

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

In the matter of an Application for Leave to Appeal under Section 5 (c) 1 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

S.C. Appeal. No: 43/2020

S.C.H.C. CA. LA. No: 46/2015

NP/HCCA/JAF/172/12

DC Jaffna Case No: L/283

Puvaneswari widow of Pasupathi,
Yuvasakthi Lane, Sudumalai South,
Manipay.

PLAINTIFF-RESPONDENT-APPELLANT

Vs.

Sinnathamby Thangarasa,
Yuvasakthi Lane, Sudumalai South,
Manipay.

DEFENDANT-APPELLANT-RESPONDENT

BEFORE : **JANAK DE SILVA, J.**
ACHALA WENGAPPULI, J.
SOBHITHA RAJAKARUNA, J.

COUNSEL : S.N. Vijithsingh for the Plaintiff-Respondent-Appellant
Kanapathipillai Pirabakaran with Hemanthani G.
Harishchandra for the Defendant-Appellant-Respondent

ARGUED &

DECIDED ON : 14.10.2025

JANAK DE SILVA, J.

The Plaintiff-Respondent-Appellant (Appellant) instituted this action against the Defendant-Appellant-Respondent (Respondent) seeking a declaration that the Respondent has no right of way over the by-lane on the eastern boundary of the corpus and for an order to remove the gate abutting the eastern boundary of the by-lane.

The Respondent in his answer denied the claim of the Appellant and moved that the plaint be dismissed.

The District Court of Jaffna entered the judgment as prayed for by the Appellant.

Aggrieved by the judgment, the Respondent appealed to the Civil Appellate High Court of the Northern Province holden in Jaffna.

The High Court set aside the judgment of the District Court and directed the learned judge of the District Court of Jaffna to consider the entire evidence led in the case and write a fresh judgment.

Leave to appeal has been granted on the following question of law:

(1) Whether the Civil Appellate High Court has interpreted Section 48 of the Judicature

Act No. 02 of 1978, as amended correctly in the circumstances of this case?

The factual matrix leading to the appeal is as set forth below.

The trial commenced before Judge A. The Appellant was the first witness. His evidence-in-chief and cross-examination was concluded. The re-examination was partly completed.

Then Judge A was succeeded by judge B before whom the re-examination of the Appellant was concluded. Furthermore, the evidence of Rasu Thuraisingham and Selvarasa

Nesamany were also led on behalf of the Appellant and his case was closed. Thereafter, the Respondent began his case and his examination-in-chief concluded before Judge B.

By the next day, Judge B was replaced by Judge C who decided to proceed to trial disregarding the evidence led before his predecessors claiming that he had not formally adopted the previous proceedings.

Judge C then allowed the re-examination of the Appellant and then recalled Rasu Thuraisingham and Selvarasa Nesamany on behalf of the Appellant and the Respondent. The learned judges of the High Court considered the procedure followed by Judge C irregular.

Upon an examination of the papers filed before the High Court, we observe that this was not a ground urged in appeal.

Moreover, we observe that parties had signed the record on 13.01.2010 indicating that they have no objections to the procedure adopted by Court. In these circumstances, we are of the view that the correctness of the adoption of the evidence by Judge C is not a matter that could have been raised in appeal before the High Court. This is the only ground on which the High Court set aside the judgement of the District Court.

For the foregoing reasons, I answer the question of law as follows:

“The High Court should not have considered the correctness of the procedure adopted by Judge C as parties had signed the record agreeing to the course adopted by Court.”

Accordingly, I set aside the judgment of the High Court dated 19.12.2014.

We direct the High Court to notice all parties and hear the merits of the appeal and deliver judgment according to law.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT

SOBHITHA RAJAKARUNA, J.

I agree.

JUDGE OF THE SUPREME COURT