

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

Meragal Pedige Darmadasa,
Ihala Kalugama,
Wellarawa.

Plaintiff

C.A. No. 993 / 2000 F

Vs.

D.C. Kuliypitiya No. 11098/94 / P

1. Meragal Pedige Dayaratne,
2. Meragal Pedige Karunawathie,
3. Peththamaru Durayalage Punni,
4. Peththamaru Durayalage Adman,
All of Ihala Kalugama, Wellarawa,
5. Peththamaru Durayalage Karunaratne,
Wilaththawa, Bingiriya.
6. Jayalath Pedige Meniki,
Ihala Kalugama, Wellarawa.

Defendants

AND NOW BETWEEN

Peththamaru Durayalage Karunaratne,
Wilaththawa, Bingiriya.

5th Defendant Appellant

Vs

Meragal Pedige Darmadasa,
Ihala Kalugama,
Wellarawa.

Plaintiff Respondent

1. Meragal Pedige Dayaratne,
2. Meragal Pedige Karunawathie,

3. Peththamaru Durayalage Punni,
4. Peththamaru Durayalage Adman,
All of Ihala Kalugama, Wellarawa,
5. Jayalath Pedige Meniki,
Ihala Kalugama, Wellarawa.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Jacob Joseph for the 5th Defendant Appellant
Nilshantha Sirimanna for the 5th Defendant
Respondent
ARGUED ON : 23.10.2012
DECIDED ON : 12.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent instituted the said action against 1st to 5th Defendant Respondents in the District Court of Kuliyaipitiya seeking to partition the land described in the schedule to the plaint. The 6th Defendant Respondent has been added as a party to the action after the preliminary survey of the land to be partitioned. After trial the learned Additional District Judge has delivered judgment in favour of the Plaintiff Respondent. Being aggrieved by the said judgement dated 14.12.2000 the 5th Defendant Appellant (hereinafter referred to as the Appellant) has preferred the instant appeal to this court.

The Appellant's case was that that he was entitled to an undivided 1/3rd share of the land depicted as lots 3 and 4 in the preliminary plan by virtue of a deed of transfer bearing No 627 dated 09.01.1986. The 2nd and 6th Defendant

Respondents too has claimed the same lots by virtue of deed bearing No 299 dated 25.07.1981. The learned District judge has allowed the claim of the 2nd and 6th Defendant Respondent (hereinafter referred to as the Respondents) on prescription and has rejected the claim of the Appellant. The Appellant in this appeal has canvassed the said portion of the judgment.

The Appellant's contention was that his title deed bearing No 627 dated 09.01.1986 has been duly registered in the correct folio and the Respondent's title deed bearing No 299 dated 25.07.1981 has been registered in the wrong folio and the learned District Judge has failed to consider the prior registration of deed bearing No 627 and to give the benefit to the Appellant.

The Respondents contended that although Podiya, the predecessor in title, has conveyed his undivided 1/3rd share of the land to the Appellant he did not receive the possession thereof and hence in any event the Respondents have prescribed Lots 3 and 4 depicted in preliminary plan No 650.

I have carefully considered the said submissions of the Appellant and the Respondents. It has transpired from the evidence of the case that the 2nd Defendant Respondent was in possession of the portion of land possessed by her father Podiya. Also, it was in evidence that although said Podiya has transferred his undivided 1/3rd share to the Appellant the possession of the same has not been received by the Appellant. It appears that the Appellant has held only a paper title of undivided 1/3rd share of said Podiya.

It is important to note that although the said deed No 627 had been executed on 09.01.1986 the Appellant upon the said deed has never gone in to the

possession of the land in dispute. Upon the said evidence the learned District Judge in her judgment at pages 124 and 125 of the brief has rightly considered the prescriptive title of the 2nd Defendant Respondent over the prior registration of the Appellant's title deed bearing No 627 dated 09.01.1986.

In the said circumstances I find no reason to interfere with the said judgement of the learned District Judge dated 14.12.2000 Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal