

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

**C.A.No.1244/98**

D.C.Galle No.9582/P

M. Suraweera  
Mihiripanna,  
Thalape.

**Petitioner**

**Vs.**

W. Kumarasinghe Alias Samarasinghe  
Mihiripanna,  
Thalape.

**Respondent**

**C.A.No.1244/98**

**D.C.Galle No.9582/P**

Before : K.T.Chitrasiri,J.

Counsel : Dr.Sunil Cooray with C.Amaratunga for the  
3<sup>rd</sup> Defendant-Appellant.  
D.M.G.Dissanayake for the Plaintiff-Respondent.  
Titus Pathmasiri for the 4A to 4D and 5<sup>th</sup> and 6<sup>th</sup>  
Defendant-Respondents.

Argued and

Decided on : 26.06.2013.

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

Both Dr.Sunil Cooray and Mr. D.M.G.Dissanayake submit that their clients namely the 3<sup>rd</sup> defendant-appellant and the plaintiff-respondent respectively have come to a settlement of the dispute in this appeal on the following terms:

- 1) Plaintiff-respondent concedes that the 3<sup>rd</sup> defendant-appellant is entitled to 1/8 share of the entire corpus upon the deeds bearing numbers 3997 and 5192 marked 3V1 and 3V2 in evidence.

2. The said 1/8 share of the land is to be allocated to the 3<sup>rd</sup> defendant-appellant from the land that had been kept un-allotted and also from the land allocated to the plaintiff-respondent.
3. Accordingly, the plaintiff-respondent and the 3<sup>rd</sup> defendant-appellant agree to allocate 70/80 shares to the plaintiff and 10/80 shares to the 3<sup>rd</sup> defendant from the land sought to be partitioned.

Mr. Titus Pathmasiri who is appearing for the 4A to 4D defendant-respondents and for the 5<sup>th</sup> and 6<sup>th</sup> defendant-respondents submits that the plaintiff-respondent and the 3<sup>rd</sup> defendant-appellant cannot come to such an agreement by allocating un-allotted shares to the 3<sup>rd</sup> defendant at this stage resulting in making use of the land that should remain co-owned, without an acceptable basis to do so.

However, Mr. Dissanayake submits that the agreement between the plaintiff and the 3<sup>rd</sup> Defendant to allocate un-allotted shares has been arrived on the basis of the title derived from the two deeds bearing Nos.3997 and 5192 referred to above. He further submits that those deeds have not been considered at all by the learned Trial Judge and therefore it is correct to allocate un-allotted shares to the 3<sup>rd</sup> defendant on the basis of those two deeds. Having considered his submissions, I am inclined to accept the contention of the learned Counsel for the plaintiff-respondent.

Mr. Titus Pathmasiri further submits that there were several original owners to this land and it has not been looked into by the learned Trial Judge . Therefore he contends that the two parties cannot come to any terms in order to settle the dispute.

It must be noted that 4A to 4D and 5<sup>th</sup> and 6<sup>th</sup> defendant-respondents have not appealed against the judgment of the learned District Judge delivered on 26.08.1998. Therefore, this Court is unable to consider the way in which the title to the land had devolved at this appeal stage. The only appellant who is the 3<sup>rd</sup> defendant, has not challenged the decision as to the devolution of title and his appeal has now been heard and is concluded.

In the circumstances, I am not inclined to disturb the settlement between the 3<sup>rd</sup> defendant-appellant and the plaintiff-respondent on the basis that :

- (1) the 3<sup>rd</sup> defendant has establish his title by producing the deeds bearing Nos.3997 and 5192 in evidence to establish title to the land that was kept un-allotted;
- (2) no appeal has been preferred to challenge the manner in which the devolution of title to the land had been established by the 4A to 4D and 5<sup>th</sup> and 6<sup>th</sup> defendant-respondents to consider their grievance as to the devolution of title.

For the aforesaid reasons, claims of the 4A to 4D and 5<sup>th</sup> and 6<sup>th</sup> defendant-respondents are rejected.

In view of the aforesaid settlement arrived at between the plaintiff-respondent and the 3<sup>rd</sup> defendant-appellant, allocation of shares made in the judgment dated 26/8/1998 should be amended. The learned District Judge is directed to amend the allocation of shares accordingly. Subject to the above variations the appeal is allowed.

*Appeal allowed.*

**JUDGE OF THE COURT OF APPEAL**

WC/-