

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

CA 999/2000
DC 164251/P

Samitha Liyanage

2nd Plaintiff Appellant

Vs.

1. Keerthiratne and 10 others
2. H.D.Piyaratne

9th Defendant Respondent

CA 1000/2000
DC 164251/P

H.D.Piyaratne

9th Defendant Appellant

Vs.

Samitha Liyanage

2nd Plaintiff Respondent

and 10 others

C.A. Appeal No. 999-1000/2000(F)

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DC. Colombo No. 16425/P

Before: K.T. CHITRASIRI, J

Counsel: Rohan Sahabandu PC with E.D. Palihapitiya for the 1st Substituted-
Plaintiff-Appellant in C.A. 999/2000(F)

Harsha Soza PC with S.Samaranayake for the 10th Defendant-
Respondent in C.A. 999/2000(F)

Harsha Soza PC with S. Samaranayake for the 10th Defendant-Appellant
in CA. 1000/2000(F)

Canishka Witharana for the Substituted 2nd Defendant –Respondent in
both appeals.

Argued &

Decided on 18.07.2013

K.T.CHITRASIRI, J

These two appeals have been preferred challenging the judgment dated 16.11.2000 of the learned District Judge of Colombo. Both President's Counsel appearing for the two appellants submit that the only issue in both appeals is the question of legitimacy of the 10th defendant-appellant. Hence, the issue in both appeals are now restricted only to the question of legitimacy of the 10th defendant. This restriction made on the two appeals had already been recorded on the last date as well. Both President's Counsel also submit that they have filed submissions in

writing in support of their respective claims and move that an order be made as to the legitimacy of the child who is the 10th defendant born to Yasohamy, considering the submissions so made. However Mr. Soza PC submits that the parties have conceded that the 10th defendant Piyaratne is a child of Robes and Yasohamy though his legitimacy is in question.

The learned District Judge has decided that the 10th defendant is a legitimate child of Robes and Yasohamy. Accordingly the 10th defendant was awarded 1/11 shares by the judgment. At this stage, Mr. Soza PC submits that the 10th defendant will not proceed with other claims referred to in his appeal, if the 1/11 share is given to him by the trial Judge is remained intact.

The substituted 1st plaintiff-appellant is present in Court. He informs Court that he is prepared to withdraw his appeal if he is to get the rights of H.D.Manis, who is his father. Both President's Counsel concede that even if the 1/11 share given to the 10th defendant by the judgment is to remain as it is, it would not affect the rights of Manis. Therefore, they further submit that Manis's rights will not be affected even though the appeal of the 1st plaintiff appellant is dismissed. In the circumstances, the 1st plaintiff-appellant moves to withdraw his appeal.

In the light of the above, learned President's Counsel for the 10th defendant also moves to withdraw his appeal. The application to withdraw both appeals are allowed. Accordingly both appeals are dismissed without costs. In the circumstances, the judgment of the learned District Judge of Colombo dated 16.11.2000 should remain intact.

Mr. Canishka Witharana who is appearing for the substituted 2nd defendant-respondent in both the appeals submits that his claim is made on the basis of the title alleged to have derived from the partition decree in the action bearing No. 8932/P upon which this case had been filed. However, the 2nd defendant-respondent has not made his claim before the learned District Judge to establish his rights. At this stage, it must be noted that the learned District Judge has decided to keep 5/11 shares unallotted. Therefore the 2nd defendant-respondent is free to make his claim before the learned District Judge to vindicate his rights and to have his rights ensured by moving Court to allocate shares from the land that was kept unallotted. In the event the 2nd defendant makes an application to establish his rights, the learned District Judge is directed to issue notice on the parties to the action allowing them to make any application or to raise objections to such an application of the 2nd defendant-respondent.

Accordingly, both appeals are dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Kpm/-