

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

Gallath Rallage Dharmadasa,
Dhalukgala,
Rambukkana.

Plaintiff

C.A. No. 676 / 97 F

Vs.

D.C. Kegalle No. 25109 / P

1. Gallath Rallage Karunathilake,
2. Mohottallage Kusumawathie,
3. Manannalage Dharmadasa,
All of Dhalukgala,
Rambukkana.

Defendants

AND NOW BETWEEN

Manannalage Dharmadasa,
Dhalukgala
Rambukkana.

3rd Defendant Appellant

Vs

Gallath Rallage Dharmadasa,
Dhalukgala,
Rambukkana.

Plaintiff Respondent

1. Gallath Rallage Karunathilake,
2. Mohottallage Kusumawathie,
Both of Dhalukgala,
Rambukkana.

1st & 2nd Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Sandamal Rajapaksa for the 3rd Defendant
Appellant
D. M. G. Dissanayake for the Plaintiff
Respondent

ARGUED ON : 29.10.2013

DECIDED ON : 21.01.2014

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against 1st to 3rd Defendants in the District Court of Kegalle seeking for a judgment to partition a land called 'Hitinawatta' described in the schedule to the plaint. The 2nd and 3rd Defendants have filed their statement of claim praying that a land called 'Paluwatta' form a part of the corpus and shares of the said land as prayed for in prayer 2 of the statement of claim. The case proceeded to trial on 16 issues. After trial the learned District Judge has delivered a judgment in favour of the Plaintiff Respondent. Being aggrieved by the said judgement dated 01.08.1997 the 3rd Defendant Appellant (hereinafter referred to as the Appellant) has preferred the instant appeal to this court.

The Appellant's position was that the said land called 'Paluwatta' also form a part of the land to be partitioned and he was entitled to an undivided ½

share of the said land called 'Paluwatta' and also 3/16 share of the corpus. At the trial the Appellant has produced his title deed marked 2 V 1. It had been executed in order to transfer three different lands. According to item No 2 of the schedule to the said title deed 2 V 1 said land called 'Paluwatta' was situated at Dompemulla. But the land described in the schedule to the plaint was situated at Pinnawala. Hence the Appellant should adduce evidence to prove that said 'Paluwatta' form a part of the land to be partitioned. But the Appellant has failed to adduce such evidence to prove his case. The Appellant has not made any attempt to identify the corpus by a survey plan.

In the said circumstances I find no reason to interfere with the said judgement of the learned District Judge dated 01.08.1997. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal