

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

Hapan Pedige Piyatilleke

Pallegama

Deewala.

Substituted Plaintiff-Appellant

C/A Application No. 846/97 F

D.C. Kegalle 21022/P

Vs

H. Nelie Enert

Rangallehena

Pallegama

Deewala.

1A Defendant-Respondent

And 11 others

Respondents

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: S.A.D.S. Suraweera for the
Substituted Plaintiff-Appellant

D.M.G. Dissanayake with

B.C. Balasooriya for the 4A,

9A and 12th Defendant-

Respondents.

ARGUED ON

: 25th March, 2015

DECIDED ON

: 20th November, 2015

Deepali Wijesundera J.

The plaintiff appellant instituted a partition case in the District Court of Kegalle against the defendant respondents to partition the land described in the schedule to the plaint. The corpus shown in the preliminary plan was admitted by both parties. The two original owners Wattuwa and Kirisaduwa was also admitted by both parties the contest was the devolution of title of the said original owners.

According to the defendant respondent's pedigree Wattuwa who had ½ share of the property had three children by the mames of Hapie

Salelu and Menika rights of Kirisaduwa the defendant respondent claimed from deeds marked as **4V1 to 4V5**.

According to the plaintiff appellant's pedigree Wattuwa had only two children and Hapie was not one of Wattuwa's children and Wattuwa's $\frac{1}{2}$ share devolved on Salelu and Menika.

The only contest at the District Court trial had been limited in the said fact. The learned District Judge accepted the pedigree of the defendant respondents and made order to partition the land on the basis that the $\frac{1}{2}$ share of Wattuwa had devolved around three children instead of two as claimed by the plaintiff appellant, placing his reliance on the deed marked as **4D1**.

The learned counsel for the plaintiff appellant stated in his argument that there is no description of the land with its boundaries and that the extent of the land described in the said deed differs in extent from the land sought to be partitioned. He further submitted that the only fact considered by the District Judge when arriving at his finding that Hapie was a child of Wattuwa is the statement contained in the said deed **1D4** and no other evidence had been considered by him.

The appellant stated that the said deed does not state paternal inheritance but simply states through inheritance, hence the deed has to be considered with other evidence specially the evidence of the 9th defendant who raised the contest as to the pedigree. Referring to the evidence of the 9th defendant respondent the plaintiff appellant's counsel stated that Hapie was a child of Kirisaduwa and not of Wattuwa according to the evidence of 9th defendant respondent. The plaintiff appellant stated that the findings of the learned District Judge as to the heirs of Wattuwa are erroneous and not sustainable in law or in fact and should be set aside.

The learned counsel for the defendants submitted that the learned District Judge has carefully examined the rights of the parties based on the title deeds and evidence placed before court. He further stated deed marked as **4V1** attested in 1861 which was strongly contested by the plaintiff appellant which has not been registered had been referred to in the subsequent deeds which fact the District Judge has considered and analysed the evidence given in support of the same.

The learned District Judge has observed the demeanor of the witnesses when giving evidence and has also analysed the evidence placed before him before arriving at his findings. The contested deed

1V4 has been carefully considered in his judgment and this deed was referred to in the subsequent deeds. The plaintiff appellant has suggested to the defendants witness that the corpus is something else but this is not correct since they have admitted the corpus at the beginning of the trial in the District Court.

On perusal of the submissions made and the documents and the learned District Judge's judgment I find that there is no merit in this appeal. The appeal of the plaintiff appellant is dismissed with cost fixed at Rs. 10,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL