

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

2. Don Jinoris Galhenage
 Horadugoda, Imaduwa.

2nd Defendant-Appellant

Vs.

Gardiye Hettiarachchi Piyasena
 Dikpitiyewatta, Kodagoda, Imaduwa.

Plaintiff-Respondent

1. Abeywickrema Gammachchige Jayatissa
 Egodawatta, Karagoda, Yakkalamulla.

C.A.NO.1246/98 (F)
D.C.GALLE CASE NO.11007/P

1st Defendant-Respondent.

3. D. K Ranaweera.
 Henegewatta, Madihe, Matara.

3rd Defendant-Respondent.

4. P.M.Keerthiratna
 Horadugoda, Imaduwa.

4th Defendant-Respondent.

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

COUNSEL : Athula Perera. with Chathurani de Silva
 Attorneys-at-Law for the 2nd Defendant-Appellant
 Sandun Nagahawatta , Attorney-at-Law for the
 Plaintiff - Respondent

WRITTEN SUBMISSIONS

FILED ON : 26th February 2013 by the 2nd Defendant-Appellant
 13th March 2013 by the Plaintiff-Respondent

ARGUED ON : 24TH JANUARY 2013

DECIDED ON : 04TH APRIL 2013

CHITRASIRI, J.

This is an appeal seeking to set aside the judgment delivered and the Interlocutory Decree entered by the learned District Judge of Galle. In addition to the aforesaid relief, the 2nd defendant-appellant (hereinafter referred to as the appellant) in his petition of appeal has also sought to have a judgment as prayed for in his statement of claim.

In the aforesaid judgment dated 20.11.1998 which is being impugned, learned District Judge decided to allocate equal shares to the plaintiff-respondent (hereinafter referred to as the respondent) and to the 1st defendant-respondent from the land to be partitioned, having accepted the evidence led in accordance with the pedigree referred to in the plaint dated 5.3.1990. Whilst deciding so, learned District Judge rejected the pedigree set out in the statement of claim filed by the appellant.

When this matter was taken up for argument on 24.01.2013, Counsel for the appellant submitted that he is not pursuing to have a judgment from this Court in accordance with the reliefs prayed for in the statement of claim of the appellant even though he, in his petition of appeal has sought to have such reliefs. This position of the appellant had been clearly recorded in the journal entry made on that date namely 24.01.2013. Therefore, it must be noted that the appellant has abandoned his claim made in the petition of appeal in order to have a judgment as claimed in his statement of claim. On that date learned Counsel for the appellant further submitted that his contention is to challenge the way in which Charles Balasuriya became entitled to 1/4th share and not to challenge the decision as to the balance 3/4th share of the land sought to be partitioned.

Having submitted so, the learned Counsel for the appellant further said that 1/8th share of Amaris Appu and 1/8th share of Alwis Dissanayake (1/4th share of the corpus) shown in the Pedigree of the plaintiff-respondent (hereinafter referred to as the respondent) has not been properly proved. Accordingly, he argued that the aforesaid 1/4th share of the land should be kept un-allotted. Therefore it must be noted that the only issue in this appeal is to determine whether it is correct to accept that Amaris Appu and Alwis Dissanayake jointly owned ¼ share of the land as decided by the learned District Judge.

Somawathie Balasuriya who is the wife of the original plaintiff, in her evidence whilst marking the relevant deeds had stated that Amaris Appu became entitled to 1/8th share of the land by deed bearing No.10055 dated 27.4.1934 marked P3 (Vide page 92 of the brief) and Alwis Dissanayake became the owner by his longstanding possession to another 1/8th share of the land. 1/8 share of Amaris Appu devolved on to Charles Balasuriya by deed 4487 dated 30.08.1961 whilst the rights of the other 1/8 share of Alwis Dissanayake passed on to Don Adrian by deed 12294 dated 03.05.1952 (P4) and thereafter from Don Adrian to Charles Balasuriya by deed 1882 dated 09.12.1954 Marked P2. (Vide page 92 of the brief).

Learned District Judge having considered the evidence of the wife of the respondent particularly the two deeds bearing Nos.10055 and 12294, has decided that those two deeds carry valid title and has declined to accept the position taken up by the appellant. The deed bearing No.10055 is a deed executed in the year 1934 and the deed bearing No.12294 had been executed in the year 1952. This action was filed in the year 1990. By the time the action was filed the rights derived from those two deeds had been in existence at least for over 38 years.

Section 68 of the Partition Act No.21 of 1977 permits to accept the proper execution of a deed if the deeds are produced in evidence without those being proved formally unless the genuineness of that deed is impeached by a party claiming adversely to the party producing the deed. Therefore, it is correct to admit the deeds marked P3 and P4 in evidence. When those two deeds are accepted in evidence, the contents of those shall not be rejected unless a valid reason is shown.

In the circumstances, it is my considered view that the learned District Judge is correct when he decided to act upon the title of Amaris Appu and Alwis Dissanayake referred to in the deeds marked P2, P3 and P4, by which they jointly became entitled to 1/4th share of the land. Accordingly, I am not inclined to accept the contention that the respondent had failed to establish the title of Amaris Appu and Alwis Dissanayake.

For the aforesaid reasons, I conclude that it is correct to decide that Amaris Appu and Alwis Dissanayake was one time entitled to 1/8th share each of the land in dispute and decide that the division of the land as decided by the learned District Judge in his judgment dated 20.11.1998 is correct.

Accordingly, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL