

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

Case No. CA/88/98 (F)

DC Mt-Lavinia Case No. 10/93/P

Dikkumburage Malini Senehelatha,
No. 36/7, Chakkindarama Road,
Ratmalana.

Plaintiff

Vs.

1. Dikkumburage Dayalatha,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
2. Dikkumburage Sanet,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
3. Dikkumburage Wijananda,
57, Kandawala Road, Ratmalana.
4. Dikkumburage Purnalatha,
36 / 7, Chakindarama Road, Ratmalana.
5. Dikkumburage Leelananda,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
6. Warnakulasooriya Mahawaduge Harold Waas,
57, Kandawala Mawatha,
1st Lane, Ratmalana.
7. Kumara Arcchige Piyaratne,
57, Kandawala Mawatha,
1st Lane, Ratmalana.
8. Ranasinghage Abaran Silva,
57, Kandawala Mawatha, Ratmalana.

Defendants.

And Now Between (Appeal)

Warnakulasooriya Mahawaduge Harold Waas,
57, Kandawala Mawatha, 1st Lane, Ratmalana.

6th Defendant-Appellant

Vs.

Dikkumburage Malini Senehelatha,
No. 36/7, Chakkindarama Road, Ratmalana.

Plaintiff-Respondent

1. Dikkumburage Dayalatha,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
2. Dikkumburage Sanet,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
3. Dikkumburage Wijananda,
57, Kandawala Road, Ratmalana.
4. Dikkumburage Purnalatha,
36/7, Chakindarama Road, Ratmalana.
5. Dikkumburage Leelananda,
99, Nagarika Nivasa, Gunalankara Road,
Kalubowila, Dehiwala.
6. Kumara Arcchige Piyaratne,
57, Kandawala Mawatha,
1st Lane, Ratmalana.
7. Ranasinghage Abaran Silva,
57, Kandawala Mawatha, Ratmalana.

Defendants-Respondents.

C.A. 88/98(F) : D.C. Mount Lavinia Case No. 10/93/P

Before : K.T. Chitrasiri, J.

Counsel : S.N. Trimannne for the 6th Defendant -Appellant
Ranjan Suwandaradne for the Plaintiff-Respondent.

Argued &

Decided on: 17.01.2013

K.T. Chitrasiri, J.

This is an appeal seeking to set aside the Judgment delivered on 24.11.1997 as amended by the subsequent order dated 19.12.1997. By that judgment, learned District Judge decided the case in favour of the Plaintiff rejecting the claim of the Defendant-Appellant. Learned Counsel for the Appellant submits that the case of the 6th Defendant-Appellant had been on the basis of prescription, claimed by him to the land sought to be partitioned. She further submits that the said claim of the 6th Defendant-Respondent had not been considered by the learned District Judge.

When this matter was taken up for trial before the learned District Judge on 17.10.1997, the 6th Defendant-Respondent was represented by an Attorney-at-Law. By then, he had filed his

statement of claim as well. Even though the 6th Defendant had claimed prescriptive rights to the land, he had not raised an issue to that effect at the trial.

Dikkumburage Nalini Dayalatha Senehelatha, being the Plaintiff has given evidence on 17.10.1997. In her evidence, she has stated that lot 'b' in the Preliminary Plan marked as 'X, ' which is in extent of **.8 perches** had been in possession of the 6th Defendant. In that evidence she has admitted that the said lot 'b' in the said Plan should be given to the 6th Defendant. The Plaintiff also has said the way in which she became entitled to the rest of the land sought to be partitioned. The aforesaid evidence had not been subjected to any cross-examination. Therefore, the learned District Judge had no option than to act on the said evidence of the Plaintiff. Accordingly, he has allocated the shares according to the evidence led before him having allotted lot 'b' in the Preliminary Plan bearing No. 1572 to the 6th Defendant-Appellant.

Even though the 6th Defendant in his answer had claimed prescriptive title for a land in extent of 15 perches, he, by his conduct had limited his claim to the land which is shown as lot 'b' in the

Preliminary Plan marked 'X' at the trial stage. Hence, he cannot make a claim for a land in extent of 15 perches at this appeal stage.

In the circumstances, there is no reason to interfere with the decision of the learned District Judge. Accordingly, the appeal is dismissed. Learned District Judge is directed to enter interlocutory decree according to the Judgment dated 24.11.1997 as amended by the subsequent order dated 19.12.1997.

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Cr/-