

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

CA. Appeal 202/97(F), 203/97(F) and 204/97(F)

DC Horana Case No: 2081/P

Pathirage Don Ramachandra Nanayakkara,
No. 3/8,
Melder Place,
Nugegoda.

And 2 other

Plaintiffs

Vs.

Boosige Hemawathie,
Atulugama,
Bandaragama.

And 54 other

Defendants

C.A. Appeal 202/97(F), 203/97(F) and 204/97(F)

D.C.Horana No.2081/P

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

Counsel : Ali Sabry PC with Nuwan Bopage for the 29th Defendant- Appellant in 202/97(F)

Saliya Peiris with Arjana Ratnasiri for the 1st, 2nd and 3rd Defendant-Appellants in 203/97(F)

Ithikar Hassim with Ashig Hussain for the 54th Defendant-Appellant in 204/97(F)

Rohan Sahabandu PC with Samithree Kumarawadu for the substituted Plaintiff-Respondent.

Nizam Kariappa with M.I.M.lynulla for 14th to 17th and 53rd Defendant-Respondents and 13A to 13E and 18B to 18E & 18F substituted Defendant-Respondents

A.C.Abdul Latheef for the 10B Defendant-Respondent.

Argued &

Decided on : 26.08.2013

K.T.Chitrasiri,J.

Counsel for the 54th Defendant-Appellant submits that the 54th defendant is entitled to 7 ½ perches from the land sought to be partitioned and that entitlement had been recognized by the learned trial Judge by allocating 270/43200 shares to him. Accordingly, he moves to withdraw the appeal filed by the 54th Defendant-Appellant. Counsel for the other parties have

no objection to this application. Having allowed the said application, Court makes an order to dismiss the appeal of the 54th Defendant-Appellant without costs.

Learned Counsel for the 1st, 2nd and 3rd Defendant-Appellants submits that the learned trial Judge having considered the evidence has correctly allocated the shares due to the 1st, 2nd and 3rd Defendant-Appellants. Therefore, he submits that the three appellants in the appeal bearing No.203/97 are not pursuing their appeal. Therefore, the appeal of the 1st to 3rd Defendant-Appellants also stands dismissed without costs.

Counsel for all the parties at this stage submit that the issues raised in the remaining appeal bearing No.202/97 filed by the 29th Defendant-Appellant also is settled in the following manner.

All the parties concede that the rights derived from the Deed marked as 29V19 have been accepted by the learned District Judge pursuant to the plaintiff filing a consolidated pedigree with the consent of all the parties to the action. However, it is the submission of the Counsel that the learned District Judge has failed to allocate shares correctly in terms of the rights emanated from the said Deed marked 29V19 despite him accepting those rights referred to therein. Having considered the rights in the Deed marked 29V19 and the allocation of shares made by the learned District Judge, it is apparent that the learned District Judge has allocated only 6535/43200 shares when his entitlement in terms of the said Deed 29V19 should have been 4/9 shares amounting it to 16200/43200 shares.

However, as of a settlement, the 29th Defendant-Appellant at this stage agrees to restrict his entitlement to 14450/43200 shares. Accordingly, all the parties at this stage agree to allocate 14450/43200 shares to the 29th Defendant-Appellant and also agree to deduct the additional shares that he is now been allocated, from the shares that had been left un-allotted making it to become 1990/43200 shares.

In view of the above agreement arrived at by the parties, learned District Judge of Horana is directed to amend the share of the 29th Defendant-Appellant to read as 14450/43200 and un-allotted shares to read as 1990/43200 and thereafter to enter interlocutory decree accordingly.

Subject to the aforesaid variation of the allotment of shares, the appeal filed by the 29th Defendant-Appellant is also dismissed without costs.

Appeals dismissed.

JUDGE OF THE COURT OF APPEAL

KLP/-