

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

**Hetti Mudiayanselage Podimahattaya of
Galapitamada.**

PLAINTIFF-APPELLANT.

-Vs.-

CA Appeal No.390/95 (F)

1A Lekamalage Dingirimahattaya

**2. Atigala Vidanalage Karunaratne of
Wehella, Galapitamada.**

3. Narangodage Mudalihamy

4. Atukarallage Peiris Singho

5A.Do Gunawardene.

6A.Do Munasinghe Atukorala

7A.Atigala Vidanalage Karunaratne.

8A.W.Gamaralage Dharmasena.

9. Wickrama Arachchillage Pabilis Singho.

10. Do Peter Singho.

11. Do Martin Singho.

12. Do Podiappuhamy.

13. Do Podimenike.

14. etti Mudiayanselage Podimahattaya.

DEFENDANT-RESPONDENTS.

CA 390/95(f)

Counsel: D. Jayasinghe for the Plaintiff/Appellant.

Sunil Abeyratne for the 2nd to 7th Defendants/Respondents.

Written Submissions: 23-11-2007, 3-11-2010,2-12-2010.

Before: Rohini Marasinghe J

Judgment: 31-3-2011

The Plaintiff/Appellant hereinafter referred to as appellant filed a partition action to partition the land called “Hapugahawatte” more fully described in the schedule to the plaint. After trial the learned trial judge dismissed the action. This appeal is against that dismissal.

The land to be partitioned was surveyed by a commission issued by court. The survey plan bearing no.268 made by Licensed Surveyor on 21-8-1973 was marked as “X” at the trial. There was no dispute as to the identity of the corpus. The dispute was with regard to the devolution of title.

The case of the appellant was briefly as follows;

The original owner of this land was one Appuhamy. By virtue of the District Court action bearing No 1121 dated 14-5-1935 half share of the land of said Appuhamy was sold by fiscal conveyance and was purchased by Mohotti Appu. The said Mohotti Appu by deed No 22204 dated 29-9-1953

marked as P 2 had transferred that half share to one Podimahathmaya, (1st Defenant) one Podihamy alias podi manike, one Dingiri Mahathmaya, and Punch Nona. Therefore, each of the said parties became entitled an undivided 1/8th share of land. The said Podihamy, Dingirimahathay and Punchinona by deed bearing No 967 dated 11-10-1971 had transferred their shares to the Appellant. Consequently, the appellant became entitled to an undivided 3/8th share in this property. The appellant had further stated that the said Appuhamy had 3 children by the name of Mudalihamy (3rd Defendant) one Podihamy and one Siriwardenahamy. The said Podihamy according to the appellant had died unmarried and issueless. Therefore, that share also had devolved on said Mudalihamy and Siriwardena . The appellant further contended that said Siriwardanahamy had transferred his share by deed bearing No 16418 dated 20-11-1970 to the 2nd defendant Karunaratne. Consequently, the appellant alleged that the shares in this land should be allotted as follows;

An undivided 3/8th share to the appellant, an undivided 1/8th share to the 1st defendant, an undivided 2/8th share to the 2nd defendant and undivided 2/8th share to the 3rd defendant.

There was no dispute that the original owner of this land was one Narnagoda Appuhamy. But the dispute was with regard to the identity of the said Narangoda Appuhamy.

The case of the 2 to 7th Defendants hereinafter referred to as respondents were as follows;

There were two persons by the name of Narangoda Appuhamy. The respondents claimed that the Narnagoda appuhamy stated by the appellant was a different person.

According to the respondents the Narangoda Appuhamy they suggested as the original owner had 2 children named Mudlaihamy and Wijehamy. And the respondent therefore, denied the devolution of title pleaded on the fiscal conveyance marked as P1.

The appellant and the 3rd defendant had given evidence on behalf of the appellant. The learned trial judge had commented on the evidence of the 3rd defendant who had tried to support the case of the appellant. The trial judge had been of the view that 3rd defendant was attempting to give false evidence in this case. The trial judge had rejected the claim of the 3rd Defendant. Additionally, the trial judge was also of the view that the respondents also had failed to establish their title to the property in issue. And on that basis the claim of the respondents too have been dismissed.

The appellate court may reverse the trial judge's conclusion on pure questions of fact, if the reasons given by the trial judge are not satisfactory, or it appears to the court that the trial judge has been grossly misdirected on the evidence led before him. I am of the view that the trail judge had carefully examined the documents and the oral evidence of the witnesses of both parties. I see no reason to interfere with the findings of the trial judge. I therefore, affirm the judgment and dismiss the appeal.

The appeal is dismissed.

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long horizontal stroke that curves upwards at the end.

Rohini Marasinghe J
Judge of the Court of Appeal.