

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

*In the matter of an application
under Sec: 772 of the Civil
Procedure Code.*

Walataracharige Piyasena of
Wedagoda,
Walatara, Beruwala.

**CA Case Nos. 730/93/F
with 731/732/93/F**

PLAINTIFF

D.C. Kalurara Case No.P/4643

Vs.

1. Milane Acharige Charlotte
Gunawathie alias Charlotte
Chandrani Silva of
Wedagoda, Walatara,
Beruwala and 35 others.

DEFENDANTS

AND BETWEEN

20/24 Saputantrige Jayasena of
Wedagoda, Walatara, Beruwala.

**20th/24th DEFENDANT
APPELLANT**

Vs.

Walataracharige Piyasena of
Wedagoda,
Walatara, Beruwala.

PLAINTIFF RESPONDENT

1. Milane Acharige Charlotte
Gunawathie alias Charlotte
Chandrani Silva of
Wedagoda, Walatara,
Beruwala.

2. Delpachitra Acharige Handy
Singho

(Deceased)

2a. Delpachitra Acharige Lissee

3. Paiyagala Badalge Ageness of
Wedagoda, Walatara,
Beruwala.

4. Raigamage Nancy Nona

(Deceased)

4a. Saputantrige Dayananda

5. D.N. Gabirielhamy

6. Naotunna Badalge
Pemawathie

7. Saputantrige Dayananda

8. Tebuwana Acharige
Pabohamy All of Wedagoda,
Walatara, Beurwala.

9. Walatara Acharige Ariyadasa

(Deceased)

9a. Naotunna Badalge
Pemawathie

10. Naotunna Badalge
Pemawathie

11. Walatara Acharige
Rosaline Nona
(Deceased)
- 11a. Kalupahana Mestrige
Wilson All of Wedagoda,
Walatara, Beruwala.
12. Walatara Acharige Alice
Nona
(Deceased)
- 12a. Labbaduwa Waduge don
Piyasiri of No. 15, Keththarama
Road, Kalutara South.
13. Ittapana Payagalage
Martine of No. 432-33,
Neduna, Ganemulla.
14. Ittapana Payagalage
Wilson of No. 712/1,
Kennaliyadda road, Ragama.
15. Kalupahana Mestrige
Ubhayaratne of Wedagoda,
Walatara, Beruwala.
16. Tantrige Wilbert
Wedagoda
Walatara, Beruwala.
17. Walatara Acharige Simon
Silva

(Deceased)

17a. Walatara Acharige
Sumitha Silva Polkotuwa,
Beruwala.

18. Induruwe Acharige Tudor
of Kiriwawula, Pilimatalawa.

19. Induruwe Acharige
Dharmadasa of 31D,
Dharmasoka Mawatha,
Kandy.

21. Payagala Badalge Grace
Silva of No. 22, Panadura
road, Horana.

22. Payagala Badalge Charlotte
of Wedagoda, Walatara,
Beruwala.

23. Saputantrige Karunaratne of
Wedagoda, Beruwala.

25. Saputantrige Aron Singho of
Wedagoda, Walatara,
Beruwala.

26. Ambepitiyage don Newton

27. Ambepitiyage Dona
Sampinona

28. Hettiarachchige Maginona of
Wedagoda, Walatara,
Beruwala.

29. Saputantrige Ysawathie

30. Saputantrige Dhanasena

31. Anagiyakdehige Jemis All of
Wedagoda, Walatara,
Beruwala.

32. Walataracharige Arinona
Walatara Gedara,
Tiranagama, Hikkaduwa.

33. Kanakke Acharige Asiline
Nona, No. 71,
Sarikkarmulla, Panadura.

(Deceased)

33a. Payagala Badalge
Thuthisoma of No. 6-5,
Kanduruduwa road, Gorakana,
Moratuwa.

34. Payagala Badalge
Ththisoma

35. Kalupahamestrige
Ubhayaratne All of
Wedagoda, Walatara, Beruwala.

36. Manodara Acharige
Gunawathie of No. 236,
Wakwella Road, Galle.

DEFENDANTS RESPONDENTS

Before : P.R. Walgama, J

**Council : N.R.M. Daluwaththe for the 20th/24th
Defendants – Appellant.**

**: Ranjan Suwandarathne for the Plaintiff –
Respondent.**

Argued on : 12.02.2016

Decided on : 27.01.2017

CASE-NO- CA. 730/731/732-93(F)- JUDGMENT- 17.01.2017

P.R. Walgama, J

By this instant appeal the 20- 24th Defendant-Appellants had assailed the judgment dated 04.11.1993, in the case bearing No. 4643 /P in the District Court of Kalutara.

The Plaintiff – Respondent instituted the above styled action to partition the land described in the schedule to the plaint and more fully depicted in the preliminary plan bearing No.2586 marked as 'X'.

The land sought to be partitioned is known as Paiyagalawatta alias Kandagahalandawatta, containing in extent approximately 4 acres.

In sequel to the above impugned judgment the 20-24th Defendants and the 3rd Defendant had lodged the instant appeal, and it was brought to the notice of Court that appeal bearing No. 731/ F was settled in

the Supreme Court, and the appeal bearing No. 732/F was dismissed by this Court as the appeal was out of time.

Therefore this Court will only embark on the appeal of the 20-24th Respondent – Appellants. But it is seen that the 7TH Defendant who is sailing with the appellants moves for a exclusion of lot D from the corpus.

At the trial in the court below the contentious issues were whether the lot D depicted in the plan marked 'X' formed a part of the corpus and also in respect of devolution of shares.

As depicted in preliminary plan marked 'X' the land sought to be partitioned consists of lots A–G. At the commencement of the trial the parties agreed to exclude the lot marked 'G' from the corpus. But the 20-24 Defendants and along with them some other defendants filed a common statement of claim seeking an exclusion of lot 'D' from the land sought to be partitioned.

It is the contention of the Counsel for the Appellants that the said lot marked 'D' is Henawatta alias Kandagahalandawatta, which was possessed by one Bastian alias Raphael. To buttress the above position the Learned Counsel for the Appellants had stressed the following;

That there is a line of five trees to separate the said lot 'D' from the corpus. But it is contended by the counsel for the Plaintiff- Respondent, that those trees are there for the convenience of the possession.

That the document marked '3V1', viz, Deed bearing No. 7031 dated 06.06.1911, which is a fiscal conveyance, the Eastern boundary of the Kandagahawatta containing in extent A1-R1-P38, is the land called Kandagahawatta possessed by Raphial Gurunnanse, and it is further said that the Eastern boundary of the said land depicted in afore said plan marked 3V1 is consonant with Western boundary of the lot 'D' which is the disputed land.

In addition, the Learned Counsel also had adverted court to the fact that as per plan marked 'X' the Northern boundary of lot 'D' is Walakadayawatta Paddy field, which is compatible with the Northern boundary described in the Deed bearing 30990 dated 12.04.1940 which is marked as 9V4. On perusal of the said deed it is apparent that the land is known as Henawatta alias Kandagahawatta and not Kandagahalandawatta and moreover the Northern boundary indicates as Walakadayawatta is a land containing in extent one acre. But it is apparent that the extent of lot marked 'D' in the plan marked as X is only R1-and P37.7. Therefore the said the position taken by the learned counsel, of the fact

that the lot 'D' is not a part of the corpus is untenable.

Further per contra, the counsel for the Plaintiff-Respondent has urged in confutation that the Appellants had not established their position by cogent evidence, viz- a-viz that no imposition of the another plan to establish that lot 'D' is a different land. The only basis of which that the counsel for the Appellants had planked his position is the Northern boundary of lot 'D' is Walakadayawatta Paddy field which is the Northern boundary depicted in the deed marked as 3V1 and bears slightly different name from the land claimed by the Appellants. Therefore the said fact is not a sufficient ground to prove that the disputed lot 'D' is not a part of the land sought to be partitioned.

Further it is noted that the Learned District Judge had made a reference to the fact that the land claimed by Rapihal is to the East of the corpus. Therefore it was held that land possessed by Raphial is to the east of this land and lot D is a part of the land sought to be partitioned.

In the above exposition of the facts clearly confirm that the disputed lot 'D' is a part of the corpus, (refer to deeds marked 9v4- 9v7)

It is viewed from the impugned judgment that the Learned District Judge has directed that the list of

shares should be prepared by the Plaintiff according to the judgment. Therefore this court is not in a position to decide the allocation of the shares to the parties to this action.

In deciding the devolution of title the Learned District Judge has answered the issue no. 20 in the negative, in that it was rejected that the original owner of this land was Bastian Gurunanse alias Raphial.

It is noted with care that the Learned District Judge has given due consideration in arriving at the devolution of title. Therefore this court need not interfere with the findings of the trial judge.

Therefore in the above setting I concur with the findings of the Court below.

Accordingly I dismiss the appeal.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL