

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

**C. A. 401/95 (F)**

D. C. Kaluthara, No. 5546/P

W. K. D Wijesinghe,  
Pinhena,  
Beruwala

**PLAINTIFF**

**VS**

K. K. D. Champa Samanmali  
Gunathilake,  
Pinhena,  
Beruwala

And 3 others

**DEFENDANTS**

**AND NOW BETWEEN**

W. K. D. Wijesinghe  
Pinhena,  
Beruwala

**PLAINTIFF-APPELLANT**

**VS**

K. K. D. Champa Samanmali  
Gunathilake,  
Pinhena,  
Beruwala

And 3 others

**DEFENDANT-RESPONDENTS**

**BEFORE** : **M. M. A. GAFFOOR, J.**

**COUNSEL** : C. J. Ladduwahetti for the Plaintiff-Appellant  
 Rohan Sahabandu PC for the 2<sup>nd</sup> Defendant-Respondent

**WRITTEN SUBMISSIONS TENDERED ON** : 30.08.2018 – by the 2<sup>nd</sup> Defendant-Respondent  
 07.09.2018 – by the Plaintiff-Appellant

**DECIDED ON** : **10.01.2019**

\*\*\*\*\*

**M. M. A. GAFFOOR, J.**

This is an appeal from the judgment of the learned District Judge of Kaluthara in respect of a Partition action bearing Case No. 5546/P.

The Plaintiff-Appellant (hereinafter referred to as the ‘Appellant’) by his amended Plaint dated 20.02.1992 instituted this action seeking to partition the land situated in Kaluthara District among the parties and also for a divided of title as 11<sup>th</sup> para of the amended Plaint of an undivided portion of the specific land described in the schedule to the amended Plaint.

The 2<sup>nd</sup> Defendant-Respondent asking a right of way to the 12 feet Road starting from Gamsaba Road to Mahaliyangoda Rubber Estate according to the Appellant’s Deed No. 13582 (*marked as “P11”*).

However, the Appellant’s main submission was that according to the Deed No. 13582, the Respondents are only entitled a strip of land 12 feet wide through **any area of the corpus and they cannot demand the said 12 feet road specifically along the Northern Boundary of the Corpus.**

It is the contention of the Appellant that he was willing to give Respondents the 12 feet strip land from any area of the corpus other than along the Northern Boundary

which the Respondents are entitled to by virtue of the above mentioned deeds. The Appellant further stated that the Respondents are demanding this strip of land only along the Northern Boundary of the corpus to maliciously deprive the Appellant of a contiguous lot with the land on the other side of the corpus which is owned by the Appellant.

This main averment was dealt with the issue No. 02 during the trial as follows:

*“Are the owners of the land called Mahaliyangodawatta situated to the West of the corpus entitled to a strip of land 12 feet wide along the **Northern boundary** of the corpus according to the amended answer of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants? - (Answer - No)”*

According to 2<sup>nd</sup> Defendant-Respondent’s submissions, Mahaliyangodawatta referred above Lot 1 of Udayargewatta which is the corpus, both owned by one Siththi Jesm and Jeminoor at one time. When Siththi Jesm Jeminoor conveyed rights to the corpus to the Appellant by Deed No. 13582 – P11 they have specifically excluded the 12 feet strip of land which provided access from VC Road on the West to the Mahaliyangodawatta to the North East. He further submitted that the ownership of Mahaliyangodawatta had already been with 2<sup>nd</sup> Defendant on deed 3V3, long before the Appellant perches interest in the corpus on deed P11 and also the evidence of the Appellant shows that where the 12 feet strip of land used as an access to the Mahaliyangodawatta.

It also seen from the alleged judgment of the learned District Judge, according to Deed P11 the 12 feet wide road is not given specifically along the Northern Boundary of the Corpus.

According to deeds P11 and 3V3, the 2<sup>nd</sup> Defendant-Appellant is only entitled a strip of land 12 feet wide through any area of the corpus to Gamsaba Road.

It is to be noted that the 2<sup>nd</sup> Defendant-Respondent asking a right of way only on the basis of the above deeds as P11 and 3V3. Clearly those two deeds do not give

the right to demand the strip of land only along the Northern Boundary of the Corpus. Therefore, it is my view that there is no bare for the 2<sup>nd</sup> Defendant-Respondent to entitled the 12 feet strip land over the corpus in order to get to his adjoining land according to his 3V3 deed (*vide P11 at page 302*).

In *Kandaiah vs Seenitamby* [17 NLR 29] it was held that,

*“The evidence to establish a prescriptive servitude of way must be precise and definite. It must relate to a defined track, and must not consist of proof of mere straying across an open land at any point which is at the moment most convenient.”*

Therefore, I am of the view that the 2<sup>nd</sup> Respondent has established his way of right and learned District Judge has correctly held with Respondent according to the said deeds and the evidence placed on before him.

In the circumstances, I see no reason to interfere with the judgment.

Therefore, I dismiss the appeal with costs fixed as 15,000/-.

*Appeal dismissed*

**JUDGE OF THE COURT OF APPEAL**