

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

24A. Rambukkanage Anura Jayalath,  
Serupita, Koholana.

28. Rambukkanage Dayawathie,  
Serupita, Koholana.

24A and 28 Defendants-Petitioners

**CASE NO: CA/96/2003/RA**

**DC NO: DC KALUTARA 4714/P**

V.

Paranagamage Don Asantha

Paranagama,

Liyanagoda, Bolossagama,

Kalutara South.

Substituted Plaintiff-Respondent

And

Several others

Before: Mahinda Samayawardhena, J.

Counsel: Rohan Sahabandu, P.C., with Samantha Vithana for  
the 24A and 28 Defendants-Petitioners.

Sulari Gamage with S. Herath for the 1st, 2nd and 17A  
Defendants-Respondents.

Other parties are absent and unrepresented.

Decided on: 19.06.2018

Samayawardhena, J.

When this matter came up for argument for the first time before me on 06.06.2018, counsel for the parties invited me to deliver the Judgment on the written submissions already filed of record.

This is a partition action. Judgment has been pronounced on 09.07.1997. According to the Judgment, *inter alia*, the rights of Juwanis Fernando devolved according to the pedigree of the 3<sup>rd</sup>, 6<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup> defendants.

In the penultimate paragraph of the Judgment, the District Judge has directed the plaintiff to tender the List of Shares prepared in terms of the Judgment, and has further noted that the said List of Shares shall be treated as a part of the Judgment.

After the pronouncement of the Judgment, the 24<sup>th</sup> and 28<sup>th</sup> defendants have made an application to the District Judge that the finding in the Judgment that rights of Juwanis Fernando shall devolve according to the pedigree of the 3<sup>rd</sup>, 6<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup> defendants is erroneous to the extent that the 3<sup>rd</sup> defendant is not an heir of Juwanis Fernando. The District Judge has accepted that position in the subsequent order dated 21.09.1999. That order is unchallenged.

Thereafter, several parties including the 24<sup>th</sup> and 28<sup>th</sup> defendants have tendered different Lists of Shares purportedly made in accordance with the Judgment, and as there had been no consensus as to allocation of shares, the succeeding District Judge has made the order dated 18.06.2002. It is against this order the 24<sup>th</sup> and 28<sup>th</sup> defendants have filed this revision application whatever they have prayed for in the prayer to the petition.

In the written submissions of the said defendants dated 14.07.2014, they canvass the said order on two grounds.

One is regarding the fresh order made by the succeeding Judge in relation to the devolution of rights of Juwanis Fernando. The succeeding Judge in the said order states that according to paragraph 7 of the statement of claim of the 6<sup>th</sup>, 24<sup>th</sup> and 28<sup>th</sup> defendants dated 11.12.1985, the rights of Juwanis Fernando shall devolve on 6<sup>th</sup>, 24<sup>th</sup>, 28<sup>th</sup> defendants and Podilina, and Podilina is entitled to 38/192 shares and that shall be left unallotted. I cannot understand why the succeeding Judge wanted to decide upon the rights of Juwanis Fernando when there was no dispute over that matter. However it is clear from paragraph 11 of the said statement of claim that upon the death of Podilina her rights have devolved on her widower and children and they in turn have transferred their rights to the 24<sup>th</sup> defendant and the 24<sup>th</sup> defendant has transferred them to the 6<sup>th</sup> defendant. Hence it is clear that the succeeding Judge has erred when she stated that Podilina is entitled to 38/192 shares and that should be kept unallotted. Podilina has left no rights.

The other point raised by the 24<sup>th</sup> and 28<sup>th</sup> defendants in the written submissions is that notwithstanding the District Judge in the Judgment has stated that Thegis Appu was entitled to  $\frac{1}{4}$  share, the succeeding Judge in the impugned order has erroneously stated that Thegis Appu was entitled to  $\frac{1}{2}$  share. This submission is unacceptable. According to the Judgment, one of the four original owners, namely Koranelis Appu, has transferred his  $\frac{1}{4}$  share to Thegis Appu by Deed marked P2 and therefore the finding that Thegis Appu has become entitled to  $\frac{1}{2}$  share of the corpus is correct.

The application of the 24<sup>th</sup> and 28<sup>th</sup> defendants is partly allowed.  
No costs.

Judge of the Court of Appeal