

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

Case No. CA 149/94 (f)

D.C. Kalutara No.5144/P

Mohamed Shane Ummul Hidayah
Saviya Road, Mahagoda,
Beruwala.

1st Defendant/Appellant.

Abdul Wahab Marrikkar Mohammed Shafi,
Riyal,
Fathumma Hanuun
Haby Mohammed Marrikkar
Ahmed Ismail Marrikkar Sithi Mafhira all of
25/35, Saviya Road, Mahagoda,

Respondents.

Counsel : Dr. Cooray with C. Liyanage for the 1st

Defendant/Appellant.

N.R.M. Daluwatte P.C. With Gayathri De Silva for the

Respondents.

Arguments ; 16-9-2009

Written submissions : 26-11-2009

Before : Rohini Marasinghe J

Judgment : 20-1-2011

CA 149/94

Rohini Marasinghe. J

The Plaintiff/Respondent hereinafter referred to as Plaintiff instituted a Partition Action to partition a land called “ Modin Thottam” situated in the Kalutara District. The said land is more fully described in the schedule to the plaint. And further, the said land was a surveyed by a commission of court. The commission plan prepared by Licensed Surveyor W.S. Seneviratne

bearing no 4182 was marked "X" at the trial. The commission report was marked "X!"

There was no dispute as to the identity of the corpus. The dispute was with regard to the devolution of shares.

The appellant in this case was the 1st defendant at the trial. The 5th defendant at the trial had given evidence on behalf of the plaintiff.

Admittedly the 1st defendant is entitled to 87/420 share. Therefore the Interlocutory Decree should be corrected allotting that share to the defendant/appellant. Consequently, the Interlocutory decree is set aside. And the District Court is directed to amend the ID incorporating the 87/420 share to the 1st defendant/appellant.

In addition to this share the 1st defendant had claimed another share. The 1st defendant had averred that he is entitled another share from a different source. The 1st defendant is claiming 87/420 from one source, and another share of 120/420 from a different source. The share that is in dispute

120/420 share which the 1st defendant/appellant had claimed from the the deeds marked as 1V4- 1v9.

The submissions of the respondent on this point were that the land that is described in these deeds refers to some other land. As pointed out by the respondent the land that is described in these deeds is as follows;

The name of the land is “ Modin thottam”. And the boundaries are- to the North is the land called Sellampiti thottam, to the East is the land of Ismail lebbe Marrikkar and Sabaniwatte, the South is the balance portion of this land, to the West is the land Mallai Thottam. These boundaries do not conform to the land that is described in the commission plan marked as “X”

The 1st defendant/appellant had admitted that the corpus is described in the plan marked as “X’ The only issue was whether the 1st defendant could claim any share from the deeds marked as 1V4 – 1 V9. As submitted by the respondent the said deeds do not relate to this land. The case of the appellant is not that the boundaries have changed due to the fluctuation of time. There were no submissions from the appellant with regard to the discrepancy of the boundaries stated in the said deeds and the boundaries

described in the commission plan. Consequently, the appellant cannot claim any shares from the deeds marked as 1V4- 1V9.

The appeal is dismissed.

Rohini Mārasinghe J
Judge of the Court of Appeal.