

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

C.A. No.505/1998(F)

D.C. Kuliypitiya No. 10506/P

Rajapakshe Liyanage Ariyawathi
Maha Agare,
Udubadduwa Post.

Appellant

Vs.

Elibichchi Pathiranalage Kusumawathi
Maha Agare,
Udubadduwa Post.

Respondent

C.A. No. 505/1998(F)

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D.C. Kuliypitiya No. 10506/P

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

Counsel : M.C. Jayaratne with M.D.J. Bandara for the 6A
Defendant-Appellant

Jacob Joseph with B. Manawadu for the
Plaintiff-Respondent

Argued &

Decided on : 04.04.2014

K.T.Chitrasiri, J

Heard both Counsel in support of their respective cases.

This is an appeal seeking *inter alia* to have a judgment declaring that the 3rd and the 6th defendants are entitled to Lot 3 and 2 respectively in the preliminary Plan marked X. However learned Counsel for the appellant at this stage submits that the appellant being a co-owner could not have claimed prescriptive rights under the law in this instance. Therefore, he is not pursuing the appeal to have prescriptive rights of the 3rd and the 6th defendant-respondents established.

However, learned Counsel for the appellant submits that the 6A defendant-appellant should have allocated 37/150 shares of the land sought to be partitioned by virtue of the deed bearing No. 1574 marked 6V1. By that deed 1574, the 4th defendant had transferred an area covered by 37 coconut trees to the 6th defendant in the year 1977. The claim of the 6A substituted defendant-appellant made relying upon the deed 1574 is not being objected to by the learned Counsel for the Appellant.

In the judgment dated 13.07.1998, learned District Judge has clearly stated that the 4th defendant Marthahamy had no rights to this land by the year 1977. Both Counsel submit that it is a correct statement. However, having said so, the learned District Judge has allocated 40/150 shares to the 4th defendant, Marthahamy. Therefore, it is, obviously a wrong conclusion.

Learned District Judge has not considered the rights of the 6th defendant which had derived from the rights of the 4th defendant Marthahamy when she was having rights to this land before the year 1977. In the circumstances, both counsel submit that the rights referred to in the deed marked 6V1 should have been given to the 6A defendant-appellant and those rights should have been taken away from the rights given in the impugned judgment to the 4th defendant-respondent. Accordingly, the share allocation given to the 4th

defendant should be corrected and it should read as 37/150 shares to the 6A substituted defendant-appellant and 3/150 shares to the 4th defendant-respondent. The aforesaid 03/150 shares given to the 4th defendant-respondent had derived from the rights that she has got after the year 1977 by deed bearing No. 10581 marked as P7.

In the circumstances, learned District Judge of Kuliypitiya is directed to amend the allocation of shares as mentioned below:

Plaintiff	-	40/150
1 st Defendant	-	47/150
2 nd Defendant	-	10/150
3 rd Defendant	-	13/150
4 th Defendant	-	03/150
6A Substituted-Defendant-		37/150

Learned District Judge is directed to enter decree accordingly.

Subject to the above variations, this appeal is dismissed. No costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

/mds