

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

Rajapaksha Kodikarage Samaneris  
Wijeratne Kiriammalakanda-  
Pahalathalduwa.

**Plaintiff.**

C.A. 904/99F

D.C. Avissawella 401/P

Vs.

1. Wahumpurage Suwaris  
Kiriammalakanda -Pahalathalduwa.
2. Suduhakuruge Alpiya  
Yalegama – Napawala.
3. Kalyani Wijeratne  
Kiriammalakanda – Pahalathalduwa.
4. Saiman Wijeratne  
Kiriammalakanda – Pahalathalduwa.
5. Lilat Wijeratne  
Kiriammalakanda – Pahalathalduwa.
6. Suduhakuruge Siyadoris  
Yalegama – Napawala-Avissaweea.
7. S.H. Jepin  
Yalegama – Napawala-Avissaweea.
8. Jemis  
Yalegama – Napawala-Avissaweea.
9. Haramanis  
Yalegama – Napawala.

**Defendants**

And now between

6. Suduhakuruge Siyadoris  
Yalegama – Napawala-Avissawella.

**Defendant – Appellant**

Vs.

Rajapaksha Kodikarage Samaneris  
Wijeratne Kiriammalakanda-  
Pahalathalduwa.

**Plaintiff - Respondant**

1. Wahumpurage Suwaris  
Kiriammalakanda -Pahalathalduwa.
2. Suduhakuruge Alpiya  
Yalegama – Napawala.
3. Kalyani Wijeratne  
Kiriammalakanda – Pahalathalduwa.
4. Saiman Wijeratne  
Kiriammalakanda – Pahalathalduwa.
5. Lilat Wijeratne  
Kiriammalakanda – Pahalathalduwa.
7. S.H. Jepin  
Yalegama – Napawala-Avissawella.

8. Jemis  
Yalegama – Napawala-Avissawella.
9. Haramanis  
Yalegama – Napawala.

**Defendant – Respondents.**

Before : E.A.G.R. Amarasekera, J

Counsel : Anushka Jayaweera for the 6<sup>th</sup> Defendant appellant.  
D.H. Siriwardana for the Plaintiff Respondent.

Decided on : 07.12.2018.

**E.A.G.R. Amarasekera, J.**

This is an appeal preferred against the Judgment of the learned Additional District Judge of Avissawella dated 29.05.1999 in D.C. Avissawella Partition case No. 401/P. When this matter was taken up for argument on 15.03.2018, the parties agreed to dispose the matter by way of filing written submissions. It appears that only the 6<sup>th</sup> Defendant-Appellant has tendered the written submissions for the consideration of this court.

However, for the following reasons I am not inclined to allow the appeal.

In the aforesaid partition action filed in the said District Court, the parties have not disputed the identity of corpus. In fact, all the parties have admitted the corpus. (vide proceedings dated 30.01.1996.)

The dispute existed only with regard to the devolution of title which had to be decided on the facts placed before the learned Additional District Judge. A decision, based on facts shall not be interfered by an Appellate Court sitting in appeal unless it is shown that the said decision is perverse or not supported by the facts placed as evidence before the original court. Therefore, it is up to the 6<sup>th</sup> Defendant Appellant to satisfy this court that the decision of the learned Additional District Judge is perverse or not supported by the materials placed before the District Court.

The learned District Judge has given ample reasons for his decision. As per the written submissions filed by the 6<sup>th</sup> Defendant Appellant, he had relied on the issues raised by the 2<sup>nd</sup> and 8<sup>th</sup> Defendants at the trial. Furthermore, he has taken up the position that his grandfather Sanchiya had become entitled to the land on performance of services. He further argues that aforesaid Sanchiya's rights devolved on Samichchiya and Samichchiya's rights devolved on his 3 children, namely 6<sup>th</sup> Defendant Appellant Siyadoris, Moisa and Alpia. Since Moisa and Alpia were married in Diga, the 6<sup>th</sup> Defendant Appellant states that he became entitled to the land in dispute.

However, as said before, he has relied on the issues raised by the 2<sup>nd</sup> Defendant which were raised to claim 1/2 of the land by a deed of transfer and the rest by

inheritance in favour of the 2<sup>nd</sup> Defendant. It appears that the 2<sup>nd</sup> Defendant-Respondent has not found fault with the Judgment of the learned Additional District Judge. On the other hand, it is clear that the issues raised by the 2<sup>nd</sup> and 8<sup>th</sup> Defendant- Respondents were not aimed to give any right to the 6<sup>th</sup> Defendant-Appellant. Even if, for the sake of argument, this court decides that the issues raised by the 2<sup>nd</sup> and 8<sup>th</sup> Defendant respondents should have been answered in their favour, the 6<sup>th</sup> Defendant – Appellant could not have gained any right. It must be noted that the 6<sup>th</sup> Defendant -Appellant has not raised a single issue to indicate that he is entitled to the corpus or at least to any share of it in the manner pleaded in his statement of claim filed along with the 7<sup>th</sup> Defendant Respondent.

As per the written submissions filed, the 6<sup>th</sup> Defendant Appellant's contention is that the corpus in the Partition action is subject to the performance of services to Manamperi Mudiyansele Walawwa. If it is the stance of the 6<sup>th</sup> Defendant-Appellant or any party who claims that the corpus is subject to the ownership of persons belonging to the said Walawwa they cannot claim co-ownership or claim prescriptive title to the corpus. On the other hand, the Nindagama land Act, No. 30 of 1968 abolished the performance of services to be done by tenants or holders of such lands. Furthermore, it made them the owners of the said lands. In that backdrop no one can claim that the corpus was subject to performance of services when the plaint was filed in the District Court of Avissawella. However, there appears to be no clear evidence as to the tenants and holders with regard to the corpus as at the date of the enactment of the aforesaid Nindagama Lands Act but there was clear evidence to establish that at one time Wahumpurage Baba was the

holder or tenant of the corpus (vide 281). Anyhow, the facts placed before the learned Additional District Judge indicate that there were sufficient materials to show that successors to Baba's rights according to the pedigree accepted by the learned District Judge had dealt with the corpus as they were the owners of the corpus through out a long period of time in the following manners;

1. By Writing deeds of sale and gifts as co-owners (vide P1, P2, P3, P4, 8V2) without referring to any tenancy rights or duty to do the performance of services.
2. By filing actions and defend actions as the owners or as licensees of Co-owners. (vide P5 and P6)
3. By tendering applications to get the Rubber replanting subsidy as a co-owner (vide P7 and P8)

Furthermore no one has come forward from the aforesaid Walawwa to claim title to the land.

As per the deed marked P1 Sanchiya had transferred  $\frac{1}{2}$  of the  $\frac{1}{3}$  which he inherited from his father. There was no other evidence to show that Sanchiya was given or he bought the other  $\frac{2}{3}$  of the land <sup>of</sup> his father. There was evidence to show that Wahumpurage Baba, father of Sanchiya had two other sons to inherit his rights. After considering all such facts, the learned Additional District Judge has come to the conclusion that Wahumpurage Baba and his successors have possessed this corpus as their own land (vide answer to issue No.9). In other words, the learned Additional District Judge has come to the conclusion that Wahumpurage Baba and his successors have prescribed to the land against owners of the Nindagama for which they at one time performed services. I do think the

conclusions of the learned Additional District Judge are supported by the evidence led at the trial. Therefore, I do not think this Court should interfere with the findings of the learned Additional District Judge. Therefore, the appeal is dismissed with costs.

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E.A.G.R. Amarasekera, J  
Judge of the Court of Appeal.