

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

**C.A. 910/98 (F)**

D.C. Walasmulla Case No: 555/P

Balage Alpina  
Nawanaliya,  
Keerama.

**Complainant Appellant**

**Vs.**

P.B. Gimara  
Kalaotuwawa,  
Weedikanda,  
Walasmulla.

**Defendant Respondent**

**C.A. 910/98 (F)**      **D.C. Walasmulla Case No: 555/P**

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

**COUNSEL**                : P.K. Prince Perera with Panchadaran and S.  
Amarasekara for the 20<sup>th</sup> Defendant-Appellant  
Buddhika Gamage for the Plaintiff-Respondent.

**ARGUED &**  
**DECIDED ON**        : 17.05.2013

**K.T. Chitrasiri, J.**

Both Counsel made submissions in support of their respective cases. At the outset learned Counsel for the Appellant submitted to Court that the appeal of the 20<sup>th</sup> Defendant-Appellant is only in respect of the 30 bread fruit trees referred to in the surveyor's report marked X1 even though different reliefs including to set aside the judgment had been prayed for in the petition of appeal. Therefore, on the application of the Counsel for the appellant this Court restrict the appeal to the claim made by the 20<sup>th</sup> Defendant-Appellant as to the 20 bread fruit trees.

Counsel for the Appellant at this stage brings to the notice of Court that the learned District Judge has given soil rights even to the 20<sup>th</sup> Defendant-Appellant. It was decided so, on the basis of the evidence given by the Plaintiff in accordance with her pedigree. Neither the 20<sup>th</sup> Defendant nor her husband, the 23<sup>rd</sup> Defendant has cross examined the Plaintiff on those matters relating to the pedigree. The 20<sup>th</sup> or 23<sup>rd</sup> defendants were unable to contradict the pedigree of the Plaintiff. Therefore it is clear that the share allocation by the learned District Judge is correct. Against this background only, the learned Counsel for the Appellant made submissions to restrict the appeal to the claim made over the 30 bread fruit trees.

It must be noted that no decision had been made to give the said 30 bread fruit trees or its value to a particular party. Hence, the entitlement of those trees would be, in proportion to the share allocation of the land. In deciding so learned District Judge has considered the claim put forward by the 20<sup>th</sup> Defendant-Appellant as well.

Husband of the 20<sup>th</sup> Defendant, who is the 23<sup>rd</sup> Defendant, has given evidence in this case claiming those 30 trees. The manner in which the learned District Judge has considered his evidence is found at pages 4, 5 and 6 in the impugned judgment. He has considered the evidence of

Upaneris also and had stated that those trees could not have been planted by the 20<sup>th</sup> Defendant or the 23<sup>rd</sup> Defendant. The Plaintiff also has stated that the trees claimed by the 20<sup>th</sup> defendant was not planted by a particular person but those came into existence through the roots of the other bread fruit trees. Furthermore, learned District Judge has stated that the 20<sup>th</sup> Defendant-Appellant has not claimed these trees before the surveyor when he went to survey the land pursuant to the commission issued by Court. Learned Judge also has stated that even the 23<sup>rd</sup> Defendant who is the husband of the 20<sup>th</sup> Defendant had not claimed these trees before the surveyor.

I do not see any wrong in the aforesaid reasoning assigned by the learned District Judge when he decided to reject the claim of the 20<sup>th</sup> Defendant-Appellant in respect of the 30 bread fruit trees. Therefore I am not inclined to interfere with the judgment of the learned District Judge. For the aforesaid reasons this appeal is dismissed with costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

NR/-