

[IN THE COURT OF APPEAL OF SRI LANKA (CEYLON)]

1972 Present: Fernando, P., Samerawickrame, J., and
Siva Supramaniam, J.

L. R. BALASUNDERAM and 5 others, Applicants, and K. L. RAMAN
and 2 others, Respondents

C. A. APPLICATION NO. 39 OF 1972

S. C. 359/69 (Inty.)—D. C. Chilaw, 110/Tr.

*Court of Appeal—Application for leave to appeal—Trusts Ordinance (Cap. 87)—
Section 112—Vesting order thereunder—Procedure for obtaining it—Question of
general or public importance—Court of Appeal Act, s. 8 (1) (d).*

The proper procedure for obtaining a vesting order under section 112 of the Trusts Ordinance is to a large extent uncertain and in a state of doubt.

Vesting orders are most often sought in the interests of public charitable trusts which are formed for the benefit of the public or a section of it. The proper procedure for obtaining an order to safeguard the title to properties included in such trusts should not be left in doubt and is therefore a question of general or public importance within the meaning of section 8 (1) (d) of the Court of Appeal Act, No. 44 of 1971.

APPPLICATION for leave to appeal from a judgment of the Supreme Court.

C. Thiagalingam, with K. Kanag-Iswaran, for the applicants.

H. W. Jayewardene, with Miss I. Marasinghe, for the respondents.

Cur. adv. vult.

November 16, 1972. SAMERAWICKRAME, J.—

The 1st respondent claiming to be the sole hereditary trustee, manager or kapurala instituted proceedings by way of summary procedure in the District Court of Chilaw asking for a vesting order vesting in him the Hindu Temple known as the Badrakali Kovil and its temporalities. He alleged that the applicants and two others were falsely, wrongfully and unlawfully asserting that they were entitled to be trustees. The District Judge took up for consideration as a preliminary matter the question whether the procedure of making an application by way of summary procedure without filing a regular action was available to the 1st respondent. He held that the procedure adopted by the 1st respondent was correct and on appeal the Supreme Court has affirmed his order.

It was submitted on behalf of the applicants that there was uncertainty about the proper procedure for obtaining a vesting order under Section 112 of the Trusts Ordinance; that vesting orders had quite often to be obtained under the provisions of the Section particularly in the case of religious trusts relating to Hindu Temples where the devolution of the office of trustee was different to the devolution of title to property comprised in the trust, and that, therefore, the proper procedure for obtaining a vesting order under the Section was a matter of general or public importance.

Learned Counsel for the 1st respondent urged that the case of *Hunter (Government Agent, W. P.) v. Sri Chandrasekera*¹, which he asserted had settled the law on the point, justified the making of an application by way of summary procedure. In the judgment in that case Dias S.P.J. expressed the opinion that where a person asks for a vesting order under Section 112 of the Trusts Ordinance without asking for any further remedy the procedure must be by way of summary procedure and not by way of regular action but he also stressed that in those proceedings no contest had arisen between rival claimants to the trusteeship. In the present case the 1st respondent asks for a vesting order and asks for no further remedy but there is on the face of his petition a contest or dispute in regard to the trusteeship.

All the decisions relating to the making of a vesting order under Section 112 point out that there is no statutory provision laying down the procedure to be followed in seeking relief under the section. Vesting orders have been asked for and granted in the course of regular actions and in *Hunter v. Sri Chandrasekara* (supra) on an application by way of summary procedure. While the decisions consider whether in the circumstances of each case the procedure adopted was justified there is not found in them any clear principle or principles by which a party desiring to obtain a vesting order may guide himself as regards the procedure

¹ (1950) 52 N. L. R. 54.

which he should adopt. It would appear, therefore, that the proper procedure to be adopted in a case in which a vesting order under Section 112 is to be sought is to a large extent uncertain and in a state of doubt.

Vesting orders under Section 112 may be obtained in the case of any trust. The provision is therefore of wide application. It is however in the interests of public charitable trusts that vesting orders are most often sought. As public charitable trusts are formed for the benefit of the public or a section of it, the procedure for obtaining an order to protect and safeguard title to properties included in such trusts should not be left in doubt. In the circumstances it is our view that the determination of the proper procedure for obtaining a vesting order is a matter of general or public importance.

The point about the procedure was raised in the Supreme Court by way of an interlocutory appeal before the merits of the matters in dispute had been gone into and the appeal has resulted in delay. Having regard to the state of our lists there is not likely to be much further delay before the appeal, if it is admitted, is decided by this Court. Having regard to the facts and circumstances the possible delay of a few months duration does not weigh strongly against the grant of leave to appeal.

We would therefore, allow leave to appeal, with costs payable by the 1st respondent.

Application allowed.
