

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

Tennakoon Mudiyanseelage Lalitha
Kumari Ratnayake,
Udalumada,
Kohoka Korale,
Uda Hewaheta.

Plaintiff

C.A. No. 1147 / 93 F

Vs.

D.C. Kandy No. 11674 / Partition

1. Nandawathie Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.
2. Ranjane Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.
3. Sujatha Dissanayake,
“Sisilasa Niwasa”
Badupola, Ginigathhena.
4. Nimala Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.

Defendants

AND NOW BETWEEN

Tennakoon Mudiyanseelage Lalitha
Kumari Ratnayake,
Udalumada,
Kohoka Korale,
Uda Hewaheta.

Plaintiff Appellant

Vs

1. Nandawathie Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.
2. Ranjane Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.
3. Sujatha Dissanayake,
“Sisilasa Niwasa”
Badupola, Ginigathhena.
4. Nimala Dissanayake,
“Daya Medura”
Damunumeeya, Hanguranketa.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE J.
COUNSEL : Miss. Chandrika Morawaka for the Plaintiff
Appellant
Lasitha Chaminda for the Defendant Respondents
ARGUED ON : 17.10.2011
DECIDED ON : 15.12.2011

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Kandy seeking to partition the land described in the schedule to the plaint. The Respondents by their amended statement of claim prayed inter alia for a dismissal of the Appellant’s action. After trial the learned Additional District Judge dismissed the Appellant’s action with

costs. Being aggrieved by the said judgement dated 31.08.1992 the Appellant has preferred the instant appeal to this court.

At the hearing of this appeal the Respondents contended that the Appellant had failed to identify the corpus. I have carefully examined the evidence of the Appellant and the Surveyor who prepared the preliminary plan. The surveyor in his evidence has admitted that the northern, eastern and western boundaries did not tally with the boundaries of the land described in the schedule to the commission.

The Respondents further contended that necessary parties were not before court. According to the pedigree of the Appellant a deed of partition had been executed among three children namely Koinmenika, Dingirimenika and Tikiri menike. Accordingly Koinmenika became entitled to 1/3 share of the property described in the said deed of partition. The Appellant in his evidence at page 97 of the brief has admitted that said Koinmenika had 04 children. But the Appellant in her pedigree has failed to show the said 04 children. She had made only 03 children parties to the present action. Hence, on this reason itself the Appellant's action should fail.

In the said circumstances I find no reason to interfere with the said judgement of the learned Additional District Judge dated 31.08.1992. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal