

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

in the matter of an application made in terms of  
Sec. 760-A of civil procedure Code for  
substitution.

C.A. No. CA/808/92(F)

1. Hikkaduwa Edmond Silva
2. Don Pilip Jayaranjan Weerasinghe  
**6<sup>th</sup> & 7 a Defendants – Appellants**

Vs.

1. Sangama Ariyaratne
2. M. Palliyaguruge Dayawathie

**And**

- 1a. Hewa Hunuge Aggie
- 2a. Hewa Hunuge Aggie
- 3a. Welitharage Samson

(Deceased)

**4.Hikkaduwage Agilin Nona**

(Deceased)

5.Hikkaduwage Lionel Warnathilake

8.Hikkaduwage Gratien De Silva

9.Hikkaduwage Mervyn de Silva

10. Hikkaduwage Ananda Silva

11. Rambukakanage Piyasiri Fernando

12.Rambukkanage Desina Silva

(Deceased)

13.Lankapurage Baby

14.Lankapurage Darlis

**Defendant – Respondent**

Don Dilip Jayaranjan Weerasinghe

No. 89, Wselilitimodera, Ginthota

**Substituted 7a Defendant – Appellans  
– Petitioner**

Vs

5A 1. Hikkaduwage Padma Iranganie  
B/ 19-2-3, Maligawatta Flats,  
Colombo 10.

5B 2. Lankapurage Dharmawthie,  
Welipiti Modera, Ginthota.

**Respondent**

Lankapurage Darlies of "Samansiri"  
Puhulduwa Watta Estate, Ganegama,  
Baddegama.

**14<sup>th</sup> Defendant – Respondent –  
Respondent**

**Counsel:** P Nanayakkara with T Alahakone for

6<sup>th</sup> and 7<sup>th</sup> Defendants/Appellants.

Hirumuthugoda for the

4<sup>th</sup> Defendant/Respondent.

C. Morawaka for 1<sup>st</sup> 2<sup>nd</sup> Plaintiffs/Respondents.

**Before:** Rohini Marasinghe J

**Written Submissions:** 25-11-2011.

**Judgment:** 29-04-2011

had 6 children namely, Suba, Aba, Pila, Jangiya, and Sancho. The 7<sup>th</sup> defendant appellant claimed title through one Omnis silva. According to the appellants said Omnis silva was a son of Podihamy who purchased the title referred to in 6V1.

At the trial the 1<sup>st</sup> plaintiff (respondent) had given evidence. He had marked the deeds P1 to P30 in support of his title. The 7<sup>th</sup> defendant/appellant had given evidence and marked 6V1 to 6V4 in support of his claim.

After the trial the learned trial judge had accepted the pedigree of the respondents. The partition of the land was ordered accordingly and the Interlocutory Order had been made. The 6<sup>th</sup> and the 7<sup>th</sup> defendants have appealed against that judgment.

According to the evidence led at the trial the respondents had established that the original owner Thino had died intestate and her share had devolved on her children Thino and Andiris. The learned trial judge had examined the title deeds of the respondents. It is not necessary for the trial judge to comment on

every deed and recite the title as contained in the deeds. It is sufficient for the trial judge to examine the deed and be satisfied that the said deeds have duly conveyed the title to the land in question to the parties mentioned therein. This the trial judge had adequately done in this case. He had stated that the deeds of the respondents were consistent with the evidence of the respondents. But the trial judge had not been satisfied with the deeds and also the oral evidence of the 7<sup>th</sup> defendant appellant who had given evidence on behalf of the appellants. The 7<sup>th</sup> defendant appellant had attempted to claim a prescriptive title to the land. The appellant had stated in evidence that predecessors in title were in possession of this land. In support of this version he had stated that his father had told him to accept whatever benefits from the land Babun hamy may give as she was his father's sister and was in possession of the land in issue. The trial judge had dismissed that claim of the appellant and had stated that it was not possible to accept the evidence of the appellant due to the fact that the evidence had disclosed that the appellant was living somewhat distantly from the land in issue. The learned trial judge had further held that his evidence was not consistent with the deeds he had tendered in evidence. Therefore, the learned trial judge had not been able to accept the deeds submitted by the appellants. The trial judge had given cogent

reasons for this determination. Both parties had placed their respective cases before the trial judge. The trial judge who had examined both the oral and the documentary evidence of both parties had been satisfied with the oral and documentary evidence of the appellant. The appellants had not been able to establish to this court that the learned trial judge had misdirected himself and come to a wrong conclusion on any matter that was placed before him. It is not correct for the appellant to submit that the learned trial had not investigated the title of the parties. The appellant had further submitted that the respondent was not within the pedigree as he had not inherited the rights but had become entitled to a share by purchase. The appellants claimed title to the land from the deed bearing number 1049 dated 27-3-1980. All these deeds have been examined by the trial judge before accepting the pedigree of the respondents.

I see no reason to interfere with the decision of the trial judge. The appeal is dismissed.

Rohini Marasinghe J

Judge of the court of Appeal.