

**In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka**

CA 75/97F
DC Kuliypitiya : 6231/P

Nuwara Paksha Pedige
Gunadasa,
Kutupota (Post)
Godawela.

1st Defendat-Appellant

Vs

Nuwara Paksha Pedige
Peruma,
Kutupota (Post)
Godawela.

Plaintiff-Respondent

Nuwara Paksha Pedige
Laisa,
Kutupota (Post)
Godawela.

2nd

Defendant-Respondent

Before: A W A Salam J
Counsel: Bimal Rajapakse with Ravindra
Anavaratna for the plaintiff-ressondent.
Argued: 03.03.2011
Decided on: 04.03.2011

A W Abdus Salam, J.

This appeal has been preferred against the judgment dated 11 December 1996 of the district judge of Kuliyaipitiya. By the said judgment the learned district judge held inter alia that the corpus has been depicted in the preliminary plan dated 4 November 1981 made by A B M Veber, licensed surveyor and commissioner of court. Further it was decreed that the corpus be partitioned in the proportion of 1/2 to the plaintiff and 1/2 to the 2nd defendant.

The 1st defendant claimed 1/2 share of the subject matter but he was not allotted any such share. Being aggrieved by the said judgment, the 1st defendant preferred the present appeal.

The learned district judge in his judgment has correctly analyzed the evidence and come to the conclusion that the corpus has been properly identified by the plaintiff by document marked X, namely the preliminary plan referred to above and allotted shares to the plaintiff and 2nd defendant.

The position maintained by the 1st defendant was that

the original owner of the land to be partitioned was one Bandiya who according to the plaintiff had died leaving as his intestate heirs Hapuwa and Hethuwa.

The 1st defendant claimed an undivided 1/2 share of the corpus on deed No 30519 dated 27 March 1978. However, according to the plaintiff Bandiya, the original owner of the subject matter by deed No 21831 dated 17.08. 1969 has transferred an undivided 1/2 share to the 2nd defendant. As such the 1st defendant cannot maintain that he has acquired 1/2 share of Bandiya. This deed conveys no title by reason of Bandiya having exhausted his rights on an earlier deed No 21831. In the circumstances, the 1st defendant has no cause to complain and as such this appeal deserves no favourable consideration.

Appeal dismissed. No costs.

Judge of the Court of Appeal

Kwk/-