

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

O. Leelawathie Perera
Katugallagama,
Kandanapitiya,Bope.

PLAINTIFF

C.A 200/1997 (F)
D. C. Horana 4659/P

Vs.

7. Jayasuriy Arachchige Somapala
Katugallagama,
Kandanapitiya, Bope.

And others

DEFENDANTS

7. Jayasuriy Arachchige Somapala
Katugallagama,
Kandanapitiya, Bope.

**7th DEFENDANT-APPELLANT-
PLAINTIFF**

Vs.

O. Leelawathie Perera
Katugallagama,
Kandanapitiya,Bope.

PLAINTIFF-RESPONENT

BEFORE: Anil Gooneratne J.

COUNSEL: W. Premathilleke for 7th Defendant-Appellant
Instructed by P.A.D.S. Pinnawala

Other parties absent and unrepresented

ARGUED ON: 27.9.2011

DECIDED ON: 7.10.2011

GOONERATNE J.

The 7th Defendant-Appellant in his Petition of Appeal has sought to set aside the judgment of the learned District Judge dated 7.11.1996. On the date of hearing (27.9.2011) only 7th Defendant-Appellant was represented. All other parties were absent and unrepresented. The learned Counsel indicated to court that he has no complaint against the allocation of shares to the parties in suit, as contained in the judgment, of the learned District Judge. Counsel only urged that 3 mahogany trees within the corpus had been cut and the monies realized on the sale of trees had been deposited in court. It was his contention that mahogany trees were planted by his predecessors in title after 1960 and that he is entitled to the amounts deposited in court since he had claimed the trees in the original court.

The points of contest No. 4 refer to the fact that the mahogany trees that were cut and its value deposited to the credit of the case be released to the 7th to 9th Defendants. Counsel drew the attention of court to the evidence of the Plaintiff in cross-examination at pg. 53 of the brief. Plaintiff states that the 2nd Defendant cultivated the plantation in the corpus to a question posed in cross-examination about the plantation, the Plaintiff admitted that she has no knowledge of the plantation. Then at folio (54) the 2nd Defendant states in evidence as follows:

ප්‍ර මෙම ඉඩමේ ගස් කොළන් කවුද වගා කරලා තිබෙන්නේ?

උ ආනා වෙන්න ඇති. මම දන්නේ නැහැ. පොඩි අප්පු ය.

2nd Defendant is unaware whether 7th Defendant claimed the plantation.

The journal entries No. (2) of 18.10.1991 and paragraph 2 of that journal entry indicates that the Grama Sevaka was ordered by court to sell the trees that were cut and deposit the proceeds of the sale to the credit of the case. Journal entry No. (22) of 26.6.1992 shows that a commission is issued to the GramaSevaka. Journal entry No. 24 of 14.9.1992, it is recorded that 3 mahogany trees were cut and after deducting whatever expenses a sum of Rs. 52,820/- had been recovered on the sale and permission is sought to deposit the said amount in court. Accordingly deposit slip to be issued.

In the judgment at folios (73) the Judge has given reasons about the plantation and stated that the plantation and improvements to be given proportionately to all parties entitled to shares in the case. It is stated “ඒ අනුව මෙම ඉඩමේ ඇති සියළුම වගාවන් සහ වැඩිදියුණු කිරීම් කොටස් ලැබෙන පාර්ශ්වකරුවන්ට ප්‍රමාණකූල ව නිම විය යුතු බව නියම කරමි. “The 7th and 9th Defendant would each get 770/12096 share each according to the judgment.

In the above circumstances I do not wish to interfere with the findings and judgment of the learned District Judge. Appeal is dismissed without costs. The 7th Defendant-Appellant in his evidence state about a dispute on cutting of mahagony trees. (folios 62 & 63 of the brief) In cross examination admits the value of the trees should be divided proportionately among all parties.

ප්‍ර පලමු වතාවට හඬයක් ඇතිවුනා මහොගනි ගස් 3 ක් කැපුව නිසා?

උ ඔව්

ප්‍ර එම ගස් විකුණා මුදල් උසාවියේ තැන්පත් කර තිබෙනවා

ප්‍ර එම ගස්වල මුදල් මෙම නඩුවේ හැම පාර්ශ්වකරුවන්ට පොදුවේ යන්න ඔන?

උ ඔව්

ගෙයි බත්ති කඩා වැටිලා. වහලය කඩා වැටිලා. ගෙය ඇතුලේ ගස් වැටිලා. ලදු කැලෑ ඉඩමේ තිබෙනවා.

I cannot alter the trial Judge's views on same above. Appeal
Dismissed.

JUDGE OF THE COURT OF APPEAL