

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

A. C. Abdul Sameen of
Galle Road,
Kalutara South.

PLAINTIFF

C.A .133/1997 (F)
D.C. Kalutara CaseNo. P/4922

Vs.

1. M. I. Bebee Suleiha of
No. 443/2, Galle Road,
Kalutara South.
2. M. U. Fathuma Haneem of
No. 443/2, Katukurunda,
Kalutara South.
3. S. M. Ismail
4. S. A. M. Latheefa Umma of
No. 443/2, Katukurunda,
Kalutara South.
- 4A. M. Caseem Haleema of
No. 443/4, Galle Road,
Kalutara South.
5. M. I. M. Haseen of
No. 482, Panadura Road,
Kahangama,
Ratnapura.

DEFENDANTS

AND BETWEEN

M. Caseem Haleema of
No. 443/4, Galle Road,
Kalutara South.

4A DEFENDANT-APPELLANT

M. U. Fathuma Haneem of
No. 443/2, Katukurunda,
Kalutara South.

2ND DEFENDANT-APPELLANT

Vs.

A.C. Abdul Sameen of
Galle Road,
Kalutara South.

PLAINTIFF-RESPONDENT

AND BETWEEN

M. Caseem Haleema of
No. 443/2, Galle Road,
Kalutara South.

**4A DEFENDANT-APPELLANT-
PETITIONER**

Vs.

M. U. Fathuma Haneem of
No. 443/2, Katukurunda,
Kalutara South.

**2ND DEFENDANT-APPELLANT-
RESPONDENT**

A.C. Abdul Sameen of
Galle Road,
Kalutara South.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

1. M. I. Bebee Suleiha of
No. 443/2, Galle Road,
Kalutara South.

4. S. A. M. Latheefa Umma of
No. 443/4, Katukurunda,
Kalutara South.

5. M. I. M. Haseen of
No. 482, Panadura Road,
Kahangama,
Ratnapura.

**DEFENDANT-RESPONDENTS-
RESPONDENTS**

BEFORE: Anil Gooneratne J.

COUNSEL: Gamini Wanigatunge for the 4A Defendant-Appellant
Plaintiff-Respondent is absent and unrepresented

ARGUED ON: 03.11.2011

DECIDED ON: 13.01.2012

GOONERATNE J.

This is an appeal in a partition case, from the District Court of Kalutara. Appeal was dismissed previously on 12.1.2011, since parties to this appeal were absent and unrepresented on many occasions. Thereafter the case had been reinstated on the application of 4a Defendant-Appellant on 19.5.2011.

The land sought to be partitioned is called 'Bothu Parangiya Watta' described as lot 1 referred to in the schedule to the amended plaint. It's extent according to the schedule is 30.6 perches inclusive of house bearing No. 195 (new No. 443/2) and all plantations. Parties proceeded to trial on 9 points of contest. The original owner was one Ahamed Lebbe. Marikkar Mohamaddu Hassan who became entitled to the land in question by final partition decree in D.C. Kalutara Case No. 4370 and shown in final plan No. 1850 in the same extent as above. Due to non payment of rates part of the land above inclusive of house No. 195 in extent of 20.2 perches vested in the Kalutara Urban Council. However subsequent to vesting as above the property was transferred to the above named original owner's son as follows.

By deed marked P2 A.H.M Faleel purchased from the Urban Council the plot of land vested as aforesaid. Thereafter by deed P3, by a deed of gift, property in question was gifted to Hassan Marikkar Mohamed Bahawdeen. He is the son of the above named original owner. By deed marked P4, both the original owner and his son who became entitled to the vested portion of the property transferred the land in question to Plaintiff and 1st Defendant in ½ share each.

The appellant had at the trial before the District Court raised points of contests on identification of the land in dispute and on prescriptive rights. In brief the contention of the learned counsel for the Appellant was that lots 1A & 1B of preliminary plan 3703('x') does not form part of the corpus and as such lot 1B should be excluded from the corpus. However such position was not properly established at the trial on documentary evidence. When plan marked 'x' was prepared it's report indicates that the Appellant did not make any claim to the house with the corpus or to lot 1B above in plan marked 'x'. Evidence establish that by a fence lots 1 & 2 of the corpus had been separated. Trial Judge takes the view that all the documents produced at the trial establish possession of plaintiff and 1st defendant and their predecessors in title. Appellants have not disproved that

position. Further the appellant had only produced to the District Court 2 survey plans and reports. Defendants have closed their case without marking any documents. It is stated that **හිතියු අනාස් මහතා විත්තවියේ නඩුව අවසන් කරන බව කියයි.** This is in breach of the practice of the original court. At the closure of the case of each party documents marked in evidence should be read in evidence. At that stage opposing party could object to documents. This is the *cursus curiae* of the original court. 1981(1) SLR at pg. 24.

There appears to be no clear evidence that lot 1B of plan 'x' had been occupied by the Defendants. Appellants have not been able to convince the Original Court and as well as this court that lot 1B in plan 'x' should be excluded from the corpus. The District Judge has considered all primary facts. The Appellate Court need not unnecessarily interfere with primary facts. As such I affirm the judgment of the District Court. Appeal dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL