

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

CA. No. 185/98 F
D.C. Kurunegala 2879/L

D.A. Balahami
Doluwa,
Kumbukwewa.

Appellant

- Vs-

A.P. Ukku Banda

W.P Sirisena

Both Are
"Samantha Trade"
Wewalagama,
Kumbukwewa.

Respondents

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

CA. No. 185/98 F

D.C. Kurunegala 2879/L

Before : K.T. Chitrasiri J.

Counsel : Sumith Senanayake with Damitha Wickrama Arachchi for
the Plaintiff-Appellant

Asela Rekawa with Amila Perera and Chameera De Silva for
the 2nd Defendant-Respondent.

Argued &
Decided on : 13.02.2014

K.T. Chitrasiri J.

Heard learned counsel for the Appellant in support of this appeal.

This is an appeal seeking to set aside the judgment dated 08.01.1998 of the learned District Judge of Kalutara. By the said judgment, learned District Judge dismissed the plaint of the Plaintiff-Appellant. (hereinafter referred to as the plaintiff) Being aggrieved by this decision, the plaintiff preferred this appeal and sought to have the reliefs prayed for in the petition of appeal dated 6th March 1998.

Plaintiff filed this action seeking *inter alia* for a judgment declaring that he is the owner of the land referred to in the schedule "A" in the amended

plaint dated 24.10.1990. Pursuant to the filing of the original plaint dated 10.10.1986, the plaintiff obtained a commission with the view of identifying the land he claims. Accordingly, the land in dispute was shown in the plan bearing No. 1453 drawn by A.B.M. Webber, Licensed Surveyor and thereafter the plaintiff filed the said amended plaint dated 24.10.1990. The case has proceeded accepting that the land claimed by the plaintiff is the land shown in the aforesaid plan 1453 which is in extent of 3 roods and 7 perches.

Learned District Judge having considered the evidence including the deeds marked as P1 and P2, concluded that the land in dispute is a co-owned land and the Plaintiff is only a one individual amongst the other co-owners to the land. Accordingly, he has decided to dismiss the plaint depending on the basis referred to above. His findings in this regard are as follows:

විත්තියේ නඩුව දුර්වල වූ පමණින්ම එමගින් පැමිණිල්ල ඔප්පු වන්නේ නැත. එම නිසා මා පැමිණිල්ල කොතෙක් දුරට ඔප්පු වී තිබේදැයි යන්න මෙහිදී සැලකිල්ලට ගතයුතුව ඇත. පැමිණිලිකරු අයිතිවාසිකම් කියා සිටින්නේ, ගණිතාගෙන් බව ඉදිපත් වූ සාකච්ඡා අනුව පෙනීයයි. එසේම ගණිතාට මෙම දේපල අයිති වූයේ පිය උරුමයට බවත්, ගණිතාට තවත් සහෝදර සහෝදරියන් සිටි බවත්, තහවුරු වී ඇත. 1වැනි දරණ ඔප්පුවෙහි මෙම දේපල පිය උරුමයෙන් අයිතීන් තිබෙන බව සඳහන් කර ඇත. එසේ නම් , එකී දේපල සම්බන්ධයෙන් ගණිකාගේ සහෝදර සහෝදරියන්ගෙන් පැවැත එන්නන්ටද යම් යම් අයිතිවාසිකම්න් ශේෂව පවතී. 1, 2 විත්තිකරුවන් ගණිතාගේ සහෝදරයෙකු වන පිනා බලි තියන්නාගෙන් පැවතෙන අයයි. ගණිතා විසින් මෙම දේපල සෙසු හවුල් අයිතිකරුවන්ගේ අයිතිවාසිකම් බැහැර කරමින් ස්වාධීනව බුක්ති විදි බව තහවුරු වී නැත. මා විසින් ඉහත සඳහන් කරන ලද පරදි, ඉඩම් හුවමාරුව ඔප්පු කිරීමට නොහැකි වී තිබේ. මේ අනුව එකී දේපල සම්බන්ධයෙන් ගණිතාගේ සහෝදර සහෝදරියන්ගෙන් පැවත එන්නන්ට ඇති හවුල් අයිතිවාසිකම් බැහැර වී නොමැත.

The evidence adduced in this case shows that the land claimed by the Plaintiff is a co-owned land and he is only one of the co-owners. Learned

Counsel for the Appellant also admits that the land claimed by the Plaintiff is a co-owned land and he, further states that the other co-owners to the land had not been made parties to this action. Though it is a co-owned land, the Plaintiff sought for a decision, declaring that he is the owner of a particular portion of that co-owned land. The deeds marked P1 and P2 of the plaintiff also show that he is entitled only to a fraction of a larger land. Hence, it is clear that the plaintiff's claim is to a particular portion of a larger land belonging to several individuals. The plaintiff, being a co-owner to a larger land he will not be in a position to claim ownership to a part of such a larger land until the co-ownership comes to an end in a manner known to the law such as amicable partitioning or by filing a partition action.

This position in law has clearly been identified by the learned District Judge by having answered the issue No. 01 affirmatively and simultaneously also answering the issue No. 06 in the negative form. In the circumstances, I do not see any error on the part of the learned District Judge when he decided to dismiss the action of the plaintiff.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL

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