

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRILANKA**

CA 875/98 (F)

DC TANGALLE 2794/P

- 1.B. Jayalath Liyana Arachchige Somatilake
No.159/2, Aarachchigedara,
Getamanna North.

Defendant Appellant Petitioner

Vs.

1. Ruwanpathirana Ransinhami
Getamanna.

Substituted Plaintiff Respondent

2. Hewathanthirige Jinadasa
Karagaha, Koratuwa, Getamanna.

3rd Defendant-Respondent

1. Pragnawathie Kumasaru
Getamanna North.
2. J.L.A Jayantha
Nugegoda.
3. J.L.A.Karunasiri
Getamanna North.
4. J.L.A.Kusumalatha
Weeraketiya.
5. J.L.A.Piyaseeli
Getamanna North
6. J.L.A.Shriyani
Hakmana.

Respondents

CA 875/98 (F)

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BEFORE: K.T. CHITRASIRI, J.

COUNSEL: Nuwan Bopage for the 1A Defendant-Appellant.

C. Paranagama with W.R.Dilrukshi for the Substituted 2A Defendant-Respondent.

Substituted-Plaintiff-Respondent is absent and unrepresented.

ARGUED &

DECIDED ON: 22.10.2013.

K.T. CHITRASIRI, J.

Substituted-Plaintiff-Respondent namely Ruwanpatirana Ransinahami is absent even though the notice dated 10.06.2013 has been sent to her under registered cover informing her that this matter is to be taken for argument today. In the same manner, another notice has been sent by the Registrar to the Registered Attorney of the Substituted Plaintiff-Respondent as well. However no appearance is made on behalf of the Substituted Plaintiff-Respondent despite the said notice sent to the Registered Attorney. Accordingly, this appeal is taken up for argument in the absence of the Substituted-Plaintiff-Respondent.

Counsel for the appellant, referring to the impugned Judgment dated 08.10.1998 which is at page 69 of the appeal brief, submits that the learned District Judge has erroneously allocated shares to a person naming that person as the 4th defendant when no such 4th defendant is found in the original action. Accordingly, he submits that it is wrong to have allocated 1/4th share of the land to a person who is not a party to the action and he, therefore moves that this Judgment be set-aside. Counsel for the 2A Defendant-Respondent also accepts the position that there is no defendant named as the 4th defendant in this action filed in the District Court of Tangalle.

I have perused the plaint dated 09.02.1987 filed in the District Court of Tangalle. (page 42 of the appeal brief) In that plaint only three defendants are found. The action had been proceeded on the said plaint in which only three persons have been named as the defendants. Therefore, it is clear that the learned District Judge has misdirected himself when he, on his own, named a person as the 4th defendant at the time he wrote the judgment allocating 1/4th share of the land to him though he is not a party to this action.

However, it is seen that confusion has arisen as to the naming of parties to the action since that other person, who was named as the 4th defendant by the learned trial judge, has claimed rights to the land sought to be partitioned before the Commissioner when the preliminary survey was carried out.

In the light of the above circumstances, both counsel agree to have this matter referred back to the District Court of Tangalle to have a fresh trial. Having considered the matters referred to above, the Judgment dated 08.10.1998 is set-aside and the learned District Judge of Tangalle is directed to have a trial *de novo* upon issuing notices to all the parties including the persons who have claimed rights before the surveyor.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Mm/-.