

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

In the matter of an Appeal under Section
755 of the Civil Procedure Code.

1. Niranjan Naganathan
2. Yogendran Naganathan

No.312/1,
Hendala Road,
Wattala.

C.A. Case No. 1214/99(F)

3. P Sudarshan

D.C. (Matale)

No.57,

Case No. P 1928

Senanayake Mawatha,
Bandarawela.

Plaintiffs

Vs.

1. Alangar Naganathan
2. Somasegaran Shanmuganathan

Mandawela,
Matale.

Defendants

Now

2. Somasegaran Shanmuganathan

Mandawela,

Matale.

2nd Defendant Appellant

Vs.

1. Niranjan Naganathan

2. Yogendran Naganathan

No.312/1,

Hendala Road,

Wattala.

3. P Sudarshan

No.57,

Senanayake Mawatha,

Bandarawela.

Plaintiffs Respondent

BEFORE : P.W.D.C. JAYATHILAKE, J

COUNSEL : S.D. Yogendra with
M.G.C.J. Fernando for the
Defendant Appellant.
Geffrey Alagarathnam P.C
With H. Seneviratne for the
Plaintiff – Respondent.

ARGUED ON : 29.10.2014

DECIDED ON : 21.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Respondent instituted this action seeking the termination of the co-ownership of the land called "Kithulgahamula Hena" and Yayamedda Hena" situated in Mandandawela which is one rood and 24 perches in extent described in the schedule to the Plaint. According to the pedigree set out in the Plaint, the three Plaintiffs own the rights in equal shares and undivided $\frac{3}{4}$ of the building and the 2nd Defendant owns the balance $\frac{1}{4}$ th. But the 2nd Defendant in his statement of claim has stated that Aiyannadan Somasekaran mentioned in the pedigree of the Plaint constructed the building shown as A in the Plan No. 2631 and gifted his undivided $\frac{1}{4}$ th share of the land with the said house to the 2nd Defendant in 1970. Therefore he has claimed an undivided $\frac{1}{4}$ th share of soil rights and the entirety of the house shown as A.

At the commencement of the trial the parties have admitted that Alangara Ammal, Aiyannadan Kanagammal, Aiyannadan Somasekaran, Aiyannadan Naganadan and Aiyannadan Thyaganadan got the ownership of the subject matter shown in the Plan No. 2631 by the case No. P 582 of District Court, Matale. The 1st Plaintiff has given evidence describing the devolution of the

title of these five persons. Alankara Ammal has transferred her soil rights to Naganadan by the deed marked P 1. After the demise of the said Alankara Ammal Kanagammal, Somasundaram, Naganadan and Thyaganadan became entitled to $\frac{1}{4}$ th share of the house. Aiyadan Kanagammal and Aiyadan Somasekeran transferred their soil rights to Aiyadan Naganadan by the deed marked as P 2 in 1973. Thyaganadan had sold his soil rights to Aiyadan Naganadan in 1963 by the deed marked as P 3. Accordingly, Naganadan became entitled to the soil rights of the entire land with half share of the house. The 1st Plaintiff, in his evidence has stated that Somasekeran, father of the 2nd Defendant was entitled to half of the house and the soil rights covered with half share of the house. It is clear that the 1st Plaintiff had believed that the 2nd Defendant had been in possession of his father's undivided share of the house and the undivided share of Alankar Ammal. The 1st Plaintiff's claim was, according to his evidence that half share of the house and the soil covered by that half share and the balance soil rights were owned by the 3 Plaintiffs in equal shares. It seems that the Plaintiff has not claimed the balance half share of the house and the soil covered by the said half share.

The learned District Judge who has rejected the claim of the 2nd Defendant's undivided $\frac{1}{4}$ th share of the subject matter has decided the 2nd Defendant is entitled only to $\frac{1}{4}$ th share of the house and has ordered to the Plaintiff to pay

the value of the half share according to the value of the commissioner's report. If the learned District Judge had accepted the evidence of the 1st Plaintiff, he should have allocated half share of the house with the soil covered by it to the 2nd Defendant.

The house marked as A in Plan X is by the main road on the East. Therefore it is not impractical to divide half share of the house with the soil covered by it. If the said half share is divided from the northern part of the house, the rights of the other parties will not be affected. Therefore, this court alters the judgment of the learned District Judge and decides that the 2nd Defendant is entitled to the half share of the house marked A with the soil covered with said half share and that half share shall be allocated to the 2nd Defendant in the northern part of the house. The Appeal is dismissed without costs subject to the said alteration to the judgment.

The judgment altered.

JUDGE OF THE COURT OF APPEAL