

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

Lamaappuge Ariyawathie Perera,
No. 347/4, Kotte Road,
Mirihana, Nugegoda

Plaintiff

C. A. No.238/95(F)

Vs.

D. C. Mt. Lavinia
Case No.1299/P

1. Mullekankanamge Jayasena, (deceased),
- 1A. Mullekankanamge Somapala,
No.347/5, Kotte Road,
Mirihana, Nugegoda.
2. Lamappuge Richard Perera,
No.347/5, Kotte Road,
Mirihana, Nugegoda.
3. Lamappuge Selestina Perera.
No.347, Kotte Road,
Mirihana, Nugegoda.

Defendant

AND NOW BETWEEN

3. Lamappuge Selestina Perera (deceased)
- 3A. Lamaappuge Saranapala Perera,
No.347/5, Kotte Road,
Mirihana, Nugegoda.

SUBSTITUTED 3rd
DEFENDANT-APPELLANT

Vs.

Lamaappuge Ariyawathie Perera,
No. 347/4, Kotte Road,
Mirihana, Nugegoda

PLAINTIFF-RESPONDENT

- 1A. Mullekankanamge Somapala, (deceased)
- 1B. Vijayalamage Siriyawathie,
No. 347, Kotte Road,
Pagoda, Nugegoda.

1C. Vijayalamage Nandawathie,
1D. Vijayalamage Malani,
1E. Vijayalamage Sirisena,
1F. Vijayalamage Ariyapala.
All of No.347/1,4th Cross Street,
Kotte Road, Mirihana,
Nugegoda.

2. Lamappuge Richard Perera, (dead)

2A. Lamaappuge Dharmawathi Perera,
No. 347, Kotte Road,
Mirihana, Nugegoda.

CA 237-238/95/P

Counsel: Ranjan Suwadaratne with Ranjith Perera for the Defendants/Appellants.

Rohan Sahabandu for the Plaintiff/Respondents.

Written Submissions: 28-01-2010 of the 2nd Defendant/Appellant.
1-04-2010 of the 3rd Defendant/Appellant
4-10-2010 of the Plaintiff/Respondent.

Before:Rohini Marasinghe J

Judgment: 28-03-2011.

ROHINI MARASINGHE J.

The Plaintiff had instituted a partition action to partition the land called “Gorakagahawatte” which was more fully described in the schedule to the plaint. The initial action was filed only against the 1st defendant. The plaintiff and the 1st defendants are referred to as the respondents in this case. During the course of the action the 2nd and the 3rd defendants had intervened as parties to the case. Consequently, they were added as the 2nd and the 3rd defendants. They are referred to as the “appellants”. The name of the 2nd defendant/appellant is Richard Perera. The name of the 3rd defendant/appellant is Celestina Perera. In relationship they are brother and sister. The name of the plaintiff is Ariyawathie Perera.. And the name of the

1st defendant/respondent is Jayasena. The plaintiff/respondent is the daughter of the 2nd defendant/appellant. And the 1st defendant/respondent namely Jayasena is the son of the 3rd defendant/appellant. One Jussey Perera was the father of the appellants and the grandfather of the respondents. The respondents and the appellants both claim title through the same source. Most of the original parties had died pending the action. And necessary substitutions have been made in the place of the deceased parties.

As held by the learned trial judge the original owner of this land was Jussey Perera. The respondents claim title through a deed of gift marked as P1. The deed P1 was a deed bearing No 685 executed on 4th September 1949. This deed has been marked as 2 D3 by the appellants. The appellants contended that by the said deed no title could pass to the donees. The appellants alleged that the owner of the property was said Jussey Perera. And that said Jussey Perera had not conveyed his title to the Donors in that deed P1. The donors in that deed are the appellants. Their position was that the said deed of gift had been made by them (appellant) on the mistaken belief that the property was owned by them (appellants). The learned trial judge had rejected the claim of the appellants. And the judgment was delivered in favor of the respondents. This is the appeal against that decision.

The survey plan was marked as “X”. The original owner of this land was Jussey Perera. This land was originally depicted as lots A, B, and C in plan 182 and 183 dated 21st December 1941. The extent of the entire land was 3roods and 19 perches. The said Jussey Perera intended to gift 1rood and 25 perches to two of his daughters namely Rosalind and Alice Perera. That portion was depicted as lot “B” in plan 183. On 31st August 1944 said Jussey Perera executed the deed of gift bearing No 259. By virtue of that deed of gift the said two daughters were gifted the allotment depicted in the schedule 2 of that deed. The said deed had been marked as 2V2 at the trial. In the second schedule of that deed the lot “A” was the southern boundary. According to the said deed lot “A” had already been allotted to the appellants.

In the schedule to the deed P1 the Lot “A” is referred to as ‘ a defined portion from and out of the land called Gorakaghawatte’. And the said portion had been allotted to the appellants before the execution of the deed 259 in 1944. (vide second schedule of deed 259).

In view of the aforementioned I am of the view that the deed P1 had conveyed good title to the respondents. Consequently, the appeal is

dismissed. The learned District Judge is directed to confirm the ID and proceed according to the provisions of the Partition Law.

Appeal dismissed.

Rohini Marasinghe J.

Judge of the Court of Appeal.