

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

In a matter of an application for an order of Transfer of the Case. No.:

**WP/HCCA/HO/36/2025/LA** under Article 138(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 46 of the judicature Act No: 2 of 1978.

**C.A. No. TRF 0020-25**

**C.A.H.C. No.**

**WP/HCCA/HO/36/2025/LA**

**D.C. Kaduwela No. 1010/L**

**Before the District Court of Kaduwela**

වේරගලගේ දෙන් විරසිර දායානන්ද, නො. 1/78,  
හෝකන්දර දකුණ, හෝකන්දර,

**පැමිණිලිකරු**

-එදිරිව-

1. අරඹ වත්තගේ පත්මසේන රුඩිරිගු, නො. 80,  
හෝකන්දර දකුණ, හෝකන්දර
2. වෙඩිමුලි ආරච්චිගේ විෂේෂිත පෙරේරා,
3. නාලනී අමරසිංහ හෙවත් අමරසිංහගේ  
නාලනී ප්‍රේරා, දෙදෙනාම, නො. 28/3,  
හෝකන්දර දකුණ, හෝකන්දර, සහ අංක.  
82, හෝකන්දර දකුණ, හෝකන්දර.
4. ආරියසේන අමරසිංහ.

5. සුනිල් අමරසිංහ.
6. මහින්ද අමරසිංහ.
7. රත්නසිරි අමරසිංහ.
8. ජයන්ත අමරසිංහ, සියලු දෙනාම.  
නො. 28/3, හෝකන්දර දුකුණ,  
හෝකන්දර.

විත්තිකරුවන්

**AND**

In the matter of an application for Leave to appeal under Section 757 of the Civil Procedure Code read with Section 5A of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006.

Mahinda Amarasinghe,  
No. 28/3, Hokandara South,  
Hokandara.

**6<sup>th</sup> Defendant Petitioner**

**-Vs-**

Weragalage Don Weerasiri Dayananda,  
No. 1/78, Hokandara South,  
Hokandara.

**Plaintiff Respondent**

1. Deceased
2. Wedumbuli Arachchige Wijesiri Perera
3. Nalani Ameresinghe alias Ameresinghege Nalani  
Prera  
both of 28/3, Hokandara South, Hokandara.
4. Ariyasena Ameresinghe,
5. Sunil Ameresinghe,
7. Ratnasiri Ameresinghe,
8. Jayanta Ameresinghe, all of 28/3, Hokandara  
South, Hokandara

**Defendant Respondents**

**AND NOW BETWEEN**

In a matter of an application for an order of Transfer of the Case No.: **WP/HCCA/HO/36/2025/LA** under Article 138(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 46 of the judicature Act No: 2 of 1978.

Mahinda Amarasinghe,  
No. 28/3, Hokandara South,  
Hokandara.

**6<sup>th</sup> Defendant Petitioner Petitioner**

**-VS-**

Weragalage Don Weerasiri Dayananda,  
No. 1/78, Hokandara South,  
Hokandara.

**Plaintiff Respondent Respondent**

1. Deceased
2. Wedumbuli Arachchige Wijesiri Perera
3. Nalani Ameresinghe alias Ameresinghege Nalani  
Prera,  
both of 28/3, Hokandara South, Hokandara.
4. Ariyasena Ameresinghe,
5. Sunil Ameresinghe,
7. Ratnasiri Ameresinghe,
8. Jayanta Ameresinghe, all of 28/3, Hokandara  
South, Hokandara

**Defendant Respondent Respondents**

|                          |   |  |
|--------------------------|---|--|
| Before                   | : | <b>Hon. Rohantha Abeysuriya PC, J.(P/CA)</b>   |
|                          | : | <b>Hon. K. Priyantha Fernando, J.(CA)</b>  |
| Counsel                  | : | A.M. Lakshman Ameresinghe with Nandana<br>Malkumara for the 6 <sup>th</sup> Defendant - Petitioner –<br>Petitioner |
| Written Submissions on : |   | 03.12.2025 for the 6 <sup>th</sup> Defendant – Petitioner  |
| Supported on             | : | 29.10.2025   |
| Decided on               | : | 12.01.2026   |

## **K. Priyantha Fernando, J.(CA)**

The 6<sup>th</sup> Defendant-Petitioner-Petitioner (hereinafter referred to as the 'Petitioner') has filed the Petition dated 22<sup>nd</sup> October 2025 seeking transfer of the case of *Homagama* Civil Appellate High Court bearing No. WP/HCCA/HO/36/2025/LA to the Civil Appellate High Court of Colombo or any other nearby Civil Appellate High Court.

### **THE POSITION OF THE PETITIONER**

The Petitioner is the 6<sup>th</sup> defendant in case no. 1010/L being heard in the *Kaduwela* District Court, **filed in October of 2023** by the Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff).

The reason for the application of transfer before this court was the **dismissal of the defendant's application of leave to appeal from the order granting injunctions** against the defendant, dated 25<sup>th</sup> July 2025 in the above case, in the Civil Appellate High Court of *Homagama*.

Moreover, the Defendant-Petitioner submitted that while the impugned order was granted in the case bearing no. 1010/L, prior to the institution of such case, in 2017 the case bearing no. 658/L was filed by the 2<sup>nd</sup> to 8<sup>th</sup> Defendants regarding the same land. In the said case, the Plaintiff-Respondent filed Answer pleading only for dismissal of the case on the ground of *Res Judicata*. The learned District Judge held that such plea would be decided at the end of the case and directed the Plaintiff to amend *inter alia* the prayers of his answer. The Plaintiff-Respondent did not do so, and it is the Petitioner's view that the Plaintiff-Respondent filed case 1010/L to get the reliefs that he abandoned in 658/L after having slept on his rights for 6 years. Hence the Petitioner states that it is

erroneous to proceed with the 1010/L Plaintiff without amending it in the first instance.

The Petitioner stated that he objected to the jurisdiction of the District Court of *Kaduwela* at the first instance and further submitted his Statement of Objections along with affidavits in lieu of the same and even submitted Answer. However, the Petitioner contended that the Plaintiff-Respondent without filing replication asked to file Written Submissions with regard to the injunction orders, and only then did he tender the Replication. Thus, the Plaintiff-Respondent did not follow the procedure set out in s. 75 (e) of the Civil Procedure Code.

However, Written Submissions of the parties were filed and the injunction Order was granted on the 25<sup>th</sup> of July 2025. The Order which granted the injunctions marked (ඉ) and (ඊ) against the 2<sup>nd</sup> to 8<sup>th</sup> Defendants, is reproduced below;

(ඉ) මෙහි පහත දෙවන උපලේඛනයේ සඳහන් ඉඩමට ප්‍රවේශවීම/ සඳහන් සහ හෝ එම ඉඩම සම්බන්ධයෙන් පැමිණිලිකරුගේ නිරවුල් තුක්තියට කිසිදු ආකාරයක මැදිහත්වීමක් හා/හෝ බධා කිරීමක් සිදුකිරීම සහ/හෝ පැමිණිලිකරු එම ඉඩමෙන් නෙරපිම වලක්වාලමින් 2 සිට 8 දක්වා විත්තිකරුවන් සහ/හෝ ඔවුන්ගේ නියෝජිතයන් සහ/හෝ ඔවුන් යටතේ හිමිකම් පාන්තාඩු දෙනාට එරෙහිව අතුරු තහනම් නියෝගයක් ලබා දෙන ලෙසටත්;

(ඊ) මෙහි පහත දෙවන උපලේඛනයේ සඳහන් ඉඩමට හෝ ඉන් කොටසක් කෙරෙහි කිසිදු අයිතිවාසිකම/හිමිකම් පැමක් සිදුකිරීම සහ/හෝ එකී දේපල පැමිණිලිකරු තුක්තිවිදීම යම් සහ/හෝ කවරාකාරයකින් අවහිර සහ/හෝ තෙවන පාර්ශවයකට විකිණීමෙන් සහ/හෝ බුද දිමෙන් කුලියට දිමෙන් සහ/හෝ උකස්කිරීමෙන් සහ/හෝ තෙවන පාර්ශවයක් තුක්තිය පිහිටිවීමෙන් සහ/හෝ එකී දේපල කෙරෙහි තවත් පාර්ශවයක් වෙත අයිතිවාසිකම ඇතිකරන්තාඩු කවර ආකාරයක හෝ ක්‍රියාවක් සිදු කිරීමෙන් සහ/හෝ එකී දෙපලේ පවත්නා ස්විභාවය වෙනස්වන ආකාරයේ කවර හෝ ක්‍රියාවක් සිදුකිරීමෙන් 2 සිට 8 දක්වා විත්තිකරුවන් ඇතුළු ඔවුන් මගින් සහ ඔවුන් යටතේ කටයුතු කරන සේවක නියෝජිතාදී සියලුම දෙන වලක්වන්තාඩු අතුරු තහනම් නියෝගයක් ලබා දෙන ලෙසටත්;

Being aggrieved by this Order, the Petitioner sought to appeal against the impugned Order, but contends that his right of appeal was denied and hence he has invoked the jurisdiction of this court and prays for the relief of transfer of this case from the Civil Appellate High Court of *Homagama* to the Civil Appellate High Court of Colombo or any other Civil Appellate High Court.

The Petitioner brings to the attention of court, the Written Submissions of the Plaintiff in 1010/L in an attempt to shed light on the alleged misleading conduct of the Plaintiff to obtain the impugned orders from the District Court of *Kaduwela*.

It was submitted that the Learned *Kaduwela* District Court Judges of cases 658/L and 1010/L did not take into account the commission report (obtained to identify the corpus) marked X which shows that the Plaintiff had encroached on the land of the 2<sup>nd</sup> to 8<sup>th</sup> defendants and various other lands. The two Plans are no. 128908 and CO/සොඩ/2022/75 and have allegedly not been perused or considered when granting the impugned order of injunctions.

The case bearing no. 699/L, filed by the Plaintiff-Respondent against the Petitioner, refers to a plan no. 1144 of 1980 filed by the Plaintiff. The Petitioner states that although a part of the property has been claimed by the Plaintiff, this is 'grossly false' and alleges that the plan has been forged. The 2<sup>nd</sup> Defendant complained to the police regarding the forged document being produced in a court of law (copies of the complaints made have been furnished and marked as P16 and P17). However, the Petitioner alleges that the Plaintiff-Respondent has hidden the plan no. 1144. The Defendants have prayed in their answer for the plan to be declared as forged.

When the 1<sup>st</sup> Defendant in 658/L (8<sup>th</sup> defendant in 1010/L) passed away 3 years ago, the caption did not reflect the same and the defendant alleges that it is a lie

that the Plaintiff did not know of 1<sup>st</sup> Defendant's death until the report of the process server of the District Court. Furthermore, the deceased was removed from the 1010/L case without substitution or consent of all parties and amended caption was filed on 15/12/2021. The Petitioner states that the 1010/L case cannot proceed and would be erroneous if it did, as it has not been amended in the first instance.

Moreover, it is the Petitioner's contention that the learned District Court Judge did not consider that the Plaintiff did not comply with mandatory requirement of s. 40 (d) CPC, which was raised as the Petitioner's 7<sup>th</sup> Objection in the Statement of Objections. In failing to follow s. 40 (d) of the Civil Procedure Code, the Petitioner is of the view that the Plaintiff has suppressed material facts and has gained an undue advantage. For the above reasons, the Petitioner seeks to set aside the Order granting the injunctions against the 2<sup>nd</sup> to 8<sup>th</sup> Defendants marked as P1, and to further issue an Order preventing the Plaintiff from taking further steps to evict the 2<sup>nd</sup> to 8<sup>th</sup> Defendants or compel them to dispose the property to a third party.

#### ALLEGED GROUNDS FOR TRANSFER OF THE CASE:

Firstly, the petitioner states that the institution of case no. 10101/L is "illegal, irregular, unfair and unjust" as the case 658/L, which concerns the same land is already underway and nearing its end. The Plaintiffs have almost concluded leading evidence in the said case, according to the document marked P12. The Petitioner has even put forth the argument that the 2<sup>nd</sup> to 8<sup>th</sup> Defendants have effectively been prevented from proceeding with the 658/L case due to the injunctions granted in 1010/L.

The Petitioner further states that the right of appeal of the 2<sup>nd</sup> to 8<sup>th</sup> Defendants was unjustly denied as they were not given dates of hearing or for support of the appeal in the Civil Appellate High Court of *Homagama*. Moreover, the date that

was given, was a date asked for by the counsel for the Plaintiff and it was unsuitable to the counsel for the Petitioner, and being a month away, the Petitioner is of the view that such a delay would allow the Plaintiff to make alterations to the property.

The Petitioner further states that the application for leave to appeal was dismissed on the grounds of non-production of the full case record. A copy of the receipt has been produced and marked as P19 and the Petitioner is of the view that it is unfair to require the full case record in a leave to appeal application. Moreover, it is the Petitioner's contention that the Plaintiff-Respondent was making arrangements to enter the land with the assistance of the police, by misdirecting the officers, to combat the fact that the Petitioner sought interim relief from the CAHC *Homagama*.

#### ANALYSIS AND CONCLUSION:

Section 46(1) of the Judicature Act, insofar as relevant to this application, reads as follows:

*“Whenever it appears to the Court of Appeal-*

- (a) That a fair and impartial trial cannot be had in any particular court or place; or*
- (b) That some questions of law of unusual difficulty are likely to arise; or*
- (c) That a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same; or*
- (d) That it is so expedient on any other ground, the court may order upon such terms as to the payment of costs or otherwise as the said court thinks fit, for the transfer of any action,*

*prosecution, proceeding, or matter pending before any court to any other court.”*

Institution of case no. 10101/L while the case 658/L, which concerns the same land is already nearing its end is a matter to be argued on merits before the Civil Appellate High Court.

The Petitioner further states that the application for leave to appeal was dismissed on the grounds on non-production of the full case record. A copy of the receipt has been produced and marked as P19 and the Petitioner is of the view that it is unfair to require the full case record in a leave to appeal application.

However, the proceedings marked as A3 does not show of any dismissal. Journal entry dated 19<sup>th</sup> August 2025 indicates that the Court has ordered to issue notice on the Respondents returnable on 29<sup>th</sup> August 2025 to enable the counsel to support the same. Journal entry dated 25<sup>th</sup> August 2025 indicates that a motion has been filed on behalf of the Petitioner informing the Court that the Counsel for the Petitioner is unable to appear on 29<sup>th</sup> August 2025 due to his sudden change of health condition.

The main grievance of the Petitioner is that he was not given the date convenient to his Counsel on 29<sup>th</sup> August 2025, but the Judges of the Civil Appellate High Court of *Homagama* fixed the matter for a date convenient to the learned President’s Counsel of appearing for the plaintiff.

As per proceedings dated 29<sup>th</sup> August 2025, the case was due to be supported by the 6<sup>th</sup> Defendant-Petitioner. On the said date, it was informed to the Court that the Counsel for the Petitioner is unable to appear on the said date due to sudden change of health condition. It was also informed that the counsel for the Plaintiff-Respondent namely Ms. Dilrukshi Dias (Bandaranayake is not recorded in the certified proceedings) is out of the country and moves for 03.11.2025.

Hence, the Court has fixed the matter for support on **03.11.2025**. Whether the said date is too far or not is relative to the fact of urgency or non-urgency. In the instant matter, the Petitioner states it is urgent since there is a risk of Plaintiff altering the land/subject property.

It is my firm view that this kind of issue should have been sorted out within the same Court (Civil Appellate High Court of *Homagama*) before the same judges by making proper application. If the date is too far and not convenient the Petitioner's Counsel, that should be appraised to the Court in the open courts or at least by way of a motion. If there is a likelihood of the Plaintiff entering the property and/or making alterations to the land, that fact should have been drawn to the attention of the Civil Appellate High Court. Then only, the learned High Court Judges can make an appropriate order as to the maintenance of the status quo until learned President's Counsel return from abroad and appears in Courts **or** to persuade the opposite party to give an undertaking not to make any change/alteration to the land.

Furthermore, If the alleged bad effect of giving a long date was explained to the Court by the Petitioner, the Court could have made appropriate order as to the maintenance of the status quo since the matter is supported. No party should be prejudiced by allowing to take convenient dates for Counsel. There should be fair and fine balance between accommodating Counsel as well as safeguarding rights of the litigants.

Without taking such steps or without making such application before the same Court by the Petitioner, it is unacceptable to expect this Court to transfer the case to another Civil Appellate High Court.

There should be a 'real likelihood of bias' on the part of the Judges of the Civil Appellate High Court if this Court is to transfer the case. In **Abdul Hasheeb v.**

**Mendis Perera and Others** [(1991) 1 SLR 243], it was held by G.P.S. De Silva J. (as His Lordship then was) as follows:

*“It is of course not necessary to prove that the judicial officer was, in fact, biased. However, even on the application of the test of reasonable suspicion, it must be shown that the suspicion is based on reasonable grounds-grounds which would appeal to the reasonable, right-thinking man. It can never be based on conjecture or on flimsy, insubstantial grounds. Adopting the words of Lord Denning in Lannon’s case (1968) 3 All ER 850, Mr. Pullenayagam submitted that ‘bias’ in this context would mean ‘a tendency to favour one side unfairly at the expense of the other’ - a submission with which I agree.”*

There is no proof as to the fact that the Petitioner has sufficiently made known to the Civil Appellate Court of the consequences of the delay caused by granting a long date such as 3<sup>rd</sup> November 2025. It is not unusual facilitating any application made on behalf of a President’s Counsel requesting a convenient date on the basis of he/she being out of the country. However, at the same time, no court should allow the opposite party to suffer in view of the delay caused by such facilitation or accommodating a counsel. If any damage is caused to either party by granting such long date, it is the duty of the same Court to take cognizance of such fact and remedy the same even at a later stage.

The party concerned, the Petitioner in the instant case, is at liberty to make appropriate application to the same Court if any damage or unlawful entry into the land or alteration done due to the fact of granting a long date to facilitate the application of any Counsel.

The Petitioner states that fair and impartial hearing of the case cannot be had before the Civil Appellate High Court of *Homagama* for the reasons enumerated

in the Petition. It is my view that this kind of situation does not come under Section 46 or 47 of the Judicature Act since the facts set out in the Petition are too remote and too tenuous in character to found an allegation of bias on the part of judicial officers/learned High Court Judges.

The totality of circumstances relied on by the Petitioner, do not show that the Judges of the Civil Appellate High Court of *Homagama* have extended favours to one side unfairly at the expense of the other and I accordingly hold that any allegation of bias has not been established. Thus, the basis or ground on which the transfer is sought (section 46(1)(a) of the Judicature Act) fails.

In all the circumstances, I dismiss this application without costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeysuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**