

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

Mohamed Fahim Wadood, of  
No.267, Colombo Road,  
Mahamodera, Galle.

**Plainriff.**

C.A. Appeal No.1178/98(F)

Vs.

D.C. – Galle. Case No:8972/P

1. Mubashir Sali Of No.134/2,  
Colombo road, Mahamodera, Galle.
2. Mohamed Kalid Sitti Fathuma,
3. Ibrahim Rahila,
4. Ibrahim Majid,
5. A. Mohamed Kalid Sitti Fathuma,
6. Ibrahim Salha Bibi,
7. Mammala Marrikar Sumirath  
Umma, Of No. 128/4, Colombo  
road, Mahamodera, Galle.

**Defendants**

AND NOW BETWEEN

2. Mohamed Kalid Sitti Fathuma,
3. Ibrahim Rahila,
4. Ibrahim Majid,
5. A. Mohamed Kalid Sitti Fathuma,

6. Ibrahim Salha Bibi,
7. Mammala Marrikar Sumirath  
Umma, Of No. 128/4, Colombo  
road, Mahamodera, Galle.

**Defendants - Appellants**

Vs.

Mohamed Fahim Wadood, of  
No.267, Colombo Road,  
Mahamodera, Galle.

**Plaintiff - Respondent**

1. Mubashir Sali Of No. 134/2,  
Colombo road, Mahamodera,  
Galle.

**Before : W.M.M.Malanie Gunarathne, J  
: P.R.Walgama, J**

**Counsel : Ms. P.L.Gunawardena for the Appellant.  
Dr.S.T.A. Cooray for the substituted plaintiff Respondent  
and for the 1<sup>st</sup> Respondent.**

Argued on : 29.04.2015

Decided on : 06.07.2015

**CASE - NO- 1178/98(:F)- JUDGMENT- 06. 07. 2015**

**P.R.Walgama, J**

The Defendant- Appellants(herein after called and referred to as the Defendants)(2<sup>nd</sup> to 6<sup>th</sup> Defendants), preferred the instant appeal against the judgment and the decree in case bearing No. 8972/P, in the District Court of Galle, which was held in favour of the Plaintiff- Respondent”(herein after called and referred to as the Plaintiff) to be set aside.

The Plaintiff instituted the above styled action to have the co owned land known as Warawatta alias Kaluwellawatta depicted in plan No. 497 as Lot A and more fully described in the schedule to the plaint, and containing in extent (A0-R2-P9) to be partitioned between the Plaintiff and the 1<sup>st</sup> Defendant giving 2/1 share to each.

The Plaintiff has clearly stated the devolution of title, to the corpus where as Appellants had stated a different person as the original owner and more fully asserted prescriptive title to the land, without cogent proof.

The Learned District Judge in the said impugned judgment has comprehensively dealt with the devolution of the title of the Plaintiff in order to arrive at the determination in partitioning the corpus.

As per plaint in the above Partition action the original owner of the Corpus was one Cassim Sultan Bava, and by Deed No. 12568 dated 24<sup>th</sup> April 1918, marked as P1 conveyed the said land to his daughter Zaida Cassim Sultan as a dowry on the occasion of her marriage to Mohamed Abdul Jaleel.

The said Zaida Cassim Sultan with a her husband Mohamed Abdul Jaleel, by deed bearing No. 4 dated 3<sup>rd</sup> December 1942 marked as P2 conveyed this property to their daughter Sitty Sunny as a dowry, on the occasion of her marriage to Mohamed Hussien Careem.

The said Sitty Sunny has divided the said land as per plan No. 497 and by deed No. 4711 dated 18<sup>th</sup> at June 1971, marked as P3 to the Plaintiff and to the 1<sup>st</sup> Defendant, excluding the house standing thereon, and given the right to the 2<sup>nd</sup> to 6<sup>th</sup> Defendants to reside in the said house, without the soil rights to the land in issue. In that it is admitted that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants are only entitled for compensation, and not to the corpus.

Therefore it is categorically stated by the plaintiff that the Appellants have no paper title or prescriptive title to the corpus. It is pertinent to note at certain point the Defendants were involved in extending the house thereon as the original house was a wattle and thatched house, with the consent of the Plaintiff. The proceedings dated 07.02.1992 bear ample testimony to that effect. There fore the Defendants cannot claim any prescriptive title to the land in issue. In that it is abundantly clear that the defendants have not possessed this land adverse to the Plaintiff's possession.

The Learned District Judge has considered the title deeds compendiously marked and tendered to establish the plaintiff's title. By Deed bearing No. 3682 marked as 1V2 one Ebrahim Lebbe Marikkar became entitled to the corpus, his predecessor in title, Sultan Bhava, became entitled to the corpus by virtue of Deed bearing No. 1061 marked as 1V1.

As mentioned before said Sultan Bhava by deed No.12566, marked as P1 has conveyed his rights to his daughter Seyda Caseem Sultan Bhava as dowry on the occasion of her marriage.

In the attended circumstances the Learned District Judge was of the view, that the Plaintiff has proved his title, where as the Defendant has failed to prove his title to the same. It was also viewed that although the 2<sup>nd</sup> Defendant relies on title of one Sulaiman Lebbe, there is no proof, the fact that such person has possessed ½ of the corpus. According to the said Deed marked as 1V1 the said Transferor had title from the year 1897.

In the above setting the Learned District Judge was convinced of the fact that the Plaintiff has proved his title by producing exhibits marked P1-P3 and 1V1 and 1V2.

Therefore it was unequivocal view of the Learned District Judge that the plaintiff has proved his title and possession to the land with stark proof which overrides the position of the Defendants.

The Learned District Judge has adverted his attention to the surveyors report marked as X1, and was of the view that the Plaintiff has claimed more plantation where as the 2<sup>nd</sup> Defendant had claimed only one king coconut tree and four coconut trees before the surveyor.

It was the stance of the Plaintiff that the 2<sup>nd</sup> Defendant was a licensee and came to reside in the house standing thereon after the plaintiff and the 1<sup>st</sup> Defendant became entitled to the land in issue.

It is pertinent to note as per document marked 2V1, from the year 1957 to 1986 the 2<sup>nd</sup> Defendant's name is registered as the tax

payee, in respect of the wattle and thatched house standing thereon. From the year 1987 the above house is registered under the name of 2<sup>nd</sup> Defendant. Nevertheless the Learned District Judge was of the view that as per documents marked 2v2 to 2v10, do not indicate any title to  $\frac{1}{2}$  of the corpus to the 2<sup>nd</sup> Defendant.

It was the position of the Plaintiff that the buildings marked No. 1 and 2 depicted in the preliminary plan belong to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants without any soil rights, and it was so determined by the Learned District Judge in the impugned judgment.

In this impugned judgment of the Learned District Judge was of the view that evidence adduced for the 2<sup>nd</sup> Defendant, has fortified her position as to the her rights to the said house and not to the soil rights. Hence it was held that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants are entitled to the said two houses depicted in the preliminary plan marked "X" and for improvements numbered as 1,2,3, in the said plan.

It also salient to note that the documents marked 2V1 to 2V10 (which are extracts from the assessment register) will only establish the fact that 2<sup>nd</sup> to 4<sup>th</sup> Defendants were living in the purported house, without having the right to claim title to the  $\frac{1}{2}$  of the corpus.

In perusing the documents marked P4 and P5 the Learned District Judge was of the view that, it is clear that the Defendants had tried to renovate the house, further it was held it the said documents are indicative of the fact that the 2<sup>nd</sup> Defendant has entered the corpus as a licensee of the original owners of the plaintiff, was also of the view that the 2<sup>nd</sup> Defendant has not been able to prove his predecessor's title, and as such had held that the Plaintiff has proved his title to the satisfaction of the Court.

In the said scenario it is proved that Sitti Sanny Carimm had conveyed her rights by deed No. 4711 attested by A.M.M.Tahir Notary Public to the Plaintiff and the 1<sup>st</sup> Defendant.

The Learned District Judge by his impugned judgment has declared that the buildings marked 1 and 2 be allocated to 2<sup>nd</sup> to 4<sup>th</sup> Defendants, and will be entitled for compensation in respect of the well.

When the impugned judgment is reviewed in the said back drop I am of the view that the said judgment should be upheld and Appeal should stand rejected.

Accordingly appeal is dismissed subject to a cost of Rs. 5000/.

appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malanie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**