

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

C.A. Case No. 1358/99(F)

Abdul Wadood Mohamed Ibrahim of

D.C.(Galle)

No.45A, Udugama Road, Galle.

Case No. 9441/P

Plaintiff

Vs.

1. Mohamed Natheer Bishrul Haffy of

No. 50/2, Udugama Road, Makuluwa,
Galle.

2. Abdul Raheem Jazeema Umma of

Anangoda, Hayley Road, Galle.

2A. Mohamed Jameel Mohamed

Haleema Umma of Hayley Road, Haiwela
Galle.

Defendants

And

Abdul Wadood Mohamed Ibrahim of

No.45A, Udugama Road, Galle.

Plaintiff Appellant

Mohamed Nalief of No. 45 A, Udugama

Road, Galle.

Substituted Plaintiff Appellant

Vs.

1. Mohamed Natheer Bishrul Haffy of

No. 50/2, Udugama Road, Makuluwa,

Galle.

2. Abdul Raheem Jazeema Umma of

Anangoda, Hayley Road, Galle.

2A. Mohamed Jameel Mohamed

Haleema Umma of Hayley Road, Haiwela

Galle.

1st and 2A Defendants Respondents

COUNSEL

: Charith Thuduwege for the
substituted Plaintiff Appellant.

S.H. Vihithsinghe for the 2A
Defendant Respondent.

ARGUED ON

: Terms of settlement tendered.

DECIDED ON

: 24.07.2015

P.W.D.C. Jayathilake, J

This case has been instituted to terminate the co-ownership of the Plaintiff and the 1st Defendant in respect of the land called “the divided portion of Katta Lebbegeewatta” 29 perches in extent. According to the pedigree disclosed in the plaint the Plaintiff and the 1st Defendant are entitled to the undivided half share each to the soil, building and the plantation of the subject matter. The commissioner appointed in the case, C.D. Fonseka, licenced surveyor has prepared the Plan No. 3532 dated 08.12.1987 in which the subject matter has

been depicted as A,B, and C. According to the said plan, the extent of the subject matter is 35.3 perches. The 2nd Defendant had been a claimant before the surveyor who had claimed the rights of all improvements and plantations. The 2nd Defendant had filed the statement of claim, claiming prescriptive rights to the entire land on the basis that the 2nd Defendant and her parents had possessed without any disturbance from the Plaintiff over the 1st Defendant over a period of over 30 years.

The learned trial judge has found faults with the Plaintiff for not following the requirements of Sec. 4 (1) of the partition law for the reason that knowing very well that the 2nd Defendant was a resident of the subject matter, not making her a party to the case. However, in the conclusion the learned judge has decided that the deeds P 5 and P 6 are not acted upon and has further decided that the 2nd Defendant has prescribed to the subject matter. As the 2nd Defendant had died during the proceedings of the case, 2A Defendant has been substituted as the legal representative of the deceased 2nd Defendant. This is an appeal filed by the Plaintiff Appellant against the judgment of the trial court in which the Plaintiff's case has been dismissed.

During the pendency of this appeal, the Plaintiff Appellant, the 1st Defendant Respondent and the 2A Defendant Respondent had arrived at a settlement

admitting their rights in respect of the land, buildings and plantation of the subject matter.

Accordingly, they have tendered the terms of conditions in respect of the settlement they have agreed upon in writing signed by the Attorneys at Law for all 3 parties. Those terms of settlement are as follows.

1. The parties to this action, admit that defined portion of Kattalebbegewatta the (corpus) subject matter of this partition action is depicted as Lots A, B and C in Plan No. 3532 dated 8th December 1987 and made by Mr. C.D. Fonseka, Licensed Surveyor.
2. The parties admit that the learned District Judge held by judgment dated 08.12.1999 that the 2nd Defendant Respondent prescribed to the whole corpus. The 2nd Defendant Respondent had only prescribed to the house and the appurtenant land of 09 perches.
3. The parties to this action, admit that the Plaintiff has established the pedigree pleaded in this case upon the deeds read in evidence and oral evidence and other material before court in this case and accordingly the Plaintiff and the 1st Defendant are the co-owners of rest of the corpus of this partition action, excluding the above said house and 09 perches land.

4. The Plaintiff, the 1st Defendant and the 2nd Defendant in this case agree that the land in extent of nine parches (09 p) out of western side of Lot B in the said plan inclusive of newly built house had been prescribed by the 2nd Defendant and 2nd Defendant is entitle to use the 8 feet wide right of way which will be the common right of way to the Plaintiff and the 1st defendant and the 2nd Defendant, in the western side leading to the village road shown in the said plan from the nine parches (09 p) land so demarcated, and for this purpose a commission would be issued by the learned District Judge.
5. The 2A Defendant who is the legal representative of the 2nd Defendant is agreeable to accept same for all the claims made in this case by the 2nd Defendant.
6. The 2A Defendant agrees to demolish whatever portion which goes outside of the nine parches (09 p) land so demarcated out of the old building shown as building No.1 in the said plan, when it is demarcated as aforesaid without payment of any compensation and the 2A Defendant is entitled to remove the material out of the so demolished portion of the said building.

7. After demarcating the said portion of land in extent of nine perches (09 p) and the 8 feet wide right of way as foresaid the Plaintiff is entitled to $\frac{1}{2}$ share and the 1st Defendant is entitled to other $\frac{1}{2}$ of the balance portion of Lot B and Lot A and Lot C of the land called defined portion of Kattalebbegewatta the corpus of this action.
8. In view of this settlement may your Lordship be pleased to set aside all judgments/orders which are contrary to the said terms of settlement. (including the judgment dated 08.12.1999)
9. The parties equally bear the cost of litigation in this action.
10. Direct the learned District Judge to enter Interlocutory Decree in this case on the above said terms of settlement.

As the 2A Defendant Respondent has accepted the fact that the 2nd Defendant Respondent had acquired the prescriptive title only to the land in extent of 9 perches out of the western side of lot B in the plan marked as X inclusive of newly built house with the entitlement to use the 8 feet right of way, this court decides to accept the terms of settlement agreed by the parties and to allow them to get their co-ownership to be terminated by partitioning the same under an interlocutory decree entered in accordance with the said terms of settlement.

But, this court does not act on the term 8 of the term of settlement as there is no reason to set aside the judgment of the learned District Judge based on the evidence led before him. Therefore, this court directs the District Judge to summon the necessary parties and explain the effect of the terms of settlement agreed upon by the parties and get their consent by getting them to sign the record, if they are willing to do so. If the parties accept the terms of settlement, amend the judgment and the interlocutory decree accordingly. The Appeal is dismissed allowing the above mention relief.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL