

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

Mohottalage Wijeratne of
Anguruwella, Kegalla,
Presently of Hakurugammana
Aranayake.

Plaintiff

Vs

C.A. 695/92F (DC Kegalle 22633/P)

1. Mohottalage Punchi Banda of
Horewala, Aranayake.
2. Kariyapperuma Athukoralalage
Tilakaratne,
of Hakurugammana,
Aranayake.

Defendants

AND NOW BETWEEN

Kariyapperuma Athukoralalage
Tilakaratne of Hakurugammana,
Aranayake.

2nd Defendant-Appellant

Vs

Mohottalage Wijeratne of
Anguruwella, Kegalla, Presently
of Hakurugammana, Aranayake.

Plaintiff-Respondent

Mohottalage Punchi Banda of
Horewala, Aranayake.

1st Defendant-Respondent.

BEFORE : Deepali Wijesundera J.
COUNSEL : Manohara De Silva PC with
Nimal Hippola for the
Defendant –Appellants
Dr. Sunil Cooray with Amila
Kiripitiya for the
Plaintiff - Respondent.
ARGUED ON : 29th August, 2014
DECIDED ON : 16th December, 2014

Deepali Wijesundera J.

The respondent in this case instituted a partition action in the District Court of Kegalle to have the land called *Kapukotuwe Hena* described in the schedule to the plaintiff in the said case partitioned between himself and the 1st Defendant-Respondent. There was no dispute as to the identity of the corpus. Plan No 851 marked X and the report marked X1 was admitted by the respondents. The 1st Defendant

admitted the pedigree set out in the plaintiff and claimed his undivided $\frac{1}{2}$ share to be allotted to include lot 1 in the plan marked X. The 2nd Defendant the appellant in the instant case intervened as a claimant before the surveyor and filed his statement claiming that he was gifted Punchirala's right by deed marked **2V2** and also claimed prescriptive title to the land. The Learned District Judge after analyzing evidence entered decree as prayed for by the plaintiff and said the 2nd defendant is not entitled for decree on prescription and that Punchirala did not have title to execute the deed No. 2133 marked **2V2**. The 2nd defendant filed this appeal against the said Judgment.

Both parties have agreed that the said land was originally owned by Punchirala and Manikrala whose rights devolved on Gunaratne and Appuhamy. Appuhamy's $\frac{1}{2}$ shares devolved on the 1st defendant in the District Court case. The dispute was on the title of Punchirala who is the vendee in deed No. 5520 marked **P4** by which his son Gunaratne transferred his land to his father. Case No. 14478 in District Court Kegalle was filed to retransfer the said case to Gunaratne. The decree was made absolute on 06/03/1963 which was to retransfer the said land to Gunaratne. The extract of this case record is filed as **P5** Punchirala had failed to execute the deed and it has been done by the Registrar by deed No. 987 marked **P6**.

The appellant's argument was that before **P6** was executed after Punchirala transferred $\frac{1}{4}$ share of the land by deed No. 2133 marked as **2V2** therefore the plaintiff respondent is not entitled to $\frac{1}{2}$ share of the said land as decided by the District Judge. The Learned Counsel for the appellant made a long analysis of the evidence given at the trial in the District Court and stated that the plaintiff is entitled to the said land on prescription as well.

The Learned Counsel for the respondent stated that the decree from which Gunaratne derived title was entered and made absolute on 06/03/1963 therefore Punchirala did not have title to pass on to the plaintiff. He further submitted that Punchirala has transferred the land by **2V2** to the plaintiff subject to life interest of himself and Dingiri Manika therefore he can not claim title on prescription either.

The counsel for the respondents citing the judgments in ***Alles Vs Alles 51 NLR 416 and Munasinghe Vs Vithanage 69 NLR 97*** and ***Alwis Vs Piyasena Fernando 1993 (1) SLR 119*** stated that it had been held that the Appellate Court should not interfere with the conclusions of the trial judge based on evidence and facts. Citing the judgment in ***Rev. Minuwangoda Dammika Vs Galle Sarada 2003 3 SLR 247*** and said it

was held in this case even if the judgment does not contain any evaluation of evidence if the final conclusion is correct the appellate Court should not interfere with the judgment.

On perusal of the Learned District Judge's judgment dated 28/01/1993 and the documents and the proceedings in the District Court it is clear that the deed marked **2V2** is not a valid deed Punchirala did not have title to pass on to the 2nd defendant appellant. By the decree entered in 1963 his title was given to Gunaratne there was no appeal against this decree therefore the title of Punchirala was passed on to Gunaratne.

The Learned District Court has carefully evaluated the evidence given at the trial and examined the documents filed and arrived at the correct decision. The appellant has failed to make any legal argument why the said judgment should be set aside.

For the afore stated reason the appeal of the appellant is dismissed.

JUDGE OF THE COURT OF APPEAL