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

1A. G.Malini Somalatha
**1A Substituted-Defendnt-Appellant**

2. A.Melis,
**2nd Defendant-Appellant**

Both of Dehigahatenne,
Boralakanda, Dehiowita.

**Vs**

**C.A.NO.546/98 (F)**
**D.C.AVISSAWELLA CASE NO.17140/L**

M.Ransa
**Deceased 1st Plaintiff-Respondent**

1A.W.D.Daya Somaratne
Aswatte.
Puwakpitiya
**And others**
**Plaintiff-Respondents**

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

**COUNSEL** : S.A.D.S.Suraweera for the Substituted Defendant-Appellants

S.N.Vijithsinghe for the Plaintiff-Respondents

**ARGUED ON** : 26TH MARCH 2014

**WRITTEN SUBMISSIONS FILED ON** : 13th September 2013 by the Plaintiff-Respondents

28th November 2013 by the Defendant-Appellants

**DECIDED ON** : 08th MAY 2014

**CHITRASIRI, J.**

This is an appeal preferred by the two defendant-appellants (hereinafter referred to as the appellants) seeking *inter alia* to set aside the judgment dated 17.06.1998 of the learned District Judge of Avissawella. In the petition of appeal, the appellants also sought to have the reliefs, as prayed for in their amended answer dated 6.12.1985. The reliefs so prayed in the amended answer is for a dismissal of the action of the plaintiff-respondents (hereinafter referred to as the respondents) and then to have a judgment declaring that the appellants are entitled to 2/3 share of the land referred to in the schedule to the plaint.

This action was filed by the respondents seeking inter alia to have a judgment declaring that they are entitled to the land morefully described in the schedule to the plaint dated 06.05.1983. Learned District Judge in his judgment dated 17.06.1998 decided that the respondents are entitled to the said land referred to in the schedule to the plaint and made order to have the appellants evicted therefrom.

When this appeal was taken up for argument, learned Counsel for the appellants Contended that the respondents have failed to establish title to the land referred to in the schedule to the plaint even though the learned District Judge has decided the other way around. Hence, it is necessary to ascertain whether the respondents were successful in establishing title to the land referred to in the schedule to the plaint.

Before, looking at the evidence to determine whether the respondents were able to establish title to the land, it is necessary to note that there is an admission by the parties to this action recorded at the commencement of the trial, admitting that the parties to this action are governed by the Kandian Law. Therefore, the Kandian law principles are to apply in this instance at all appropriate times. The admission referred to above reads thus:

"පිළි ගැනීම් :-

මෙම නඩුවේ පැමිණිලිකරුවන් සහ විත්තිකරුවන් උඩ රට නීතියට යටත් පුද්ගලයන් බව දෙපාර්ශවයම පිළි ගනී."

(*vide proceedings at page 59 in the appeal brief*)

I will now briefly refer to the manner in which the title of the respondents had devolved, as found in evidence. The 2nd plaintiff namely Hewage Baby in her evidence has stated that the original owner of the land referred to in the schedule to the plaint was Kirilamaya. However, no other material is available to establish that Kirilamaya was the original owner. Hence, it is seen that no clear evidence is forthcoming to establish that Kirilamaya was the original owner of the land in question.

Be that as it may, the 2nd plaintiff in her evidence has said Kirilamaya, by deed 8117 marked P1 transferred 1/2 share of the land to her husband M.L.Podineris. She has further said that she married Podineris in the year 1951 and had been living on this land since then. Podineris died on 5.2.1975 leaving

the wife namely the 2nd plaintiff Baby and five children. Out of five children, four are women and the remaining child is a male whose name is Karunathilake. Accordingly, she has stated that she along with the said Karunathilake became entitled to 1/2 share of the land. (*vide proceedings at pages 59 and 60 in the appeal brief*).

At this stage, it is necessary to note that a wife will not be able to succeed to the estate of her deceased husband under the Kandian law and such a widow will only become entitled to have the life interest to the properties of the husband. It is the Kandian law that is applicable in this instance in view of the aforesaid admission recorded in this case. Therefore, it is clear that the 2nd plaintiff-respondent is not entitled to claim title to the land in question. Hence, it is incorrect to have decided that the 2nd plaintiff-respondent is entitled to ½ share of the land referred to in the schedule to the plaint.

The 2nd plaintiff-respondent Baby, in her evidence has also stated that the balance 1/2 share of Kirilamaya devolved on to his wife Githoni and to their two sons Emis and Pediris. Said Githoni, Emis and Pediris has transferred their 1/2 share of the land to Ransa, by deed 14314 marked P4. (*vide proceedings at pages 61 and 62 in the appeal brief*). Ransa is the 1st plaintiff in this case. Once again, Githoni being the wife of Kirilamaya could not have transferred any rights of the land since she is not entitled to inherit and to claim title to the land of her deceased husband, under the Kandyan Law. As stated before, wife will have only the life interest to the property under the Kandyan

Law. Therefore Githoni could not have transferred any rights to the 1st plaintiff except for the life interest that she is entitled in respect of the property. Furthermore, there is evidence to show that Kirilamaya had not only two but five children. The said evidence was given by Emis on 3.12.1993 and it reads thus:

> "මුල් අයිතිකාර කිරිළමයාට අයිතිය තිබුනේ මව් උරුමයෙන්. කිරිළමයා විවාහ වෙලා සිටියේ ගිතෝනි සමඟ. ගිතෝනිට සහ කිරිළමයාට දරුවන් 6 දෙනෙක් සිටියා. දෙන්නෙක් ගැහැණු දරුවන්. ගිතෝනි කියන්නේ මගේ මව. මගේ සහෝදරයන් තව තුන් දෙනෙක් ඉන්නවා . ඒ අය පේදිරිස්, පේමරත්න සහ ගුනරත්න. රන්සා කියන්නේ මගේ නංගී. ඒමිස් කියන්නේ මම. මේ ඉඩමට අපි අයිතිය කියන්නේ පිය උරුමයෙන්. රන්සාට දීග දෙන කොට 1/2 ක් අම්මයි, මල්ලියි, මමයි, ඔප්පුවකින් ලියලා දුන්නා".
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> (*vide proceedings at page 114 in the appeal brief*)

Moreover, in the petition filed in the District Court on 9.12.1987, by which an application had been made by the 2nd plaintiff to have her son added as a plaintiff to this case, she has clearly stated that she has only a life interest to this property. (*vide proceedings at page 406 in the appeal brief*).

The aforesaid evidence led on behalf of the plaintiffs, clearly show that both the plaintiff-respondents did not have clear title to the land in question, particularly because they cannot claim rights through the wives of Kirilamaya and Podineris who were subjected to the Kandian law. Therefore, it is incorrect to have decided that the two plaintiffs are the owners of this land.

Learned Counsel for the appellants referring to the cases of **Attanayake vs. Ramyawathie [2003 (1) S.L.R.at 401] and Hevawitarane vs. Dangan Rubber Co.,Ltd [17 N.L.R. at 49]** submitted that this court may consider giving a lesser relief of evicting the appellants since the two plaintiffs do have rights to the property if not for clear title to the entire land put in suit. This case had been filed and proceeded with, on the basis that the two plaintiffs are the owners of the land. It is the case that had been put forward by the appellants. The respondents were to meet the said cause of action disclosed in the pleadings and the issues framed accordingly. They were not required to meet a cause of action different to the one they had pleaded in the plaint. Hence, it is incorrect to consider for a lesser relief since such a matter was not in issue at the trial. Moreover, the facts in those two cases referred to by the learned Counsel for the appellants are different to the facts in the case at hand. Issue in those two cases was that a co-owner could evict a person though the plaintiff is not entitled to have a declaration of title declaring him/her as the sole owner to the entire property. Therefore, I am not inclined to consider granting a lesser relief as contended by the learned Counsel for the appellant.

I will now turn to consider the claim of the appellants made in their answer. Even though the appellants have prayed that they be declared entitled to 2/3rd share of the land, no evidence is forthcoming to identify the area to which they claim title. Therefore, without identifying the land claimed by the appellants, I am not inclined to consider the claim of the defendant-appellants.

[***Lathief and another Vs Mansoor and another (Bar Association Law Reports 2011 at page 189)***, **Sirisena V Piyadasa (CA minutes dated 30.01.2014 in CA 957/98), Ananda Kodagoda V Moraj Udesshi (CA minutes dated 22.01.2014 in CA 175/98 and CA 996/98 (F) Court of Appeal minutes dated 19.03.2014]**

For the aforesaid reasons, I set aside the judgment dated 17.6.1998 of the learned District Judge of Avissawella and allow the appeal of the appellants. In the light of the decisions arrived at by this Court today, I make order dismissing the plaint dated 06.05.1983. Simultaneously, reliefs prayed for by the defendant-appellants also are rejected affirming the decision of the learned District Judge made in that connection. Accordingly, reliefs prayed for in the answer dated 06.12.1985 stand dismissed. Learned District Judge of Avissawella is directed to enter decree accordingly.

Appellants are entitled to the costs of this appeal.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL