

**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.*

Dadallage Shanthilatha,
No. 55, Kandy Road,
Maradankadawala.

CA (Writ) App. No. 53/2024

PETITIONER

Vs.

1. The Divisional Secretary,
Divisional Secretariat Kekirawa,
Kekirawa.
2. The Deputy Land Commissioner,
Commissioner of Lands,
Anuradhapura,
Deputy Land Commissioner's Office,
District Secretariat Office,
Anuradhapura.
3. Commissioner General of Agrarian
Development,
Department of Agrarian Development,
No. 42, Sri Marcus Fernando Mawatha,
Colombo 07.
4. Agrarian Development Divisional
Officer,
Agrarian Service Centre,
Maradankawala.
5. D. Jayalath Kumarasiri,

New Road,
Maradankadawala,
Kekirawa.

6. Attorney General's Department,
No. 159, Hulfsdorp,
Colombo 12.

RESPONDENTS

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

Counsel:

Dharshana Weraduwege with Dhanushi Kalupahana for the Petitioner.

Dr. Peshan Gunaratne, S.C. for the 1st to 4th and 6th Respondents.

Naveen Mahaarachchi with Usha Karunasena for the 5th Respondents.

Argued on: 11.11.2025

Decided on: 16.12.2025

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

Judgement

Introduction

Dadallage Kumarasekara had been issued with a grant in terms of Section 19(4) of the Land Development Ordinance (as amended) (hereinafter referred to as the “Ordinance”). The said Kumarasekara passed away in 2004; prior to his death, he had left a Last Will dated 1999.06.29, attested by a notary public in the presence of two witnesses, bequeathing the rights under the grant to the 5th Respondent, who is the eldest male child in the family. By the said Will, the 5th Respondent had been appointed as the executor as well.

After his death, the 5th Respondent, having instituted the testamentary action in the District Court of Anuradhapura bearing case No. T/29/2004, obtained the probate. In fact, the 3rd Respondent to the said testamentary proceedings was the Petitioner to this Application. After obtaining the probate, the Petitioner registered himself as the successor to the rights of the said Kumarasekara under Section 64 of the Ordinance. For that purpose, he made an application to the 1st Respondent, who correctly registered the application, and the said registration is marked as X11 to this Application. The Petitioner to this Application, being the sister (daughter of the original grantee), also claimed to have possessed the property granted under the Ordinance by X3 to Kumarasekara, and she challenges X11 by this Application.

Consequently, the 5th Respondent instituted a vindicatory action to eject the Petitioner from the land and premises granted to the original grantee under the grant. Thereafter, the Petitioner rushed to this Court to obtain the following relief as prayed for in the Petition;

“(c) Issue an Order in the nature of a Writ of Certiorari quashing the Notice of the 1st Respondent in the Document marked ‘X11’;

(d) Issue an Order in the nature of a Writ of Mandamus against the 2nd Respondent, to strike out the entry with regard to Document marked ‘X11’ in the Document marked ‘X12’;

(e) Grant costs; and

(f) Grant such other and further relief as to Your Lordships’ Court shall seem fit and meet.”

Initially, this Court issued notice; thereafter, the 1st and 5th Respondents filed their respective Objections. This came up before me on 11.11.2025 for final arguments, and the following arguments were advanced by counsel; hence this judgment.

Arguments

The first argument advanced by Mr. Weraduwege is that, before registering the 5th Respondent as successor, when the application was made in that behalf by the 5th Respondent, the 1st Respondent should have inquired into the matter. Therefore, the 1st Respondent has failed to follow the rules of natural justice.

The second argument advanced by Mr. Weraduwege is that the 5th Respondent has failed to register the succession within 3 months from the death of the original grantee. Therefore, the registering of the succession reflected in **X11** is *ultra vires*.

The third argument is that the succession is registered in terms of the entire land, whereas the testamentary action was filed in respect of only a *kumburu* land. Therefore, the 1st Respondent is not empowered to register the succession.

However, Dr. Gunaratne argued that there is no application by the Petitioner to succeed to the grantee's rights after his death. Therefore, there is no necessity to hold an inquiry by the 1st Respondent. Secondly, he argued that there was no complaint until X11 was registered by the Petitioner. Further, he argued that the Petitioner is guilty of misrepresentation or non-representation material facts, as borne out by 5R(5) and 5R(2).

However, on the other hand, Mr. Mahaarachchi argued that X8, the order of the testamentary action bearing No. T/29/2004, clearly indicates that, as the 3rd Respondent, the Petitioner also participated in the proceedings. Therefore, she is well aware that a testamentary action was instituted in respect of the entirety of the land alienated under X3 to the original grantee. Therefore, even the District Judge has considered that fact, and no objection was raised by the Petitioner in that application. Further, he argued that, in terms of Sections 63, 64, and 65 of the Ordinance, the 5th Respondent had taken steps to have the Last Will propounded in District Court and given notice to the Petitioner also, who participated as the 3rd Respondent in the proceedings, and thereafter secured the probate and registered the same with the 1st Respondent to succeed to the rights of the original grantee.

