

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

Divisional Secretary,
Divisional Secretariat,
Kundasale,
Manikhinna.
Applicant-Respondent-Petitioner

CA CASE NO: CA (PHC) 151/2013

PHC KANDY CASE NO: 24/2010/REV

MC TELDENIYA CASE NO: 92158

Vs.

Abdul Hameed Mohammed Razik,
No. 54/2, Galdediyahena,
Digana,
Rajawella.
Respondent-Petitioner-
Respondent

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Anusha Fernando, D.S.G., for the Applicant-
Respondent-Petitioner.
Anura Meddegoda, P.C., with Jayani
Jayasundara for the Substituted Petitioner-
Respondent.

Decided on: 10.10.2019

Mahinda Samayawardhena, J.

The Petitioner Divisional Secretary of Kundasale filed this application in the Magistrate's Court of Teldeniya under section 5 of the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended, to eject the Respondent from Lot 17 of the Preliminary Plan No. 2381 prepared by the Surveyor General.

The Respondent took up the position that his predecessor in title became the owner of the land depicted in Plan 879 prepared by Surveyor H. Panabokke by virtue of the Decree entered in District Court Kandy Case No. 6007/L in 1964, and thereafter the judgment-creditor in that case gifted the land to his children by Deed No. 5319 in 1965, and they in turn transferred the land by Deed No. 12149 in 1970 to the Respondent's father-in-law, Jenudeen Buhardeen, who was the original Respondent in the connected Case No. CA/PHC/140/2013 and therefore this is not a State Land, but a Private Land, from which he cannot be ejected under the said Act. After the death of Jenudeen Buhardeen, his daughter, who is also the wife of the Respondent, has been substituted as the Substituted Respondent in the other case.

This case is directly connected to CA/PHC/140/2013 where the Judgment was delivered just now. In both cases, objections, submissions, counsel etc. are all same. The only difference is, in this case, (a) the disputed land is Lot 17 of the same Plan No. 2381 and (b) the Respondent (Abdul Hameed Mohammed Razik) is the husband of the Substituted Respondent in the other case.

There is no necessity to repeat the reasons given in the other case here.

For the same reasons, the Judgment of the High Court is set aside and the order of the Magistrate's Court is restored. No costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal