

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

C.A. No. 69/1998 F
D.C.Kurunegala No. 3453/P

M.P. Layanal Premalatha
Rabe,
Ma Eliya.

Appellant

Vs.

W. Somadasa
Rabe,
Ma Eliya.

Respondent

C.A. No. 69/1998F)

D.C.Kurunegala No. 3453/P

BEFORE : K.T. CHITRASIRI, J.
COUNSEL : Parties are absent and unrepresented.
DECIDED ON : 30th January, 2014.

K.T. CHITRASIRI, J.

Upon preparation of the briefs, the Registrar of this Court has sent notices to the parties as well as to their registered Attorneys directing them to collect the briefs and to be present in this Court on 12th December, 2013. When this matter was mentioned on that date namely, 12th December, 2013 neither the parties nor their Attorneys were present in Court, even though the notices referred to above had been sent under registered cover to the addresses given in the petition of appeal. Also, it is to be noted that those notices have not been returned. Accordingly, this Court had no option than to fix the matter for argument in their absence. The case was taken up for argument today. The parties are not present even today.

This is an appeal seeking to set aside the judgment dated 12th November 1997 of the learned District Judge of Kurunegala. In the said judgment, learned District Judge, made order partitioning lot (1)

referred to in the plan bearing No.329/Kuru/91 drawn by R.B. Premathilaka Bandara, Licensed Surveyor having allocated half share to the plaintiff-respondent. The balance half share was not allocated to any party due to not proving the title of the said half share. Being aggrieved by the said judgment, the 3rd defendant-appellant filed this appeal stating that she has established her title to the land sought to be partitioned and also stating that the land had not been properly identified by the learned District Judge.

Both these issues had been carefully considered by the learned District Judge. In his judgment, the learned District Judge has looked at the deeds marked 3V1 and 3V2. The deed marked 3V2 had already been produced by the plaintiff having marked the same as P3. The land referred to in the deed 3V2 is not a land subjected to in this action.(vide proceedings at pages 92, 93 and 95). Therefore, it is seen that the learned District Judge has considered the deeds marked by the appellant carefully and has decided that those are not relevant to this action.

Learned District Judge has also looked at the question of identity of the land sought to be partitioned. The 3rd defendant-appellant has taken up the position that the land sought to be partitioned is not the lot (1) in the plan marked "X" but it is the land referred to in the plan bearing No. 1064A marked 3V4. However, she has not taken steps

to submit a plan to show the land she was referring to even though the Court has given six opportunities for her to do so. It being a matter within her knowledge and a matter she wanted to have established, the burden is on the appellant to show the land with reference to the plan she has marked as 3V4. Accordingly, the learned District Judge has rejected her application and has decided that the plaintiff has established that the land sought to be partitioned is lot (1) referred to in the plan bearing No. 329 marked as "X".

In the circumstances, I do not see any error on the part of the learned District Judge when deciding the case finally. For the aforesaid reasons this appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Kwk/=