

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

Jayasundara Gamage Heenhamy

Galgama

Nakulugamuwa.

PLAINTIFF

C.A. (Writ) Application No.924/97F

D.C. Tangalle Case No. 2826/P

Vs

1. Hewagamage Sadiris
2. Hewagamage Pediris
3. Hewagamage Menikhamy
4. Hewagamage David
All of Punchiattikkagahawatta
Galgama, Nakulugamuwa.
5. Liyanagamage Sawaneris
Laksha Kade, Hatporuwa.
6. Liyanagamage Somadasa
Laksha Kade
Hatporuwe, Embilipitiya.

DEFENDANT

AND

Hewagamage David
Punchiattakkagahawatta
Galgama, Nakulugamuwa.

4TH DEFENDANT - APPELLANT

Vs

Jayasundara Gamage Heenhamy
Galgama
Nakulugamuwa.

PLAINTIFF – RESPONDENT

1. Hewagamage Sadiris (dead)
(Substitution effected on 2.01.2014)

1(a) Hewagamage Martin
No. 1831, 550 Yaya
Unudiya Pokuna Road
Mahapolossa, Suriyawawa.

1(b) Hewagamage Premathunga
Gatagahahena, Galagama
Nakulugamuwa.

1(c) Hewagamage Gimawathie
No. 1831, 550 Yaya
Unudiya Pokuna Road,
Mahapolossa, Suriyawawa.

1(d) Hewagamage Indrawathie
No. 185/1B, Pattiwila
Gonnawela.

1(e) Hewagamage Rupa Ranjane
No. 1831, 550 Yaya
Unudiya Pokuna Road,
Mahapolossa, Suriyawawa.

1(a) to 1(e) SUBSTITUTED

DEFENDANTS-RESPONDENTS

2. Hewagamage Pediris (dead)
(Substitution effected on 22.01.2014)

2(a) Hewagamage Gunapala

2(b) Hewagamage Andreyas

2(c) Hewagamage Martin
All of "Sanjaya Hardware",
Ambalangoda Road,

Suriyawawa.

2(a) to 2(c) SUBSTITUTED

DEFENDANTS-RESPONDENTS

3. Hewagamage Menikhamy (dead)
(Substitution effected on 22.01.2014)

3(a) Senerath Hettiarachchige Seriel

Alias Sirithunga

No. 25/1, Elegoda West,

Mamadala.

3(a) SUBSTITUTED

DEFENDANT-RESPONDENT

5. Liyanagamage Sawaneri

Laksha Kade, Hatporuwe.

6. Liyanagamage Somadasa

Laksha Kade

Hatporuwe, Embilipitiya.

5th and 6th DEFENDANTS-

RESPONDENTS.

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: M.C. Jayaratne with M.D.J. Bandara

For the 4th Defendant-Appellant

Chandrasiri De Silva with

Nadeera Weerasinghe for the

Plaintiff-Respondents.

ARGUED ON

: 31st August, 2015

DECIDED ON

: 28th April, 2016

Deepali Wijesundera J.

The plaintiff respondent filed a partition case in the District Court Tangalle to partition the land described in the schedule to the plaint. After trial the learned District Judge had delivered his findings answering the issues of the respondent allowing the partition as prayed for by the plaintiff respondent. Being aggrieved by the said judgment dated 10/09/1997 the defendant-appellant has preferred the instant application.

The appellant stated that the learned District Judge failed to examine the title in terms of section 25 (A) of the Partition Act (as amended). The appellant citing the judgment in **Piyaseeli vs Mendis and others (2003) 3 SLR 273** said that the main function of the trial judge in a partition action is to investigate title.

The appellant stated that the respondent failed to establish the title of Jayathu Hamy who is said to be the original owner and that the District Judge has erred when he answered the first issue in the affirmative.

The appellant citing the judgment in **Jane Nona vs Dingirimahathmaya 74 NLR 105** said that in a partition action the plaintiff had to set out the devolution of title fully.

The respondent argued that the original owner of the corpus was Ubeysinghe Arachchige Jayathuhamy and that he had two children namely Appu and Jane and that the plaintiff respondent's title was thereupon very clearly stated in the plaint and as well as in evidence, and invited court to examine the evidence of J.G. Soun Hamy who marked the death certificate of Sedarahamy as **P3** which proved the plaintiff's chain of title. Plaintiff also has marked as **P2** the death certificate of Ubesinghe Arachchige Charlis which also tallied with the plaintiff's chain of title. The respondent submitted that by these two documents and the evidence the plaintiff respondent proved their chain of title which the learned District Judge very correctly accepted.

The respondent stated that the District Judge had enough documentary evidence and had a clear picture of the plaintiff's pedigree.

On perusal of the arguments submitted and also the documents and the District Judge's judgment it can be seen that the District Judge who heard the evidence and observed the witness giving evidence had very correctly analysed and investigated the pedigree and the title of the plaintiff.

As stated by the appellant in **Piyaseeli vs Mendis and others (2003) 3 SLR 273** it is the main function of the trial judge in a partition action to investigate the title and is a necessary prerequisite to every partition action and the learned District Judge has done this very correctly.

As stated in **Jane Nona vs Dingiri Mahathaya 74 NLR 105** which case the appellant cited the plaintiff had set out his title fully.

For the afore stated reasons I see no reason to vacate a well considered judgment given by the learned District Judge. The appeal of the appellant is dismissed with costs fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL.

M.M.A. Gaffor J.

I agree.

JUDGE OF THE COURT OF APPEAL