

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

C A.1086/98(F)
D.C./Galle/9716/P

Godawatte Liyanage Madumathi of
Ketanwila Stores,
Nakiyadeniya.

8A Defendant Appellant

Vs

Wakwella Gamage Piyasiri of
Madola,
Walahanduwa.

Plaintiff Respondent

Godawatte Liyanage Karunawarhie
Walahandllwa,
Madola (deceased)

Waduwatta Kankanamage Kasun
Priyadharshani
Madola, lhalagoda,
Walahanduwa .

Waduwatta Kankanamage Athula Sirimal
Madola, lhalagoda,
Walahanduwa.

**Substituted 14A & 14B
Defendants-Respondent**

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

Counsel : Rohan Sahabandu P.C. with Athula Perera
for the 8A Defendant-Appellant

D.M.G. Dissanayake with S.C. Balasuriya
for the 7A & 14A substituted Defendant-
Respondents

J.P. Gamage with Rasika Wellappili
for the 10th & 16th Defendant-Respondents.

Manori Pathirana for the 3A, 3B 4,5,7A,7B,7C
and 15th Defendant-Respondents

Person alleged to be the husband of the 8A
Defendant-Appellant is present in Court.

14A Substituted Defendant-Respondent is
present in Court.

Argued &

Decided on : 09.07.2014

K.T.Chitrasiri, J

This is an appeal seeking to set aside the judgment dated 24th December, 1997 of the learned District Judge of Galle and to have an order declaring that the original 8th defendant is entitled to the buildings marked 15, 16, 17 and 18 in the preliminary Plan 736 drawn by G.H.G.C.L.De Silva Licensed Surveyor. Learned District Judge has decided that the buildings 15, 16 and 17 are to be allocated jointly to the

8th and the 14th defendants and for them to have equal shares on those buildings and the entirety of the foundation marked 18 to be allocated to the 14th defendant.

At this stage, all four Counsel appearing for the parties bring it to the notice of Court that the only issue in this appeal is to determine as to who is entitled to the buildings referred to as 15, 16, 17 and 18 in the preliminary Plan 736. They further submit that the parties do not have any issue as to the allocation of shares determined by the learned District Judge. The aforesaid dispute in respect of the building 15,16,17 and 18 is between the 8A defendant-appellant and the 7A & 14A defendant-Respondents and therefore the other respondents are not claiming any rights to those buildings.

Two Counsel appearing for the Defendant-Appellant and for the 7th & 14th Defendant- respondents inform Court that as at now, only 4 boutiques are in existence and no four separate buildings are found on the ground though it was so at the time the land was surveyed to prepare the preliminary plan marked X in the year 1986. At this stage, the two parties who are claiming the buildings now agree to have two boutiques each to either party. Accordingly, the parties agree that the two boutiques on to the direction of Galle to be allocated to the 7th & 14th defendant-respondents and the balance two boutiques that fall on to the direction of Udugama to be allocated to the original 8th defendant.

Parties also agree not to make a specific claim to the foundation referred to as a building in the plan "X" though such a construction is still found on the ground. Hence, it is agreed by the parties not to make any claim to the foundation marked 18 on the basis of improvements made on the land. Now that the parties have arrived at a settlement as to the claim made in respect of the buildings marked 15, 16 17 and 18, they agree to set aside the judgment concerning those buildings.

In view of the settlement referred to above, the decision of the learned District Judge as to the allocation of the buildings marked 15, 16, 17 and 18 is set aside. Accordingly, the learned District Judge of Galle is directed to enter interlocutory decree allocating the two boutiques towards the Galle jointly to the 7th & 14th defendant-respondents and the remaining two boutiques towards Udegama to the original 8th defendant, in addition to the matters contained in the judgment dated 24th December 1997.

In the light of the above, this appeal is partly allowed. No parties are entitled to costs of this appeal. Registrar is directed to send the original record along with this judgment to the District Court of Galle forthwith.

Appeal is partly allowed.

JUDGE OF THE COURT OF APPEAL

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