. K. Wijewardena

Assistant Registrar General (Central
Record Room)
Maligawaththa, Colombo 10.

6. H. N. D. C. Herath

Assistant Registrar General
(North Western & North Central Zone)
Wathhimi Road, Kurunegala

7. Abeysinghe Mudiyanse Kelum
Priyankara
No.114, Mahawa, Kakunawa.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Upul Kumarapperuma, PC with K.H. Dilrukshi
instructed by Darshika Nayomi for the
Petitioner.

Panchali Witharana, SC for the State.

Written Submissions : Petitioner filed on 08.09.2025
7th Respondent filed on 08.09.2025
1st to 6th Respondents filed on 09.10.2025

Supported on : 01.07.2025

Decided on : 04.11.2025

K. Priyantha Fernando, J.(CA)

The Petitioners by petition dated 14th March 2023 have sought a Writ of Certiorari quashing the decision embodied in P10 and P16 and a Writ of Mandamus mandating the 1st to 6th Respondents to register the Deed of Gift (P9) in the relevant Volumes/Folios of *Nikarawetiya* Land Registry.

THE FACTUAL MATRIX:

The land in dispute which is described in the Schedules of the Petition was owned by the 1st Petitioner and it was given to the 2nd Petitioner by way of Deed of Gift (**P9**).

The Deed of Gift P9 has been refused to be registered by the 1st Respondent-Registrar of Lands and District Land Registry on the basis that a previous Deed of Declaration for a portion of the same land has been registered. The refusal to register P9 has been communicated to the Petitioners by the Letter **P10**.

By letter dated 02.02.2023 (**P16**), the Registrar of Land of Nikaweratiya has informed the Petitioners' Notary that the appeal of the petitioners has been refused by the Registrar General.

The Petitioner has later learnt that 7th Respondent-*Kelum Priyankara*, had registered a Deed of Declaration No. 015 dated 24.10.2021 (**P11**) declaring ownership for an undivided one acre of land as described in the 2nd schedule to the Petition which is an undivided portion of the land described in the 1st schedule.

Both **P9** and **P11** had been registered Nikarawetiya Land Registry on 29.10.2021.

THE PETITIONERS' POSITION:

The law requires the executor of a Deed to specify in the schedule of the instrument, a description of the land together with boundaries and extent. The Petitioners, having no knowledge of the Deed of Declaration P11, have specified the boundaries and extent of the land belong to the 1st Petitioner. By refusal to register Deed P9, the 1st Respondent has assumed that the Deed P11 is duly executed.

It was contended that if the Petitioner had the knowledge of existence of P11 and if the Deed of Gift P9 was presented with corrected extent as suggested by the 1st Respondent, excluding 1 acre indicated in P11, it would be an acceptance of title of the 7th respondent.

It was contended that there is no statutory power vested in the Registrar either to refuse registration based on the existence of another registered instrument concerning the same property, or to resolve disputes as to title.

THE POSITION OF THE 1st TO 6th RESPONDENTS:

The attention of the Court has been drawn to **Section 38** of the Registration of Documents Ordinance where appeal procedure is provided as follows:

Section 38 (1)

“Any person aggrieved by an order of a Registrar refusing to register an instrument may, within thirty days from the date of the order being communicated to him, appeal to the Registrar General, who may vary or reverse the order.

(2) Any person aggrieved by the decision of the Registrar-General under this section may, within thirty days from the date of such decision being communicated to him, institute in the District Court a suit against the Registrar-General praying for the variation or reversal of the decision of the Registrar-General.

It was contended by the 7th Respondent that the Petitioner has failed to seek the proper remedy and hence they are not entitled to invoke jurisdiction of this Court.

Attention was drawn to observations drawn by Jayasuriya J. in Jayaweera vs. Commissioner of Agrarian Services (1996) 2 SLR 73, where it was held as follows:

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction – are all valid impediments which stand against the grant of relief”.

It was the counter argument of the learned President Counsel for the Petitioners that, in the case at hand, it is not only mere refusal to register but one-sided self-serving Deed of Declaration registered for a portion of the land; when the real owner of the land presented a legitimate Deed of Gift, the Registrar General could have registered the Deed of Gift allowing the parties to have the dispute settled among themselves. It is on this basis that the provisions of **section 39** of the Act provide power to the District Court.

It was petitioner’s argument that not only adequate remedy is available but the impugn decision is ultra vires, arbitrary and unreasonable whereas the 1st respondent is not vested with power to adjudicate between two competing instruments.

CONCLUSION:

The law relating to registration of documents is laid down in the Registration of Documents Ordinance No. 23 of 1927 (as amended). Section 36 provided for instances which the Registrar of Lands can refuse to register an instrument.

“36. Grounds for refusing to register an instrument.

(1) A Registrar may, if he thinks fit, refuse to register an instrument—

(a) where he has reason to suspect that the person presenting the instrument for registration is not a person who is authorised by this Ordinance to present it for registration, until such person proves his right to present it for registration.

*(b) **if it does not comply with the provisions** of this Ordinance or any written law affecting the form or mode of execution of such instrument.*

(2) A Registrar shall refuse to register an instrument—

(a) if it is liable to stamp duty, unless it is duly stamped;

(b) until any fee payable for registration has been paid.”

Section 36 of the Registration of Documents Ordinance limits the Registrar’s refusal power to two instances:

- (a) Suspicion that the presenter is not duly authorized; or
- (b) Non-compliance with the provisions of the Ordinance.

Non-compliance referred to above is defined in **Section 13** titled “Mode of description of lands in instruments” and Section 13 of the Ordinance states as follows:

“13. Mode of description of lands in instruments.

*(1) Every instrument (other than a will) presented for registration **shall embody therein or in a Schedule annexed thereto, an accurate and clear description of the land or immovable property affected thereby, its boundaries, extent** and situation specifying the District, Pattu, Korale, Divisional Secretary’s Division, local authority division and the Grama Niladari Division and the village, of the District in which the land is situated and in case the land or immovable property affected by this instrument is situated in within any municipality, town or developed area, declared under section 2 of the Municipal Councils Ordinance, section 2 of the Urban*

Councils Ordinance and section 2 of the Pradeshiya Sabha Act, No. 15 of 1987 respectively, the assessment number and the name, if any, of the street, in which such land or immovable property is situated.”

Accordingly, the law requires the executor to specify in the schedule of the instrument a description of the land together with its boundaries and extent of such land.

In the instant case, the Petitioners without knowing of the Deed of declaration P11 has specified the boundaries and extent of the land belonged to the 1st Petitioner.

It is seen that the 1st Respondent’s refusal to register the Deed P9 had been carried out on the assumption that the Deed P11 is duly executed under the provisions of law.

I concede the argument of the learned President’s Counsel of the petitioners that even if the Petitioners had the knowledge of the existence of P11 and, if the Deed of Gift P9 was presented with correct extent excluding the 1 acre indicated in P11, it would amount to an acceptance of title of the 7th Respondent.

It is pertinent to note that nowhere in the Ordinance, the Registrar General is accorded with statutory power to refuse registration based on the existence of another registered instrument concerning the same property.

The Registrar General is not vested with any statutory power to resolve factual disputes relating to title. In fact, the Registrar of Lands has not been provided with powers to determine ownership of parties.

On the contrary, if at all the refusal to register was effected in terms of Section 36(b), for having not complied with the provisions of the Ordinance in light of the confusion of the extent of the land.

Be that as it may, **Section 39** of the Ordinance provided for the power of District Court to cancel registration.

*“Where it is shown to the satisfaction of a District Court that **any instrument registered** under Chapters III or IV is a forgery, or has been registered without due authority or in contravention of any provision of this Ordinance, or where any instrument registered as aforesaid is rectified or set aside by a competent court, the District Court may order the registration of the instrument to be cancelled or to be rectified in such manner as the circumstances may require, and may order the original instrument to be brought into court and the endorsement of registration to be cancelled or altered.”* (the emphasis was added)

On plain reading of the above section 39, it clearly refers to any instrument already registered. If two competing instruments were registered without due authority or in contravention of any provision of the Ordinance, only thereafter such can be referred to the District Court to cancel such registration.

Thus, if only the Deed of Gift marked P9 is registered, the Petitioners could have sought relief from the District Court.

Moreover, a Deed of Declaration which usually contains a statement by a person declaring ownership over a property does not amount to a conveyance of title proper since it is a unilateral assertion. It can be used as supporting evidence of possession or ownership but has no independent power to confer title.

A Deed of Gift, on the other hand, is a conveyance by which a legal transfer of ownership of immovable property without consideration. It must be executed by the lawful owner, attested by a notary, and registered to be effective against third parties.

The legal validity between P9 and P11 lies on this ground whereas if P9 was registered only, the dispute between the Petitioners and the 7th Respondent could have been resolved thereafter in the District Court.

The remark made upon refusal on P9 gives the reason that there is a prior Deed of Declaration registered for 1 acre from the same land; since the extent is not corrected, Deed is refused.

The refusal is based on the Deed of Declaration by the 7th Respondent and an alleged defect in extent of Deed of Gift P9. Since the Deed of Gift P9 is refused, the right of the Petitioner to challenge the alleged wrongful execution of Deed of Declaration P11 is dissolved. The Deed P11 could in all possibilities be a properly executed Deed but include the wrong extent as indicated by the 7th Respondent.

In all the above circumstances, it is established that the decision to refuse registration of P9 is arbitrary, unreasonable and ultra vires whereas the 1st Respondent is not vested with the power of adjudicating between two competing instruments.

ARE THERE ALTERNATIVE REMEDIES?

The preliminary objection raised by the 1st to 6th Respondents is that this claim could have been presented before the District Court upon rejection of registration.

However, as already revealed in this case, not only mere refusal to register occurred in the instant case. The 1st Respondent, not being an adjudicator of title, could have registered the Deed of Gift allowing two parties to have the dispute settled between themselves. It is on this basis that section 39 provides for the District Court to cancel registration.

Furthermore, the Petitioners have submitted that no other equally effective, speedy or adequate alternative remedy is available to them since:

-civil proceedings would require a declaration of title which would unnecessarily protract litigation which is not the relief sought in this application,

-only an order in the nature of a writ can effectively quash the ultra vires decision and compel registration in the circumstances.

In Kolambage Udara Sudarshani Silva v. Subasinghe Arachchige Dona Maria Reeta Pilaminahamy and 6 others-CA Writ 0304/19 decided on 20.07.2023, discusses the possibility of pursuing a prerogative writ in an instance where an alternative action in the District Court was available.

His Lordship Justice Sampath Wijeratne has referred to a situation involving the Registration of Title Act No. 21 of 1998 has stated that,

“...it is clear that the entries in the Title Register are subject to being reviewed in Courts and for rectification. Consequently, there is no sanctity attached to the Certificate of Title or to the entries in the Title Register...”

S.M. Mehta, in his book titled "Indian Constitutional Law" 1990 edition, at page 334, states that,

*“the existence of an alternative remedy may be a ground for refusing a writ of Certiorari, where the defect of jurisdiction is not patent on the face of record and the fundamental rights are not involved. **This is a rule of convenience and not a Rule of law and hence certiorari may be issued even when an alternative remedy is available.** Thus, an alternative remedy which is not speedy, effective or adequate is no ground for refusing a writ of certiorari.”*(the emphasis was added)

In Ramasamy v. State Mortgage Bank (1976) 78 NLR 510, it was stated that,

“It may be noted that where the Court of Equity were concerned, one defeated in equity by reason of this defense, may still have this remedy in common law. As for the common law courts they have invariably taken into consideration such factors as the availability of an alternative remedy along with acquiescence and the existence of facts such as the conduct of the parties and any developments which may render it inequitable to grant relief, when applying this doctrine”.

In the instant case, there is patent illegality in refusing to register P9 by the 1st Respondent and hence I am of the view that *Certiorari* should be issued even when alternative remedy is available.

For all the above circumstances, I am inclined to issue a Writ of *Certiorari* quashing the decision embodied in P10 and P16 by one or more of the Respondents and to issue a Writ of *Mandamus* mandating the 1st to 6th Respondents to register the Deed of Gift marked P9 in the relevant Volume/Folio of *Nikarawetiya* Land Registry.

The parties should bear their own costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal