

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

Maligaspe Koralage Leelani Priyanthi

“Amarasiri” Klahe

Wanchawala

Petitioner.

C.A.No.1391 /99(F)

D.C. Galle No.9556/p

Maligaspe Koralage Bartin Nanayakkara.

Pinnaketiyawatta, Panagamuwa’

Wanchawala.

4th Defendant-Appellant (Deceased)

1. Trincy Benita Liyanage,

“Amarasiri”, Kalahe,

Wanchawala.

2. Maligaspe Koralage Anil Manoj,

Pinnakatiyawatta, Panagamuwa,

Wanchawala

Presently at

City Plaza (1BNk) Pretty Fit,

P.O.Box 4979, Alkholder 31952 K.S.A.

Respondents

Before : **M.M.A.Gaffoor, J. and**
S.Devika de L Tennekoon, J.

Counsel : Mahinda Nanayakkara with Anura Jayathilaka
for the 4th 5th and 7th Defendant-Appellant
D.H.Siriwardena for the 1st Defendant-Respondent.
C.J.Fernando for the 6A and 6B Defendant-
Respondents.

Argued on : 26.01.2017

Written submissions filed on : Defendant-Appellants filed on 03.07.2017

1st Defendant-Respondent filed on 05.04.2017

Decided on : 24/07/2017

M.M.A.Gaffoor, J.

The Defendant-Appellants (4th and 7th Defendants) had preferred the instant appeal and impugned the judgment delivered by the Learned District Judge dated 28.09.1999 in the District Court of Galle.

By the aforesaid judgment the shares of the co-owned land has been allocated only to the Plaintiff who became entitled to 10/32 share and the 1st Defendant became entitled to 6/32 share, while 1/32 share was left unallotted.

In the said context the aforesaid Defendant-Appellant had moved for an exclusion of Lots D and E morefully depicted in the preliminary plan marked as X bearing No. 620 made by G.H.G.A.A. de Silva Licensed Surveyor .

The plaintiff instituted a Partition action to partition the co-owned land morefully depicted in the aforesaid plan containing in extent two and half acres known as Pinnaketiyawatta and Godaahalawatta contiguous lands to be divided between the Plaintiff and the 1st Defendant.

To buttress the above position the Plaintiff tendered number of deeds which are marked as P1 to P5. It is noted that as per plan No.620 Lots and are marked as

A,B,C,D,E and out of the said Lots the Defendant-Appellants are claiming lot D and E as those lots are portions of a larger land known as Welikandawatte lot 1 and lot 2 accordingly.

The only contentious issue in this appeal to be resolved is whether the Defendant-Appellants had proved that the Lots D and E are portions of a different land as they claimed to be. Therefore in the appellate review it is incumbent on this court to consider whether the Defendant-Appellants had proved the fact that the land claimed to be is in existence or not. It is pertinent to note that the land sought to be partitioned and the devolution of title is different from the land claimed to be excluded by the Defendant-Appellants.

It is pertinent to note that although the Defendant-Appellants had stated a different pedigree and the devolution of title the predecessor in title to fully differ from the Plaintiff's chain of title.

It has been observed by the Learned District Judge that the Lot D which is a larger portion of the land to be partitioned, an which has been claimed by the 4th

Defendant-Appellant, has failed to give evidence at the trial to prove his case, but some deeds had been tendered by the 5th Defendant-Appellant who claims a very minute portion from the land sought to be partitioned.

Further it is salient to be mentioned that the Defendant-Appellants had failed to tender any document to prove that the land they are claiming is registered at the land Registry, and exists as a separate land. Besides the Defendant-Appellants had failed to effect a superimposition of a plan which depicts the land they are claiming and the lot D is a portion of the said land. In the absence of the said proof will not establish of the stance of the Defendant-Appellants.

On the contrary it is apparent and the learned District Judge had taken cognizance of the fact that the plaintiff has proved the existence of the land sought to be partitioned, its extent and its meets and bounds by tendering the relevant folios in respect of the land in suit.

It was the position of the Plaintiff that the corpus sought to be partitioned consists of two contiguous lands namely Godaehalawatta and Pinnaketiyawatta, had been possessed as a co-owned land.

The position of the plaintiff had been that the plantation had been effected by his father and after his death the plaintiff has been in possession of the plantation.

The learned District Judge in considering the argument set forth by the defendant-appellants regarding the existence of fence consists of masonry stones purported to be a demarcation of the two allotments of lands, had observed that the said position was not put to the plaintiff in the course of the cross-examination.

It is salient to note that although the 5th Defendant has given evidence at the trial in the District Court has categorically stated that he has no knowledge as to the land in issue, but nevertheless he claims the lot E as a portion of a different land. Surprisingly the 4th Defendant-Appellant has entrusted the 5th Defendant to prove his case by tendering some deeds pertaining to a different land in the said context the learned District Judge had rejected the argument of the Defendant-appellants that lot D is a portion of a larger land .

Further it has been also observed by the learned District Judge that there has not been a separate claim by the 5th defendant for the exclusion of lot E as such it was held that the Defendant-Appellants has failed to prove that they are co-owners of the land sought to be partitioned and more so that they had possession to the same.

For the reasons stated above the learned District Judge was of the view that it was only the plaintiff has proved possession and therefore the plaintiff should be entitled to the plantation as claimed by him before the surveyor.

It is also contended by the Defendant-Appellants, that although it is incumbent and the duty is cast upon the Trial Judge to investigate the title of the parties, the learned Trial Judge had failed to do so , and thereby had arrived at a erroneous decision.

It is intensely relevant to note that the Defendant-Appellants are claiming an exclusion of lot D from the corpus as it forms a part of a different land. It is being observed by this Court that the learned District Judge has analyzed the facts placed by the Defendant-Appellants and arrived at the irresistible conclusion that the said Lot D is a part of the corpus and had rejected the Defendant-Appellants position

that said Lot D is a portion of a different land as there was no iota of evidence to prove the same.

Hence for the reasons as stated above this Court is of the view that there is no merits in the argument put forward by the Defendant-Appellant.

In considering the evidence surfaced in the above case the Learned District Judge arrived at the above determination in the correct perspective which needs no variation in the appellate review

Hence the appeal stands dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

S.Devika de L. Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL