

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

8A. Manannelage Kirisanda (Deceased)

8AA. Manannelage Premadasa

of Miniwangamuwa, Hettimulla.

8AA DEFENDANT-APPELLANT

C.A. Case No.732/2000 (F)

D.C. Kegalle Case No.22629/P

-Vs-

Manannelage Sirimala (Deceased)

1A. Manannelage Somasiri

of Miniwangamuwa, Hettimulla.

PLAINTIFF-RESPONDENT

1. Manannelage Sundara (Deceased)

1A. Manannelage Dayananda

2. Manannelage Podiya (Deceased)

2A. Manannelage Babi

3. Manannelage Dayananda

4. Manannelage Martin

5. Manannelage Kirisanda

6. Manannelage Kiriappu (Deceased)

6A. Manannelage Sunil

7. Kandedurayalage Millandu

9. Manannelage Sitti (Deceased)

9A. Manannelage Darmadasa

10. Manannelage Hapuwa (Deceased)

10A. Manannelage Podisimo

11. Manannelage Rankira

12. Manannelage Matin

13. Manannelage Siril

14. Manannelage Gunepala

15. Manannelage Siril

16. Manannelage Nimal

17. Manannelage Irin

18. Manannelage Sita

19. Manannelage Abiththa

All of Miniwangamuwa, Hettimulla.

DEFENDANT-RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Chandrika Morawaka for the 8A Defendant-Appellant
Praba Perera for the 9A Defendant-Respondent
Sandamal Rajapakse for the 1A and 3rd Defendant-Respondent

Decided on : 10.12.2018

A.H.M.D. Nawaz, J.

The Plaintiff-Respondent instituted this action to partition a land called "Bogahamulalanda" which was in an extent of 8 *lahas* paddy sowing. The Plaintiff pleaded that the land originally belonged to one Kiri Baiya and he transferred the land to Hatana, Kiraa and Rankiri. Kiraa died and his share devolved on Hatana and Rankiri. Both Hatana and Rankiri became entitled to an undivided half share each of the entire corpus.

Hatana's half share went to Menika in 1921 and Menika transferred her half share to Sirimala (Plaintiff), Sundara (1st Defendant) and Podiya (2nd Defendant) by a deed bearing No.10692 and dated 10.07.1955. Though Sirimala derived 1/6th share of the entire land, this share finally devolved on him, though there were other transactions on this share. Sundara (1st Defendant) and Podiya (2nd Defendant) had 1/6th each of the entire corpus. This is how one half share of the entire land devolved on Sirimala, Sundara and Podiya. This is the version contained in the plaint.

Rankiri had the remaining half share of the land and he transferred it to Dayananda (3rd Defendant) by a deed bearing No.2470 and dated 24.07.1969. Reflecting the above devolution, the Plaintiff sought a partition of the land as follows:-

- The Plaintiff 1/6 undivided
- 1st Defendant 1/6 undivided
- 2nd Defendant 1/6 undivided
- 3rd Defendant 1/2 undivided

The preliminary survey was effected by a licensed surveyor C. Kurukulasooriya and preliminary plan bearing No.867 and dated 24.07.1980 and report attest to the fact the land sought to be partitioned is the same as is morefully described in the plaint.

The 6th and 7th Defendants filing their statements of claim claimed 1/4th the undivided share of the land on inheritance from one Ukkumalie. They also described the land as "*Bogahamula Hena*". They had no possession of the corpus and the learned District Judge of *Kegalle* rightly concluded that the land that these parties claimed was another land and there were no rights that accrued to the 6th, 7th and 10th to 18th Defendants in respect of this corpus.

The 8th and 9th Defendants intervened in the case and filing a joint statement claim asserted that Kiri Baiya had two other brothers Punchikira and Ukkuwa and each of them was entitled to 1/3rd share of the land, including Kiri Baiya.

The total share of Punchikira and Ukkuwa $\frac{2}{3}^{\text{rd}}$ was inherited by their children named Dingiriya and Ungiya *alias* Bandiya. When Ungiya passed away issueless, his share too devolved on the children-Aviththa (8th Defendant), Sitti (9th Defendant) and Kalu.

So the main contest in the matter was between the Plaintiff and the 8th and 9th Defendants. The Plaintiff traced his title to Kiri Baiya and according to his pedigree, 1st Defendant, 2nd Defendant and 3rd Defendant inherited their respective shares from Kiri Baiya. But 8th and 9th Defendants' contention was that Kiri Baiya had two brothers Punchikira and Ukkuwa and then Kiri Baiya would have only $\frac{1}{3}$ and not the entirety of the land. In other words the argument of the 8th and 9th Defendants was that they became co-owners of this land through their predecessors Punchikira and Ukkuwa. If this is established, Plaintiff's predecessor Kiri Baiya could have transferred only $\frac{1}{3}^{\text{rd}}$ to the 8th and 9th Defendants. This assertion was not proved at all as by way of P1-the deed bearing No.6863 dated 12.06.1913, Kiri Baiya dealt with the whole of the subject-matter and transferred it to the predecessors in title of the Plaintiff, 1st Defendant, 2nd Defendant and 3rd Defendant. When P1 was marked, there was no objection from the 8th and 9th Defendants and this deed was not challenged at all.

There is no credible evidence that emerges at the trial that shows that the predecessors in title of the 8th and 9th Defendants Punchikira and Ukkuwa also had undivided interests in the land. If Punchikira and Ukkuwa (predecessors in title of the 8th and 9th Defendants) and Kiribaiya (the predecessor in title of the Plaintiff, 1st, 2nd and 3rd Defendants) co-owned this property because of an original owner, and that they were brothers, this evidence could have been given by way of Section 32-*see* Sinnetamby, J. in *Coorey v. Wijesooriya* 62 N.L.R 158. There was no such evidence in the case. The evidence that Kiri Baiya had the entirety of the corpus and passed it to the Plaintiff, 1st Defendant, 2nd Defendant and 3rd Defendant becomes more probable in view of the fact that the relationship among the brothers (predecessors in title of the 8th and 9th Defendants) was not satisfactorily established at the trial as such and I cannot fault the learned District Judge for taking the view that the pedigree of the 8th and 9th Defendants was not proved at the trial.

P1 makes it clear that the original owner of the corpus was Kiri Baiya and he had inherited the land from his father Undiya. No doubt P1 deals with other lands that are co-owned but as for the corpus the deed is quite emphatic-it speaks of sole ownership to the corpus. It is this sole ownership that Kiri Baiya passed to the predecessors in title of the Plaintiff, 1st, 2nd and 3rd Defendants.

Upon a perusal of the deed P1, it is clear that the parties had divided their properties and Kiri Baiya had transferred what he had got to the predecessors in title of the Plaintiff, 1st, 2nd and 3rd Defendants. Even the 8th and 9th Defendants admitted that the possession of the Plaintiff, 1st, 2nd and 3rd Defendants was more than 60 years. There was indeed evidence of sharing the money out of the proceeds of sale of cut timber trees on the land among the parties but it was in any event an isolated payment, and if at all, it took place in 1970. It could not have affected a 60 year old prescriptive possession.

Upon a conspectus of the evidence led in the case, I take the view that the judgment dated 22.08.2000 is flawless and cannot be impugned. So I affirm the judgment and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL