

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

In the matter of an Appeal against Judgment dated 9th September 2020 pronounced in Case No. UVA/HCCA/BDL/15/18 (F) under and in terms of Section 5 (c) (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

IN THE DISTRICT COURT

Lokumarage Hemapala (Deceased)
Uduhulpotha, Bandarawela

Plaintiff

L.K.Samudra Swarnamali
Uduhulpotha, Bandarawela

Substituted Plaintiff

SC/APPEAL/78/2022

SC/HCCA/LA/No.323/20

UVA/HCCA/BDL/15/18 (F)

D.C. Bandarawela Case No. P/499

V.

1. Galle Arachchige Don Pedrik Appuhamy (Deceased)

Mahindasiri, Golflink Rd, Bandarawela

1. A. Galle Arachchige Don Ananda Galle Arachchi

2. G.A.D. Podiappuhamy (Deceased)

2.A. G.A.D.Nimal Chandraguptha
Diwthotawelakanda,Welimada

2.B. G.A.D.Rupasinghe

2.C. Asoka Weeralatha

2.D. Pushpalatha Upamalika

3. G.A.D Williyam Appuhamy (Deceased)

3.A. G.A.D.Nandani Indra Niwasa,
(Deceased)
Uduhulpotha,Bandarawela

3.B. G.A.D Neelakanthi
144/9/A, Pamunuwela, Gonawela,
Kelaniya alias Indra Niwasa,
Uduhulpotha Bandarawela

4. G.A.D. Kumaradasa (Deceased)

4.A. Y.M.Nandawathie
4.B. Ashoka Kumarasasa
Both of Sobana Motors, Uduhulpotha,
Bandarawela
4.C. G.A.D. Mahendrasena
Pinarawa, Kinigama, Bandarawela

5. Keerthi Amarasinghe Alias Nimal
Keerthi Amarasinghe
Watte Gedara, Uduhulpotha Bandarawela

6. Sriyawathie Abeykoon,
Abeysiri Niwasa, Uduhulpotha Bandarawela.

7.K.B.Chandrasena,
Uduhulpotha, Bandarawela.

8.Pathmini Nilaweera
Watte Gedara, Uduhulpotha, Bandarawela.

9. Dona Godahena Kamala Witharana
298, Watte Gedara, Uduhulpotha,
Bandarawela.

10.Okanda Gamage Dhanapala
Amila, Watte Gedara, Uduhulpotha
Bandarawela

11.Premawathie Mahawitharana
Uduhulpotha, Bandarawela

12.Sirisena Wanasinghe alias Wanasinghe

Mudiyansilage Sirisena
Uduhulpotha, Bandarawela

13. Hansa Udukalage

14. R.M. Dharmasiri
All of Watte Gedara, Uduhulpotha
Bandarawela

15. G.A.D. Sumanapala
Watte Gedara, Uduhulpotha Bandarawela

16. Okanda Gamage Chandrani Renuka
Uduhulpotha, Bandarawela

17. M.K.M Pemalatha,

18. Galle Arachchige Don Ananda Galle
Arachchi
Mahindasiri, Golflink Rd, Bandarawela.

Defendants

AND BETWEEN IN THE HIGH COURT

G.A.D. Sumanapala
Watte Gedara, Uduhulpotha Bandarawela
15th Defendant – Appellant

V.

L.K.Samudra Swarnamali
Uduhulpotha, Bandarawela

Substituted Plaintiff- Respondent

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(Deceased)

Mahindasiri, Golflink Rd, Bandarawela

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Arachchi

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Mahindasiri, Golflink Rd, Bandarawela.

Defendants- Respondents

AND NOW BETWEEN IN THE SUPREME COURT

G.A.D. Sumanapala
Watte Gedara, Uduhulpotha Bandarawela
15th Defendant – Appellant-Appellant

V.

L.K.Samudra Swarnamali
Uduhulpotha, Bandarawela

Substituted Plaintiff- Respondent-Respondent

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(Deceased)

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18. Galle Arachchige Don Ananda Galle
Arachchi
Mahindasiri, Golflink Rd, Bandarawela.

Defendants- Respondents-Respondents

Before : **Yasantha Kodagoda, PC, J.**
A.H.M.D. Nawaz, J.
K. Priyantha Fernando, J.

Counsel : Uditha Egalahewa, PC with Bhagya Herath with
Abirami Balasubramaniyam instructed by
Sandaruwan Senanayake for the 15th Defendant-
Appellant – Appellant

Sameera Silva for the Substituted Plaintiff-
Respondent- Respondent

Argued on : 07.10.2025

Decided on : 09.02.2026

K. PRIYANTHA FERNANDO, J.

The Facts

1. The Plaintiff – Respondent-Respondent (hereinafter referred to as Plaintiff- Respondent) has instituted action in the District Court of Bandarawela under case No. P/499 against the 1st, 2nd, 3rd and 4th Defendants – Respondents- Respondents (hereinafter referred to as Defendants - Respondents) to partition the lands in the two schedules to the Plaintiff namely “ලං උල්පොත කමුර” (6 busals in extent) and “ලංල්පොත අරාව” (4 busals in extent).
2. The plaintiff states that the original owner of the lands described in the schedule was one G.A.D. Siyadoris Appuhamy, who has passed leaving his second wife M. Heenmanika alias Kumarihamy, three children from his previous marriage and four children from his marriage to Heenmanika. The children from the previous marriage were Pedrick Appuhamy (the 1st Defendant – Respondent), Podi Appuhamy (the 2nd Defendant - Respondent), and William Appuhamy (the 3rd Defendant - Respondent). The children from his second marriage with M. Heenmanika were Kumaradasa, Punchisingho, Wilbert and Podihamine of whom, Punchisingho and Podihamine have passed away without issue whereby their shares have devolved to their mother, M. Heenmanika and their brothers.
3. According to the Plaintiff, M. Heenmanika has then contracted a marriage with Karolis Appuhamy in or about the year 1935. She has had four children with Karolis Appuhamy namely Lokukumarage Hemapala (the Plaintiff), Jayarathne alias Wijayaratne, Gunaratne and Nandawathie. She has passed away in the year 1949 leaving a will. The will which has been duly proved in a Court made Karolis Appuhamy entitled to 8/14 of both lands.
4. In 1963 Wilbert (a child of Heenmanika and Siyadoris) passed away, half his shares devolved on his brothers and sisters from the maternal side and the other half on his brothers and sisters from the paternal

side. Later, Gunaratne (a child of Heenmanika and Karolis Appuhamy) passed away in 1979 leaving as his heirs, his wife and children.

5. Karolis Appuhamy has passed away in 1982, intestate and his rights devolved onto his four children or their heirs, i.e. the Plaintiff, Jayarathne alias Wijayaratne, heirs of Gunaratne and Nandawathie. The shares of Gunaratne have been transferred to the Plaintiff-Respondent by deed No. 24078 dated 26.06.1990.
6. As per the Plaintiff, the shares of the first land by this point were as follows:

Plaintiff – 172/280
1st Defendant – 27/280
2nd Defendant – 27/280
3rd Defendant – 27/280
4th Defendant – 27/280

7. The shares of the second land, as per the Plaintiff were as follows:

Plaintiff – 92/280
1st Defendant – 107/280
2nd Defendant – 27/280
3rd Defendant – 27/280
4th Defendant – 27/280

8. Thereafter, a Commission has been issued and a preliminary survey has been carried out by U.N.P Wijeweera, a licensed surveyor who has submitted the preliminary plan numbered 1674 (see page 764 of the brief).
9. Thereafter, the 5th – 14th Defendants – Respondents – Respondents (hereinafter sometimes referred to as the 5th – 14th Defendants - Respondents), the Appellant (15th Defendant – Appellant – Appellant, hereinafter sometimes referred to as the 15th Defendant - Appellant), and the 16th – 18th Defendants- Respondents- Respondents (hereinafter referred to as 16th – 18th Defendants - Respondents) have intervened into the action. The 1st, 3rd, 4B, 4D, 6th, 8th, 9th, 11th, 12th, 13th, 16th, 17th, 18th Defendants – Respondents and the 15th Defendant - Appellant have submitted their statements of claim. The Plaintiff-Respondent-Respondent has filed his replication, and the matter has proceeded to trial.
10. The Learned District Judge by Judgment dated 29.01.2018 has held that the corpus has been adequately identified and that the shares

of the respective parties have been determined. Aggrieved, the 15th Defendant – Appellant has preferred an Appeal to the Civil Appellate High Court of Uva Province holden in Badulla on 12.03.2018.

11. The position taken up by the 15th Defendant – Appellant has been that the Judgment of the District Judge is ex-facie wrong and contrary to the oral and documentary evidence whereby submitting that there is a huge discrepancy in the corpus which has not been identified, that the claims of prescription raised by the 1st Defendant – Respondent had not been recognized, that there are discrepancies in the pedigree of the Plaintiff and that the paternal rights of the Plaintiff has been recognized without adequate evidence to conclude on the fact that he is the son of Karolis Appuhamy.
12. The Learned Judges of the Civil Appellate High Court of the Uva Province holden in Badulla by Judgment dated 09.09.2020 held inter alia that the learned District Judge had correctly identified the corpus, that there is no error in calculating the shares to the parties and that the learned District Judge had properly investigated the title of parties whereby there is no reason to interfere with the Judgment.
13. Aggrieved, the 15th Defendant – Appellant has appealed to this Court. When the matter was taken up for hearing, the question of law was confined to the following with the consent of the learned Counsel for both parties:

Question of Law

“Did the Judges of the High Court of Civil Appeal err in law when they concluded that the paternity of the Plaintiff, Mr. Hemapala, Jayaratne, Gunaratne, and Nandawathi, had been established by way of evidence and therefore accepted the pedigree?”

14. Therefore, the question of law before this Court concerns itself with whether the Plaintiff – Respondent alongside Jayaratne alias Wijayaratne, Gunaratne, and Nandawathi are in fact the child of Karolis Appuhamy. In alleging that the Plaintiff – Respondent is not fathered by Karolis Appuhamy, the 15th Defendant – Appellant has furthered the following arguments and evidence.

The Plaintiff- Respondent and others were born prior to the institution of the marriage between Karolis Appuhamy and M. Heenmanika

15. It is submitted by the 15th Defendant – Appellant that, although the Plaintiff states that the marriage between M. Heenmenika and Karolis Appuhamy was contracted in or about 1935 the marriage certificate that has been submitted marked “P15” provides that the date of marriage was 23.08.1948. I observe that this position is factually accurate having examined the marriage certificate in page 703 of the brief.

16. Following from this, he states that the Plaintiff – Respondent was born on the 1st of June 1941 (before the marriage between Karolis Appuhamy and M. Heenmanika took place) according to his birth certificate (marked P 18 at page 717 of the brief), which too, I observe is factually accurate. Similar is the case for Jayaratne alias Wijayaratne whose birth certificate is marked “P 21” which provides his birthday to be the 19th of May 1937, Gunaratne, whose child’s birth certificate denoting him as the father notes his birthday as 9th January 1935 (page 698 of the brief) and that of Nandawathie, whose birth certificate is marked “P 19” at page 719 of the brief denoting her date of birth as the 1st of March 1939.

17. In this regard, the 15th Defendant – Appellant, placing the maxim “*Pater est quem nuptiae demonstrant*” meaning “he is the father whom the nuptials point out, or whom marriage indicates” submits that the afore mentioned maxim has no application for children born out of wedlock, whose alleged father has later married their mother. However, this position on its own can not be considered conclusive evidence to determine that the Plaintiff- Respondent is in fact not a child of M. Heenmanika and Karolis Appuhamy.

The Birth Certificates of the Plaintiff – Respondent and others do not Recognize Karolis Appuhamy as the Father

18. The 15th Defendant – Appellant further submits that the birth certificates do not identify Karolis Appuhamy as the father of the Plaintiff – Respondent, Jayaratne alias Wijayaratne, Gunaratne and Nandawathie. Upon examining the birth certificates of the Plaintiff – Respondents and the others aforementioned, I observe that the space for the name of the father has in fact been left blank and the marital status of parents is noted as “no”.

19. In this regard the Learned Counsel for the 15th Defendant – Appellant submitted the case of ***Ubeyratne v Karunawathie and***

Others [1993] 3 SLR where it was stated that “The Birth Certificates of the children are *prima facie* evidence of the fact that they were born during the continuance of a valid marriage.”

20. However, it must be mentioned that the name of Karolis Appuhamy is mentioned as the informant of the birth and as a resident of the household in these birth certificates. I believe that this repeated mention raises at least a slight doubt as to the denying of the paternity and therefore, I will look at the jurisprudential developments in cases where the birth certificate is not possible to be used as conclusive evidence to establish paternity owing to extra-ordinary circumstances.

Establishing Legitimacy where Birth Certificate is Inconclusive

21. The Plaintiff – Respondent concedes to the legal position that a birth certificate is the *prima facie* evidence, however, the Learned Counsel for the Plaintiff – Respondent submitted the case of **Jayasinghe Premarathna Jayasinghe and others v Kotaliyagoda Dharmawansa Thero and Others** [C.A. Case No. 1005/1997 CA Minutes of 30.07.2018]. In the judgment by Justice Nawaz, it has been held that even in the absence of a birth certificate, devolution to the title could be proved and that Section 50 of the Evidence Ordinance could be applicable in this context.

22. I observe that in the case **M.K.M.G. Gunawathie v M.G. Karunawathie** [CA Appeal No. 876/1997 CA Minutes of 12.12.2017] Justice Nawaz referring to previous judgments of this Court expands on the possibility of devolution of the title where birth certificate is absent. Reference is made to the head note to the case of **Cooray v Wijesuriya 62 NLR 158** where it has been stated that:

“Apart from proof by the production of birth, death and marriage certificates, the relevant provisions of the Evidence Ordinance in regard to proof of pedigree are to be found in sections 32 (5), 32 (6) and 50 (2) of the Evidence Ordinance”

At page 161 of the same judgment the following is stated:

“It almost always happens that birth and death certificates of persons who have died very long ago are not available; in such cases the only way of establishing relationship is by hearsay evidence”

23. To this extent, it must be noted that section 50 (2) contains an exception to the exclusionary rule on opinion evidence. It provides the following:

"When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

(Illustrations)

- a) *The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and Wife is relevant.*
- b) *The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant."*

24. In **M.K.M.G. Gunawathie v M.G. Karunawathie (supra)** Justice Nawaz differentiates section 50 (2) from section 32 (5) in the following way:

"It is to be noted that Section 50 differs from Section 32(5) in the following respects:

- (a) *What is admissible under Section 32(5) is the statement giving the opinion of a deceased person or a person who cannot be produced, whereas under Section 50, the relevant fact is the opinion of persons, alive or dead, expressed by conduct, the qualification of special means of knowledge being common to both provisions.*
- (b) *Under Section 32(5), the statement must be made ante litem motam, but under Section 50 the opinion may have been expressed before or after the controversy arose."*

Following from this discussion, it is evident that legitimacy may be established through expressions of conduct in cases where there is doubt as to the paternity of a child.

25. In this regard, the arguments and supportive evidence submitted by the learned Counsel for the Plaintiff – Respondent of various instances where Karolis Appuhamy has possibly acted in the capacity of the father becomes significant.

Evidence of Karolis Appuhamy Acting in the Capacity of the Plaintiff – Respondents' and others Father by way of Conduct

26. The document marked "P25" at page 729 of the brief which is the school admission of the Plaintiff- Respondent notes the name of Karolis Appuhamy as the father of Hemapala who is the Plaintiff- Respondent.
27. It is also submitted that the Plaintiff – Respondent is substituted as the substituted Plaintiff in the place of Karolis Appuhamy who was the original Plaintiff in the action bearing P/5106 upon his death. It is observed that the parties to the present case are similar to the parties of case No. P/5106 with the case facts concerning similar circumstances. It is submitted that the parties did not oppose to the substitution at the time. This is marked "P1" at page 653 of the brief.
28. The death certificate of Gunarathne which is marked "P9" at page 653 of the brief identifies Karolis Appuhamy as his father. Further, it is submitted that Gunaratne's daughter's birth certificate identifies Karolis Appuhamy as the grandfather, it is submitted marked "P10" at page 696 of the brief. I observe both these positions to be factually accurate.
29. In these circumstances I am of the opinion that there is sufficient evidence to hold that the Plaintiff – Respondent and his siblings Jayarathne *alias* Wijayaratne, Gunaratne, and Nandawathi were children of Karolis Appuhamy.
30. Therefore, while the birth certificate does not recognize Karolis Appuhamy as the father, I am of the opinion that in the circumstances of there being sufficient evidence by way of his conduct to prove that he has in fact acted in the capacity of the father, the Plaintiff – Respondent and his siblings Jayarathne *alias* Wijayaratne, Gunaratne, and Nandawathi were children of Karolis Appuhamy.

Further Factual Inconsistencies

31. It is further submitted that the 15th Defendant – Appealant does not seem to have a comprehensive understanding of the pedigree or the admissions made in this case, given his responses during cross examination. I am compelled to believe this is so as he clearly states that his knowledge is limited to one of the two lands in suit during his cross examination. This is reflected in page 517 of the brief.

32. Further, it is submitted that neither the 1st Defendant – Respondent nor the 15th Defendant – Appellant have mentioned in their statements of claims or their points of contest, issues in relation to the paternity of Hemapala. Having perused the statements of claim and the points of contest I observe that such is the case, which is an anomalous position given the primary contention in the case at hand being the paternity and also given the nature of this action as it concerns the devolution of shares among co-owners.

Operation of Section 3 of the Legitimacy Act No. 03 of 1970

33. At the argument it was argued that the subsequent marriage between M. Heenmanika and Karolis Appuhamy renders the Plaintiff – Respondent and his siblings legitimate as per the provisions of Operation of Section 3 of the Legitimacy Act No. 03 of 1970. It provides the following:

“Legitimization of illegitimate children

*3. A valid marriage to which this Act applies shall be deemed at all times, whether before or on or after the date of the commencement of this Act, to have rendered, and to render, legitimate **any child procreated by the parties prior to such marriage**, whether or not such child was so procreated in adultery: Provided, however, that where at any time before the date of the commencement of this Act any rights of any description whatsoever did not vest in the child of any marriage, but did in fact vest in any other person, by reason only of the fact that such child, having been procreated in adultery, was the illegitimate child of the parties, the subsequent legitimization of such child, by virtue of the operation of the preceding provisions of this section, shall not be deemed or construed*

(a) to have prejudiced or affected, or to prejudice or affect, in any manner, or to any extent, whatsoever the rights so vested, or such other person's claim or title to such rights; and

(b) to have conferred, or to confer, on such child any claim or title to such rights.”

(emphasis added)

34. As this Court is inclined to hold that the evidence when taken as a collective lead to the conclusion that the Plaintiff – Respondent and his siblings were in fact fathered by Karolis Appuhamy, it is thereby

possible that the Plaintiff – Respondent and his siblings are rendered legitimate children of M. Heenmanika and Karolis Appuhamy by the operation of the above Act.

35. Therefore, the question of law mentioned in paragraph 13 of this Judgment is answered in the negative as this Court is inclined to hold that Karolis Appuhamy is the father of the Plaintiff - Respondent. In these circumstances, the Judgments of the Bandarawela District Court dated 29.01.2018 and the Civil Appellate High Court of Uva Province helden in Badulla on 09.09.2020 are upheld.

36. Appeal is dismissed with costs.

Appeal is Dismissed

JUDGE OF THE SUPREME COURT

JUSTICE YASANTHA KODAGODA PC

I agree

JUDGE OF THE SUPREME COURT

JUSTICE A.H.M.D. NAWAZ

I agree

JUDGE OF THE SUPREME COURT