Factual matrix

The Petitioner and the 5th Respondent are siblings, and they are the children of one Dadallage Kumarasekara, who had been issued with a grant in terms of Section 19(4) of the Land Development Ordinance by the Head of the State in respect of 1.423 Hectares of land in the Anuradhapura area; the said grant is marked as X3 annexed to the Petition. The said Kumarasekara died in 1994. Before he died, he had left a Last Will, appointing the 5th Respondent as the executor, and further, he had bequeathed the said property alienated by X3 to the 5th Respondent.

Thereafter, the said Last Will has been propounded in the District Court action bearing No. T/29/2004 of the Anuradhapura District Court, and the Petitioner is the 3rd Defendant in the said case. However, the learned District Judge has granted the probate and admitted the said Last Will to probate and accordingly granted a probate with the will annexed.

Thereafter, the 1st Respondent apparently has accepted the 5th Respondent as the successor to the rights of said Kumarasekara, and accordingly, he has notified the District Land Registrar to register the succession of the 5th Respondent in the relevant folios by X11 annexed to the Petition. Subsequently, there had been a dispute between the Petitioner and the 5th Respondent, and thereafter the 5th Respondent had instituted an action in the District Court of Kekirawa to eject the Petitioner from the said land referred to in X11.

In those circumstances, the Petitioner has instituted the above-styled Application in this Court, seeking to quash the document marked as X11, by which the 1st Respondent had accepted the 5th Respondent as the successor to the late Kumarasekara and had informed the Land Registrar to register the same in the relevant folios.

The existence of the Last Will

It is the Petitioner's position that she was unaware that the 5th Respondent had surreptitiously taken actions behind her back to eject her from the land in suit.

Although the Petitioner takes up that position, her own documents stultify her position so taken, since she herself asserts in the Petition filed in this instant Application that she was also cited as the 3rd Respondent in the Testamentary action filed in the District Court of Anuradhapura, and had also participated in the said testamentary action. The proceedings of the said Testamentary action

is also filed along with the Petition. According to the said Testamentary action proceedings, the learned District Judge had gone into the application for probate and delivered a detailed order which is also part of this record marked as X8; it also shows that the Petitioner as the 3rd Defendant in the said action had never objected to the application, despite filing Objections.

Therefore, it is clear that the Petitioner is well-aware about the existence of the Last Will of the late Kumarasekara.

Application to succeed

Thus, the probate has been issued and based on the strength of the said probate, the 5th Respondent has made the application and representation to the 1st Respondent, to accept him as the successor to the late Kumarasekara's holding, which the 1st Respondent has duly accepted and caused the issuance of the document marked as X11 annexed to the Petition; thereby, followed a statutory law as provided for the purpose of succession of a landholding alienated under Section 19(4) of the Land Development Ordinance relating to situations where, other than for a nomination, there is a Last Will left by the grantee nominating a successor.

Therefore, in this case, although the Petitioner makes various allegations against the 1st and 5th Respondents that they had acted behind her back, no such secret actions have taken place, as everything has been done and acted in level playing fields. The Petitioner was very much aware of what was happening in the District Court of Anuradhapura, and its subsequent events as well.

The next argument advanced by the Petitioner is that her father had given her permission and consent to develop the highland alienated by X3, along with the paddy land, whereas the paddy land was only given to the 5th Respondent. Though the Petitioner asserts so, what is alienated by

X3 has been bequeathed to the Petitioner by the Last Will which had been admitted properly to the probate. Therefore, the Petitioner's assertion cannot be accepted; if at all, the Petitioner has to make her case before the District Court of Kekirawa, where now the 5th Respondent is attempting to assert his rights in an indicatory action.

Thus, it is my view that the nomination had taken place as way back as in 1999, and the original grantee had died in 1994. Before his death, he had left a Last Will bearing No. 179, dated 29.06.1999 and attested by Korasagolla Notary Public. According to the said Last Will, the estator has categorically appointed the 5th Respondent, Jayalath Kumarasiri, as the executor, and he has been nominated and bequeathed with the succession rights according to the same. In fact, the alienated property is very clearly referred to in the same, including the paddy field and highland in extent of 1.423 Hectares.

Accordingly, it is my view that the Petitioner cannot maintain this Application, and no writ lies against the Respondents, particularly the 1st and 5th Respondents, since the 1st Respondent has followed the statutory duties cast upon him by the Land Development Ordinance; in addition to that, the 5th Respondent has only exercised the rights given to him by the said Last Will under the relevant statutes. Hence, it is my view that no writ lies to quash the determination contained in X11 annexed to the Petition.

Statutory provisions followed

By way of amending Act No. 16 of 1969 and in conformity with the substantive and procedural law relating to wills and proof of wills, the Legislature has, in its wisdom, introduced Sections 63 to 67 of the Land Development Ordinance. By a Last Will, a nomination can be cancelled or a new nomination can be made even though no nomination has been made initially by the permit holder

or a grantee. However, such a nomination by a Last Will has to be properly proved and then submitted to the relevant officer for registration after obtaining probate or letters of administration, as the case may be. This is clearly spelt out in Sections 64 and 65(1) of the Land Development Ordinance, and for the purpose of clarity, I will reproduce the same.

*" 64. A nomination or a cancellation of a nomination made in the last will of the owner of a holding or a permit-holder shall not be valid unless it is registered in the prescribed manner within a period of **three months reckoned** from the date of the death of the owner of that holding, or of the date of the death of that permit-holder, as the case may be.*

65. (1) A nomination or a cancellation of a nomination made in the last will of the owner of a holding or of a permit-holder shall not be registered unless the applicant for registration shall furnish to the registering officer a certified copy of that will together with a certificate in the prescribed form to the effect that probate of that will has been applied for, signed by the Registrar of the District Court to which the application for probate was made.

*(2) A nomination or a cancellation of a nomination made in the last will of the owner of a holding or of a permit-holder shall be invalid **if probate of that will is refused or recalled or set aside by order of a court of competent jurisdiction**; and, in that event, the title to the holding or to the land alienated to that permit-holder shall devolve as though no nomination or cancellation of a nomination had been registered after the death of the owner of that holding or permit-holder." [Emphasis is mine]*

In this case, the 5th Respondent has been nominated and bequeathed with the entirety of the alienated holding by the father in the Last Will, and he has also been appointed as the executor.

After the proof of the Last Will, he obtained the probate and thereafter submitted the same for registration as the successor, which the relevant officer, the 1st Respondent, has accepted. In addition to that, in the course of the proof of the said Last Will, the Petitioner to this Application has participated as the 3rd Respondent to the said Testamentary action. Therefore, now the Petitioner cannot make any allegation either against the Last Will or against the 5th Respondent or the 1st Respondent.

Succession within the time stipulated

In this case, a contention was advanced for and on behalf of the Petitioner that the 5th Respondent had failed to succeed within the three months from the date of the death of the Petitioner's father, the original grantee, as spelt out in Section 64(1) of the Act. However, in the same Section, subsections (2) and (3) provide and stipulate that when a nomination is made by a Last Will, such nomination can only be accepted by registering the probate or the letters of administration issued in that behalf.

In this case, the Petitioner has obtained the probate. However, when it comes to the propounding of a Last Will in the District Court, the court will not issue a probate or letter of administration unless the proper procedure is followed as provided for in Chapter XXXVIII of the Civil Procedure Code, which is titled "Testamentary Actions".

When a testator dies, leaving a Last Will, the executor or the person who is in possession of the Last Will should take steps to propound the same in the relevant District Court within three months of the death of the testator¹. However, after the same is accepted and deposited in the court, the

¹ Section 516 of the Civil Procedure Code.

Court has to make an order to have the notice of the testamentary proceedings published in the newspapers in two consecutive months. For that purpose, at least a two-month period will have to lapse. In addition to that, after the first publication, if there is any objection, it should have been filed within sixty (60) days and before sixty-seven (67) days, and thereafter, it should be fixed for inquiry. Therefore, this itself shows that from the date of the death of the testator, at least more than three months will lapse to follow the correct procedure in the issuance of probate when the Last Will is propounded.

Thus, in any case, even if the Petitioner makes an application within three months from the death of the father, it could not have been accepted by the 1st Respondent to register the same without a probate. Therefore, to obtain a probate, the proper procedure set out in the Civil Procedure Code has to be followed, which normally takes more than three months; sometimes, it may be years, depending on the objections and inquiry. This is clearly explained with mental pictures and graphic touches by Charles Dickens².

Therefore, in this case, after the institution of the said Testamentary action in the District Court, it has taken more than three months, as the record indicates; nevertheless, it is my view that the 5th Respondent has taken all the necessary steps within his prerogative and ability to propound the Last Will left by the testator, his father, to propound the same and obtain probate. After obtaining probate, he has registered the same, which has been accepted by the 1st Respondent. Therefore, in interpreting Section 64(1), it is my view that Section 64(1) is subject to Section 65(1) because it states that without the probate, the 1st Respondent cannot accept the nomination by a Last Will to register the successor. Therefore, even Section 64 needs to be read not only subject to Section

² Charles Dickens “Bleak House” (1852), *Jarndyce v Jarndyce*

65(1), but also the law provided for in Chapter XXXVIII of the Civil Procedure Code. Thus, the three-month period contemplated by Section 64(1) should be reckoned with the period to be expanded to include maybe even years.

Thus, it is my view that the 5th Respondent in this case has taken all the necessary steps within his limits and has obtained the nomination made by the Last Will properly registered to succeed to the rights of the original permit holder, his father.

Conclusion

Accordingly, for the reasons adumbrated above, this Application is dismissed, subject to the nominal cost of Rs. 5,250/- (Five Thousand Two Hundred and Fifty Rupees) payable by the Petitioner to the 5th Respondent.

JUDGE OF THE COURT OF APPEAL