

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

Malavige Sunil Padmasiri,  
136, Embulgama Road,  
Panagoda, Homagama.

Substituted Plaintiff-Respondent-Appellant

**SC/APPEAL/113/2018**

**WP/HCCA/AV/1609/2015(F)**

**DC HOMAGAMA 129/L**

Vs.

1AA. Malavige Don Hemachandra Gunaratne,  
No. 234/1, Ranala Road, Habarakada,  
Homagama.  
IAA and IM Substituted Defendant-  
Appellant-Respondent

- 1B. Malavige Don Kamalawathie Gunaratne,
- 1C. Malavige Don Dayaseeli Gunaratne,
- 1D. Malavige Don Wimalawathie Gunaratne,
- 1E. Malavige Don Siriwardene Gunaratne,
- 1F. Malavige Don Ravipala Gunaratne,
- 1G. Malavige Don Chandrawathie Gunaratne,
- 1H. Malavige Don Seetha Milini Gunaratne,
- 1I. Malavige Don Sunitha Lalani Gunaratne,
- 1J. Malavige Don Sarath Kumara Gunaratne,
- 1K. Malavige Don Gamini  
Samankumara Gunaratne,
- 1L. Malavige Don Ayomi Gunaratne,

1N. Malavige Don Premawathie Gunaratne,  
All of No. 234/1, Ranala Road,  
Habarakada, Homagama.

1B and 1N Substituted Defendant-  
Respondent-Respondent

Before: Hon. Justice Yasantha Kodagoda, P.C.  
Hon. Justice Mahinda Samayawardhena  
Hon. Justice Menaka Wijesundera

Counsel: Kamal Dissanayake with Sajani Ranasinghe for the  
Substituted Plaintiff-Respondent-Appellant.  
S.N. Vijith Singh for the 1AA Defendant-Appellant-Respondent.

Argued on: 19.06.2025

Written submissions:

By the Substituted Plaintiff-Respondent-Appellant on  
30.07.2025.

By the 1AA Defendant-Appellant-Respondent on  
23.07.2025.

Decided on: 13.01.2026

**Samayawardhena, J.**

The plaintiff instituted this action against the defendant in the District Court of Homagama seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom, and damages. The defendant filed answer seeking the dismissal of the plaintiff's action. After trial, the learned District Judge entered judgment for the plaintiff as prayed for in the prayer to the plaint, except for damages.

On appeal, the High Court of Civil Appeal set aside the judgment of the District Court and dismissed the plaintiff's action with costs, on the basis that, "*since the plaintiff had gifted the property in suit to the substituted plaintiff while the action was pending and thereafter died, the cause of action did not survive.*"

This Court granted leave to appeal against the judgment of the High Court on the following question of law:

Did the High Court err in law by failing to consider section 404 of the Civil Procedure Code before dismissing the plaintiff's action?

It is common ground that, as the plaintiff was ill, the appellant was substituted in place of the plaintiff in the District Court. It is also undisputed that, while the action was pending before the District Court, the plaintiff transferred the property in suit to the appellant by deed No. 465 dated 19.06.1994. Midway through the trial, the plaintiff died, whereupon the appellant made an application to the District Court under section 404 of the Civil Procedure Code to be named as the added plaintiff. The defendant objected to this application.

By order dated 24.03.2009, the learned District Judge, citing *Eugin Fernando v. Charles Perera* [1988] II CALR 37, held that the transfer of the property *pendente lite* did not constitute an impediment to the maintenance of the action and that the appellant was entitled to continue the proceedings in terms of section 404 of the Civil Procedure Code. The Court further observed that there was no necessity to rename the appellant as an added plaintiff, as he had already been substituted in place of the original plaintiff. The defendant did not appeal against this order. The trial thereafter proceeded, and judgment was ultimately delivered.

Section 404 of the Civil Procedure Code reads as follows:

*In other cases of assignment, creation, or devolution of any interest pending the action, the action may, with the leave of the court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.*

In *Arumugam Rasalingam v. Sri Lanka Land Reclamation and Development Corporation* (SC/APPEAL/17/2016, SC Minutes of 16.12.2022), I had occasion to consider the legal implications of a plaintiff alienating title *pendente lite* in a *rei vindicatio* action, in the context of conflicting judicial authority on the point. Upon a careful analysis of the relevant principles and authorities, I reached the following conclusion:

*There is no rationale for the proposition of law that in a vindictory suit, the action must fail the moment the plaintiff transfers title pending action (except to say that it is a principle of the Roman Dutch Law as articulated by Voet) when section 404 of the Civil Procedure Code expressly enacts that in the case of assignment, creation or devolution of any interest in the subject matter of a pending action, the Court has the discretion to admit parties as plaintiffs or defendants after affording a hearing to all parties to the action. It is up to the Court to exercise that discretion judicially taking into consideration the facts and circumstances of each case.*

This conclusion accords with the decision in *Eugin Fernando v. Charles Perera*, on which the learned District Judge rightly placed reliance.

The High Court failed to consider the provisions of section 404 of the Civil Procedure Code when it dismissed the plaintiff's action on the footing that the alienation of title *pendente lite* resulted in the extinction of the cause of

action upon the death of the transferor. Such an approach is legally unsustainable.

I accordingly answer the question of law on which leave to appeal was granted in the affirmative. The judgment of the High Court is set aside, and the judgment of the District Court is restored. The parties shall bear their own costs.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court