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

BEFORE: A W A SALAM, J

CA 995/97F

DC KAGALLE 226287 P

GANGODATHENNA ADHIKARI MUDIYANSELAGE YAPA BANDARA, GANGODAWATTA, 11, SRI DHARMAPALA MAWATHA, ASGIRIYA, KANDY

2ND DEFENDANT-APPELLANT

VS

KAMBURAWALA KANKANAMALAGE GILBERT SINGHO, BELIGAMMANA, MAWANELLA

PLAINTIFF-RESPONDENT AND OTHERS

BEFORE: A.W.A.SALAM, J

COUNSEL: DR JAYATHISSA DE COSTA P.C WITH WIJERATHNA HEWAGE AND LAHIRU N SILVA FOR THE 2ND DEFENDAT-APPELLANT AND CHATHURA GALHENA WITH M/S MANOJA GUNAWARDENA FOR THE PLAINTIFF-RESPONDENT.

ARGUED ON : 22.01.2013

WRITTEN SUBMISSIONS FILED ON : 12.09.2013

**A W A SALAM, J**

This is an appeal preferred by the 2nd defendant-appellant against judgment and interlocutory entered by the learned District Judge in a partition action. According to the plaintiff-respondent (referred to in the rest of this judgment as the "plaintiff") the land which is the subject matter of the partition action is known as WATTORUHENA was originally owned by KIRIBANDA and DINGIRIBANDA KORALA in the proportion of an undivided 1/2 each.

The undivided 1/2 share owned by KIRIBANDA had devolved on the only child BANDARA MANIKE who had transferred the same on deed No 11034 dated 30 May 1956 to 3 people by the name H D MOLAGODA, S.B MOLAGDA and B.B MOLAGODA who in turn transferred the same on deed No 11476 dated 30 January 1968 to KALUMANIKA who thus became entitled to an undivided 1/2 share of the subject matter.

DINGIRIBANDA KORALA who was the original owner of the balance 1/2 share of the corpus had died leaving as his heirs L.B KAPPAGODA and S.B KAPPAGOGA both of whom had transferred their undivided shares in the property on deed No 9596 dated 7 February 1955 to the aforesaid KALUMANIKA who thus became entitled to the balance 1/2 of the property in question and thus turned out to be the sole owner of the corpus. The said KALUMANIKA by the No 23674 dated 30 January 1968 having acquired entirety of the corpus, transferred an undivided 3/4 share of the land to the

plaintiff by deed No 16262 dated 9 January 1961 and the remaining undivided 1/4 share of the corpus to PUNCHIRALA the 1st defendant on deed No dated 16262 dated 09.01.1961. Thus, on the chain of title disclosed by the plaintiff, the undivided shares from and out of the corpus had devolved on the parties in the following manner.

PLAINTIFF- UNDIVIDED 3/4

1ST DEFENDANT – UNDIVIDED 1/4

At the trial one of the points of contest which came up for determination was whether the corpus consists of both lots 1 and 2 depicted in the preliminary plan No 800 prepared by T.M.T.B Tennakoon, Licensed Surveyor and Commissioner of Court. The 4th defendant-respondent maintained the position that lot 2 depicted in the preliminary plan is a portion of a separate land called MEDAKUMBUREHENA and he was the original owner of the same by virtue of the final decree entered in partition action No 3556. The points of contest arising from the claim made by the 4th defendant-respondent to have lot 2 excluded from the corpus are recorded as points of contest No's 23 to 27. The learned district judge answered the said issue No's 23 to 27 in favour of the 4th defendant-respondent and excluded lot 2 from the corpus. Therefore, the corpus should, as has been identified by the learned district judge, consist only of lot 1 depicted in the said preliminary plan. The finding of the learned district judge that only lot 1 formed the corpus appears to be flawless and further the said decision has not been challenged in this appeal.

As such, the corpus identified by the learned district judge as lot 1 depicted in the preliminary plan remains to be the corpus in this action.

The 1st and the 2nd defendant-respondents filed a joint statement of claim taking up the position that the corpus was originally owned by KAPPAGODA MUDIYANSELAGE whose name is mentioned in the plaint as one of the original owners. According to the joint statement of claim of the 1st and the 2nd defendant-respondents, the said KIRIBADA died leaving three children named BANDARA MANIKE, DINGIRI BANDARA KORALA and LOKUMANIKE. The 2nd defendant-respondent in his statement of claim maintained the position that upon the demise of LOKUMANIKE her rights devolved on the only son GANGODATHENNA and thereafter the said rights devolved on the 2nd defendant-respondent.

Having analyzed the evidence adduced at the trial the learned district judge answered points of contest No 12 in the affirmative. However, on a reading of the evidence relating to title and the basis of the judgment the answer to point of contest No 12 should be corrected to read as "no" as the said answer is contradictory to the correct finding relating to point of contest No 2.

As far as the claim made by the 2nd defendant-respondent is concerned, the onus was on the 2nd defendant-respondent to establish his relationship to LOKUMANIKE. According to the 2nd defendant-respondent the said LOKUMANIKE is his grandmother. However, the 2nd defendant-respondent

has failed to establish any such relationship with the LOKUMANIKE. Under cross examination he has admitted that he is unaware as to the person with whom the said LOKUMANIKE had contracted her marriage. The 2nd defendant-respondent has not produced the birth certificate of the said LOKUMANIKE either.

The evidence adduced on behalf of the 2nd defendant-respondent in support of this claim is totally inadequate and unsatisfactory to arrive at the conclusion that he had derived title to the subject matter as claimed by him. In the circumstances, the learned district judge cannot be faulted in any manner for rejecting the claim made by the 2nd defendant-respondent.

As such, the basis on which the learned district judge has investigated title and come to the conclusion accepting the pedigree of the plaintiff appears to be the correct approach. For the reasons adumbrated, I am of view that the appeal preferred by the 2nd defendant-respondent merits no favourable consideration. Hence, this appeal stands dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL

NR/-