

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

Petition of Appeal under Section 755(3) read with Section 758 of the Civil Procedure Code against judgment dated 08/09/1998 in District Court Galle Case No.P/12340.

Deva Sanjeeva Nandalal
Parana Watta
Boossa

Substituted-Plaintiff-Appellant

Deva Punchi Singho
(Deceased Plaintiff-Appellant)

Vs

C.A.NO.1252/98 (F)
D.C.GALLE CASE NO.12340/P

1. Edirimuni Indrani de Zoysa of Paranawatta, Boossa.
2. Nikkuwa Handi Jayasena of Paranawatta, Boosa.
3. Merregngna Edwin Mendis, formerly of Kochchiwatta, Boossa and now of "Madhushika", 1st Lane, Hakmana Road Walasmulla.

Defendant-Resondents

BEFORE : **K.T.CHITPASIRI, J.**

COUNSEL : Rohan Sahabandu P C with Hasitha Amarasinghe,
Attorney-at-Law for the Substituted-Plaintiff- Appellant.
Sadamal Rajapakse, Attorney-at-Law for the Defendant-
Respondents

ARGUED ON : 22nd FEBRUARY 2013

**WRITTEN SUBMISSIONS
FILED ON** : 22nd FEBRUARY 2013

DECIDED ON : 12th MARCH 2013

CHITRASIRI, J.

This is an appeal seeking to set aside the judgment dated 8th September 1998 of the learned District Judge of Galle. In addition to the said relief, the deceased plaintiff-appellant (hereinafter referred to as the plaintiff) in his appeal also sought:

- (i) that the plaintiff-appellant be declared entitled to an undivided 11/16 shares and the 1st defendant-respondent to 4/16 shares; or
- (ii) that in the alternative the disputed ½ share be left un-allotted, and that the plaintiff-appellant be declared entitled to 3/16 shares and the 1st defendant-respondent to 4/16 shares.

Looking at the aforesaid relief (ii) itself, it is clear that there had been no dispute in respect of a ½ share of the land sought to be partitioned. Indeed, it is on that basis both the plaintiff and the 1st defendant-respondent (hereinafter referred to as the 1st defendant) argued the appeal and also filed their written submissions. Learned District Judge decided to allocate 3/16 to the plaintiff, 4/16 to the 1st defendant and 1/16 to the 3rd defendant totaling it to 8/16 shares out of the undisputed ½ share of the corpus as there was no dispute as to the said ½ share. Balance 8/16 or the ½ share of the corpus is the share that is being claimed both by the plaintiff and the 1st defendant. Learned District Judge had allocated the entirety of the disputed ½ share to the 1st defendant on the strength of the deeds marked 1D1 to 1D6.

Accordingly, I will now turn to consider the claims of the plaintiff and of the 1st defendant as to the disputed 1/2 share of the land. The plaintiff claims title to the same through the deeds marked P3, P4 and P5 whilst the 1st defendant's claim rests on the deeds marked 1D1 to 1D6. This claim of the two parties namely the plaintiff and the 1st

defendant had been the main issue even in the Court below. Almost all the issues also had been raised before the trial judge in order to determine this issue namely the claim in respect of the disputed half share of the land.

Learned District Judge has clearly identified the said issue between the plaintiff and the 1st defendant. (vide page 142 of the brief). He has observed that the 1st defendant's rights to the disputed 1/2 share had devolved on her by a deed executed in the year 1962 which refers to a previous deed as well. Having noted so, he has stated that the rights claimed by the plaintiff had derived from the deed marked P3, executed in the year 1981, which does not show any connection to a prior chain of title of the two vendors to the said deed P3.(vide page 142 of the brief). Having compared the title referred to in the respective deeds marked by the two parties, learned District Judge preferred to accept the title referred to in the deeds of the 1st defendant. His decision is with cogent reasons. He has considered the evidence as to the possession of the land as well when coming to his conclusions.

The plaintiff claims rights by the deed marked P5 to which the rights had accrued through the deeds P3 and P4. The first deed marked P3 which bears the No.1106 is a deed executed on the 2nd March 1981. It had been executed on the basis of the possession of its vendors without having any connection to a previously executed deed.

The 1st defendant had claimed rights through the deeds 1V1 to 1V6. The rights found in the deed bearing No.10077 marked 1V1 had devolved on the 1st defendant by deed bearing No.5 marked as 1V6. The said deed bearing No.10077 had been executed

on the 4th July 1962 and its vendor, Saradial Mendis had transferred his rights that he had obtained by the deed bearing No.195 executed in the year 1942.

Having compared the two sets of deeds produced by the opposing parties, it is my view that the rights emanated from the deeds 1V1 to 1V6 of the 1st defendant should prevail over the rights derived from the deeds P3 to P5 of the plaintiff since the 1st defendant could easily claim that his deeds had been executed and registered, much prior to that of the plaintiff's. Hence, I do not see any wrong in the manner in which the learned District Judge had evaluated the evidence particularly the deeds marked and produced by the respective parties, in coming to his findings. In the circumstances, I am not inclined to interfere with the decision as to the allocation of shares by the learned District Judge in the impugned judgment dated 8th September 1998.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL