

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

28. Sammu Amarasena de Silva

29. Sammu Karunasena de Silva

30. Sammu Gunasena de Silva

CA 1217/96 (F)

31. Sammu Lalitha de Silva

D.C. Galle Case No.P/6920

32. Sammu Sisira de Silva

All of Bopagoda,
Ratgama.

Defendant – Appellants

Hewa Malinee de Silva
No. 324, Bope Road,
Piyadigama,
Gintota.

Substituted Plaintiff – Respondent

01. Padumawathie Tillekeratne
Visaka Vidyalaya Hostel
Bandarawela.

2A/3. Pemawansa Tillekeratne
Ranjanie, Kitulampitiya,
Galle.

04. M.T. Samson Mendis
Karawagoda,
Dodanduwa.

05. M.T. Norman Mendis
Karawagoda,
Dodanduwa.
06. Eliyata Newton Mendis
Karawagoda,
Dodanduwa.
08. Rupe Charlotte Chandra
Keerthi
09. D. S. R. Chandralatha
7A/10. D. R. Chandra Keerthi
All of No. 1/ 320, Galle road,
Panadura.
11. Jothimuni Emalin Nona
7B/12. Uragaha Gnanawathie
13. Uragaha Karunawathie
All of Bopegoda, Ratgama.
14. Raitin Mendis
15. Owinis Mendis
16. Kaludura Eetin Silva
17. Kaludura Seetin Silva
18. Kaludura Dainishamy

19. Abeyratna Mendis
20. Sirisena Mendis
21. Murukkuwadura Charlotte Mendis
22. Murukkuwadura Joslin Mendis

All of Hegoda Ratgama

23. Sammu Somadasa
24. Sammu Deepawansa
25. Sammu Punnawathie
26. Sammu Chandrawathie
27. Sammu Nandawathie

All of Bopagoda, Ratgama.

- 33A. R.H.P. de Silva
No. 02, Watarappala Road,
Mount Lavinia.
34. Uragaha Sirisena
Bopadoda,
Ratgama.
35. Uragoda Wilson
Innalawatta,
Ranapanadeniya,
Ratgama.
36. Dedimuni Munidasa

Seenigama,
Hikkaduwa.

37. Dedimuni Pemawathie
Seenigama,
Hikkaduwa.
38. Dewa Themis
Hegoda, Ratgama.
39. L.M. Wickramasinghe
Ovakanda, Ratgama.
40. Sammu Leelawathie
'Indrani', Ratgama,
Dodanduwa.
41. Sammu Alawathie
'Indrani', Ratgama,
Dodanduwa.
42. Kasthuri Dainisappu
Ratgama,
Dodanduwa.

Defendant – Respondents

BEFORE: M.M.A. GAFFOOR J

S. DEVIKA DE LIVERA TENNEKOON J

COUNSEL:

**W. Dayaratne P.C. with N. Kekulawala for
the Substituted Plaintiff – Respondent
M.F. Miskin for the 28th – 32nd Defendant –
Appellants**

WRITTEN SUBMISSIONS**Substituted Plaintiff – Respondent –
26.07.2017****Defendant – Appellants – 04.09.2017****DECIDED ON:****23.02.2018****S. DEVIKA DE LIVERA TENNEKOON J**

The original Plaintiff instituted the present action in the District Court of Galle by Plaint dated 05.05.1976 against 32 Defendants to partition a land called 'Kowda Kumbura' depicted in Plan bearing No. 1179 dated 30.07.1976 made by F. Guruge, Licensed Surveyor marked as 'X'. This preliminary survey was carried out by the Court Commissioner who depicted the corpus as 7 lots.

After the said preliminary survey more parties were added and due to the death of several Defendants and the action continued against the present 44 Defendants.

Out of the 44 Defendants the 3rd and 44th Defendant filed a joint statement of claim and the 28th – 32nd Defendants also filed a joint statement of claim.

Trial commenced and the parties present admitted the corpus as depicted in the preliminary survey by Plan bearing No. 1179 dated 30.07.1976 made by F. Guruge, Licensed Surveyor. The original Plaintiff raised issue Nos. 1 – 4, the 3rd and 44th Defendants raised issue Nos. 5 – 10 and the 23rd – 32nd Defendants raised issue Nos. 11 – 13.

Thereafter, the original Plaintiff died and his daughter the substituted Plaintiff – Respondent (hereinafter referred to as the Plaintiff) was substituted in his room.

The Plaintiff commenced her case and marked documents P1 – P18. In the course of the evidence in chief of the Plaintiff the 3rd and 44th Defendants who raised issue Nos. 5 - 10 settled their dispute between the parties. The same was not objected to by the 23rd – 32nd Defendants (vide 210 of the appeal brief).

Therefore, the contest was only between the Plaintiff and the 23rd – 32nd Defendants and the issues subject to the present action which needed to be answered were issue Nos. 1 – 4 and 11 - 13.

After the conclusion of the Plaintiff's case the 44th Defendant and the 30th Defendant gave evidence on behalf of the 23rd – 32nd Defendants and after the conclusion of the trial the learned District Judge delivered judgement dated 21.10.1992.

Being aggrieved by the said Judgment the 28th – 32nd Defendant – Respondents (hereinafter referred to as the Appellants) preferred the instant Appeal on the ground *inter alia* that the learned Trial Judge has failed to investigate title as per Section 25 of the Partition Act.

Section 25(1) of the Partition Act reads;

“On the date fixed for the trial of a partition action or on any other date to which the trial may be postponed or adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which the action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.”

The learned Counsel for the Plaintiff submits the case of **Thilagaratnam Vs. Athpunathan and others** 1996 (2) SLR 66 in which it was held *inter alia*;

“(1) Although there is a duty cast on court to investigate title in a Partition action, the court can do so only within the limits of pleadings, admissions, points of contest, evidence both documentary and oral.”

Per Anandacoomaraswamy, J.

"Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them; otherwise parties will tender their pleadings and expect the court to do their work and their Attorneys-at-Law's work for them to get title to those shares in the corpus."

As submitted by the learned Counsel for the main point of contention as crystallised by the learned District Judge is as follows;

“Did Eramanis die leaving as his heirs his wife namely Dewa Egohamy and 5 children namely Appu Singho who died unmarried and issueless, Subarashamy, Jamisappu, Babohamy and Sarohamy as claimed by the 23rd – 32nd Defendants or did Eramanis's rights devolve on his heirs as pleaded in paragraph 18 – 33 of the Plaint according to which he transferred 4/20 share to Urala Bastian and the balance share on his children namely Endi, Umanis and Bastian?

In proof of their claim the 23rd – 32nd Defendants produced documents 23 D1 -- 23 D5. The Counsel for the Appellants contends that the learned District Judge has erred when he rejected the said documents and accepted Deed marked as P18.

Upon a perusal of the judgment it is clear that the learned District Judge has meticulously analysed the Deeds placed before Court and has come to the correct conclusion that Appu Singho, Subarashamy, Jamisappu, Babohamy and Sarohamy were the children of Bastian who was the son of Eramanis. It is also clear that the title claimed by the Plaintiff stems from very old title deeds.

This Court agrees with the learned Counsel for the Plaintiff that 'Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them.'

The Appellants had ample opportunity to substantiate their claim either with oral evidence in support of their claim or by documentary evidence such as birth certificates, marriage certificates or death certificates but it is evident that they have failed to do so.

Furthermore, it seems that the written submissions of the learned Counsel for the Appellants are merely a reproduction of the contents averred in the Petition of Appeal.

In the circumstances as discussed above we see no reason to interfere with the findings of the learned District Judge. Therefore, we dismiss the appeal with costs set at Rs. 10,000/-.

Appeal Dismissed.

Judge of the Court of Appeal

M.M.A. GAFFOOR J

I Agree.

Judge of the Court of Appeal