

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

*In the matter of an Application for  
Orders in the nature of Writs of  
Certiorari, Prohibition and Mandamus  
under Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.*

Harshani Chandima Jayawardena,  
No. 251/A/10/1,  
Pitipana South,  
Ambahena,  
Kiriwathuduwa.

**CA (Writ) App. No. 334/2023**

**PETITIONER**

**Vs.**

1. Harin Fernando,  
Minister of Tourism and Land,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,  
Rajamalwatta Avenue,  
Battaramulla.
  
- 1A. Hon. K. D. Lal Kantha,  
Minister of Agriculture, Livestock,  
Land and Irrigation,

Ministry of Agriculture, Livestock,  
Land and Irrigation,  
Land Secretariat,  
No.1200/6 Rajamalwatta Rd,  
Battaramulla.

2. Bandula Jayasinghe,  
Commissioner General of Lands,  
Land Commissioner Department,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,  
Rajamalwatta Avenue,  
Battaramulla.
- 2A. Chandana Saman Ranaweera Arachchi,  
Commissioner General of Lands,  
Land Commissioner General's  
Department,  
"Mihikatha Madura",  
Land Secretariat,  
No.1200/6 Rajamalwatta Road,  
Battaramulla.
3. District Secretary of Trincomalee,  
District Secretariat,  
Trincomalee.
4. T. M. S. Bandara Tennakoon,  
Land Commissioner of Trincomalee,  
Provincial Land Commissioner's  
Department,  
Trincomalee.
5. Bathiya Wijeyantha,  
Divisional Secretary,  
Divisional Secretariat,  
Morawewa.
6. I. G. Indrani,

Division 1,  
Maha Divil Wewa.

7. Diluka Chathumal Jayawardena,  
Division 1,  
Maha Divil Wewa.
8. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Gamini Hettiarachi instructed by Jayamuditha Jayasuriya for the Petitioner.

Panchali Witharana, S.C. for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents.

**Supported on:** 07.11.2025

**Order delivered on:** 26.02.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Order**

### **Introduction**

The Petitioner claims that she was born within wedlock to her late father and late mother. However, her father later contracted another marriage without dissolving the first marriage and sired two children, one of whom is the 7<sup>th</sup> Respondent.

Prior to his death, the father had nominated the 6<sup>th</sup> Respondent as his successor. The Petitioner also claims the right to succeed. However, the 2<sup>nd</sup> Respondent decided to accept the 7<sup>th</sup> Respondent as the successor to the father's rights, as he had been in possession of the land right throughout.

The Petitioner challenges this decision, which is contained in the document marked as **P13** annexed to the Petition, by way of this Application. After the issuance of initial notice, the Respondents filed their respective Objections.

It was the position of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents that, even if the Petitioner was born within wedlock, the rights of the 7<sup>th</sup> Respondent cannot be denied by reason of the provisions of the Land Development Ordinance (hereinafter referred to as the "Ordinance"), under which the rights of biological children are also recognized and provided for.

This matter was argued before me on 07.11.2025; hence, this judgment.

### **Argument**

The thrust of the main argument of Mr. Hettiarachchi, the learned Counsel for and on behalf of the Petitioner, is that the 7<sup>th</sup> Respondent is not entitled to succeed to the rights of original permit holder,

Jayawardena, by reason of any inheritance since he only remained as a biological child of Jayawardena not within wedlock; whereas the Petitioner is the only child born within wedlock.

On the other hand, Ms. Witharana argued that by reason of the fact that somebody only remains as a biological child does not affect his rights to succeed to the rights of a permit holder or a grantee under the Ordinance, since even the biological children are entitled to succeed. Therefore, the 7<sup>th</sup> Respondent is entitled to succeed as far as the facts of this case are concerned.

### **Factual Matrix**

On a perusal of the record, I found that the documents marked as **P1** and **P2** are the original permits issued to the Petitioner's father, P. Jayawardena. The permits **P1** and **P2** had been so issued as way back as on 22.06.1998. The said Jayawardena had married R.K. Chandani Dhammika, as borne out by the document marked and annexed to the Petition as **P3**. The Petitioner was born on 08.01.1984 as borne out by the birth certificate marked and annexed to the Petition as **P4**. However, it is alleged by the Petitioner in the Petition, that while the said marriage was subsisting, and without dissolving the same, the said Jayawardena had entered into another marriage with the 6<sup>th</sup> Respondent, Indrani, as borne out by **P5**. The Petitioner alleges that the said marriage is *ab initio* void.

Thereafter, the 7<sup>th</sup> Respondent was born as the eldest son from the marriage between Jayawardena and the 6<sup>th</sup> Respondent, Indrani. The said Jayawardena had nominated Indrani as his successor as reflected in **P11**. In the meantime, the Petitioner's mother had passed away on 12.09.2014, as borne out by the death certificate marked as **P6** annexed to the Petition. Nevertheless, Jayawardena had also passed away on 14.03.2021, as borne out by the death certificate marked and annexed to the Petition as **P8**.

However, a dispute has arisen between the parties after the death of Jayawardena when the Petitioner also claimed rights to succeed to the rights of the said late Jayawardena, who is the father of the Petitioner, while the 6<sup>th</sup> and 7<sup>th</sup> Respondents also claimed their rights on the basis of nomination, with whom the 7<sup>th</sup> Respondent has also possessed the land in suit.

The Petitioner claims that she never lost her possession though she was living with her mother, away from the residence of the father who was living with the 6<sup>th</sup> Respondent even during the subsistence of the marriage of her parents. She also conceded that the 7<sup>th</sup> Respondent was also there along with the original permit holder and the 6<sup>th</sup> Respondent in their matrimonial home, who had been a minor when the original permit holder had died.

In that background, the 1<sup>st</sup> to 4<sup>th</sup> Respondents have decided to accept the 7<sup>th</sup> Respondent as the successor of late Jayawardena (the original permit holder), on the basis that the 7<sup>th</sup> Respondent has been possessing the land from birth along with his late father, Jayawardena.

In those circumstances, it is my view that the following questions arise for my consideration;

- i. Whether the Petitioner is entitled to succeed to the rights of the original permit holder, being the legitimate child of the original permit holder and the Petitioner's mother, who was the legally married wife of the original permit holder.
- ii. Whether there is any validity in the nomination made by the original permit holder of the 6<sup>th</sup> Respondent.
- iii. Whether the 7<sup>th</sup> Respondent is entitled to succeed to the rights of the original permit holder, in view of the Objection taken by the Petitioner with regard to his birth status (being only a biological child of Jayawardena not born within wedlock).

- iv. Whether the Petitioner can claim the rights to the property in suit by reason of her possession alone, in addition to her birth right.

Now I will consider those matters in turn.

### **The Petitioner's eligibility to succeed by reason of birth right**

The Petitioner's father, Jayawardena, had been issued with the two permits **P1** and **P2** as way back as in 1998, and by that time, he had already gotten married to Dhammika as borne out by the document marked as **P3**. According to the document marked as **P4**, the Petitioner was born within the wedlock between the original permit holder and his wife, Dhammika, in 1984. Therefore, it is very clear that the Petitioner is a legitimate child of Jayawardena, the original permit holder; as such, she is legally entitled to succeed to the rights of the original permit holder in terms of the Land Development Ordinance, as the Ordinance provides that the eldest child (whether male or female after the 22<sup>nd</sup> Amendment to the Ordinance), is entitled to succeed to the rights of the father in terms of Section 72 read with the Third Schedule.

Then the question arises whether the original permit holder can nominate the 6<sup>th</sup> Respondent as his successor.

### **Validity of the nomination of the 6<sup>th</sup> Respondent**

It is my view that the only person who can be nominated other than a blood relative in terms of the Ordinance, is the legally married spouse (wife/husband).

This is further illustrated upon a perusal of the following section;

*“51. No person shall be nominated by the owner of a holding or a permit-holder as his successor unless that person is the spouse of such owner or permit-holder, or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule.*

*[Section 50 is repealed by Act No. 16 of 1969]”*

The above provisions establish two things: Other than a blood relative, the only non-blood relative who can be nominated is the spouse. It is further illustrative that spouses are only entitled to a life interest when there is no nomination. Once she/he marries a third party outside the family, such a spouse is not entitled to the life interest as well. This is clear upon a careful perusal of Sections 48A and 48B of the Ordinance, which reads thus;

*“48A. (1) Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19\*, notwithstanding default in the payment of such instalments, the spouse of that permit-holder, **whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to that spouse.***

*(2) **If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such spouse, such spouse shall be entitled to a grant of that land subject to the following conditions:-***

- (a) such spouse shall have no power to dispose of the land alienated by the grant;*
- (b) such spouse shall have no power to nominate a successor to that land;*
- (c) upon the death of such spouse, or upon his or her marriage, the person who*

*was nominated as successor by the deceased permit-holder or who would have been entitled to succeed as his successor, shall succeed to that land:*

*Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit.*

*(3) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid.*

***48B. (1) Upon the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions: -***

***(a) upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who was entitled to succeed under rule 1 of the Third Schedule;***

***(b) such spouse shall have no power to dispose of that holding;***

***(c) such spouse shall have no power to nominate a successor to that holding:***

*Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.*

*(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.” (Emphasis is mine).*

Although there is a marriage certificate marked and annexed to the Petition as **P5** between Jayawardena and Indrani (the 6<sup>th</sup> Respondent), the marriage between Jayawardena and Dhammika

had not yet been dissolved by 30.07.1998; additionally, Jayawardena's first wife, Dhammika was still living until 2014, as borne out by the document marked as **P6**.

It transpired in the document marked as **P11** that Jayawardena's nomination of Indrani on 08.06.2011, as his successor under the two permits therefore cannot be made in view of the provisions because she is not a blood relative or relative by virtue of a marriage, which is only allowed in terms of Sections 51 of the Ordinance. Furthermore, when there is no nomination made, a spouse can succeed only during his/her lifetime; if such spouse should enter into another marriage after the death of the original permit or grantee, such a spouse loses their rights.

The document marked as **P11** has been prepared by the Land Commission of Trincomalee, and a letter sent to the Commissioner General of Lands with a copy to Indrani, the Petitioner, the Divisional Secretary of Morawewa, and the District Secretary (Land) of Trincomalee. Therefore, what is observed in the said report by the Land Commissioner of Trincomalee, Mr. Bandara Tennakoon (the 4<sup>th</sup> Respondent), is the correct legal position in view of Section 48A, read with Sections 51 and 72 and the Third Schedule of the Ordinance.

Therefore, the 6<sup>th</sup> Respondent, Indrani's nomination is not valid.

Now I will consider whether the 7<sup>th</sup> Respondent is entitled to any right, not being a child born within wedlock.

### **Eligibility of the 7<sup>th</sup> Respondent to succession**

It is common ground that the 7<sup>th</sup> Respondent is born not within the wedlock of Jayawardena and Indrani though the marriage was registered, due to the fact that the first marriage of Jayawardena to Dhammika was still in subsistence, without the same been dissolved by a competent court of law; Jayawardena is not eligible to enter into a second marriage by reason of the legal disability

imposed by the law. The relevant section of the Marriage Registration Ordinance, No. 19 of 1907 (as amended) is reproduced herein, which reads thus;

*“18. No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void.”*

Therefore, Jayawardena could not have entered into a valid marriage with Indrani as at the time of entering into the said marriage, Jayawardena’s first marriage was still in subsistence. Further, there is no subsequent marriage, after the death of Dhammika in 2014, between Jayawardena and Indrani to at least bring the children within the purview of the Legitimacy Act, No. 3 of 1970. The relevant provision is reproduced therein, which reads thus;

*“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.”*

### **Biological children**

Therefore, it is my view that the 7<sup>th</sup> Respondent cannot even fall back on the Legitimacy Act. However, such biological children are not left out by reason of their birth not being within a wedlock. The relevant provisions of the Ordinance provides that succession can take place when there is a blood relative; therefore, Section 72 read with the Third Schedule clearly provides for such exigencies, which reads thus;

*“72. If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19\* or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit- holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.*

*[\*Section 19A is repealed by Law No. 43 of 1973] [Sections 69, 70 and 71 are repealed by Act No. 16 of 1969]”*

The Third Schedule of the Ordinance reads thus;

*“1. (a) The group of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.*

*(b) The title of a holding or the land for the purposes of section 72, shall devolve on one only of the group of relatives of the permit holder or owner in the order of priority in which they are respectively mentioned in the subjoined table. The older being preferred to the younger where there are more relatives than one in any group.*

*(c) Where in any group of relatives mentioned in the subjoined table there are two or more persons of the same age equally entitled and willing to succeed to the title to the holding or the land, the title to the holding or the land shall devolve on such persons as may be determined by the Divisional Secretary of the relevant Divisional Secretary's Division where the land is situated.*

*(d) Notwithstanding the provisions of paragraphs (b) and (c) above -*

*(i) where any person in the order of priority in which they are respectively mentioned in the subjoined table developed such land, the title to the holding or the land shall not devolve on the older person referred to in paragraph (b) but on the person who developed such land;*

*2. If any relative on whom the title to a holding or land devolves under the provisions of these rules is unwilling to succeed to such holding or land, the title thereto shall devolve upon the relative who is next entitled to succeed subject to the provisions of rule 1.*

*3. The Divisional Secretary shall, on being satisfied of the material facts before him and for reasons specified by him, determine such person or persons referred to in rule 1 according to the by laws, rules and regulations pertaining to the unit of subdivision or the minimum fraction specified by the relevant local authority, the provisions of the Agrarian Development Act, No. 46 of 2000 and the Irrigation Ordinance (Chapter 453).*

*Table*

(i) Children

(iv) Siblings

(ii) Grand Children

(v) Uncles and Aunts

(iii) Parents

(vi) Nephews and Nieces

*In this rule -*

*‘Children’ includes a child adopted according to law; and*

*‘relative’ means a relative by blood or adoption according to law and shall not include a relative by marriage.” [Emphasis is mine]*

Admittedly, the 7<sup>th</sup> Respondent is a child of Jayawardena, and therefore, he falls within the category of blood relative who is contemplated and provided for by the provisions of the Land Development Ordinance. Thus, the 7<sup>th</sup> Respondent is entitled to succeed to the rights of the original permit holder.

Now the question finally arises whether when there is contest between the Petitioner and the 7<sup>th</sup> Respondent, whose rights prevail.

### **Right to succession based on possession**

The Petitioner now claims that she used to come to the land in suit with her mother during the harvesting season, though her mother was living away from the original permit holder as mentioned in paragraph 7 of the Petition, and later, on her own, and after her marriage ,with the husband as well. However, there is no proof provided to establish that fact. Even if there is proof, this Court cannot look into that aspect of the matter. Therefore, the Petitioner has to establish her rights in the relevant forum.

Quite apart from that, the 2<sup>nd</sup> to 5<sup>th</sup> Respondents are empowered under the Ordinance to look into such claims made by the Petitioner, and whether the Petitioner can establish such claim by

producing evidence in a properly held inquiry. In addition to that, they are also empowered to consider the rights and possession of the 7<sup>th</sup> Respondent as against the claim of the Petitioner, who is also a blood relative of the original permit holder.

Having considered those claims, the 2<sup>nd</sup> to 5<sup>th</sup> Respondents have come to the conclusion that the 7<sup>th</sup> Respondent, being a minor who had been in occupation of the land assisting his father, the late Jayawardena in cultivating the same, and after his father's death, had contributed to the development of the lands concerned. Though the 7<sup>th</sup> Respondent is younger than the Petitioner, he has right throughout assisted his father, the original permit holder, to develop the same. Therefore, being a blood relative, he has a better claim than the Petitioner.

This was further illustrated in terms of the Third Schedule (d) (ii) of the Ordinance which reads thus;

*“(d) Notwithstanding the provisions of paragraphs (b) and (c) above -*

*(ii) where there are two or more persons in the order of priority in which they are respectively mentioned in the subjoined table developed the land, the title to the holding or the land shall devolve on such **persons who developed such land.**” [Emphasis is mine]*

Accordingly, it is my view that the 4<sup>th</sup> Respondent, by his report marked as **P11**, has clearly elaborated as to why the 7<sup>th</sup> Respondent should be treated as the correct successor instead of the Petitioner. Based on this, the 2<sup>nd</sup> Respondent has taken the decision, by **P13**, to accept the 7<sup>th</sup> Respondent as the person who can succeed to the rights of the original permit holder. Therefore, the findings of the 2<sup>nd</sup> Respondent and the 4<sup>th</sup> Respondent's final conclusion are also justified. As such, the Petitioners' claim should fail.

**Conclusion**

Accordingly, this Application is liable to be dismissed, but without costs due to the relationship and grievances of the parties concerned.

**JUDGE OF THE COURT OF APPEAL**