IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Special Leave to Appeal made in terms of the Provisions of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Appeal No. 85/2013

C.A. No. 469/98(F)

DC Kurunegala Case No. 6120/T

Maheepala Dharmasiriwardenage
Soidahamy,
(DECEASED),
Pilassa,
Gandahe Korale.

ADMINISTRATOR

Ranpatipura Dewage Sirisena,
Dahamune, Pilassa.

4C-SUBSTITUTED ADMINISTRATOR

Vs.

1. Maheepala D. Alfred Fernando
   No. 45,
   Station Road,
   Mount Lavinia.
2. Maheepala D. Shanthadeva Ananda,
   No.43/1,
   Paliyathuduwa Road,
   Kelaniya.
3. Ranpatipura Dewage Rankira
   (DECEASED)

3a. Ranpatipura Dewage Kirinelis

3b. Ranpatipura Dewage Podiamma

3c. Kiradewayalaage Pinchi

3d. Ranpatipura Dewage Somawathie

3e. Ranpatipura Dewage Gunedasa

3f. Ranpatipura Dewage Karunarathne

3g. Ranpatipura Dewage Gunawathie

4. Ranpatipura Dewage Dingira
   (DECEASED)

4a. Ranpatipura Dewage Gunadasa

4b. Ranpatipura Dewage Piyadasa

4d. Ranpatipura Dewage Rana

4e. Ranpatipura Dewage Kirinelis

4f. Ranpatipura Dewage Punchina

4g. Ranpatipura Dewage Podina

5. Ranpatipura Dewage Arnolis Fernando,
   (DECEASED)

5a. Mahipala Dharmasiriwardenage Alfred Fernando (also 1st Respondent)

6. Ranpatipura Dewage Sirimalie,
   (DECEASED)

6a. Rajakaruna Dewage Piyadasa

6b. Rajakaruna Dewage Somaratna

6c. Rajakaruna Dewage Rajapaksa

6d. Rajakaruna Dewage Premaratna

6e. Rajakaruna Dewage Ariyadasa

7. Ranpatipura Dewage Ranasinghe

8. Ranpatipura Dewage Babaanis

9. Wijekoon Mudiyanselage Kiribanda

All of Pilassa.

RESPONDENTS

AND BETWEEN

1. Maheepala D. Alfred Fernando,

   No 45,

   Station Road,

   Mount Lavinia.
2. Maheepala D. Shantha Deva Ananda,

   No. 43/1,

   Paliyathuduwa Road,

   Kelaniya.

RESPONDENTS-APPELLANTS

Vs.

Ranpatipura Dewage Sirisena,

Dahamune, Pilassa.

4C-SUBSTITUTED-ADMINISTRATOR-RESPONDENT

3. Ranpatipura Dewage Rankira

   (DECEASED)

3a. Ranpatipura Dewage Kirinelis

3b. Ranpatipura Dewage Podiamma

3c. Kiradewayalaage Pinchi

3d. Ranpatipura Dewage Somawathie

3e. Ranpatipura Dewage Gunedasa

3f. Ranpatipura Dewage Karunarathne

3g. Ranpatipura Dewage Gunawathie

4. Ranpatipura Dewage Dingira
   (DECEASED)

4a. Ranpatipura Dewage Gunadasa

4b. Ranpatipura Dewage Piyadasa

4d. Ranpatipura Dewage Rana

4e. Ranpatipura Dewage Kirinelis

4f. Ranpatipura Dewage Punchina

4g. Ranpatipura Dewage Podina

5. Ranpatipura Dewage Arnolis Fernando,
   (DECEASED)

5a. Mahipala Dharmasiriwardenage Alfred
   Fernando (also 1st Respondent)

6. Ranpatipura Dewage Sirimalie,
   (DECEASED)

6a. Rajakaruna Dewage Piyadasa

6b. Rajakaruna Dewage Somaratna

6c. Rajakaruna Dewage Rajapaksa

6d. Rajakaruna Dewage Premaratna

6e. Rajakaruna Dewage Ariyadasa

7. Ranpatipura Dewage Ranasinghe

8. Ranpatipura Dewage Babaanis

9. Wijekoon Mudiyanselage Kiribanda
   All of Pilassa.

AND NOW BETWEEN

1. Maheepala D. Alfred Fernando
   No. 45,
   Station Road,
   Mt. Lavinia.
2. Maheepala D. Shanthadeva Ananda
   No. 43/1,
   Paliyathuduwa Road,
   Kelaniya.

RESPONDENT-APPELLANT-APPELLANTS

Vs.

4c. Ranpatipura Dewage Sirisena,
(DECEASED)

4C SUBSTITUTED–ADMINISTRATOR-RESPONDENT-RESPONDENT

4c(i) D.M. Heen Amma
4c(ii) R.D. Sisira Senanayaka
4c(iii) R.D. Pradeep Senanayaka
4c(iv) R.D. Nalika Senanayaka
4c(v) R.D. Shirani Senanayaka
All of,
No.225,
Kandy Road,
Nape,
Pilassa.

4C(i) to 4C(v) SUBSTITUTED-ADMINISTRATOR-RESPONDENT-RESPONDENT

3a. Ranpatipura Dewage Kirinelis

3b. Ranpatipura Dewage Podiamma

3c. Kira Dewayalaage Pinchi

3d. Ranpatipura Dewage Somawathie

3e. Ranpatipura Dewage Gunedasa

3f. Ranpatipura Dewage Karunarathne

3g. Ranpatipura Dewage Gunawathie

4a. Ranpatipura Dewage Gunadasa

4b. Ranpatipura Dewage Piyadasa
(DECEASED)

4b(i) Kadirawelanage Appuhamy
Guneratnage Anulawathie

4b(ii) Ranasinghe Dissanayakege Thushari
Priyangika Edirisuriya

4b(iii) Ranasinghe Dissanayakege Chandana
Pradeep Edirisuriya

4b(iv) Ranasinghe Dissanayakege Sanjeewa
Pradeep Edirisuriya

4d. Ranpatipura Dewage Rana

4e. Ranpatipura Dewage Kirinelis

4f. Ranpatipura Dewage Punchina

4g. Ranpatipura Dewage Podina

5a. Mahipala Dharmasiriwardenage
Alfred Fernando

6a. Rajakaruna Dewage Piyadasa

6b. Rajakaruna Dewage Somaratna

6c. Rajakaruna Dewage Rajapaksa

6d. Rajakaruna Dewage Premaratna

6e. Rajakaruna Dewage Ariyadasa

7. Ranpatipura Dewage Ranasinghe

8. Ranpatipura Dewage Babanis

9. Wijekoon Mudiyanselage Kiribanda

All of Pilassa.

RESPONDENT-RESPONDENT-RESPONDENTS

Before: **Murdu N.B. Fernando, PC, C.J.**

A.L. Shiran Gooneratne, J.

Janak De Silva, J.

Counsels: Dr. Sunil Cooray with Ms. Diana Rodrigo for the 1st Respondent – Appellant – Appellant

Niranjan De Silva with Shane Foster and S. R. Thambiah for the 2nd Respondent – Appellant – Appellant

Kamal Nissanka with Samadi Seneviratne for the 4C Respondent – Respondent – Respondent and 4b (I), 4b (II), 4b (III), 4b (IV) Respondent – Respondent – Respondent

Argued on: 11.10.2022 and 28.11.2022

Decided on: 24.07.2025

Janak De Silva, J.

One Ranpatipura Dewage Lukshman Fernando died intestate. Mahipala Dharmasiriwardenege Soidahamy, widow of the deceased (the original Petitioner - Administrator), applied to the District Court of Kurunegala for the letters of administration. Originally, there were five respondents named in the petition, which later increased to nine. The parties entered into a settlement agreeing to the grant of letters of administration to Soidahamy and the distribution of the estate.

After the issue of the letters of administration to Soidahamy, there were several claims made by debtors against the estate. The total of these claims was about Rs. 29,000/= whereas the amount lying to the credit of the application was Rs. 4940.35. The value of the properties left by the deceased was around Rs. 68,000/=.

Soidahamy sought the leave of Court to sell four of the lands to settle the debtors. Only three of those properties were sold and it is claimed that the said sale was done with the permission of Court. Subsequently, Soidahamy sought permission from the court to sell the 4th land described in the inventory and the court granted permission on 03.12.1980. The sale took place on 17.02.1981 and the said land was purchased by Soidahamy.

Thereafter, the administrator Soidahamy died, and the letters of administration was re-issued to R.D. Sirisena, the 4C Substituted–Administrator-Respondent-Respondent.

Objections were filed against the aforesaid second sale but the learned District Judge confirmed the sales by order dated 27.02.1991 (A 16)**.**

The 4A Respondent-Respondent-Respondent aggrieved by the said order appealed to the Court of Appeal which was rejected on 09.12.1994 in terms of Rule 13(b) of the Supreme Court (Court of Appeal Appellate Procedure Copies of Records) Rules 1978.

On 05.07.1995, the learned District Judge, who succeeded the learned District Judge who delivered the Order marked A 16, called for a Registrar's Report regarding the entire case. With the filing of the said Registrar's Report, the learned District Judge called for the Inventory and the Final Accounts. On 22.11.1995, the District Judge fixed for consideration of the Final Accounts and Inventory.

On 21.04.1998 the learned District Judge delivered order holding that the earlier sales of the lands was not legal and that all of those properties should go to the deceased's heirs.

Being aggrieved by the said order, the 1st and 2nd Respondent-Appellant-Appellants appealed to the Court of Appeal.

At the same time, 1st and 2nd Respondent-Appellant-Appellants filed a revision application to the Court of Appeal. The Court of Appeal dismissed the revision application holding that the petitioner has not discharged the burden of satisfying the court that there are compelling reasons why the court should exercise its discretionary jurisdiction through Revision.

Thereafter, the Court of Appeal took up the appeal filed by the 1st and 2nd Respondent-Appellant-Appellants and dismissed it. Court of Appeal held that the impugned judgment/order cannot be said to have attracted the qualification of a final order/judgment which is capable of finally disposing the matter in litigation. Accordingly, Court held that no appeal lies against the impugned order.

Being aggrieved by the said judgment, the 1st and 2nd Respondent-Appellant-Appellants applied and obtained leave to appeal on the following questions of law:

1. Does the impugned order of the District Court dated 25th April 1998 [A-26] has the effect of setting aside the order made by a previous District Judge marked A-16 at page 315 of the brief and the Judgment in D.C. Kurunegala Case No. 4726/L/94 at pages 530 to 548 of the brief, and if so, do the said Order marked A-16 and the Judgment in D.C. Kurunegala case No. 4726/L operate as Res Judicata?

2. Did the District Court err in law in holding that "Sales effected by the Administrator were done illegally and those properties should go to the heirs of the deceased intestate"?

3. Did the Court of Appeal err in law and in fact in holding that, there is no right of appeal against the impugned Order of the District Court dated 21st April, 1998 in terms of Sec. 744 of the Civil Procedure Code?

Question of law Nos. 1 and 2 will arise for consideration only if the answer to question of law No. 3 is in the affirmative. As such, I shall first consider question of law No. 3.

I must state at the outset that the Court of Appeal did not make any reference to Section 744 of the Civil Procedure Code. In fact, the 1st and 2nd Respondent-Appellant-Appellants contended that this was never raised before the Court of Appeal. However, leave to appeal has been granted on this question and I must therefore address this contention.

Section 744 of the Civil Procedure Code states that every order or decree made under the provisions of Chapter LV shall be subject to an appeal to the Court of Appeal. This chapter deals with the accounting and settlement of the estate. None of the provisions therein provide for the setting aside by the District Court of the sale of lands which have been confirmed by the District Court by order dated 27.02.1991(A 16)**.** Moreover, the appeal preferred by the 4A Respondent-Respondent-Respondent against the said order A16 was also dismissed by the Court of Appeal.

Accordingly, I hold that the impugned order is not one made under the provisions of Chapter LV of the Civil Procedure Code and hence Section 744 of the Civil Procedure Code does not assist the 1st and 2nd Respondent-Appellant-Appellants.

In these circumstances, the 1st and 2nd Respondent-Appellant-Appellants must establish that the impugned order is a judgment within the meaning of Section 754(1) read with Section 754(5) of the Civil Procedure Code in order to maintain this appeal.

Let me initially set out the development of the relevant principles in English law as our law was developed on those principles.

The English Courts have adopted two tests, which were referred to as *order approach* test and *application approach* test by Sir John Donaldson MR in ***White v. Brunton*****[(1984) 2 All ER 606]***,* to determine whether an order or judgment is final or interlocutory for the purpose of the relevant English Rules.

The *application approach* appears to have been adopted in ***Standard Discount Co. v. La Grange*** **[(1877) 3 C.P.D. 67]** where Lord Esher held (at page 67) that if the decision

given in one way will finally dispose of the matter in dispute, was given the other way to allow the action to go on, then it is not a final but interlocutory order.

In ***Salaman v. Warner and Others*** **[(1891) 1 QB 734 at 735]** Lord Esher M.R., further clarified the *application approach* test for determining the question as follows:

> *"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."*

Fry, L. J., expounded the same test in the following words (at page 736):

> *"I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined. Applying this test to the present case, it is obvious that the order here was made on an application of which the result would not in one event be final. Therefore this is an interlocutory order."*

Lopes L. J., enunciated the same test thus (at page 736):

> *"I think that a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties."*

The decision in ***Salaman*** (supra.) was adopted with approval in ***White*** (supra.).

The *order approach* appears to have been adopted in ***Shubrook v. Tuffnell*** **[(1882) 9 QBD 621]** where it was held that an order is final, if it finally determines the matter in litigation. In ***Bozson v. Altrincham Urban District*** **Council [(1903) 1 KB 547 at 548]** Lord Alverstone, C.J., proceeded to lay down the order approach test as follows:

> *"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order, but if it does not, it is then, in my opinion, an interlocutory order".*

Several English decisions adopted the *order approach* enunciated in ***Bozson*** (supra.) **[**See ***Isaacs & Sons v. Salbstein and Another*** **(1916) 2 K. B. 139, 147,** ***Haron bin Mohd Zaid v. Central Securities*** **(*Holdings) Bhd* (1982) 2 All ER 481]**.

Hence, the *order approach* test considers only the nature of the order made. If the order, taken in isolation, finally disposes of the rights of the parties in litigation without leaving the suit alive, the order is final and a direct appeal lies as of right. In ***Rank Xerox (Singapore) Pte Ltd. v. Ultra Marketing*** **[(1991) 2 SLR (R) 912]** it was held that the phrase "the rights of the parties" contained in ***Bozson*** (supra.) referred to the substantive rights in dispute in the particular action in which the summary judgment application was made.

On the contrary, in the *application approach* test, the focus is on the nature of the application made to Court and not the order delivered *per se*. If the order given in one way finally disposes the matter in litigation, but if given in the other way will allow the action to continue, the order is interlocutory and not final. According to this approach, the order will be final only where, whichever way it is given, the order finally determines the rights of the parties in the litigation.

In ***Salter Rex & Co. v. Ghosh*** **[(1971) 2 All ER 865]** Lord Denning MR having considered the two tests held (at page 866):

> *"Lord Alverstone CJ was right in logic but Lord Esher MR was right in experience. Lord Esher MR's test has always been applied in practice. For instance, an appeal from a judgment under RSC Ord 14 (even apart from the new rule) has always been regarded as interlocutory and notice of appeal had to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause of action, or dismissing it for want of prosecution – every such order is regarded as interlocutory: see Hunt v Allied Bakeries Ltd [1956]3 All ER 513, [1956] 1 WLR 1326. So I would apply Lord Esher MR's test to an order refusing a new trial. I look to the application for a new trial and not to the order made. If the application for a new trial were granted, it would clearly be interlocutory. So equally when it is refused, it is interlocutory. It was so held in an unreported case, Anglo-Auto Finance (Commercial) Ltd v Robert Dick, and we should follow it today."*

In ***Siriwardena v. Air Ceylon Ltd.*** **[(1984) 1 Sri.LR. 286]** the Supreme Court adopted the *order approach* advocated by Lord Alverstone C.J. in ***Bozson*** (supra.) in determining whether an order was interlocutory or a final. However, later in ***Ranjit v. Kusumawathie and Others*** **[(1998) 3 Sri.L.R. 232]** the Court adopted the *application approach* advocated in ***Salman*** (supra.) and ***Salter Rex*** (supra.). A fuller bench in *S. R.* ***Chetttiar and Others v. S. N. Chettiar*** **[(2011) 2 Sri.L.R. 70]** and ***Dona Padma Priyanthi Senanayake v. H. G. Chamika Jayantha and two others*** **[(2017) BLR 74]** reviewed all the previous decisions and held that the *application approach* test must be applied to ascertain whether an order or judgment is interlocutory or final.

Applying the *application approach* test to the impugned order, I hold that it is an interlocutory order. The substantive rights of the parties in the main application were

never determined by the impugned order. As the Court of Appeal correctly held, the substantive rights of the parties were determined when the parties entered into terms of settlement in 1970 and 1972. This constitutes the judgment of this action. It clearly lays down as to who should be issued the letters of administration, the parties who should be treated as the intestate heirs of the deceased and the extent to which the widow is entitled to the properties under Kandyan Law. Hence the settlement entered into between the parties has the effect of pronouncing final judgment in this action. All other proceedings are ancillary to the final judgment.

Upon an application of the *application approach* test*,* it is clear that in any action, there can be only one final judgment which is liable to a direct appeal. All other orders are ancillary to the final judgment and can be appealed only with leave first obtained. This approach has the utility of ensuring that actions do not get delayed due to final appeals been lodged against ancillary orders.

In an application for grant of letters of administration as in this action, the type of orders that can be made are set out in Section 534 of the Civil Procedure Code. A judgment made thereunder will be the final judgment in such proceedings which is liable to a direct appeal. In this action, that came about in the form of settlement between the parties as explained above.

I must add in passing that had I concluded that the impugned order was one made under Section 744 of the Civil Procedure Code, the question of applying the *application approach* test will not arise. In ***Barbara Iranganie de Silva and Another v. Hewa Waduge Indralatha*** **[(2017) BLR 68]** it was held that the ratio in ***Chettiar*** **(supra)** has no application when the language of a statute is clear and the right of appeal is given in express terms. In ***Believers Church v. Paneer Selvam Jenita Enriya*** **[S.C. No. SC/HCCA/LA 184/2023, S.C.M. 12.03.2024]** I have examined this aspect and agreed with the reasoning in ***Barbara Iranganie de Silva and Another*** **(supra)**.

For all the foregoing reasons, I answer question of law No. 3 in the negative. Hence there is no need to answer questions of law Nos. 1 and 2.

The Court of Appeal was correct in dismissing the appeal filed by the 1st and 2nd Respondent-Appellant-Appellants. I affirm the judgment of the Court of Appeal dated 04.10.2010.

Appeal is dismissed.

In all the circumstances of the case, I make no order as to costs.

Judge of the Supreme Court

Murdu N.B. Fernando, PC, C.J.

I agree.

Chief Justice

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court