

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

In the matter of an appeal in terms of section 5 C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC Appeal No. 89/2019

SC (HC CA) Leave to Appeal

Application No. 55/2018

Civil Appellate High Court

Kandy Case No. 04/2016(LA)

DC Kandy Case No. DLM
00143/2014

1. Karawita Aarachchige Nihal,
No. 22A, Dumindu Mawatha,
Watapuluwa Housing Scheme,
Kandy.

PLAINTIFF

Vs.

1. Pepiliyanage Sriyani Manjula Perera
alias Pepiliyane Sriyani Manjula
Perera Tennakoon,
No. 74/1/B, Bomaluwa Road,
Watapuluwa, Kandy.

2. DFCC Vardhana Bank Limited,
No. 73, W.A.D Ramanayake
Mawatha, Colombo 02.

DEFENDANTS

AND THEN BETWEEN (IN THE
APPLICATION FOR INTERIM
INJUNCTION IN THE DISTRICT
COURT)

1. Pepiliyanage Sriyani Manjula Perera
alias Pepiliyanage Sriyani Manjula
Perera Tennakoon,
No. 74/1/B, Bomaluwa Road,
Watapuluwa, Kandy.

1ST DEFENDANT-PETITIONER

Vs.

1. Karawita Aarachchige Nihal,
No. 22A, Dumindu Mawatha,
Watapuluwa Housing Scheme,
Kandy.

PLAINTIFF-RESPONDENT

2. DFCC Vardhana Bank Limited,
No. 73, W.A.D Ramanayake
Mawatha, Colombo 02.

AND

DFCC Vardhana Bank Limited,
Branch Office,
No. 05, Deva Veediya,
Kandy.

2ND DEFENDANT-RESPONDENT

AND THEN BETWEEN (IN THE
HIGH COURT OF CIVIL APPEAL)

1. Pepiliyanage Sriyani Manjula Perera
alias Pepiliyane Sriyani Manjula
Perera Tennakoon,
No. 74/1/B, Bomaluwa Road,
Watapuluwa, Kandy.

1ST DEFENDANT-PETITIONER-

APPELLANT

Vs.

1. Karawita Aarachchige Nihal,
No. 22A, Dumindu Mawatha,
Watapuluwa Housing Scheme,
Kandy.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

2. DFCC Vardhana Bank Limited,
No. 73, W.A.D Ramanayake
Mawatha, Colombo 02.

AND

DFCC Vardhana Bank Limited PLC,
Branch Office,
No. 05 Deva Veediya,
Kandy.

**2ND DEFENDANT-RESPONDENT-
RESPONDENT**

AND NOW BETWEEN (IN THE
SUPREME COURT)

1. DFCC Bank PLC,
(Formerly DFCC Vardhana Bank
Limited),
No. 73, W.A.D Ramanayake
Mawatha,
Colombo 02.

**2ND DEFENDANT-RESPONDENT-
RESPONDENT-APPELLANT**

Vs.

1. Pepiliyanage Sriyani Manjula Perera
alias Pepiliyane Sriyani Manjula
Perera Tennakoon,
No. 74/1/B, Bomaluwa Road,
Watapuluwa, Kandy.

**1ST DEFENDANT-PETITIONER-
APPELLANT-RESPONDENT**

2. Karawita Aarachchige Nihal,
No. 22A, Dumindu Mawatha,
Watapuluwa Housing Scheme,
Kandy.

**PLAINTIFF-RESPONDENT-
RESPONDENT-RESPONDENT**

Before : **P. Padman Surasena J**
E. A. G. R. Amarasekara J
Shiran Gooneratne J

Counsel : Kushan de Alwis, PC with Mr. Kaushalya Nawaratne and Ms. Surangi Kannangara for the 2nd Defendant-Respondent-Respondent-Appellant.

Ms. Sandya Kalalpitiya with Ms. Kaushalya Samaratunga for the 1st Defendant-Petitioner-Appellant-Respondent.

Ms. Panchali Ekanayake for the Plaintiff-Respondent-Respondent-Respondent.

Argued on : 15-05-2023

Decided on : 12-10-2023

P. Padman Surasena, J:

The Plaintiff-Respondent-Respondent-Respondent (hereinafter referred to as the Plaintiff) instituted action against the 1st Defendant-Petitioner-Appellant-Respondent (hereinafter referred to as the 1st Defendant) and the 2nd Defendant-Respondent-Respondent-Appellant (hereinafter referred to as the 2nd Defendant) in the District Court of Kandy. The Plaintiff in his Complaint had prayed *inter alia* for:

- (i) a declaration that the he is the owner of the property morefully described in the schedule to the Complaint.
- (ii) ejectment of the 1st Defendant and her assigns and for restoration of the premises for his benefit
- (iii) damages payable for the alleged illegal occupation of the said premises by the 1st Defendant

The 1st Defendant filed the answer to the Complaint (document produced marked **X2**) praying *inter alia* :

- (i) for a declaration that the Plaintiff has no right to claim the relevant property as the Plaintiff must hold the relevant property as a trust in favour of the 1st Defendant;
- (ii) for a declaration that the 1st Defendant is the lawful owner of the property relevant to the case;
- (iii) for dismissal of the Complaint.

Thus, it must be stressed at this commencing point itself that the 1st Defendant in her answer has not prayed for anything against the 2nd Defendant.

The 2nd Defendant has not filed an answer. This is understandable because neither the Plaintiff nor the 1st Defendant has prayed for anything against the 2nd Defendant.

Thereafter the 1st Defendant has filed the Petition and affidavit dated 16-12-2015 in the District Court praying *inter alia* for following reliefs:

- (i) An enjoining order to prevent the Plaintiff and the 2nd Defendant from selling or disposing or alienating the relevant property,
- (ii) An order issuing the notice of interim injunction; and
- (iii) An interim injunction to prevent the Plaintiff and the 2nd Defendant from selling or disposing or alienating the property relevant to this action.

The learned District Judge having considered the material in the said Petition and affidavit dated 16-12-2015, by his order dated 23-12-2015, had decided to refuse to issue both the enjoining order and the notice of interim injunction.

Being aggrieved by the said order dated 23-12-2015 pronounced by the learned District Judge of Kandy, the 1st Defendant has filed a Leave to Appeal application in the Provincial High Court of Civil Appeals holden in Kandy. The Provincial High Court having granted Leave to Appeal, had thereafter concluded the argument thereof which led to the pronouncement of its judgment dated 17-01-2018.

By the judgement dated 17-01-2018, the Provincial High Court has set aside the order dated 23-12-2015 pronounced by the learned District Judge of Kandy refusing to grant the enjoining order and the notice of interim injunction. The Provincial High Court had directed the learned District Judge to issue an interim injunction as prayed for, under paragraph (ඇ) of the prayers of the petition dated 16-12-2015 filed in the District Court by the 1st Defendant.

It is against that order that the 2nd Defendant has filed the Leave to Appeal application relevant to the instant appeal in this Court. This Court having heard the submissions of the learned Counsel for the relevant parties, had granted Leave to Appeal by its order dated 23-05-2019 on the following questions of law:

- 1) Did their Lordships of the High Court of Civil Appeals err in directing the learned Trial Judge to issue an Interim Injunction ex facie in the absence of a prima facie case against the 2nd Defendant?
- 2) Have their Lordships of the High Court of Civil Appeals erred in setting aside the Order of the learned Trial Judge dated 23.12.2015 marked X7 with the Petition in the absence of any evidence to prove a grave and irremediable injustice which may be caused to the 1st Defendant in the event the purported application for the Interim Injunction is refused?

- 3) Have their Lordships of the High Court of Civil Appeal erred in law in failing to take into consideration the principles governing the grant of interim relief, in delivering the said impugned judgment?

Before I proceed to consider the above questions of law, it would be pertinent at this stage, to set out briefly, the facts of the case at hand. The original owner of the relevant property at the time of transactions pertaining to this case, was the 1st Defendant. The 1st Defendant by Deed of Transfer No. 12, attested on 14-10-2011 by D.S. Perera Notary Public, had transferred its title to the Plaintiff. The Plaintiff on the same date, had mortgaged the said property to the 2nd Defendant Bank by Mortgage Bond No. 1482 attested on 14-10-2011 by C.P. Rajaratne Notary Public. According to the said Mortgage Bond, the Plaintiff had tendered the said property as security to obtain a loan amounting to a sum of Rs. 7,500,000/= from the 2nd Defendant Bank. It is the case for the Plaintiff that the Plaintiff after purchasing the property from the 1st Defendant had permitted the 1st Defendant to remain in occupation of the property as the 1st Defendant was planning to leave the country shortly after selling her property to the Plaintiff. According to the Plaintiff, the present dispute had arisen when the 1st Defendant had thereafter refused to hand over the possession of the property to the Plaintiff. This had led the Plaintiff filing the instant action to recover the vacant possession of the property from the 1st Defendant.

Having narrated the facts of the case let me now introduce briefly, the law that must be applied to answer the above questions of law which revolve around the question whether the Provincial High Court had failed to consider the principles governing the grant of interim injunctions. Interim injunction is an equitable remedy and is not available as of a right. Such injunctions will be granted at the discretion of the Court. The effect and the purpose of such injunction is to preserve the status quo of the subject matter of the action until the final judgment is delivered. The Civil Procedure Code has dedicated its Chapter XLVIII for the procedure relating to applications for injunctions.

Section 662 is followed by few other sections in that Chapter of the Civil Procedure Code and they form the procedure to be followed when an application for an injunction (for any of the purposes mentioned in section 54 of the Judicature Act), is made. As has been clearly stated in section 662, the 'purposes' for which such injunction may be obtained are set out in section 54 of the Judicature Act. The corollary of the above, is that a Court can only grant such an

injunction for the purposes set out in section 54 of the Judicature Act. This means that it is this section which vests Courts with jurisdiction to grant such injunctions.

In the case of Alubhay Vs Mohideen,¹ a case relating to an issuance of an interim injunction, De Sampayo J stated that it was section 87 of the Courts Ordinance No. 1 of 1889 which creates the jurisdiction of the Court to grant injunctions, and one must look to the Civil Procedure Code for the relevant procedure. Looking back at the recent legal history of the country, one could observe that the Courts Ordinance No. 1 of 1889 was replaced by the Administration of Justice Law No. 44 of 1973,² and the latter was in turn replaced by the Judicature Act No. 2 of 1978. This is why in Felix Dias Bandaranayake Vs. State Film Corporation and another,³ Justice Soza stated that 'generally speaking section 54 of the Judicature Act No. 2 of 1978 is the jurisdictional section while sections 662, 664 and 666 of the Civil Procedure Code set out the procedure' for granting of injunctions. This concept has been long followed by our Courts. Thus, section 54 of the Judicature Act states the substantive law relating to injunctions in the following manner:

Section 54:

(1) Where in any action instituted in a High Court, District Court or a Small Claims Court, it appears-

(a) from the plaint that the plaintiff demands and is entitled to a judgment against the defendant, restraining the commission or continuance of an act or nuisance, the commission or continuance of which would produce injury to the plaintiff; or

(b) that the defendant during the pendency of the action is doing or committing or procuring or suffering to be done or committed, or threatens or is about to do or procure or suffer to be done or committed, an act or nuisance in violation of the plaintiffs rights in respect of the subject matter of the action and tending to render the judgment ineffectual, or

(c) that the defendant during the pendency of the action threatens or is about to remove or dispose of his property with intent to defraud the plaintiff, the Court may, on its appearing by the affidavit of the plaintiff or any other person that sufficient grounds exist therefor, grant an injunction restraining any such defendant from

¹ 18 NLR 486.

² Jurisdiction to grant interim injunctions was in section 42 therein.

³ 1981 (2) Sri L. R. 287 at page 292.

- (i) committing or continuing any such act or nuisance;*
- (ii) doing or committing any such act or nuisance*
- (iii) removing or disposing of such property.*

(2) For the purposes of this section, any defendant who shall have by his answer set up any claim in reconvention and shall thereupon demand an affirmative judgment against the plaintiff shall be deemed a plaintiff, and shall have the same right to an injunction as he would have in an action brought by him against the plaintiff for the cause of action stated in the claim in reconvention, and the plaintiff shall be deemed the defendant and the claim in reconvention the plaint.

(3) Such injunctions may be granted at any time after the commencement of the action and before final judgment after notice to the defendant, where the object of granting an injunction will be defeated by delay, the court may enjoin the defendant until the hearing and decision of the application for an injunction but for periods not exceeding fourteen days at a time.

Since it is section 54 of the Judicature Act which grants jurisdiction to court to issue injunctions any party gets its entitlement to agitate for such injunction only to the extent to which section 54 of the Judicature Act has permitted. This is because the Court has to derive its jurisdiction from that section before it could consider granting the requested injunction. On the face of it section 54 has primarily conferred jurisdiction on court to issue such injunction against the Defendant named in the plaint on the application of the Plaintiff. This can be clearly seen from Section 54(1) as what has been mentioned throughout that section, is only about issuance of an injunction against a defendant. However, in terms of section 54(2) of the Judicature Act, any Defendant falling under the categories set out in section 54(2) would also get the same entitlement if he had set up a claim in reconvention against the plaintiff praying for an affirmative judgment against the Plaintiff. For further clarity requirement which must be fulfilled by a defendant to get the same entitlement to agitate for such injunction in terms of section 54(2) can be identified in the following manner:

- I. the defendant concerned shall have by his answer set up any claim in reconvention against the plaintiff, and
- II. such defendant shall thereupon have demanded an affirmative judgment against the plaintiff

For the purposes of that section, it is then only that a defendant could be deemed to be a plaintiff. It is only such party who can have the same right to an injunction as if he had brought

an action against the plaintiff for the cause of action stated in the claim in reconvention. It is only in such a situation that the plaintiff can be deemed to be the defendant as far as the claim in reconvention is concerned. It is then only that such defendant can file petition and affidavit in terms of section 662 of the Civil Procedure Code to pray for an interim injunction. Further, such defendant must also bear in mind that such interim injunction can be asked for, only in relation to the cause of action stated in the claim in reconvention.

Thus, section 54(2) has permitted only a defendant falling under the above category to apply for an injunction. In other words, the section has set out the above two pre-requisites which such defendant must fulfill before such defendant could request Court to issue an injunction.

Another important feature which can be seen from the above two requirements found in section 54(2) of the Judicature Act is that the entitlement of the defendant is to pray for an injunction only against the plaintiff of the case. This is because of the wordings in section 54(2) of the Judicature Act which has specifically stated "set up any claim in reconvention against the plaintiff" and "demanded an affirmative judgment against the plaintiff". In the instant case it is the 1st Defendant who had obtained an interim injunction against the 2nd Defendant of the case and not against the Plaintiff of the case. This is not permitted by section 54 of the Judicature Act.

The above section shows that a court may grant an injunction for one or more of the purposes set out in section 54 (1) under three limbs namely (a), (b) and (c). While the aforesaid three limbs [(a), (b) and (c)] set out the purposes for which injunctions may be granted, limbs (i), (ii) and (iii) appearing at the end of section 54 (1), set out what a Court can restrain by issuance of an injunction. It is not accidentally that the same wordings found in the aforesaid three limbs [(a), (b), (c)] have been incorporated in verbatim, in limbs (i), (ii) and (iii) appearing at the end of that section. This is why Justice Soza in Felix Dias Bandaranayake case,⁴ has stated that the person requesting the Court to issue an injunction must have a clear legal right which is being infringed or about to be infringed. This is reflected in the following passage quoted from that judgment.

"It is necessary first of all to have a clear picture of the legal principles that are applicable to the question before us. The jurisdictional provisions have already been noted. This is an action instituted in the District Court and the application for an interim

⁴ Supra at page 301.

*injunction was made at the time the plaint was filed. So section 54(1) (a) and (i) of the Judicature Act No. 2 of 1978 and sections 662 and 664 of the Civil Procedure Code apply. If it appears from the plaint that the plaintiff demands and is entitled to a judgment against the defendants, restraining the commission of an act or nuisance, which would produce injury to him the Court may, on its appearing by the affidavit of the plaintiff or any other person (and that would include the defendants as I have already pointed out) that sufficient grounds exist therefor, grant an interim injunction restraining the defendants from committing any such act or nuisance. **The plaintiff must therefore have a clear legal right which is being infringed or about to be infringed.**⁵ ...”*

I have already held above that it is not open for the 1st Defendant to obtain an injunction against the 2nd Defendant of the case. Although this is sufficient to dispose this matter I would proceed to consider another important aspect which can be seen in this case.

As has been mentioned above, the 1st Defendant in his answer has not set up any claim in reconvention against the 2nd Defendant. The 1st Defendant has also not prayed for any affirmative judgment against the 2nd Defendant. Thus, according to section 54(2) the 1st Defendant is not qualified to ask for an injunction against the 2nd Defendant. Thus, the 1st Defendant cannot be deemed to be a Plaintiff in terms of section 54(2) of the Judicature Act because the 1st Defendant had not set up any claim in reconvention against the 2nd Defendant. The Provincial High Court has fallen into error as it had totally missed this point. Although the Provincial High Court has held that the 1st Defendant has established a prima facie case, I fail to understand how it could be so when the 1st Defendant had not even claimed anything against the 2nd Defendant. I must add a caution that the position may be different in partition cases for the reason that every statement of claim in a partition case is generally considered as a plaint and every party in a partition case is generally considered as a plaintiff. The record shows that the District Judge by his Order dated 23-12-2015 had refused to issue the enjoining order prayed for and also refused to issue notice of injunction. This means that no inquiry to decide whether the interim injunction prayed for should be granted or not, had ever been conducted in the District Court. The Civil Appeals High Court has lost sight of this fact when they had directed the District Judge to issue an interim injunction. To the contrary, the prayer (අඟි) of the Petition dated 16-12-2015 is as follows:

⁵ Emphasis is mine.

ඇ) මුල් අවස්තාවේදීම අතුරු තහනම් නෝතිසි සමග මෙහි පහත උපලේඛනයේ වඩාත් සවිස්තරව දක්වා ඇති විෂය ගත දේපල විකිණීම හා/හෝ බැහැර කරලීම හා/හෝ අත්සතු කිරීම හා/හෝ වෙනත් පිළිබඳීමකට විෂය ගත දේපල යටත්කිරීම 02 වන විත්තකාර-වගඋත්තරකරුට තහනම් කරනු ලබන වාරණ නියුගයක් නිකුත් කරන ලෙසත්

Therefore, it is clear the prayer (ඇ) of the Petition dated 16-12-2015 is not a prayer for interim injunction although the Civil Appeals High Court by its judgment has directed the District Judge to issue an interim injunction as per that prayer.

The procedure one has to follow with regard to obtaining/granting an interim injunction is set out in Chapter XLVIII of the Civil Procedure Code. This position was accepted by Soza, J in Felix Dias Bandaranaike vs. State Film Corporation and another⁶. According to section 664 of the Civil Procedure Code, it is mandatory for the court to issue notice of injunction before it decides to grant an injunction. This is unambiguous in the wordings used in section 664 which is as follows:

Section 664:

- (1) The court shall before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party.*
- (2) Where it appears to court that the object of granting an injunction would be defeated by delay, it may until the hearing and decision of the application for an injunction, enjoin the defendant for a period not exceeding fourteen days in the first Instance, and the court may for good and sufficient reasons, which shall be recorded, extend for periods not exceeding fourteen days at the time, the operation of such order. An enjoining order made under these provisions, shall lapse upon the hearing and decision of the application for the grant of an injunction.*
- (3) The court may, of its own motion, or on an application made by any party suspend the operation of an enjoining order issued under subsection (2), if it is satisfied that such order was obtained by suppression, or misrepresentation, of any material facts.*

⁶ supra

Thus, it is clear that the High Court had directed the District judge to grant the interim injunction prayed for by the 1st Defendant even in the absence of not only an inquiry in that regard but also an order issuing notice of injunction in the first place.

As has been shown above, there is no legal basis for the Provincial High Court to have directed the learned District Judge to issue an interim injunction as prayed for by the 1st Defendant in terms of paragraph (අ) or to issue an enjoining order or the notice of interim injunction as prayed for by the 1st Defendant in terms of paragraph (ආ) of the prayers of the Petition dated 16-12-2015 filed in the District Court against the 2nd Defendant.

For the foregoing reasons, I answer the questions of law in respect of which this Court has granted Leave to Appeal in the affirmative. I proceed to set aside the judgment dated 17-01-2018 pronounced by the Provincial High Court. I restore the order dated 23-12-2015 of the learned District Judge of Kandy. The Petition dated 16-12-2015 praying for the enjoining order and interim injunction must stand dismissed. The 1st Defendant-Petitioner-Appellant-Respondent must pay to the 2nd Defendant-Respondent-Respondent-Appellant a cost of Rs. 100,000/=.

JUDGE OF THE SUPREME COURT

E. A. G. R. Amarasekara J

I agree,

JUDGE OF THE SUPREME COURT

Shiran Gooneratne J

I agree,

JUDGE OF THE SUPREME COURT