

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

Dissanayake Mudiyansele
Tikiribanda,
'Jayanthi Niwasa,
Alagalla Ihala, Hathara Liyadda.
Plaintiff

C.A. No. 682 / 1997 F

Vs.

D.C. Kandy No. 13070 / P

1. Dissanayake Mudiyansele
Aberathna,
2. Dissanayake Mudiyansele Herath
Banda,
Both of Pinwatta, Allagalla Ihala,
Hathara Liyadda.
Defendants

AND NOW BETWEEN

Dissanayake Mudiyansele
Tikiribanda,
'Jayanthi Niwasa,
Alagalla Ihala, Hathara Liyadda.

Plaintiff Appellant

Vs

1. Dissanayake Mudiyansele
Aberathna,
2. Dissanayake Mudiyansele Herath
Banda,
Both of Pinwatta, Allagalla Ihala,
Hathara Liyadda.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Aravinda R.I.Athurupana for the Plaintiff
Appellant
Nimal Muthukumarana for the Defendant
Respondent
ARGUED ON : 20.06.2012
DECIDED ON : 21.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against 1st and 2nd Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Kandy seeking to partition the land described in the schedule to the plaint. After trial the learned District Judge has dismissed the action of the Appellant. Being aggrieved by the said judgement dated 25.07.1997 the Appellant has preferred the instant appeal to this court.

The Appellant's case was that he was entitled to an undivided 1/5 share and the two Defendants were entitled to undivided 2/5 share of the land described in the schedule to the plaint. The original owner of the said land was Palingu Menike and after her death her rights devolved on her five children and the Appellant by deed of transfer No 29516 dated 08.02.1960 acquired the title of Dingiri Banda one of the said five children.

The Respondents in their statement of claim has not disputed the said scheme of partition proposed by the Appellant. They have admitted that they were

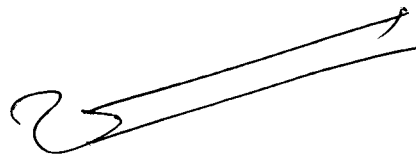
entitled to undivided 2/5 share each. Even at the trial the parties have not raised issues of the case. The Appellant's evidence was not subjected to cross examination. The Respondents have not led evidence at the trial. The Appellant in his evidence has produced the title deeds of the parties and other requisite documents marked X, X 1, Y, P 1 to P 5 and V 1 to V 3.

It seems from the said documents that said Palingu Menike's title has devolved on the Appellant and the Respondents. When there was no contest between the parties and all possible claimants were before Court the learned District Judge should consider the evidence of the Appellant and the documentation produced before court in a way to minimise further litigations between parties by giving effect to a partition of the land in dispute rather than going on a voyage of discovery finding loopholes and silly contradictions in the evidence in order to dismiss the action.

In the case of Karunaratne Vs Sirimalee 53 NLR 444 it was held that Where, in a partition action, all possible claimants to the property are manifestly before the Court, no higher standard of proof should be called for in determining the question of title than in any other civil suit.

Therefore I set aside the judgment of the learned District Judge dated 25.07.1997 and allow the appeal of the Appellant without costs. I direct the learned District Judge to enter interlocutory decree as prayed for in the plaint.

Appeal allowed.



Judge of the Court of Appeal