

**GNANAPRAGASAM
V.
SIVANANTHAM**

SUPREME COURT

SAMARAKOON, C.J., WANASUNDERA, J., AND SOZA, J.

SC. NO. 33/1982, NO. 34/1982

DECEMBER 9, AND 10, 1982

Interim injunction to prevent obstruction to laying of electric cables along common roadway.

The Appellant and Respondent were owners of two blocks of land served by a roadway (Lot E) which was used in common as a means of access. The Appellant made an application to the Electricity Board to obtain a supply of electricity and the Board's employees commenced the work of laying underground cables. The Respondent disputed the right of the Appellant to lay underground cables and compelled the employees of the Electricity Board to stop work.

The Appellant thereupon obtained an interim injunction ordering the Respondent not to interfere with the laying of the cables. The Respondent filed an application in the Court of Appeal for leave to appeal and an application in revision. Accordingly leave to appeal was granted and the order directing interim injunction to issue was set aside. The Appellant appealed from this order of the Court of Appeal.

Held—

If the Appellant is allowed to have cables laid and work completed, the Respondent will, if successful, be faced with a *fait accompli* and may face resistance in getting the cables removed. This is eminently a case where the main trial and the application for an injunction should be taken together.

Case referred to:

Richard Perera v. Albert Perera 67 NLR 445

APPEAL from an order of the Court of Appeal.

Eric Amerasinghe, S. A. with N. S. A. Gunatillake, V. Basnayake, K. Kanagasunderam and Miss. D. Guniyangoda for Appellant,
H. L. de Silva, S. A. with K. Kanang — Iswaran, Gamini Jayasinghe and S. Mahenthiran for Respondent.

January 25th, 1983

SAMARAKOON, C.J.

The Respondent and one Murugesu Krishnapillai purchased a land called Etambagahawatta bearing assessment No. 128, Lauries Road, Bambalapitiya in extent A0 - R1 — P20 upon Deed No. 400 dated 31st January, 1971 (D1) attested by A Thavanesan, N.P. By Deed of Partition No. 6982 dated 7th March, 1978 attested by A. B. W. Jayasekera, N.P. (D2) they partitioned the land amicably between themselves as depicted in Plan No. 2459 dated 5th January, 1979 made by K. Kidnapillai, Licensed Surveyor (D2A). The Respondent became entitled to Lots 1 and 2 in Plan D2A and the said Krishnapillai became entitled to Lots 3 and 4 in the said Plan D2A. Lot 5 was reserved as a common roadway, 15 feet wide, to serve all lots. These lots are also shown as Lots A to E in Plan No. 2728 dated 17th January, 1980, (marked X) made by K. K. Thirunavukarasu, Licensed Surveyor. By Deed No. 34 dated 10.09.1977 (marked XI) attested by G. S. Sivadasan, N. P. the Respondent and his wife transferred Lot 2 in Plan D2A (i.e., Lot B in Plan X) to the Appellant with a right of way over Lot 5 (i.e., Lot E in Plan X) The said Deed recited *inter alia* "the right to erect, lay down and instal electric cables, water mains, drains, sewage pipes and other contrivences of whatsoever kind or nature in, under "provided they do not interfere with the use of the roadway by persons entitled to such use. By Deed No. 29 dated 14.06.79 the said Krishnapillai sold Lot C in Plan X to K. Kandiah Ganendran. Thereafter the Appellant, the Respondent, the said Krishnapillai and the said Ganendran entered into Deed No. 41 dated 19.05.1980 attested by S. Sivadasan, N. P. whereby they were each allotted their respective lots according to the re-survey in Plan X in lieu of their respective allotment of land they seised and possessed (sic.) earlier" in the following manner:-

Respondent to Lot A,
Appellant to Lot B,
Kandiah Ganendran to Lot C, and
Krishnapillai to Lot D.

Lot E was to be held and used in common by all parties "as a means of access to their respective Lots marked A, B, C, and D depicted in Plan No. 2728". This roadway which was depicted Lot 5 in Plan D2A, 15 feet wide (5.25 perches) was depicted as Lot E in Plan X, 12 feet wide (4.15 perches). The Appellant appears to have obtained a water supply to his Lot B from the Municipal mains by laying water pipes through Lot E. He then made an application to the Electricity Board for the supply of electricity to the residential premises constructed on Lot B and the Board acceded to the request. The Board's employees commenced the work of laying underground cables along Lot E. For this purpose a 9 inch trench was cut leaving a clearance of 10 feet for use as roadway. On the 19th March, 1982, the Respondent objected to the cutting of trenches and disputed the right of the Appellant to lay underground cables along Lot E. By a show of force he compelled the Board's employees to stop the work. The Appellant then obtained an interim injunction ordering the Respondent not to interfere with the work of laying cables. The Respondent then filed an application for leave to appeal and an application in Revision, both in the Court of Appeal. Ranasinghe, J. dealt with both in one Order and granted leave to appeal and acting in revision set aside the District Judge's order of 6-4-82 directing an interim injunction to issue. The Appellant appeals from this Order of the Court of Appeal.

Ranasinghe, J. referred to the two Deeds No. 41 and No. 34 and expressed the view that the special rights acquired on Deed No. 41 over Lot 5 (Lot E of X) had been given up and "the Plaintiff-Respondent would therefore seem to be entitled to subject Lot E without the consent of the other parties to Deed Y2 only to its natural use, namely to use it as a roadway". However the Respondent conceded that the Appellant had the right to lay overhead lines to obtain a supply of electricity. The reasons for this concession cannot be gathered from the record. The substantive question is whether the Appellant in fact had the right to lay underground cables along Lot E. This has to be decided at the trial of the case. If the Appellant is allowed to have the cables laid and the work completed pending trial the Respondent will, if he succeeds in his contention, be faced with a *fait accompli* and the Electricity Board may well resist the

removal of such cables. Furthermore a consideration of the Deeds No. 41 and No. 34 seems to suggest that the right acquired on the former Deed was whittled down by the latter. In the circumstances Ranasinghe, J. correctly followed the principle in the case of *Richard Perera v. Albert Perera*⁽¹⁾. This is eminently a case where the application for an injunction and the main trial should be taken together. I would therefore dismiss the appeal with costs here and in the Court of Appeal.

WANASUNDERA, J. — I agree

SOZA, J. — I agree

Appeal dismissed.