

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

Pathirage Podimenike,  
497, Susilarama Road,  
Malambe.

Plaintiff

C.A. No. 465 / 98 F

Vs.

D.C. Homagama No. 64 / L

Hewarainduwage Saranelis Appu,  
Susilarama Road,  
Malambe.

Defendant

**And Now Between**

Hewarainduwage Saranelis Appu,  
Susilarama Road,  
Malambe.

Defendant Appellant

Vs

Pathirage Podimenike,  
497, Susilarama Road,  
Malambe.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Y. K. Dhanapala instructed by N. Pradeepa for  
the Defendant Appellant.

Dr. Almeida Gunerat ne PC with Lasitha  
Chaminda for the Plaintiff Respondent

ARGUED ON : 22.06.2012

DECIDED ON : 03.04.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) has instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) seeking inter alia for a declaration of title to the land described in the 2<sup>nd</sup> schedule to the amended plaint dated 28.04.1992. The Respondent has filed his amended answer denying the averment in the amended plaint and seeking for a declaration of title to the land described in the 2<sup>nd</sup> schedule to the amended answer.

The case proceeded to trial on 8 issues. After trial the learned District Judge delivered judgment in favour of the Respondent. Being aggrieved by the said judgment dated 22.04.1998 the Appellant has appealed to this court.

The Respondent's case was that one Pathirage Anelis Perera was entitled to an undivided 3/16 share out of the land described in the 1<sup>st</sup> schedule to the plaint. He sold 1/16 share out of his undivided share to one Juwandarage Julis Perera by deed bearing No 30728 dated 30.01.1918 and said Julis Perera by deed bearing 3243 dated 20.12.1950 sold the same to Baby Perera. Thereafter said Anelis Perera in lieu of his remaining undivided 2/16 share possessed the land

described in the 2<sup>nd</sup> schedule to the amended plaint as a separate entity. Said Anelis Perera has died leaving three children namely the Respondent, Alis Nona And Lisi Nona as heirs. Said Alis Nona and Lisi Nona by deed bearing No 40 of 10.06.1981 have transferred their shares to the Respondent and thereby the Respondent became the sole owner of the land described in the 2<sup>nd</sup> schedule to the amended plaint.

The Appellant's position was that One Pathirage Peiris Perera was entitled to an undivided 1/16 share of the land described in the 1<sup>st</sup> schedule to the plaint. After the death of said Peiris Perera his rights devolved on his wife Lucihamy and children. Said Lucihamy by deed bearing No 609 dated 8.8.1934 transferred an undivided 2/8 share from and out of her undivided share to Julis Perera. It was the contention of the Appellant that although said Julis Perera by deed bearing No 3243 has transferred his rights to Baby Perera as averred in paragraph 3 of the amended plaint, in fact Julis Perera did not transferred the rights he bought from the said deed bearing No 609 dated 8.8.1934 and by deed bearing No 7457 dated 10.09.1961 he transferred the same to one Sirisena Perera who was the immediate predecessor in title of the Appellant.

I have perused the Respondent's title deeds produced marked P 2, P 3, P 4, P 6, P 7 and P 8 and also the Appellant's title deeds produced marked 1 V 1 and 1 V 2. According to the Appellant's evidence at page 140 of the brief Julis Perera has transferred his rights to Sirisena Perera by deed bearing No 7457 dated 10.09.1961 and said deed has been produced marked 1 V 2. But 1 V 2 is a title deed bearing No 7437 dated 10.09.1961.

Prior to the execution of the said title deed bearing No 7437 (1 V 2) Julis Perera has executed a deed bearing No 3243 dated 20.12.1950 transferring all of his rights to Baby Perera.

According to the Respondent's evidence said Julis Perera has transferred all of his rights, title and interest into and upon the land in dispute to Baby Perera by deed bearing No 3243 dated 20.12.1950. It was the contention of the Appellant that Julis Perera had not transferred the rights he bought from the said deed bearing No 609 dated 8.8.1934. When I consider the date of execution of the said two deeds bearing No 609 and 3243 I cannot accept the position of the Appellant.

Hence I am of the view that with the execution of the said deed of transfer bearing No 3243 Julis Perera had exhausted all of his rights of the land in dispute and therefore no rights could have been transferred by deed bearing No 7457 dated 10.09.1961 to Sirisena Perera who was the immediate predecessor in title of the Appellant.

In the said circumstances I find no reason to interfere with the said judgment of the learned District Judge dated 22.04.1998. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal