

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

Kalamba Arachchige Pedoris
Of Madawala Welipanna.

Defendant-Appellant.

Vs.

Madawala Wattage Benjamin
Of Welipanna, Madawala.

Plaintiff-Respondent

Case No.CA 957/96 (F)

DC Matugama 1021 P

1. Kalamba Ararchchige Martin
2. Kalamba Ararchchige Edwin
3. Kalamba Ararchchige Baby
Nona
4. Kalamba Ararchchige Aralis
5. Kalamba Ararchchige George
6. Horawala Mawathage Garlis
Singho
7. Horawala Mawathage Elbert
8. Horawala Mawathage Baton
9. Horawal Mawathage Richard
10. Madawala Maddumage
Richard

11. Horawala Mawathage Pilen Singho
 12. Horawala Mawathage Missi Nona
 13. Madawala Wattage Aron all of Madawala, Welimpanna.
 15. Admil Kankanamage Ansinona of No.25 Post, Koppiwatta, Welipanna.
 16. K.A.D. Eminona
 17. P.D. Karolis
 18. W.D. Saraneris
 19. M.M. Gilbert
 20. P.V. Jasalinnona
- All of Madawala, Welipanna and others.

Defendants-Respondents.

BEFORE : A.W.A. Salam J.

COUNSEL : S.N. Vijithsingh for the 14th Defendant- Appellant and Sanath Vitharana with Mahanama Dissanayake for 1A, 1B Substituted Plaintiff-Respondent.

Argued on : 05.03.2012

Written Submissions tendered on : 07.09.2011

Decided on : 22.05.2012.

A.W.A. Salam J.

This is an appeal from the judgement dated 12 September 1996 to partition the land depicted in the preliminary plan bearing No 195 dated 30 December 1986 made by P D C W Hewadikaram, Licensed Surveyor and Commissioner. The only question that arose for determination in the district court was whether the land depicted in the preliminary plan is a portion of a larger land depicted as lot 103 in the village final plan No 82, in extent 10 acres 2 roods and 13 perches. According to the plaintiff, the corpus is known as Kanapatymulle Kumbura Pitakattiya and Nagahapaliya. The contesting defendant, namely, the 14th defendant-appellant maintained that the expression "Pitakattiya" in Sinhala is used to refer to the portion of a land outside a paddy field and therefore the land described as "Kaapathimulle Kumbura Pitakattiya" cannot be considered as a land of 5 bushels of paddy sowing extent. On behalf of the appellant it was contended that 5 bushels being equivalent to 10 roods as per decision in Ratnayaka Vs Kumarihamy 2002 Vol 1 SLR page 60, the corpus depicted in the preliminary plan is a portion of a larger land. For purpose of convenience the relevant passage from the judgement in Ratnayaka Vs Kumarihamy is reproduced below...

"The boundaries given in the deeds are at variance with the boundaries shown in the preliminary plan.
.....Learned Counsel for the defendant-appellants contended that the English equivalent to the customary Sinhala measure of sowing of one laha is one acre. However, it is to be noted that this system of land

measure computed according to the extent of land required sowing with paddy or Kurakkan vary due to the interaction of several factors. The amount of seed required could vary according to the varying degrees of fertility of the soil, the size and quality of the grain, and the peculiar qualities of the sower. In the circumstances, it is difficult to correlate sowing extent accurately by reference to surface areas, (vide Ceylon Law Recorder, vol. XXII, and page XLVI)".

Accordingly, it is difficult to adopt a uniform method to ascertain the extent of a land in reference to the paddy sowing quantity. Even though the appellant contested the identity of the land alleging what was surveyed at the preliminary survey was portion of a larger land, he has failed to take out a commission to survey the land or to superimpose the plan depicting the larger land on the preliminary plan.

When the plaintiff was under cross examination he was not questioned as to the boundaries of the corpus. It was merely suggested to him, under cross examination that the land depicted in the preliminary plan is a portion of a larger land which suggestion the plaintiff refuted and maintained that the corpus he sought to partition is a separate land.

The appellant in the course of presenting his case produced the final village plan bearing No 82, which depicts lot No 103 in extent of 10 acres 10 roods and 13 Perches. However, the appellant has failed to produce any other documents to establish that the corpus is part of larger land depicted in the final village plan. According to the commissioner the land he

surveyed for purpose of preparing the preliminary plan is the identical land that is sought to be partitioned. The learned district judge having considered the evidence adduced by both parties on the question of the identity of the corpus has come to the conclusion that the land sought to be partitioned is not a portion of a larger land as claimed by the appellant, but an independent entity as depicted in the preliminary plan and answered the point of contest on the identity of land in favour of the plaintiff.

Taking into consideration the material considered by the learned district judge to arrive at this conclusion, I am of the view that he has properly analysed the evidence and come to the right decision. Hence, the appeal preferred by the appellant merits no favourable consideration and therefore the appeal is dismissed subject to costs.

Judge of the Court of Appeal.

Mm/-