

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

Court of Appeal **CA 40/98 (F)**

DC Mathugama Case No- 2541/Partition.

Pelawaththa Hettige Kumatheris,
Medawaththa,
Boralugoda,
Mathugama. [Deceased]

6th Defendant - Appellant.

[Deceased]

Pelawaththa Hettige Ranjith Kumara,
Medawaththa,
Boralugoda,
Baduraliya.

Substituted 6th Defendant Appellant

Vs.

01. Pelawaththa Hettige Duinona.
[deceased]
02. P. Wickramarachchi
03. Wickramarachchi Chandrasena

All at "Pubudu" Baduraliya.

Substituted Plaintiff-Respondents

01. Sapuhettige Sipinona,
Athele, Boralugida,
Mathugama.
02. Pelawaththa Hettige Piyasena,
Hedigalla Janapadaya,
Pallekumbura.
03. Rideewitage Merynona,
Athle, Boralugida,
Mathugama
04. Nehinnage Don Alon,
Mahawaththa,
Boralugoda,
Mathugama.
05. Memullage Babunnona,
Medawaththa,
Boralugoda.
07. Kamalawathie Wickramarachchi,
Kalugala Road,
Dehipitiya,
Gurulubedda.
08. Pelawaththa Hettige Jayasena,
Medawaththa,
Boralugoda,
Mathugama.
09. Mirihana Kankanage Julis
Samanala Stores,
Baduraliya.

10. Mirihana Kankanage Dharmawardena,
Samanala Stores,
Baduraliya.
11. Mirihana Kankanage Wimaladasa,
Samanala Stores,
Baduraliya.
12. Mirihana Kankanamge Premadasa,
Samanala Stores,
Baduraliya.
13. Mirihana Kankanage Rathnawathie,
Samanala Stores,
Baduraliya.
14. Mirihana Kankanage Karunasena.
Samanala Stores,
Baduraliya.
15. W.D Somawathie,
Rohana Wasa,
Mellagahawila,
Hedigalla.
16. M.D. Simon,
17. Uru Liyanage Sumanawathie,
Medawaththa,
Boralugoda,
Mathugama.
18. Pelawaththa Hettige Don paulis,
Ingurudulla,
Boralugoda,
Mathugama.

Pelawaththa Hettige Don paulis,
Ingurudulla,
Boralugoda,
Mathugama.

19. Kolamba Arachchige Methias,
Boralugoda,
Mathugama.
20. Kolamba Arachchige Sumanadasa,
Boralugoda,
Mathugama.
21. Sapuhettige Dona Sumanawathie,
Batagodawila, Hedigalla,
Janapadaya.

Wickramarachchi Karolis,
Boralugoda,
Mathugama.
Kolambage

22. Kottahachvhi Arachchige Leelawathie,
Athele, Mathugama.
23. Washington Jayamanne,
Athele, Mathugama.

Defendant - Respondent

Before : K.T.Chitrasiri, J.

Counsel : Rohana Deshapriya for the 6th Defendant-Appellant

Amanthi Jayasinghe for the Plaintiff-Respondent

Argued &

Decided on : 31.01.2013

K.T.Chitrasiri, J.

This is an appeal seeking to set aside the judgment dated 12.12.1997 of the learned District Judge of Matugama. By that judgment the learned District Judge made order to partition the land referred to in the preliminary plan 649 dated 26.10.1994, in accordance with the division mentioned in his judgment. Being aggrieved by the said judgment, the 6th defendant-appellant filed this appeal.

At this stage, both Counsel submit that the only issue in this appeal is to determine whether or not Odanis is a son of Dines. Admittedly, Dines was the original owner of the land. There is no dispute as to the corpus as well. The 6th defendant-appellant in his statement of claim had claimed that Dines had four children including Odanis whilst the position taken up by the plaintiff-respondent is that Dines had only three children. Learned District Judge had

decided that there were only three children to Dines dismissing the claim of the 6th defendant-appellant. Learned District Judge in deciding so, had stated thus:-

මා විසින් විසඳිය යුතුව ඇත්තේ 6ව4 ඔප්පුවේ විකුණුම්කරු වන ඔදුනිස්, දිනේස්ගේ දරුවෙක්ද යන්නයි. විසඳිය යුතු ප්‍රශ්න මගින් පාර්ශවකරුවන් අතර හඬයට ලක්කර ඇත්තේ එම ප්‍රශ්නය පමණි. මම 6 වන විත්තිකරු විශ්වාසය තබා ඇති 6ව4 ඔප්පුව මගේ තීක්ෂණ අවධානයට යොමු කරමි. 6ව4 ඔප්පුවේ ඔදුනිස් තමාට මෙම ඉඩමෙන් 1/4 පංගුවක් අයිතිවූ ආකාරය කියා ඇත. එහි කියා ඇත්තේ මෙසේය.

“ පැලවත්තගේ දොන් ඔදුනිස් අප්පුනාමි වන මට 1/4 පංගුවක් බුක්තිය පිණිස අයිතිව බුක්ති විඳගෙන එන ඉහත කී පත්තුවේ ඉගුරුදුවට යන ගම....” යනුවෙනි.

මෙම ඔප්පුවේ ඔදුනිස් කියන්නේ තමාට මෙම 1/4 පංගුවේ අයිතිය ලැබුණේ බුක්තියට බවයි. එනම් කාලාවරෝධීව බවයි. ඔදුනිස්ට මෙම 1/4 හි අයිතිය දිනේස් ගෙන් පිය උරුමයට ලැබුණේ නම්, ඒ බව 6ව4 ඔප්පුවේ ප්‍රකාශ නොකොට, තමාට බුක්තියට අයිතිව බුක්ති විඳගෙන එන යනුවෙන් කීමට කිසිදු හේතුවක් නැත. ඔහු විසින් කිව යුතුව තිබුණේ පිය උරුමයට අයිතිව බුක්ති විඳගෙන එන යනුවෙනි. ඔදුනිස් , දිනේස්ගේ දරුවෙක්ද, නැද්ද යන ප්‍රශ්නය විසඳීමටත්, ඔදුනිස්ට දිනේස් ගෙන් පිය උරුමයට මෙම 1/4 පංගුව ලැබුණාද යන ප්‍රශ්නය විනිශ්චය කිරීමටත් හොඳම සාක්ෂිය 6ව4 ඔප්පුවයි. 6ව4 ඔප්පුවේ ඔදුනිස් මෙම 1/4 පංගුව තමාට පිය උරුමයෙන් ලැබුණ බව කියා නැත. ඔහු කියා ඇත්තේ බුක්තියට අයිතිවූ බවයි. මේ අනුව එකී ඔදුනිස් දිනේස් ගේ දරුවෙකු නොවන බව මා විසින් නිගමනය කලයුතුව ඇත.

As mentioned by the learned District Judge, it is on the strength of the deed bearing No.7435 marked in evidence as 6V4 that the 6th defendant-appellant had claimed rights through Odanis. However, the said deed 6V4 is a deed of transfer which does not support the fact that Odanis is one of the children of Dines. Therefore it is only the oral evidence of the 6th defendant is available to establish that Odanis is a son of Dines. To the contrary the plaintiff has clearly given evidence that there were only three children to Dines. Learned trial Judge having considered oral evidence of both parties had inclined to accept the evidence of the plaintiff having assigned cogent reasons for same.

Such matters being matters of fact, the trial Judge having seen the witnesses giving evidence, is the best person to decide on those issues. Therefore, I am not inclined to interfere with his decision arrived on the facts of the case. In the circumstances, I do not see any misdirection on the part of the learned District Judge when he decided that the 6th defendant-appellant had failed to establish that there were four children to Dines.

Furthermore, it must be noted that the 5th defendant-respondent who is a member of the same family of the 6th defendant-appellant had decided to accept the pedigree of the plaintiff. He had opted not to appeal against the decision as to the allocation of shares as well. Moreover, the 6th defendant-appellant himself had purchased the rights of the 7th defendant, admittedly

another member of the same family who had relied on the pedigree of the plaintiff. The said rights had been purchased by the 6th defendant-appellant from the 7th defendant by the execution of the deed marked 6V1(Deed No.1253). Those acts of the 6th defendant-appellant show that he had impliedly accepted the devolution of title as set out by the plaintiff-respondent. Against such a back ground, the 6th defendant-appellant is estopped from claiming a larger share of the land, deviating from the pedigree of the plaintiff-respondent.

For the aforesaid reasons, it is clear that the 6th defendant had failed to establish that there had been a son by the name of Odanis to the original owner Dines. Therefore, it is my opinion that the learned District Judge is correct when he decided to accept the pedigree of the plaintiff-respondent rejecting the 6th defendant-appellant's claim that was made depending on the deed marked 6V4.

Accordingly, I am not inclined to interfere with the judgment of the learned District Judge. In the circumstances, the appeal of the 6th defendant-appellant is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

KLP/-