

**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.*

1. Wettupperuma Achchillage Nelumika
Madhuwanthi Wijerathne,
Nikapothawatta Road, Udukumbura,
Thalammehera, Pannala.
2. Wettupperuma Achchillage Shashika
Madhuwanthi Wijerathne,
No. 922/1/A, Udukumbura, Thalammehera,
Pannala.

CA (Writ) application No: 0048/2024

PETITIONERS

Vs

1. A.H.M.L. Aberathne,
Commissioner-General of Agrarian
Development,
Department of Agrarian Development,
No.42, Sir Marcus Fernando Mawatha,
Colombo 07.

1A. U. B. Rohana Rajapakshe,
Commissioner-General of Agrarian
Development,
Department of Agrarian Development,
No.42, Sir Marcus Fernando Mawatha,
Colombo 07.

ADDED RESPONDENT

2. Dushani M. Weerawansa,
Deputy Commissioner-General of Agrarian
Development,
Department of Agrarian Development,
District Office,
Kandy Road,
Kurunagala.
3. D. M. C. N. Dasanayake,
Provincial Officer of Agrarian Development,
Agrarian Service Centre,
Hamangalla.
4. Samantha Wickramaratna Bandara,
Divisional Secretary,
Divisional Secretariat of Pannala,
Pannala.
5. Deshabandu Tennakoon,
Acting Inspector General of Police,
Police Headquarters,
No. 331, Olcott Mawatha,
Colombo 01.
- 5A. Priyantha Weerasooriya,
Acting Inspector General of Police,
Police Headquarters,
No. 331, Olcott Mawatha,
Colombo 01.

SUBSTITUTED RESPONDENT

6. W. A. P. B. Wijesuriya,
Officer-in-Charge,
Pannala Police Station,
Pannala.
7. A.A. Upul Chandana Kumara,
Udukumbura, Thalammehera,
Pannala.
8. H. P. D. P Gunasinghe,
Thalammehera, Pannala.
9. I. M. Sandya Kumari,

Thalammehera, Pannala.

10. H. M. Ramya Kumari Herath,
Maholawa, Bopitiya.
11. H. M. Saman Ratnasiri Herath,
Thalammehera, Pannala.
12. R. K. Chandrasiri Randeniya,
Thalammehera, Pannala.
13. D. P. Premachandra Dasanayake,
Viridiyava Region,
Thalammehera, Pannala.
14. K. A. Dharmadasa,
Nisala Thenna,
Thalammehera, Pannala.
15. S. A. Sanath Gamini Subasinghe,
Viridiyawa Road,
Thalammehera, Pannala.
16. Imashi Udeshika Chathurangani,
Wiridiyawa Road,
Thalammehera, Pannala.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

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

Counsel:

Nilshantha Sirimanne with Deshara Gunathilake instructed by Amila Kumara for the
Petitioner.

Rajika Aluwihare, S.C. for the 1st – 6th Respondents.

Reshaal Serasinghe for the 7th, 8th, 9th, 10th, 11th, 12th, 14th, and 15th Respondents.

Supported on: 02.09.2025

Order delivered on: 14.10.2025

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

Order

Introduction

The two Petitioners, who are owners of certain parcels of land named Lot No. 1 and Lot No. 2 depicted in “**P8**”, assert that they have exclusive ownership of Lot No. 3 depicted in the same plan, which they have reserved to have access to their respective plots of land. However, the 7th Respondent made a complaint to the 2nd Respondent alleging that the Petitioners have obstructed their way of access to their paddy land over Lot No. 3 depicted in “**P8**”. The 7th Respondent has made the complaint to the 2nd Respondent under the Agrarian Development Act, No. 46 of 2000 on the basis that the 1st and 2nd Petitioners had disturbed his way of access to go to his paddy field situated towards the south of the Petitioners’ land.

Thereupon, the 2nd Respondent, having inquired into the matter, decided that the 7th Respondent, along with the 8th to 15th Respondents, are entitled to use Lot No. 3 as their way of access to their respective paddy fields situated to the south of the said land depicted in “**P4**”.

Accordingly, the Petitioners alleged that the decision taken by the 2nd Respondent contained in “**P24**” without considering the rights of the parties, and only the basis of the complaint along with the evidence of certain bias witnesses is wrong. It is further alleged that the 7th Respondent has

other access paths to the paddy fields which he owns, situated to the south of the land depicted in “P4”. Therefore, the 8th to 15th Respondents also has access over the said land which is marked as Lot No. 3 in “P4”. The Petitioners have annexed Lot No. 3 to their land, and therefore, he cannot make such a baseless complaint against the Petitioners. Thus, the decisions taken by the 2nd Respondent contained in “P24” are against the factual situation and the law, and the Petitioners seek to challenge the decision contained in the same. This was supported on 02.09.2025, and the following submissions were advanced before us by the Counsel of both parties.

Arguments

Mr. Serasinghe argued that the 2nd Respondent, who is the Deputy Commissioner of Agrarian Development, has taken the impugned decision contained in “P24” contrary to the evidence presented in the case; and that there are no proper reasons given in the said decision. Therefore, a *Writ of Certiorari* lies against the said decision which has been made in terms of Section 90(1) of the Agrarian Development Act, No. 46 of 2000.

The second argument of Mr. Serasinghe is that the 2nd Respondent, without considering the alternative roadway leading to the paddy fields claimed by the 7th Respondent, has taken the said decision reflected in “P24” and therefore erred in facts. As such, the two Petitioners, who are the owners of the land in question, are entitled to obtain a *Writ of Certiorari* quashing the said decision. However, on questioning, Mr. Serasinghe conceded that he could have gone to the District Court to assert his rights when the dispute arose between the parties, and when the Court brought to his notice, for him to comment, on the actions available to a person who could have obtained relief under *actio negatoria*.

On the other hand, Mr. Aluwihare argued that since alternative remedies were available for the Petitioners to assert their rights, they are not entitled to obtain the reliefs that have been prayed for in the Petition. Additionally, he argued that the decision taken by the 2nd Respondent contained in “P24” is based on the evidence placed before him and not on the substantive rights of the parties, as the 2nd Respondent is empowered to take decisions for the development of paddy cultivation in this country. When answering a question, it is Mr. Aluwihare’s position that decisions reflected in “P24” can be assailed collaterally in the District Court; if the Petitioners obtain reliefs in a properly formulated action in the District Court, then, what is reflected in “P24” can be ignored.

Factual matrix

The two Petitioners are granddaughters of one Jane Nona, who owned land known as “Nagahalandewatta” in the extent of 10 Acres and 32 Perches by virtue of a deed, which is not before us. The said Jane Nona transferred two-thirds (2/3) of the said land to the two Petitioners and their brother, one Noel Chaminda Wijeratne. In addition to that, another one-third (1/3) of the said land has been transferred to the brother of the 7th Respondent, who is a first cousin of the two Petitioners. According to the Petition, the two Petitioners, their brother, and the brother of the 7th Respondent amicably partitioned the land they were entitled to in 2002, and the said amicable partition is shown on the survey plan marked as “P4”. Accordingly, based on mutual understanding, the two Petitioners and their brother, Noel Chaminda Wijeratne, commenced possessing Lot No. 2, and Lot No. 4 was possessed by the brother of the 7th Respondent. Further, they assert that Lot No. 1 and Lot No. 3 were reserved as a 10-foot roadway for access to the paddy field situated to the south of the said land, “Nagahalandewatta.” This includes the 7th Respondent and all others, namely from the 8th Respondent to the 15th Respondent, who had access to their paddy fields situated to the south of the land via the said roadway.

However, it is alleged that the brother of the 7th Respondent, having annexed Lot No. 3 depicted in “P4” to his land (Lot No. 4), transferred the said Lot No. 4, depicted as Lot No. 1, to a third party, the 16th Respondent. Later, Noel Wijeratne, who became entitled to a share in the said land depicted in “P4” (who jointly owned 2/3 of the said land as transferred by their grandmother), transferred his share to the two sisters, the Petitioners, as shown in “P6”; thus, the two Petitioners became entitled to Lot No. 2 exclusively. Thereafter, they partitioned Lot No. 2 into two lots, which are depicted on “P8” as Lot No. 1 and Lot No. 2, and they also reserved Lot No. 3 for access to the two lots of land, namely Lot No. 1 and Lot No. 2, as depicted on the same plan, “P8”.

However, in 2020, the brother of the 7th Respondent, who had surreptitiously annexed Lot No. 3 to Lot No. 4 (which he had possessed since 2002 after the amicable partition of the entire land between the cousins), after transferring it to a third party, namely the 16th Respondent, filed a complaint to the 2nd Respondent under Section 90 of the Agrarian Services Act, No. 58 of 1979, complaining that the 1st and 2nd Petitioners did not allow him to access his paddy field situated south of the Petitioners’ land, where he used to have access via Lot No. 3 in Plan “P8”.

Thereafter, the 2nd Petitioner initiated an inquiry, and at the said inquiry, in addition to the 7th Respondent, the 8th to 15th Respondents provided evidence and also claimed that they were deprived of access to their respective paddy lands over Lot No. 3 in “P8” by the two Petitioners, asserting their claim of a way of access over that land. However, after the inquiry by “P24”, the 2nd Respondent decided that the two Petitioners had deprived the 7th Respondent, along with the 8th to 15th Respondents, of access to their paddy lands, thereby violating their rights under the Agrarian Services Act. Therefore, it was decided that access should be granted to the 7th to 15th Respondents over Lot No. 3, as depicted in “P8”.

Co-ownership appears to exist

Being aggrieved by the said order, the Petitioners seek to invoke the writ jurisdiction of this Court conferred by Article 140 of the Constitution. It is very clear, therefore, that although the cross conveyance was executed in favour of the 1st and 2nd Petitioners to have Lot No. 2 on “P8” later partitioned into two lots, the original co-ownership between the parties appears to still be in existence, since there is no proper cross-conveyance executed. Accordingly, it is my view that by virtue of “P3” and “P6”, the two Petitioners have become the co-owners of the entire land along with the brother of the 7th Respondent, who also became a co-owner, as asserted by the Petitioners. Although they possessed the land after partitioning, as depicted on “P4”, they appear to have never executed a cross conveyance. Despite that, they continued to possess the land separately from 2002¹.

However, it is alleged that the brother of the 7th Respondent has transferred Lot No. 4 of “P3”, which he commenced possessing, to a third party, the 16th Respondent, surreptitiously, after annexing the access road depicted as Lot No. 3 to Lot No. 4 in “P4”. However, as the Petitioners appear to remain as the co-owners, the co-ownership has not been properly terminated as recognized by law². Furthermore, it must also be noted that based on “P4”, the parties commenced their possession of their separate lands. There is no cross conveyance executed, and even “P4” has not been signed to run prescription against each other. Therefore, as recognized by law, the parties have not intended to terminate the co-ownership³.

As such, the Petitioners should be advised to have a proper cause of action for them to have their rights declared or asserted in a properly constituted action.

¹ *Wickremaratne and Another v. Alpenis Perera* (1985) 1 SLR 190

² *Kirimenike v. Manikhamy* (1921) 22 NLR 510; *Nonis v. Peththa* (1969) 73 NLR 1,3.

³ *Gunasekera v. Tissera and Others* (1994) 3 SLR 245

“P24” is not a bar to declare the parties’ rights

In the course of the arguments, it was pointed out by Mr. Aluwihare, the learned State Counsel for and on behalf of the Respondents, that, if at all, the Petitioners have any rights, they should assert their rights in a properly formulated and constituted case, and the “P24” decision will not stand in their way to assert their rights in a properly constituted District Court action. However, it is also argued on behalf of the Respondents that the decision contained in “P24” was taken only on the complaint made by the 7th Respondent, with the support of the 8th to 15th Respondents, on their rights recognized under the Agrarian Services Act and nothing else. However, such rights may exist only as cultivators of the paddy land and not otherwise. Therefore, if a properly constituted case is instituted, they can also claim access over the entire subject matter which is depicted in “P4” and thereafter obtain a proper way of access to their respective paddy land.

As such, it is my view that, for the time being, the 7th to 15th Respondents should be given access as a temporary measure, as decided by the 2nd Respondent, the Additional Director General of the Agrarian Service of the District of Kurunegala. Therefore, it is my view that the Petitioners do not have any rights to obstruct access temporarily to the 7th to 15th Respondents, as they only need temporary access over this land to have access to their paddy lands; otherwise, they will not be able to cultivate their lands. The provisions are provided in the Agrarian Services Act as temporary measures for the farmers to cultivate their paddy lands and not otherwise. The 1st and 2nd Respondents cannot give any permanent right like that in a partition case to the parties. Therefore, the Petitioners should be advised to seek recourse to the proper cause of action as recognized by the law.

Conclusion

Accordingly, for the reasons adumbrated above, it is my view that no writ lies in this case, and I refuse to issue formal notice and dismiss this case *in limine* without costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL