

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

Albin Nona,
Bandarawatte,

Edirisuriya Mudiyansele Dona
Edirisuriya of “Chanadaragiri ‘
Gampaha.(deceased)

Plaintiff.

Lionel,

Kuruwita Archchige Ananda
“Chandragiri” Bandarawatte,
Gampaha.

Substituted Plaintiff/Appellant.

Reginald Silva

Sembukuti Arachchige Lambert
Andiambalama.

1st Defendant/Respondent..

CA.505/93(f)
D.C. Gampaha No. 20436/P

Counsel:Dr. Sunil Cooray with Chitrananda Liyanage for the

Plaintiff/ Appellant.

N.R.M.Daluwatte for the

1st Defendant/Respondent

Arguments:28-5-2009

Written submissions: 10-12-2009(Appellant)
16-11-2010 (Respondent)

Before:Rohini Marasinghe J

Judgment:11-2-2011

This action has been filed to partition the land called “Kahatagalawatte”. According to the preliminary which was marked as “x” the extent of the land is 2 acres 3 roods and 8.6 perches. After trial the learned trial Judge by his judgment held that the plaintiff was uncertain as to the land which he sought to be partitioned. Consequently, the trial Judge was of the view that the plaintiff has failed to prove the corpus to be partitioned, and as such the action of the plaintiff was dismissed. This appeal is against that dismissal.

The submissions of the Appellant on this point were as follows;

In the plaint the land in issue is described in two ways. First, it is described as being bounded on the North high land of Babapulle Hettirala. And bounded on the East by high road, and bounded on the South by the high land of Dompege Jamis Appu and on the West bounded by the paddy field of Rantunga Archchi. The extent of the land is 2 acres 2 roods and 30 perches. In the plaint it is also stated that at the land registry the same land is

described as being bounded on the North and West by land of Davith Appuhamy. And the East and South were bounded by the land belonging to the Crown. The extent of the land was 4 acres 2 roods and 10 perches. According to the submissions of the plaintiff notwithstanding the variation in the description the land in suit was one land.

The commission plan of the land in suit bearing no.1299 was marked as "X". In the commission plan the boundaries appear to be same as the first land that was described in the schedule to the plaint. The extent of the land was 2 acres 3 roods and perches 8.06.

On this point the learned trial judge held that some of the deeds of the plaintiff refer to the land of 4 acres, 2 roods and 10 perches and the other deeds refer to the land of 2 acres, one rood and 30 perches. In the deeds marked P 4 and P7 there is no reference to the land as having two descriptions. In the deeds marked as P2 to P5 there is reference only to the large land. The deeds P7 and P8 refer only to the small land. Consequently, the trial judge held that the plaintiff was not able to identify the corpus with reasonable certainty. At page 6 of the impugned judgment this questions had been dealt adequately. And cogent reasons have been given for that determination.

In a partition action the identity of the corpus is the burden of the plaintiff. The trial court had been of the view that the evidence of the plaintiff on this point was inconsistent. It was the duty of the plaintiff to explain as to how some of the deeds have no reference to the larger land and how some of the deeds have no reference to the smaller land. This was the primary duty of the plaintiff in a land action of this nature. Therefore, as rightly commented by the trial judge the plaintiff has not identified the land in a manner acceptable to court. According to the submissions of the plaintiff to this court, the issue no 5 was an admission by the defendant as to the identity of the corpus. This submission is incorrect. The case of the defendant was that the two lands described in the schedule to the plaint were two different lands. The defendant further submitted that the second land that was described in the plaint was different land possessed by the co owners as divided portions as mentioned in their statement of claim. The learned trial had preferred to hold with the claim of the defendant. I also examined the deeds tendered to court by the plaintiff in relation to the identity of the land in suit. As very correctly stated by the trial judge some deeds have no reference to the large land. Similarly some deeds have no reference to the small land. The deeds marked as P 4, P 7 P8 are some of the deeds which showed this inconsistency in relation to the extent of the land. The large difference of

the two extents of the land was not explained to court by the plaintiff. Therefore, the trial judge was correct when he said that the plaintiff had not identified the land to be partitioned. I see no merit in this appeal.

The appeal is dismissed.

Rohini Marasinghe.J]

Judge of the Court of Appeal.