

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

C.A. No. 435/97(F)

D.C. Tangalle No.3105/P

Jamuni Ariyadasa
Julgedara, Getamanna Road,
Kudaheella
Beliatta.

Plaintiff

-Vs-

1. Jamuni Nonahamy
Bogahawatta,
Gatamanne Road,
Kudaheella,
Beliatta.
2. Jamuni Belin Nona
Julgedara,
Getamanna Road,
Beliatta
3. Jamuni Siripala
Julgedara,
Getamanna Road, Beliatta
4. Jamuni sirisena
Lihiniya Tiles,
Barawakumbuka,
Ambalantota.

Defendants

And Now Between

Jamuni Nonahamy
Bogahawatta, Gatamanne Road
Kudaheella, Beliatta

Defendant-Appellant

-Vs-

1. Jamuni Ariyadasa
Julgedara, Getamanna Road, Kudaheella
Beliatta

Plaintiff-Respondent

2. Jamuni Belin Nona
Julgedara, Getamanna Road, Beliatta
- 3A. Jakodige Wimalawathi
Julgedara, Gatamanna Road
Kudaheela, Beliatta
4. Jamuni sirisena (deceased)
- 4A. Jamuni Malani
- 4B. Jamuni Jayanthi
- 4C. Jamuni Dinesh Sujith Kumara

All of

Lhiniya Tiles
Barawakumbuka,
Riduyagama,
Ambalantota.

Defendants-Respondents

C.A.No. 435/97(F)D.C. Tangalle No.3105/PBEFORE : K.T.CHITRASIRI, J.COUNSEL : Saman Galappaththi for the 1st defendant-
appellant
Thilan Liyanage with Nishshanka Pieris for the
plaintiff-respondent.ARGUED ANDDECIDED ON : 11th June 2013**K.T.CHITRASIRI, J.**

This is an appeal seeking to set aside the order dated 1st July,1997 of the learned District Judge of Tangalle. By that order the learned District Judge affirmed the final plan bearing No.714A drawn by P.M.Gamage, License Surveyor who is the Commissioner appointed by the Court. Having dissatisfied with the blocking out of the land referred to in the said Plan 714A, the 1st defendant-appellant has moved for an alternative commission and accordingly the Commissioner D.D.Y. Abeywardane has submitted his plan bearing No.960215 dated 7th July1996. The learned District Judge has refused to accept the said alternative plan and affirmed the blocking out shown in plan 714A of the Commissioner.


Being aggrieved by this order of the learned District Judge, the 1st defendant-appellant has filed this appeal seeking to confirm the alternative plan 960215 setting aside the order made affirming the plan 714A of the Commissioner.

In support of the said application, learned Counsel for the appellant submitted that the 1st defendant was in occupation of the land and therefore she should have given the road frontage as shown in the alternative plan. He also contended that it is insufficient to have **8 feet** roadway as shown in the Commissioner's plan and therefore he moved that the alternative plan which shows a **10 feet** wide road be accepted.

When this matter was taken up for argument on the 13th March 2013, the plaintiff-respondent agreed to have the road referred to above extended to become it to **10 feet** in width. However, when the matter was taken up today in the morning, Counsel for the 1st defendant-appellant submitted that the appellant is not willing to have it widened to **10 feet** despite the fact that the alternative plan which the appellant sought to confirm show only a **10 feet** wide road.

In the circumstances, it is clear that the 1st defendant-appellant even though has claimed it is insufficient to have a **8 feet** road, she is now not interested in having even a **10 feet** wide road that she

sought in the petition of appeal. Therefore, as far as the width of the road is concerned, the relief prayed for in the petition of appeal cannot be granted as the appellant is not interested in having such a relief now.

The appellant also has contended that it is unfair to prevent her from having the road frontage as shown in the Commissioner's plan. The plaintiff-respondent has been allotted Lot 6A in plan 714A with a road frontage facing the main road. All the other parties were not given such a road frontage. The shape of the land to be partitioned is such that it is difficult to block out the land enabling two or more parties to enjoy the road frontage as the width of the road frontage is so short. Therefore, nothing is wrong by affording the available road frontage to the plaintiff, he being the person instrumental in having the land partitioned that benefitted all the parties to the action. The improvements claimed by the 1st defendant-appellant has also been considered by the Commissioner and she has been allotted the area where her buildings are situated. Hence, no prejudice has been caused to the appellant as far as her improvements are concerned. On the other hand, if the division of the land is made according to the alternative plan submitted on behalf of the appellant, not only the block allotted to the plaintiff-respondent but ~~also~~  the blocks of lands allocated to the 2nd defendant and to the 4th defendant also will get disturbed causing difficulties to them.

At this stage it must also be noted that the reason for the preparation of the alternative plan had been a request made by the 3rd defendant to the surveyor by the letter dated 23.11.1995, (vide page 90 of the appeal brief) requesting to have the blocks of lands of the 1st and the 3rd defendant allocated to them jointly. This letter was given long after the Commissioner has drawn up his plan. The Commissioner had visited the land on 17th & 18th May 1994. Had this request ^{been} ~~being~~ made to the Commissioner at the appropriate time, he could have considered the request made in the said letter dated 23.11.1995 and the division of the land would have been made accordingly. Therefore, it is seen that the alternative plan had been prepared upon after thoughts of the 3rd defendant and it shows that it was not a genuine application.

Under those circumstances, it is not correct to interfere with the blocking out of the land by the Commissioner, Gamage.

For the aforesaid reasons, I am not inclined to interfere with the order dated 01st July, 1997 of the learned District Judge of Tangalle. Accordingly, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

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