

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

CA 462/96 (F)
DC Kagalle No. 23113/P

Egodawatte Heenatipone
Gedera Kiribanda of
Muruthalawa, Mawanella.

2nd Defendant-Appellant.

Vs.

1. Henaka Rallage Agnus
Podimenike of Randiwela
Mawanella.

Plaintiff - Respondent.

2. Egodawatt e Heenatipone
Gedera Mudiyanse of
Yatimahana, Baddewela.

1st Defendant-Respondent

BEFORE : A.W.A SALAM J.
: Parties are absent and unrepresented.
DECIDED ON : 27.03.2012.

A W A SALAM, J.

The 2nd defendant-appellant has preferred the present appeal against the judgment and interlocutory decree entered on 19th July 1996 to partition the subject matter of the action among the plaintiff, 1st defendant and the 2nd defendant. The land sought to

be partitioned by the plaintiff is depicted in the preliminary plan bearing No 100 dated 18th February 1982 made by P A R Perara Licensed Surveyor as lots 1 and 2. The 1st and 2nd defendants maintained that the land sought to be partitioned should be lots 1,2 and 3 depicted in plan number 591 made by P B Wijesundera, Licensed Surveyor. The learned District Judge came to the finding that the land sought to be partitioned has been correctly depicted as lots 1, 2 and 3 in plan No 591 dated 18th August 1987 made by P B Wijesundera. The learned District Judge in her judgment gave reasons as to what compelled her to reject the position of the plaintiff that the land depicted in plan X does not form the corpus. Having considered the deeds produced in the action and the two plans produced by the plaintiff and the 3rd defendant the learned district judge has rightly come to the conclusion that the land sought to be partitioned consist of lots 1,2 and 3 in plan 591. I do not see any reasons to find fault with the judgment of the learned district judge with regard to the point of contest relating to the identity of the corpus.

As far as the devolution of title is concerned the plaintiff took up the position that the original owner of the subject matter was one Appuhamy who died leaving 4 children by the name Kirihamy alias Kiri Banda, Mudianse, Hethuhamy and Ranhamy each one inheriting an undivided 1/4th share from and out of the corpus. The undivided rights of Kirihamy alias Kiri Banda and Sethuhamy on a chain of title set out in the plaint and spoken to by the plaintiff in his evidence has devolved on the plaintiff and therefore

the plaintiff has become entitled to an undivided $\frac{1}{2}$ share of the land. The rights of Mudianse and Ranhamy have devolved on one Sethuhamy who died leaving the 1st and the 2nd defendant who thus became entitled to $\frac{1}{4}$ th share each. The learned district judge having considered the evidence rejected the position that the original owner died leaving 3 children. I do not see any reason to interfere with the said finding of the learned district judge.

As regards the claim made by the 3rd defendant with regard to the alleged right of way the learned district judge has come to the conclusion that he has failed to establish such a right and therefore rejected that the 3rd defendant had ever used a roadway over and across the subject matter of the action. Taking into consideration the findings relating to the identity of the corpus, the devolution of title and the inability on the part of the 3rd defendant to establish his claim for a right of way over and across the land, I do not think they call for any intervention by this court. In the circumstances, I affirm the impugned judgment and the interlocutory decrees entered in the case and dismiss the appeal preferred by the 2nd defendant appellant subject to costs.

Judge of the Court of Appeal.

Vkg/-