

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

Maddage Semapala of  
School Lane, Labugama, Haltota.

Plaintiff

Vs.

C.A. No. 564/96(F)

D.C. Horana No. 3006/P

1. Devika Weerakoon of  
No.42A, Andarawatta Road,  
Polhengoda Road, Kirulapona,  
Colombo 5.
2. Wijaya Weerakoon of Labugama,  
Haltota.
3. Ratiyalage Don Aron Perera of  
Labugama, Haltota.
4. Kalubowilage Salinona of  
Labugama, Haltota.
5. Ratiyalage Anula of  
Labugama, Haltota.
6. Ratiyalage Dona Matilda  
Ariyawathie of  
Labugama, Haltota.
7. Lokuge Georgiana Perera of  
Labugama, Haltota.
8. Thambawitage Gunaratne of  
Labugama, Haltota.
9. Ratiyalage Gunaseeli Perera of  
Labugama, Haltota.
10. Patrick Ranaweera Mannapperuma  
of Labugama, Haltota.

11. Dilani Kalpani Mannapperuma of Labugama, Haltota.
12. Sooriyaarachchige Munasinghe of Labugama, Haltota.

Defendants

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Maddage Semapala of  
School Lane, Labugama, Haltota.

Plaintiff-Appellant

Vs.

1. Devika Weerakoon of No.42A, Andarawatta Road, Polhengoda Road, Kirulapona, Colombo 5.
- 2A. W.A. Mallika Weerakoon Labugama, Haltota.
3. Ratiyalage Don Aron Perera of Labugama, Haltota.
4. Kalubowilage Salinona of Labugama, Haltota.
5. Ratiyalage Anula of Labugama, Haltota.
- 6A. P.D. Premawardena
- 6B. P.D. Kusumalatha  
Both of Labugama, Haltota.
7. Lokuge Georgiana Perera of Labugama, Haltota.
8. Thambawitage Gunaratne of Labugama, Haltota.

9. Ratiyalage Gunaseeli Perera of Labugama, Haltota.
10. Patrick Ranaweera Mannapperuma of Labugama, Haltota.
11. Dilani Kalpani Mannapperuma of Labugama, Haltota.
12. Sooriyaarachchige Munasinghe of Labugama, Haltota.

Defendant-Respondents

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Before : A.W.A.Salam, J.

Counsel : Rohan Sahabandu for the Plaintiff-appellant  
Ranil Premathilake for 1<sup>st</sup> and 2<sup>nd</sup> Defendant-  
Respondents.

Written Submissions

Tendered on : 10.12.2010

Decided on : 17.01.2011

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A W Abdus Salam, J.

This appeal raises the question of an interpretation of a deed, as regards the intention of the vendor who parted with his rights relating to an immovable property.

The facts briefly are as follows.

The plaintiff instituted action to partition a land which is correctly depicted in preliminary plan No 2696 dated 22 June 1993 and 9 August 1993. the name of the land is Indigahagodalla. As agreed upon by the parties lots A,B,C and D depicted in the said plan is in extent of 04 acres and 29 perches which is equivalent to 1. 6921 Hectares.

At the commencement of the trial<sup>8</sup> the admissions were recorded. As far as the setting is concerned, leaving out redundant information, the following admissions would be useful to decide the merits of the petition of appeal. They are

1. A person by the name Aranolis was entitled to an undivided 7/12 share of the corpus.
2. that the land sought to be partitioned is in extent of 4 acres and 29 perches.

According to the plaintiff Aranolis by deed of gift No19977 (P 15) has gifted 1/3 share of of his rights to Themis, Nomis and Liveris and thereafter died leaving two children by the names Nomis and Manchi Nona whose rights devolved on the plaintiff as set out in the plaint.

The contesting 2nd defendant took up the position that was diametrically opposed to the construction the plaintiff

suggested that P 15 should be given. The learned district judge at the conclusion of the trial gave judgement endorsing the construction favourable to the 2<sup>nd</sup> defendant. Being aggrieved by the construction given to P 15 by the learned district judge in his judgement, the plaintiff has preferred the present appeal inter alia on the following grounds.

1. deed No 19977 of 3 January 1906 provided room for the interpretation of the language contained therein when the grantor Aranolis conveyed only 1/3 of his interest to the grantees on the said deed but the learned district judge went on to give an interpretation to the language of the said deed by interpreting the deed to convey all the interests of Aranolis in the proportion of 1/3<sup>rd</sup> share to the grantees.
2. the learned district judge has failed to investigate title on the land properly as he was governed by the misinterpretation given to the said deed No 19977.

Quite noticeably, in the petition of appeal the plaintiff makes a special reference to the scope of the appeal. He restricts his appeal in his petition to the alleged misconstruction of deed No 19977. For that reason, this judgment deals only with the legal proprieties relating to the construction adopted by the learned district judge in his judgement as regards the deed of gift No 19977.

As stated earlier that it is common ground that Aranolis was entitled to 7/12 share. By deed of gift 19977, he has parted with his rights adopting the following words

ඉන්දිගහගොඩැල්ලට මායිම් උතුරුට .....නැගෙනහිරට .....දකුණට  
.....සහ බස්නාහිරට .....යන මායිම්තුල අක්කර හතරකුත් පර්චෙස්  
විසිනවයක් ඇති බිමෙන් සහ සියලුම ගහ කොළවලින් මට අයත්  
නොබෙදාපු තුනෙන් පන්ගුවද

When translated the operative part of the deed as to the actual extent of alienation effected by Aranolis would appear to be "an undivided 1/3 share of the soil and trees of Indigahagodella bounded on the North by .....South by..... East by..... and West by..... in extent of 4 acres and 29 perches.

As has been submitted by the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants the construction of the deed ought to be different had Aranolis disclosed his mind in the deed in Sinhala in the following manner...

ඉන්දිගහගොඩැල්ලට මායිම් උතුරුට .....නැගෙනහිරට .....දකුණට  
.....සහ බස්නාහිරට .....යන මායිම්තුල අක්කර හතරකුත් පර්චෙස්  
විසිනවයක් ඇති බිමෙන් සහ සියලුම ගහ කොළවලින් මගේ අයිතියෙන්  
නොබෙදාපු තුනෙන් පංගුවක්ද. This manner of expression undoubtedly  
would mean that Aranolis had gifted from and out of his rights an  
undivided 1/3<sup>rd</sup> share which should work out to  $7/12 \times 1/3 = 7/36$ .

On a perusal of the controversial deed and the language employed by the grantor it is quite clear that he was dealing with the share are of the entire land and not a specific proportion of his entitlement.

In the circumstances, I am of the view that the manner in which P 15 has been construed on the crucial question, by the learned district judge involves no error or misdirection. The construction of P15 is absolutely rational and quite logical. As such, I do not think it is necessary to interfere with this findings, judgment and interlocutory decree.

Appeal dismissed subject to costs.

Judge of the Court of Appeal