

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

Galle Hewage Lanty  
Hiriyamal Kubura,  
Yakkalamulla.

**PLAINITFF**

C.A 1057/1998 (F)  
D.C. Galle 12474/L

Vs.

Wewalwala Hewage Geramiyas  
Hiriyamal Kubura,  
Yakkalamulla.

**DEFENDANT**

**AND NOW BETWEEN**

Galle Hewage Lanty  
Hiriyamal Kubura,  
Yakkalamulla.  
**(Deceased)**

1. Murrukku Hewage Babynona
2. Galle Hewage Lamber
3. Galle Hewage Jayasiri
4. Galle Hewage Wijesiri
5. Galle Hewage Wijeratne
6. Galle Hewage Thilakawathi
7. Galle Hewage Jayarathna
8. Galle Hewage Priyanthi
9. Galle Hewage Priyanthi
10. Galle Hewage Thilakaratne

All of Hiriyamal Kumbura  
Yakkalamulla.

**SUBSTITUTED PLAINTIFFS-  
APPELLANTS**

Vs.

Wewalwala Hewage Geramiyas  
Hiriyamal Kubura,  
Yakkalamulla.

**DEFENDANT-RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** S. Delgoda with T. Hirimuthugodage & L. Dawarella  
For Substituted-Plaintiff-Appellants

Rohan Sahabandu for the Defendant-Respondent

**ARGUED ON:** 04.09.2012

**DECIDED ON:** 07.12.2012

**GOONERATNE J.**

Plaintiff Appellant, one Lantis filed action in the District Court of Galle for a declaration of title to the land described in paragraph 2 of the plaint and eviction of the Defendant-Respondent. Plaintiff also prayed for damages as in the plaint. The land in question is described as lot No. 7 which was allotted to 5 persons by partition case, Galle bearing No. L/1963 of 29.1.1949 (P1). Parties proceeded to trial on 7 issues. The Defendant-

Appellant only raised issue No. 7 based on prescription. Two admissions recorded viz. lot 7 in the above partition case and final partition plan 1152 a of 29.8.1948.

The main question that need to be considered in this appeal and which was also considered by the learned District Judge is whether the Plaintiff became entitled to the entirety of the land in dispute.

The position of the Plaintiff was that lot 7 mentioned above was owned by Gunapala, Hinni Appu, Kalinga, Sopichna & Martin (all brothers). There is no dispute about it. By deed No. 3698 of 16.2.1982 Gunapala transferred  $\frac{1}{2}$  share of the land in dispute to Plaintiff on the basis that other co-owners died unmarried and issueless and thus Gunapala became the only survivor and heir. As such he became entitled to the entire land. It was the position of the Plaintiff that Defendant entered the land in question forcibly.

In view of the partition decree the land in dispute devolved on 5 persons. As such all 5 would be entitled to  $\frac{1}{5}$ <sup>th</sup> share each. The question posed by the Respondent is, as to how Gunapala got  $\frac{1}{2}$  share? Only on the demise of 4 others, except Gunapala and those 4 others if died unmarried and issueless that the entirety of the land could devolve on Gunapala and thereby Plaintiff could claim under Gunapala.

However the trial Judge has really gone into the issue and decided the case on evidence. Plaintiff's evidence at pg. 52 of the original record is sufficient to reject his case. Plaintiff in his own evidence state one of the brother who was a co-owner called 'Kalinga' is still alive, and the other co-owner Martin who died, but Martin's children are in Batticaloa. Witness was not sure whether Sopichcho was married or not. This evidence is create a doubt and weak for Plaintiff to establish the case on a balance of probability.

Having perused the judgment of the original court, I agree that Plaintiff could not prove that he became the owner of the entirety of the land in dispute, which extent is 11.28 perches. The trial Judge also came to the conclusion that the Defendant-Respondent had not prescribed to the land in question. These decisions are correct and cannot be faulted. Nor do I wish concur in the view that a declaration should be awarded to the actual share of Gunapala? Plaintiff relies on his title, based on paper title, and no issue was raised on the above position and the prayer to the plaint does not disclose or was prepared on the above basis (declaration sought for entirety of land). There are very basic principles adopted by court that once, issues are raised pleadings recede to the background.

In a rei vindicatio action the initial burden is on the Plaintiff to establish title. Once title is proved burden shifts to the Defendant. If the initial burden is not discharged by Plaintiff then action must be dismissed. Plaintiff must have ownership. De silva Vs. Goonetilleke 32 NLR 217; Abeykoon Hamine Vs. Appuhamy 52 NLR 49; Peris Vs. Savunahamy 54 NLR 207; 31CLW 91; 58 NLR 169, 65 NLR 167; 62 NLR 158; 11 NLR 217.

The cases on shifting of burden of a proof, vide 52 NLR 289 (Privy Council).

When I consider all the facts and circumstances of this case along with the applicable case law there is no basis to disturb the judgment of the learned District Judge. Judgment of the District Court is affirmed. Appeal dismissed with costs.

Appeal dismissed.

A handwritten signature in black ink, appearing to read "A. D. Gunawardena". The signature is written in a cursive style with a prominent initial "A" and a long horizontal stroke at the end.

JUDGE OF THE COURT OF APPEAL