

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

Rajasinghalage Ranaweera
Pallegedera, Uduwera,
Haliella.

PLAINTIFF - APPELLANT

C.A. No. 752/97 (F)

D.C. Badulla Case No. 28/96/P

Vs

1. R.D. Rosalin
C/O, W.D. Hendaris
Madepathane Gedera,
Uduwera.
2. Rajasinghe Deweyage Mary
C/O, D. Somasiri
Madegala Road, Uduruppe,
Bussa.
3. R.S.D. Jamis
Puwakgaswatte
Uduwera
Haliella.

DEFENDANT-RESPONDENTS

BEFORE : Deepali Wijesundera J.
: M.M.A. Gaffoor J.

COUNSEL : Nuwan Rupasinghe for the
Plaintiff – Appellant.
Vinodh Wickramasooriya for the
Defendant – Respondents.

ARGUED ON : 08th September, 2015

DECIDED ON : 12th February, 2016

Deepali Wijesundera J.

The plaintiff appellant has filed a partition case in the District Court of Badulla to partition the land described in the schedule to the plaint. The plaintiff has claimed 1/3 share of the land and stated that the first defendant is entitled to 1/3 share of the land. In the District Court a commission was issued to survey the said land and upon the survey being done plan no. 3110 was submitted to court. Both parties have admitted the corpus at the trial. After trial the learned District Judge has held that the corpus cannot be identified and that the pedigree has not been proven and dismissed the partition case. The plaintiff has filed the instant application against the said judgment.

When the instant application was argued the defendant respondents conceded that the corpus was admitted therefore it could be said that the land to be partition has been identified and admitted in the District Court. The learned counsel for the appellant stated once the parties admitted the corpus there is no need to prove it and on this ground alone the judgment of the District Judge should be set aside.

The appellants stated that the plan marked X which shows the land to be partitioned shows the boundaries described in the schedule to the plaint and that the survey was done according to the boundaries shown by both parties and in their presence.

The appellants stated that the plaintiff mentioned the land as Helawala Mihiriyagastenne and that the first defendant too identified the land by the same name. The appellants further stated that the plaintiff established his chain of title in evidence by documents **P1 to P3** and that the first defendant failed to dispute his title in the District Court.

The learned counsel for the defendant submitted that the defendant in the District Court discharged her burden as required by the Evidence Ordinance regarding the facts in issue by corroborating the

defendant's evidence by the evidence of the two witness called, which proved that the original owner of the corpus was Danthuwa and Kalu and not only Kalu as stated by the plaintiff. The defendant respondents stated that the learned District Judge very correctly held that the plaintiff appellant failed to prove his title by failing to place evidence on the relationship between Haramanis and Babi and also by failing to dispute the defendant's evidence that Danthuwa was a co-owner of the corpus with Kalu. The respondents submitted in the circumstances the learned District Judge had no option but to dismiss the plaintiff's case.

In a partition action it is the duty of the trial judge to examine the title and to draw up the pedigree when the parties fail to agree on the pedigree, on examination of the documents and evidence placed before court. In the instant case the plaintiff appellant has stated in the plaint as well as in evidence that the original owner was Kalu who had three children Haramanis, Babi and Jamis and that he bought 1/3 share which belonged to Haramanis by deed marked P1. The plaintiff has claimed only 1/3 of the land. The first defendant appellant has stated in evidence that Kalu's property was co-owned by Danthuwa and that the defendant got the shares from Jamis and Babi who were Kalu's children as well as the two children of Danthuwa. They have not claimed the share of Haramanis which the plaintiff claimed. On these facts and documents the trial judge had a duty to examine the title and prepare a partition

judgment without taking the easy way out and dismissing the case. Defendant respondents have admitted the corpus therefore to say the land was not properly identified is incorrect. The defendants as well as the plaintiff have accepted the plan marked X which depicted the land to be partitioned. The corpus had been identified and admitted.

In **Somasiri vs Faleela and others 2005 2 SLR 121** it was stated that the trial judge should make a personal inquiry as to the title of the land to be partitioned. It is the prime duty of the trial judge to investigate the title. In the instant case the trial judge has failed to perform a proper investigation of title and dismissed the plaint. Which fact should be a ground for appeal and a trial *de novo*.

For the afore stated reasons I allow the appeal and set aside the judgment of the learned District Judge of Badulla dated 23/05/1997 and I order a trial *de novo*. Appeal allowed.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL