IN THE COURT OF APPEAL

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Welegedera Sekara
No.90, Pahalagama
Neluwakanda
Alawatte

8th Defendant- Appellant

C.A. NO.698/98(F)

D.C.MATALE CASE NO.1606/P **Vs**

Meegahagedera Ratnapala
No.155, Neluwakanda, Alawatte,
Matale

Plaintif-Respondent

Meegahagedera Madurawathie
Alawatta
Matale

1st Defendant-Respondent

And others

Defendant-Respondents

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

COUNSEL : D.M.G.Dissanayake with Upali Loku Marakkala and L.M.C.B.Bandara for the 8th Defendant-Appellant

S.A.D.S.Suraweera for the Plaintiff-Respondent

ARGUED ON : 26.06.2014

WRITTEN SUBMISSIONS FILED ON : 31.07.2014 by the Plaintiff -Respondent

: 11.08.2014 by the 8th Defendant-Appellant

DECIDED ON : **12. 09. 2014**

CHITRASIRI, J.

This is an appeal seeking to set aside the findings dated 18.09.1998 of the learned District Judge of Matale. Whilst seeking so, the appellant is challenging basically the legality of the order made to have the lots 3, 4 & 5 depicted in the Preliminary Plan 1038 included into the corpus in this case. Learned trial Judge decided that the land sought to be partitioned consists of lots 1 to 5 in the aforesaid Plan bearing No.1038 drawn by S.Ranchagoda Licensed Surveyor marked "X" in evidence. Accordingly, it is seen that the only issue in this appeal is to ascertain whether or not the lots 3, 4 and 5 referred to above forms part of the land sought to be partitioned. Therefore, as submitted by both the Counsel, the issue in this appeal is the question of identity of the corpus subjected to in this case.

Issue No.2 raised on behalf of the plaintiff-respondent (hereinafter referred to as the plaintiff) is to determine the identity of the corpus in this case. The 8th defendant-appellant (hereinafter referred to as the appellant) having filed his statement of claim stating that lots 3,4 and 5 depicted in the aforesaid plan marked "X" is a part of a land called Yak Ambemula Hena, has raised issues to establish that those three lots do not form part of the land referred to in that plan marked "X". Accordingly, the appellant has sought for an exclusion of the said three lots from the corpus having set out the manner in which the title to the same had devolved. Accordingly, Issues bearing Nos. 4 – 8 had been raised by the appellant in accordance with the averments found in his statement of claim and thereafter the 9th issue had been raised moving for an exclusion of those lots from

the land sought to be partitioned. Hence, it is necessary to determine whether the learned District Judge is correct when he answered those issues in favour of the plaintiff having decided to include lots 3, 4 and 5 in the plan marked "X" as part of the land sought to be partitioned.

Identification of a land put in suit is basically determined by looking at the names, the extent and the boundaries of the lands involved and that are being referred to by the parties in an action. Therefore, it is necessary to consider whether the learned trial Judge has considered those matters carefully, before he came to the conclusion that the land sought to be partitioned in this case comprises lots 1 to 5 depicted in the plan marked "X".

Following reasoning of the learned trial Judge show that he has carefully looked at the names and the boundaries of the lands in question when he came to his findings. His decision in this connection reads thus:

"8 විත්තිකරු කියා සිටින්නේ 'එක්ස්' සැලැස්මේ සඳහන් කැබලි අංක: 3, 4 හා 5 කුරුලු අඹේමුල වත්තේ කොටසක් නොවන බවත්, එය යක් අඹේමුල වත්තේ කොටසක් බවත්ය. මානක රංවාගොඩ මහතා විසින් ඉදිරිපත් කර ඇති 'එක්ස්' සැලැස්ම, 'වයි' දරණ වාර්තාව හා ඔහුගේ සාක්ෂි අනුව පැමිණිල්ල විසින් බෙදා වෙන් කිරීමට යෝජනා කර ඇති ඉඩමේ නැගෙනහිර මායිමේ කොටසක් හැරුණ විට අනෙක් සියලුම මායිම් ගැලපේ. මෙම ඉඩමේ නැගෙනහිර මායිමේ දකුණු පැත්තට වන්නට ඇති කොටසේ එනම් කැබලි අංක: 3, 4, හා 5 දරණ කොටස්වලට නැගෙනහිර මායිම ලෙස යක් අඹේමුල වත්ත සඳහන් කර

ඇත. නමුත්, බෙදීමට යෝජිත ඉඩමේ නැගෙනහිර මායිම ලෙස උපලේඛණයේ සඳහන් කර ඇත්තේ කිරීදුරයාගේ වත්තේ වැට සහ මැනිපොලේ වත්තේ වැට පමණකි. නමුත් ඉඩම මැනීමේදී මෙම මායිම් දෙකට අමතරව යක් අඹේමුල වත්තේ කොටසක්ද, මෙම ඉඩමට මායිම් වන බව සඳහන් කර ඇත. මෙම මායිම් තමාගේ ඔප්පුවල සඳහන්ව නැත්තේ කුමන හේතුවක් නිසාද යන්න ප්‍රකාශ කල නොහැකි බව පැමිණිලිකරු ඔහුගේ සාක්ෂියේ සඳහන් කර ඇත."

[vide proceedings at pages 117 and 118 in the appeal brief].

The above reasoning of the learned District Judge shows that he has carefully considered and compared the boundaries of the land sought to be partitioned with that of the land referred to in the statement of claim of the appellant. In that consideration, he has stated that the southern portion of the eastern boundary of the corpus, particularly the eastern boundary of the lots 3 and 4 of that land is Yak Ambemula Watta claimed by the appellant. Having stated so, he has argued that in such a situation, the western boundary of the land claimed by the appellant should have been the land subjected to in this case namely Kurulu Ambemula Watta. However, the western boundary of Yak Ambemula Watta claimed by the appellant is not the land shown in the Plan "X" but it is Mala Ela belonging to Dingiriya Duraya.

Moreover, it is seen that if the appellant's claim is to be sustained, then the western boundary of lots 3, 4 and 5 cannot be the eastern boundary of the land belonging to Tikiri Kella since the said land claimed by Tikiri Kella extends up to

the southern point of lot 5 in Plan "X". In the circumstances, it is seen that the boundaries of Yak Ambemula Watta claimed by appellant do not tally with the boundaries of the land consisting of lots 3, 4 and 5 in plan "X".

No evidence also is forthcoming to show that the lots 3, 4 and 5 are distinct and are separated from the lots 1 and 2 referred to in the plan marked "X". It is a land without any physical boundaries found on the ground separating five lots though the Commissioner has shown it as 5 different lots in his Plan marked "X". The Commissioner, who prepared the plan, had testified to that effect.

Therefore, it is seen that the learned District Judge has correctly looked at the boundaries of the land sought to be partitioned with that of the land claimed by the appellant and the other relevant materials when he concluded that the corpus in this case comprises all the 5 lots referred to in the Plan marked "X".

The extent of the land sought to be partitioned is the other issue that should have been considered in determining the identity of the corpus. The land described in the schedule to the plaint is a land in extent of One Acre and One Rood (A1.R1.P0). However, the land surveyed is a land consisting of One Acre One Rood and Thirty Seven Perches (A1.R1.P37). Accordingly, the land sought to be partitioned contains thirty seven perches more than the entitlement of the plaintiff.

The question of discrepancy in extent of the land sought to be partitioned had been dealt with in the case of **Yapa vs. Dissanayake Sedara. [1989 (1)**

S.L.R.at 361] In that decision, it was held that inconsistency in extent will not affect the question of identity if the portion of land conveyed, is clearly described and can be precisely ascertained. As mentioned before, the land sought to be partitioned in this case had been identified having looked at its boundaries and also by referring to the manner in which it was possessed.

The aforesaid issue as to the discrepancy in extent also had been dealt with by the learned District Judge in the impugned judgment. In this regard, the learned District Judge has stated thus:

> "පැමිණිලිකරු බෙදීමට යෝජනා කර ඇත්තේ අක්කර 1 1/4 ක් පමණ විශාලත්වය ඇති ඉඩමකි. මෙම ප්‍රමාණය 1947 දී ලියා සහතික කර ඇති පැ:2 ඔප්පුවේ ද සඳහන් කර ඇත. නමුත් ඉඩම මැනීමේදී මෙම ප්‍රමාණයට වඩා පර්චස් 32 ක් වැඩියෙන් ඇති බව පෙනී යයි. මේ සම්බන්ධයෙන් මානක තැන ප්‍රකාශ කර සිටියේ ඉඩමක් මැනීමට යාමේදී උපලේඛණයේ සඳහන් ප්‍රමාණයට වඩා ඉඩමේ වපසරිය අඩු හෝ වැඩි විය හැකි බවත්, එයට හේතුව මෙයට පෙර පිඹුරක් සකස් කර නොමැති නම් සාමාන්‍ය ප්‍රමාණයක් යොදන නිසා බවය. මෙම ඉඩමෙන් කැබලි අංක: 3,4 හා 5 කොටස්වල වපසරිය අඩුකරනු ලැබුවහොත් ඉතිරිවන්නේ රූඩ්: 1 පර්චස් : 24 ක ප්‍රමාණයක් පමණකි. එය ඉදිරිපත් කර ඇති ප්‍රමාණයට වඩා රූඩ්: 3 පර්චස් 16 ක් අඩුවෙනි. මෙම අඩු වැඩිවීම සලකා බැලුවිට ඉඩමේ ප්‍රමාණය අනුව පැමිණිලිකරු විසින් ඉදිරිපත් කර ඇති සම්පූර්ණ ඉඩම කුරුලු අඹේමුල වත්ත නම් ඉඩම බව තීරණය කිරීම වඩාත් යෝග්‍ය වේ."
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> *[vide proceedings at pages 118 and 119 in the appeal brief]*

Moreover, in the findings referred to above, arrived at by the learned District Judge, he has stated that in the event the appellant's claim is allowed, then the balance land would be restricted only to One Rood and Twenty Four Perches (1R.P24). Accordingly, he has held that such a remaining extent cannot be the extent referred to in the deeds produced on behalf of the respondents. The aforesaid analysis by the learned District Judge is logical and acceptable.

In the circumstances, it is clear that the learned district Judge is correct when he decided to include lots 3, 4 and 5 referred to in the plan "X" also as part of the land sought to be partitioned. Therefore, I do not see any reason to interfere with the findings of the learned District Judge.

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

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL