

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

D.G.Jayatillake
Maldeniya,
Dehiowita

5th Defendant-Appellant

C.A.No.896/99 (F
D.C.AVISSAWELLA CASE NO.603/P

Vs

D.G.S.Piyaratne
Maldeniya,
Dehiowita

And 3 others

Plaintiff-Respondents

D.G.K.C.Wimalaratne
Muttettuwegama.
Dehiowita

And 3 others

Defendant-Respondents

BEFORE : **K.T.CHITRASIRI, J**

COUNSEL : S.A.O.S.Suraweera with Chitrananda Liyanage for
the 5th Defendant-Appellant

Rohan Sahabandu, P.C. with Madhawe Jayaratne for
the Plaintiff-Respondents

ARGUED ON : 27.01.2014

WRITTEN : 28th February 2014 by the Plaintiff- Respondents
SUBMISSIONS : 28th February 2014 by the 5th Defendant- Appellant
FILED ON

DECIDED ON : **03.04.2014**

CHITRASIRI, J.

This is an appeal filed by the 5th defendant-appellant (hereinafter referred to as the appellant) seeking *inter alia* to have the judgment dated 19.10.1999 of the learned District Judge of Awissawella set aside. Simultaneously, he also sought to have the plaint filed by the plaintiff-respondents, dismissed.

At the outset, it must be noted that the issue in the Court below had been basically, the validity of the two deeds bearing Nos.24594 and 24595 upon which the 1st and the 2nd plaintiff-respondents and the 1st and the 2nd defendant-respondents became entitled to the land sought to be partitioned. Vendor in those two deeds is the 4th plaintiff-respondent who is the father of the appellant as well as the 3rd plaintiff-respondent and of the 3rd defendant-respondent. The first two plaintiffs and the first two defendants are the grand children of the 3rd plaintiff-respondent. He, the 3rd plaintiff-respondent, 3rd defendant-respondent and the appellant are brothers.

The appellant has challenged the validity of the aforesaid deeds 24594 and 24595 by which his father has transferred the land to the four children of his two brothers [3rd plaintiff-respondent and the 3rd defendant-respondent] having retained a land in extent of 20 perches out of his entitlement. Other than the aforesaid issue as to the validity of those two deeds, the appellant also has raised a few points of contest at the trial, on the devolution of title shown in the plaint. 1st to 4th defendant-respondents have virtually accepted the

pedigree of the plaintiffs. Indeed, no appeal has been filed by them challenging the judgment of the learned District judge.

Even though, the 17th point of contest of the appellant is on the question of identity of the land sought to be partitioned, learned Counsel for the appellant, on 27.01.2014 informed this Court that the appellant is now prepared to admit the corpus as the land shown in the Plan bearing No.4153 dated 29.07.1993 drawn by Sena Iddawela, Licensed Surveyor, which was marked "X" in evidence. Accordingly, the answers given by the learned District Judge to the points of contest bearing Nos.1, 2 and 17 raised to determine the identity of the corpus would remain intact. Indeed, the grounds of appeal in the petition of appeal also been drafted accepting the corpus as the land shown in the plan marked "X".

In the written submissions filed on behalf of the appellant, it is also argued that the corpus in this case had already been partitioned amicably in the year 1968 as shown in plan 302 marked P2 and therefore it is a land that is not a co-owned land that requires partitioning. It is also necessary to note that such a contention was never been advanced by the learned Counsel for the appellant when he made his oral submissions in this Court. Learned District Judge having considered the aforesaid plan marked P2, has stated that the division shown in that plan had been made only for the convenience of the parties and there had been no deeds executed accepting such a division by the parties concerned. Admittedly, no deeds have been executed in terms of the

division shown in the plan marked P2. (*vide proceedings at page 136 in the appeal brief*). Therefore, it is seen that there had been no proper partitioning of the land though the plan 302 was drawn. Hence, it is clear that the co-ownership of the parties to the land in question continued despite the division shown in plan marked P2. Moreover, it must be noted that no points of contest have been raised to determine the division shown in Plan 302 at any stage of the trial. Therefore, the learned District Judge could not have examined existence of such a division of the land. Accordingly, I do not see any merit in the submissions made on the ground that the land sought to be partitioned does not have the character of co-ownership.

The remaining ground of appeal is on the question of devolution of title of the parties concerned. The 3rd plaintiff while giving evidence has stated that **Marthelis Panditharatne** became the owner of this land. (*vide proceedings at page 71 in the appeal brief*) The appellant too, whilst giving evidence has admitted that the original owner to this land was the same Panditharatne (*vide proceedings at page 116 in the appeal brief*). Therefore, it is abundantly clear that the said Panditharatne had owned the entire corpus earlier and it was by virtue of the deed bearing No.453 marked P8.

Panditharatne has transferred 4 acres from this land to Peiris Singho who is the 4th plaintiff by the deeds bearing Nos.9215 dated 13.06.1963 (P5) and 7785 dated 26.6.1968. (P4). Balance entitlement of panditharatne has devolved on to his children and those children of panditaratne have transferred

all their rights to the 4th defendant-respondent. The entitlement of the 4th defendant respondent had not been challenged, either by the appellant or by the plaintiff-respondents.

The dispute is on the manner in which the title of the said Peiris Singho who became entitled to a land containing 4 acres in extent, devolved on to his four grand children. Out of the said 4 acres, he has transferred A1.R3.P30 to the 1st and the 2nd plaintiffs, by deed bearing No.24594 dated 24.03.1987 and another A1.R3.P30 to the 1st and the 2nd defendants by deed bearing No.24595 dated 24.3.1987. The balance 20 perches remained with the 4th plaintiff Peiris Singhgho. He, the 4th plaintiff Peiris Singho has not given any share to his own son, who is the 5th defendant-appellant.

The aforesaid devolution of title had been accepted by all the parties except for the appellant. Clear evidence also is forthcoming to establish the aforesaid devolution of title including that of the evidence contained in the deeds referred to above. Even though, the appellant has raised an issue to establish that the execution of the deeds by which the 1st and the 2nd plaintiff-respondents became entitled to the land was not an act of the transferee namely the 4th plaintiff who is the father of the appellant, he has failed to establish such a fact.

The aforesaid devolution of title had been carefully considered by the learned District Judge. He, having considered the deeds by which the 4th plaintiff Peiris Singho transferred his rights, came to the conclusion that the 1st

and the 2nd plaintiff-respondents and the 1st and the 2nd defendant-respondents became entitled to a land containing an extent of 4 acres minus 20 perches. The said 20 perches remained with 4th plaintiff-respondent.

In the circumstances, I do not see any wrong in the manner that the learned District Judge has allocated shares in the land sought to be partitioned in this case. Therefore, I am not inclined to interfere with his findings.

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

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL