

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

Kalimuthu Letchi Raman
Sole Trustee and Managing Kapurala of the
Munneswaram Badrakali Kovil,
Munneswaram, Chilaw.

Plaintiff

Case No. C. A. 373/89(F)
D. C. Chilaw Case No. 20658/L

Vs.

1. Letchiraman Pathmanadan
 2. Letchiraman Balasunderam
 3. Letchiraman Jeganathan
 4. Letchiraman Sabharatnam
 5. Nagaratnam Sinnathamby
 6. S. M. Piyadasa (Deceased)
 - 6A. Kaddupitty Arachchige Magarat
 - 6B. Serasinghe Mudiyansele Sarathchandra
 - 6C. Serasinghe Mudiyansele Ranjini
- All of Jayabima, Chilaw.
7. V. Rajasingham of Munneswaram
 8. Yogambal Jayaratnam of No. 37, Easakimuthu Place, Colombo 13.
 9. C. Rajendran of Hospital Road, Manipay.
 10. Ananda Iswari Ratnasabapathi of Lorensz Road, Wellawatte, Colombo 06.

Defendants

AND

Kalimuthu Letchi Raman
Sole Trustee and Managing Kapurala of the
Munneswaram Badrakali Kovil,
Munneswaram, Chilaw.

Plaintiff-Appellant

Kalimuthu Sivaoadasundaram
Sole Trustee and Managing Kapurala of the
Munneswaram Badrakali Kovil,
Munneswaram, Chilaw.

Substituted Plaintiff-Appellant

Vs.

1. Letchiraman Pathmanadan (Deceased)
1A. Sutharsanadevi Pathmanadan of Kali Kovil Road,
Munneswaram, Chilaw.
2. Letchiraman Balasunderam (Deceased)
2A. Punyakumari Balasundaram of Jayabima,
Chilaw.
3. Letchiraman Jeganathan
3A. Jaganathan Yuganathan presently of Unit-3, 3-6,
Caroline Street, Westmead, NSW 2145,
Australia.
3B. Kokulashanthini Jeganathan of Jayabima,
Chilaw.
4. Letchiraman Sabharatnam
5. Nagaratnam Sinnathamby
6. S. M. Piyadasa (Deceased)
6A. Kaddupitty Arachchige Magarat

6B. Serasinghe Mudiyansele Sarathchandra

6C. Serasinghe Mudiyansele Ranjini

All of Jayabima, Chilaw.

7. V. Rajasingham of Munneswaram

8. Yogambal Jayaratnam of No. 37, Easakimuthu Place, Colombo 13.

9. C. Rajendran of Hospital Road, Manipay.

10. Ananda Iswari Ratnasabapathi of Lorensz Road, Wellawatte, Colombo 06.

Defendants-Respondents

Before: Janak De Silva J.

Counsel:

Rohan Sahabandu P.C. with Chathurika Elvitigala for Substituted Plaintiff-Appellant

K.M.B. Ahamed with Luxman Jeyakumar for 1st, 2nd and 3rd Substituted Defendants-Respondents and 4th and 5th Defendants-Respondents

Argued on: 22.02.2019, 25.02.2019 and 26.02.2019

Written Submissions tendered on:

Substituted Plaintiff-Appellant on 21.02.2019 and 09.05.2019

Substituted Plaintiff-Respondent on 15.02.2019 and 06.05.2019

Decided on: 04.10.2019

Janak De Silva J.

This is an appeal against the judgment of the learned District Judge of Chilaw dated 13.12.1989.

The Plaintiff-Appellant (Plaintiff) instituted the above styled action in the District Court of Chilaw seeking inter alia a declaration of title to the allotments of land more fully described in the schedules to the plaint dated 08.05.1980 [Page 61 of the Appeal Brief].

The Plaintiff is the Sole Trustee and the Managing Kapurala of the Munneswaram Badrakali Kovil (Kovil) situated in Munneswaram, Chilaw under and by virtue of the Order/Decree dated 04.02.1976 of the District Judge of Chilaw in Case No. 10/Trust (which was affirmed by the Supreme Court in S. C. 24/76(F), S. C. 88/76(F) and S. C. 89/76(F) decided on 29.11.1977).

The 1st to 5th and the 7th Defendants filed their Answers on 22.06.1981. It was their contention that one Sivanandan Pillai Kathiravelu became entitled to the said allotments of land under and by virtue of Deed No. 159 dated 03.02.1924, Deed No. 119 dated 24.07.1923 and Deed No. 62 dated 09.12.1922 all attested by J. J. Fernando, Notary Public and subsequent to the demise of the said Sivanandan Pillai Kathiravelu, his heirs became the owners of the said allotments of land and the building called 'Kathiravelu Madama' situated thereof built by the said Sivanandan Pillai Kathiravelu. Further, they sought to add the heirs of the said Sivanandan Pillai Kathiravelu as Defendants and the 8th to 10th Defendants were added accordingly.

The 9th Defendant filed his Answer on 25.03.1985 confirming the position taken up by the 1st to 5th and 7th Defendants.

The learned District Judge dismissed the action of the Plaintiff on the basis that the Plaintiff had failed to prove his title to the said allotments of land and hence this appeal.

The learned President's Counsel for the Substituted Plaintiff-Appellant (Appellant) took up the position that the present action is not a proper rei vindicatio action but an action to obtain a declaration of status under Section 217(g) of the Civil Procedure Code read with Sections 106 and 107 of the Trusts Ordinance [Written Submissions dated 09.05.2019].

A careful perusal of the document marked 'පැ.4' [Page 234 of the Appeal Brief] shows that an action has been previously instituted by the same Plaintiff (D. C. Chilaw Case No. 10/Trust) seeking for a vesting order under Section 112 of the Trusts Ordinance vesting the Munneswaram Badrakali Kovil situated on the land called Bodiyaawatte more fully described in the Schedule 'A' together with the temporalities more fully described in the Schedule 'B' of the said document marked 'පැ.4' in the Plaintiff (as the Sole Trustee and the Managing Kapurala of the said Kovil).

By the Order/Decree dated 04.02.1976 of the District Judge of Chilaw in Case No. 10/Trust (which was affirmed by the Supreme Court in S. C. 24/76(F), S. C. 88/76(F) and S. C. 89/76(F) decided on 29.11.1977), decided not only the Kovil and the temporalities more fully described in the Schedule 'B' of 'භූ.4' were vested with the Plaintiff but he was also declared the Sole Trustee and the Managing Kapurala of the said Kovil (without prejudice to the rights of the male descendants of the previous Kapurala) [Page 226 of the Appeal Brief].

The learned District Judge has held that if the said allotments of land more fully described in the schedules to the Plaint dated 08.05.1980 in this action belonged to the Kovil, they should have been included in the list of temporalities in the D. C. Chilaw Case No. 10/Trust. I agree with that finding of the learned District Judge.

The learned President's Counsel for the Appellant has made detailed submissions on the nature of the present action to emphasize that it is not a *rei vindicatio* action but only an action seeking a declaration under section 217 of the Civil Procedure Code as to the status. This submission has been made since the learned District Judge classified the present action as an *action rei vindicatio* and held that the action must be dismissed since the Plaintiff failed to establish his title to the land in dispute as required by law.

Court is of the view that there is no need to make a definitive classification of the nature of the present action other than to state that it was instituted by the Plaintiff to safeguard the alleged trust property.

In *Thamotherampillai v. Ramalingam* (34 N.L.R. 359) it was held that when the plaintiffs claiming as Trustees institute an action to safeguard or assert rights to the "Trust property" and the question at issue is whether the title to the trust property is vested in the plaintiffs or in the defendants, the plaintiffs are not entitled to maintain the action without first obtaining a vesting order under section 112 of the Trusts Ordinance. This was quoted with approval by Sripavan C.J. in *Jegatheeswaran and another v. Rameswara Iyer and others* [S.C. Appeal No. 8/2013, S.C.M. 24.01.2017].

The previous action (D. C. Chilaw Case No. 10/Trust) was to obtain a vesting order in terms of Section 112 of the Trusts Ordinance regarding the Kovil and its temporalities. In terms of paragraph 2 of 'භූ.4', the temporalities belonging to the Kovil are enumerated and described in the Schedule 'B' of 'භූ.4'. However, it must be noted that the allotments of land in respect of which the instant action was instituted is not included in the said Schedule 'B' of 'භූ.4'.

For all the foregoing reasons, I see no reason to interfere with the judgment of the learned District Judge of Chilaw dated 13.12.1989.

Appeal is dismissed with costs.

Judge of the Court of Appeal