

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

Withanage Pemadasa of  
Gungamuwa, Bandaragama.

**PLAINTIFF**

C.A. 77/1997 (F)  
D.C. Horana 4221/P

Vs.

- 1A. P. K. Somawathie
2. Withanage Punyadasa
3. S. Kumari Withanage
4. G. Hemasiri Wickramasinghe  
all of Gungamuwa, Bandaragama.

**DEFENDANTS**

**AND**

3. S. Kumari Withanage (**Deceased**)
4. G. Hemasiri Wickramasinghe  
all of Gungamuwa, Bandaragama

**DEFENDANTS-APPELLANTS**

Vs.

Withanage Pemadasa of  
Gungamuwa, Bandaragama.

**PLAINTIFF-RESPONDENT**

- 1A P. K. Somawathie
- 5. Withanage Punyadasa

**DEFENDANTS-RESPONDENTS**

**AND NOW**

Withanage Pemadasa of  
Gungamuwa, Bandaragama.

**PLAINTIFF-RESPONDENT-  
PETITIONER**

Vs.

- 5. G. Hemasiri Wickramasinghe  
of Gungamuwa, Bandaragama

**4<sup>th</sup> DEFENDANT-APPELLANT-  
RESPONDENT**

P. Kaushalya Wickremasinghe of  
No. 49A, Gungamuwa,  
Bandaragama.

**RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** D.M. Dissanayake for the 3<sup>rd</sup> & 4<sup>th</sup> Defendant-Appellants  
Bimal Rajapakse for the Plaintiff-Respondent-Petitioner

**ARGUED ON;** 14.10.2011

**DECIDED ON:** 16.12.2011

**GOONERATNE J.**

This was a partition suit filed in the District Court of Horana. Plaintiff was one Vithanage Pemadasa. Land sought to be partitioned is described in the schedule to the plaint called Millagahawatte lots 5 & 6 in extent of 4 acres and 3 roods. At the trial parties have admitted paragraphs 1 – 6 of the plaint. Title has been traced to an earlier partition decree in D.C. Kalutara Case No. 5411. By the said partition decree the persons named in paragraph 2 of the plaint became entitled to the land. Paragraphs 3 – 6 indicates the several transfer deeds executed in favour of Methias Perera who was a co-owner referred to in paragraph 2 of the plaint and transferors are also persons named therein. These facts are not disputed. The matter that concerned the original court was on the matters raised in issue No 2. i.e whether the said Methias Perera died intestate leaving his 4 children as successors to his inheritance. (paragraph 7 of plaint). Issue No. 2 suggested at the trial is to the effect that the said Methias Perera had another son by the

name of Vithanage Piyadasa (in addition to those names in paragraph 7 of the plaint) This is the only issue to be considered even in this appeal, filed by the 3<sup>rd</sup> & 4<sup>th</sup> Defendant-Appellants. Consequentially issue Nos. 3 & 4 would be important to the said Appellant since they claim to derive title by deed No. 273 of 19.2.1986.

At the hearing before this court learned counsel on either side referred to certain items of evidence led at the trial to prove or disprove whether the said Methias Perera had 4 or 5 children to succeed to his inheritance. Learned District Judge held in favour of the Plaintiff-Respondent, who would have had the opportunity to cage the witnesses, hear evidence, watch the reactions and actions of witnesses, demeanor and form an opinion of each of the parties to the case. The Appellate Court cannot express a view on the above matters and has to rely on the trial Judge in that respect. At this point note must also be taken of the fact that on Plaintiff's defaulted this case and had been dismissed in the District Court, but parties seem to have agreed to reinstate the case.

The following points were urged before this court by learned Counsel for Plaintiff-Respondent and some of which are contained in the written submissions filed in both courts.

- (a) The 3<sup>rd</sup> & 4<sup>th</sup> Defendant rely and claim rights from one Jinadasa alleging that he was a son of Mathias Perera. Plaintiff urge that the said Jinadasa was not a son of Methias Perera but was brought up and educated from childhood by Methias Perera and his wife.
- (b) By document P1 – Methias Perera was either the guardian or father of Piyadasa. Following to be noted from P1. (Piyadasa was also known as Jinadasa)
- (i) Jinadasa's wasagama begins with the letter 'K' and Methias' wasagama is Vithanage.
  - (ii) Jinadasa does not bear Methias Perera's surname which is 'Perera'
  - (iii) By P1 Jinadasa's age is 7 years at the time of admission to school. Guardian did not know the date of birth of Jinadasa.
  - (iv) On document marked P13 the Birth Certificate of Jinadasa the following to be noted. (produced at the trial by Respondents)
    - 1. P13 corroborates the age at 7 years appearing in P1.
    - 2. P13 indicates Jinadasa's mother was Laisahamy who was not married to Jinadasa's father.
    - 3. 3<sup>rd</sup> Defendant does not contest the fact that P1 & P13 refer to her father.
- (c) Plaintiff and 3<sup>rd</sup> Defendant do not deny that Jinadasa was also known as Piyadasa.
- (d) Documents confronted by Plaintiff as submitted to him by the Defendant are not official records of birth.
- (e) Affidavit 3D6 shown to Plaintiff, to be the signature of Plaintiff's mother Alpi Nona. Plaintiff denied the signature in 3D6 or denies Alpi Nona's signature. Alpi Nona was dead during proceedings in the District Court. Affidavit invalid, Buddhist cannot be sworn.
- (f) Documents 3V3, 3V4, 3V5 & 3V8 are self-serving documents which could be produced by any interested party.

The Plaintiff-Respondents also comments on the 3<sup>rd</sup> Defendant Witness's evidence at the trial and refer to same in a critical manner suggestive of the fact that court cannot act upon such unreliable evidence. Witness Julias Perera who came to support the 3<sup>rd</sup> Defendant stated Methias Perera had 7 children. The 3<sup>rd</sup> Defendant's version is that he had 5 children. The mother of the 3<sup>rd</sup> Defendant gave evidence and admitted Piyadasa was born on 8.11.1923. This date is the same given in Birth Certificate P13, where Piyadasa's father in P13 is unknown and mother C. Laisahamy was not married. In cross-examination that witness testified and admitted:

- (i) She came to know her husband Piyadasa for the first time in 1958 and that she knew nothing about Piyadasa prior to 1958 (page 13 of her evidence)
- (ii) At the time she married Piyadasa he was already in the police force (page 14 of her evidence)
- (iii) The birth certificate has to be produced before a person joins the police force
- (iv) That no attempt was made to obtain Piyadasa's birth certificate from his personal file (P15 of her evidence)
- (v) Her daughter will derive benefits if it is claimed that her husband was a son of Methias.
- (vi) She has come forward to give evidence in order to enable her daughter to obtain a share (page 16)
- (vii) That all she know about Piyadasa's life before marriage is based on heresy (page 17)

The Appellants contends as follows (to support that Piyadasa was a son of Methias Perera)

- (1) Relies on documents produced 3V1 – 3V8. 3V1 being a deed it is stated in the deed “මට මගේ මය ගිය පියා වූ චිතානගේ මෙතියස් පෙරේරාගෙන් පියා උරුමයද..... (3V2 not available in the brief)
- (2) Marriage Certificate 3V3 of Piyadasa – Father Methias Perera
- (3) 3V4 – Death notice of Methias Perera, wife Alpi Nona. Reference to Piyadasa as eldest son (Police).
- (4) 3V5 wedding card of Piyadasa refer to Methias Perera as father.

In the written submissions filed in the lower court the Appellant has been critical of Plaintiff’s witness who produced document P1 a Principal of a school. I have considered the evidence reflected in those proceedings, and the evidence of the Plaintiff.

There is no doubt as observed by the learned District Judge, if Piyadasa was to get rights as an intestate heir, Piyadasa should be a legitimate child of Methias Perera or legally adopted. As such the burden is on the Appellant and that burden has not been discharged according to Section 101/103 of the Evidence Ordinance. However trial Judge points out

that Piyadasa was brought up by Methias Perera, since Methias' sons were born after 6 years of marriage. This explanation of the trial Judge is in order or acceptable, as he was brought up as one of his own. (Folio 232 of judgment). That does not mean legitimacy is proved. I am very much inclined to agree with the reasoning of the learned District Judge. The following extract from the judgment to be noted and I have no hesitation in endorsing same.

කෙසේ නමුත් දැන් මතුවන ප්‍රශ්නය නම් දේපල උරුම විමේදී කුලවැද්දීමේ නියෝගයක් නොමැති නිවසේ සිටි පමණින් එවැනි දරුවෙකුට දේපල වල අයිතිවාසිකම් ලැබේද යන්නයි. කණගාටුවෙන් වුවද කිව යුත්තේ දෙමාපියන්ගේ දේපල අයිතිවාසිකම් ලැබෙන්නේ විශේෂයෙන්ම පියෙකුගේ දේපය අයිතිවාසිකම් ලැබෙන්නේ එක්කෝ නිත්‍යානුකූල විවාහයෙන් ලැබුණු දරුවන්ට හෝ නිත්‍යානුකූලව හදා වඩා ගැනීමට කුලවැද්දීමේ නියෝගයක් මත ලබා ගත් දරුවන්ට පමණක් බවයි. මේ වර්ගයන් දෙකටම 03 වැනි වින්තිකාරියගේ පියා අයත් නොවන බව පැහැදිලිව සනාථ වන අතර ඒ අනුව 03 වැනි වින්තිකාරියගේ පියාට එනම් පියදාස හෝහොත් පියදාසට මෙතියස් පෙරේරාගේ දේපල අයිතිවාසිකම් නොලැබෙන බව මේ අධිකරණයේ නිගමනයයි.

The documents produced by the 3<sup>rd</sup> Defendant marked 3V3, 3V4, 3V5, 3V6 & 3V7 cannot be considered to arrive at a decision that 3<sup>rd</sup> Defendant father's, father (grand father) was Methias Perera. In these



circumstances Birth Certificate P13 would explain very many disputed facts and P13 will shut out the above documents submitted by the 3<sup>rd</sup> Defendant and confirm the version of the Plaintiff-Respondent.

In all the above circumstances I affirm the judgment of the District Court. Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL