

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

Alawattage Somawathie,
Mabogoda,
Anguruwatota.

Plaintiff

Court of Appeal Case No:

CA 1018/98 (F)

District Court Case No: 4103/P

Vs.

1. Alawattage Leelawathie,
Mabogoda,
Anguruwatota.
2. Alawattage Bennat,
Mabogoda,
Anguruwatota.
3. Alawattage Premadasa,
Mabogoda,
Anguruwatota.
4. Mirissage Mendiris,
Dalkadalanda,
Anguruwatota.

5. Alawattage Shelton,
Mabogoda,
Anguruwatota.

6. Alawattage Jayatissa,
Mabogoda,
Anguruwatota.

Defendants

AND BETWEEN

Mirissage Mendiris,
Dalkadalanda,
Anguruwatota.

4th Defendant – Appellant
(deceased)

Sriyalatha Brito,
Dalkadalanda,
Anguruwatota.

Substituted 4th Defendant –
Appellant

Vs.

Alawattage Somawathie,
Mabogoda,
Anguruwatota.

Plaintiff – Respondent
(deceased)

1A. M. Janaka,
Mabogoda,
Anguruwatota.

1B. Don Thilakasiri,
Mabogoda,
Anguruwatota.

Substituted Plaintiff –
Respondents

1. Alawattage Leelawathie,
Mabogoda,
Anguruwatota.

1st Defendant – Respondent
(deceased)

Alawattage Bennat,
Mabogoda,
Anguruwatota.

**Substituted 1st Defendant –
Respondent**

2. Alawattage Bennat,
Mabogoda,
Anguruwatota.
3. Alawattage Premadasa,
Mabogoda,
Anguruwatota.

**3rd Defendant – Respondent
(deceased)**

4. Alawattage Premadasa,
Mabogoda,
Anguruwatota.

**Substituted 3rd Defendant –
Respondent**

5. Alawattage Shelton,
Mabogoda,
Anguruwatota.
6. Alawattage Jayatissa,
Mabogoda,
Anguruwatota.

Defendant – Respondents

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : Asthika Devendre for sub 4th P/Appellant and in CA1019/98(F) for Respondent.

: J.P. Gamage for 5 & 6 D/ Respondent in CA 1018/98(F) and & 6 Deft – Appellants in CA 1019/98(F).

: Anura Gunarathne for 2a, 2b, 3a sub Plaintiff – Respondent – Respondents.

: Dr. Sunil Coory with Buddika Gamage for Plaintiff – Respondent.

Argued on : 24.06.2015

Decided on: 30.10.2015

CASE- NO- CA-1018/F JUDGMENT - 30/10/2015

P.R.Walgama, J

The Plaintiff- Respondent (herein after called and referred to as the Plaintiff) instituted a partition action in the District Court of Horana, to divide the co owned land more fully described in the schedule to the plaint.

The land to be partitioned is known as Praiya Ovita alias Agalakapuwatta, was possessed by the predecessors in title as stated in paragraph 2 of the Amended Complaint, and the said land was sold by the said co owners to one Weerawagu Pullai and Alawattage Podisira Fernando by Deed No. 10150 attested by D.B.K. GUNATILLEKE, Notary Public.

It is categorically stated by the Plaintiff that the said Weerawagu Pullai was an Indian and as such he had never possessed the land sought to be partitioned, and did not have heirs to the title. In the above circumstances the said Alawattage Podisira possessed the said land for 40 years without any interruption and disturbance from any party.

The said Podisira Fernando died leaving Alawattage Jemis Fernando, and per averment 5 of the Amended Complaint it is said that Alawattage Jemis had conveyed $\frac{1}{4}$ share of the land to a third party, which has been possessed by the 4th Defendant.

The said Jemis Fernando died leaving the Plaintiff and the 1st, 2nd and 3rd Defendant. In the afore said circumstances the 4th Defendant has been allotted $\frac{1}{4}$ share and the Plaintiff and the 1st to 3rd Defendants are been allotted $\frac{3}{16}$.

The Learned District Judge by his judgment dated 01.06.1998 has allotted shares only to the Plaintiff and 1st 2nd and 3rd Defendant and not the 4th Defendant- Appellant. Being aggrieved by the said judgment the 4th Defendant -Appellant has appealed to this Court

and sought to set aside the said impugned judgment and the decree accordingly.

The parties to this action has formulated 19 issues, to be resolved at the trial. In that it is intensely relevant to note that the Plaintiff has framed the issue No.3 on the basis that Plaintiff is entitled only 3/16 share, and by the 3rd issue is that the balance portion should be divided among 1st 2nd ,3rd and 4th Defendants as stated in the Amended Plaintiff.

Therefore according to the afore said issues it is abundantly clear that the Plaintiff has admitted that the 4th Defendant was also a co owner of the land sought to be partitioned.

The 4th Defendant-Appellant by his Amended Statement of Claim has admitted the facts stated in the paragraph 5 of the Amended Plaintiff, in that it is stated that Weeravagu Pullai who became entitled to ½ of the land sought to be partitioned, and his rights had been devolved on Charlis and Dominee. Further in paragraph 4,5,6,7, 8 and 9 the 4th Defendant -Appellant has demonstrated a different pedigree and parties, entitled to the land.

As per preliminary plan in lot No. 1 it is clear that the Rubber plantation was possessed by the 4th Defendant and not by the Plaintiff or other Defendants to this action.

In addition to the afore said that Plaintiff in his testimony to Court has stated that the Rubber plantation with 320 Rubber trees are been possessed by the 4th Defendant – Appellant.

But it is his contention that the 4th Defendant – Appellant has no title to this land, and has forcibly entered the land in issue.

But nevertheless he has admitted that the 4th Defendant - Appellant was in possession of lot No1 and was enjoying the Rubber plantation.

The stance of the 4th Defendant - Appellant is that the entire land was possessed by him, but same has not been established by the 4th Defendant – Appellant to that effect.

It is also to be noted that as per surveyor's report marked X1, it is stated that in lot No.1, the Rubber plantation is been enjoyed by the 4th Defendant - Appellant, therefore it is abundantly clear the 4th Defendant - Appellant should be allotted the ¼ share that was admitted by plaintiff by his amended plaint.

The Learned District Judge has dealt in his impugned order that the 4th Defendant-Appellant has failed to prove his title by not producing the Deeds marked 4V2, and also the deeds to prove the sale of the purported land to his predecessors, in title and as such has held that the 4th Defendant–Appellant is not entitled to a share in the land sought to be partitioned.

Thus in adumbrating the facts stated above I am of the view that the Plaintiff himself has admitted the fact that 4th Defendant- Appellant was in possession of lot No. 1 wherein he

had enjoyed 320 Rubber plantation, which fact has been ignored by Learned District Judge in the alleged impugned judgment.

For the above compelling reasons I allow the appeal and vary the said impugned judgment, by allocating $\frac{1}{4}$ share to the 4th Defendant - Appellant. Hence it is decreed that shares be allotted as per amended plaint dated 10.09.1993.

Appeal is allowed subject to the above variation. We order no costs.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL