

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

Wilwana Acharige Sarath Premakumara
of No. 342, Dalupitiya, Kadawatha.

C.A. No. 219/99 (F)

D.C. Gampaha
Case No. 25831 / P

Plaintiff.

-Vs.-

1. Atigoda Acharige Maggie Nona,
2. Kalupahana Mesthrige Cyril,
- 2(a) Allen Moreas,
3. Kalupahana Mesthrige Norman,
4. Kalupahana Mesthrige Chithra,
5. Kalupahana Mesthrige Shirley,
6. Kalupahana Mesthrige Newton,
7. Kalupahana Mesthrige Neil,
All of No. 31, Dalupitiya, Kadawatha.
8. Induruwe Achari Mesthrige Peter Singho
of No. 329, Dalupitiya, Kadawatha.
- 8(a) Somawathie Perera
of No. 329, Dalupitiya, Kadawatha.

Defendants.

And

1. Atigoda Acharige Maggie Nona,
2. Kalupahana Mesthrige Cyril,
- 2(a) Allen Moreas,
3. Kalupahana Mesthrige Norman,
4. Kalupahana Mesthrige Chithra,
5. Kalupahana Mesthrige Shirley,
6. Kalupahana Mesthrige Newton,
7. Kalupahana Mesthrige Neil,
All of No. 31, Dalupitiya, Kadawatha.
8. Induruwe Achari Mesthrige Peter Singho
of No. 329, Dalupitiya, Kadawatha.
- 8(a) Somawathie Perera
of No. 329, Dalupitiya, Kadawatha.

Defendants-Appellants.

Vs.

Wilwana Acharige Sarath Premakumara
of No. 342, Dalupitiya, Kadawatha.

Plaintiff-Respondent.

CA 219/99 (f)

Counsel: Shirantha Madushani for the Defendants/Appellants.

Daya Gurge with Damitha Pathirana for the Plaintiff/Respondent.

Written Submissions: 11-10-2010(Appellants)

09-12-2010 (Respondents)

Before: Rohini Marasinghe J.

Judgment: 31-3-2011

Rohini Marasinghe. J.

The Plaintiff/Respondent hereinafter referred to as the respondent instituted a partition action to partition the land called “Unapanduruwatte” situated in the district of Gampaha which is more fully described in the schedule to the plaint. The 1st to 8th defendants have filed their statements of claim seeking dismissal of action. After trial the judgment was entered on 3rd February

1999 in favor of the respondent. The 1st to 8th defendants hereinafter referred to as appellants have filed this appeal against that judgment.

The land to be partitioned was surveyed by a commission issued by court. The Commission plan bearing No 81 made by Licensed Surveyor Francis Perera was marked as "X". This land comprised of 2 lots. The said two lots are depicted as lot "1" and lot "2" in the said plan. The 1 to 7th appellants denied the rights of the respondent. The said respondents claimed said lot "2" by virtue of prescriptive title. The 8th appellant claimed the said lot "1" by prescriptive title.

At the trial the respondent had given evidence. The deeds P1 to P5 and the deed 1V1 were marked as evidence. In his evidence he had stated that David Silva had gifted the property in issue to him by deed bearing No 25429 in 1982. This deed was marked as P7. He had also stated that the said David Silva had handed over the possession of that share to him. The plaintiff in his evidence further stated that though said David Silva gifted his share to the respondent, the other co-owners had objected to him possessing the said share. At that point the respondent had filed this case. The case of the respondent as disclosed at the trial was, that his father Stephen had

transferred his share to said David Silva by deed bearing No 3001 marked as P6. And said David Silva on P 7 had gifted that share to the respondent. The said David Silva's widow Dayawathie had given evidence on behalf of the respondent. In her evidence she had stated that her husband had gifted the property in issue to the respondent in 1982. And she had further stated that her husband had been in possession of this land since 1955. They were not living on this land. But they had been enjoying the plantation on this land since 1955. The dispute had arisen only after the property was gifted to the respondent in 1982. It is conceded that respondent on his own had never possessed this land. But the question is whether he could claim the prescriptive title of his predecessors. The learned trial judge had accepted the evidence of the respondent and his witnesses on this point. Consequently, the trial judge had held that that the 1-7th appellants had failed to establish that lot "2" in plan "X" was in their exclusive possession which ousted the possession of the predecessors in title of the respondent. And I see no reason to interfere with that finding.

The next question that is in dispute is with regard to the identity of the corpus. The appellants claimed that a portion of land belong to the corpus had been left out in the preliminary plan No 81 marked as "X"

The learned trial judge dealing with this point had stated that the defendants in their evidence had admitted that the land to be partitioned had been correctly surveyed, and the land belonging to the 8th appellant is not a part of this land. The learned trial judge had held that the 8th appellant had failed to establish his prescriptive title to this land. The findings of this case are largely based on the credibility of the witnesses. The reasons for this determination are well stated in the impugned judgment. I am of the view that the learned trial judge had arrived at this determination after a careful consideration of the oral and documentary evidence led before him. This court also had examined the evidence given by the parties on the points in issue. I am in agreement with the trial judge's decision and I affirm the judgment.

The appeal is dismissed.

Rohini Marasinghe J.

Judge of the Court of Appeal.