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

Ariyawathie De Silva,
Ihalamulla,
Ankumbura.
1st Defendant-Appellant

CASE NO: CA/608/2000/F
DC KANDY CASE NO: 8593/P

Vs.

Edirisinghe Devage Wijesena,
Ihalamulla,
Ankumbura.
Substituted Plaintiff- Respondent
Nanda Edirisinghe,
Ihalamulla,
Ankumbura.
2nd Defendant-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: H. Withanachchi with Shantha Karunadhara for the 1st Defendant-Appellant.
Mahanama De Silva with K.N.M. Dilrukshi for the Plaintiff-Respondent and the 2nd Defendant-Respondent.

Decided on: 01.04.2019

Samayawardhena, J.

This is an appeal filed by the 1st defendant against the Judgment of the District Court entered in a partition action. He raised a corpus dispute and a pedigree dispute at the trial. After trial, the learned District Judge held against him on both matters.

The plaintiff filed the action to partition the land known as Tennedeniyahena alias Pangollehena bounded on the North by the limit of Nagolla now owned by E.D. Baladewa, South by the fence of Weliketiyahena belonging to Sawwa, East by the limit of Tennedeniyecumbura belonging to Pansala and Lapaya and West by limit of Weliketiyehena belonging to Podda and Gansabawa Road in extent of one Amunam or five Pelas of paddy sowing area between the plaintiff and the 1st defendant.

Preliminary Plan No. 220 prepared by Welivita, L.S. depicts a land in extent 1 Acre and 27 Perches.[1]

According to the 1st defendant one Amunam or five Pelas of paddy sowing area equals to 2 ½ Acres. On that basis the 1st defendant got Plan No. 1635 of Kiridena, L.S. prepared depicting a land in extent of 2 Acres 3 Roods and 24 Perches.[2] This has been done by adding a portion (shown as Lot 2) to Plan No.220, from the southern boundary.[3] According to the Report of Plan 1635, Lot 2 is completely covered with cinnamon plantation.[4] That part is possessed by the 2nd defendant, and it is on that

[1] Page 375 of the brief.
[2] Page 384 of the brief.
[3] Cf. with Plan No.220.
[4] Page 387 of the brief.

footing, the 2nd defendant intervened in the action after the preparation of Plan No.1635.

Both the surveyors, Welivita and Kiridena, have died pending action and therefore Plan Nos. 1687[5] and 6158[6] have later been prepared respectively on the lines of the previous Plans.

After trial, the learned District Judge accepted the Preliminary Plan No. 220 as the Plan correctly depicting the corpus. In the facts and circumstances of this case, that finding is correct.

The land to be partitioned is a land in extent of one Amunam or five Pelas of paddy sowing area. The 1st defendant was not satisfied with the Preliminary Plan because 2 ½ Acre land was not shown in that Plan. That shall not be a ground to reject the Preliminary Plan, if the other circumstances do not support such a view.

There is no hard and fast rule that one Amunam or five Pelas of paddy sowing area shall necessarily equal to 2 ½ Acres.

In *Ratnayake v. Kumarihamy [2005] 1 Sri LR 303* the plaintiff wanted to partition a land of 4 Lahas of Kurakkan sowing area. The Preliminary Plan showed a land in extent of 8 Acres 1 Rood and 16 Perches. The contesting defendants sought dismissal of the action *inter alia* on the basis that 1 Laha sowing extent equals to 1 Acre, and the Preliminary Plan shows a land far in excess of the land described in the schedule to the plaint, and therefore the land has not been properly identified. This argument was rejected both by this Court and the Supreme Court. The Supreme Court at 308-309 observed that "*land*

[5] Page 389 of the brief.
[6] Page 454 of the brief.

measures computed on the basis of land required to be sown with Kurakkan vary from district to district depending on the fertility of soil and quality of grain and in the said circumstances difficult to correlate the sowing extent with accuracy. Thus there cannot be a definite basis for the contention that 1 Laha sowing extent be it Kurakkan or even paddy would be equivalent to 1 acre."

As the learned District Judge has stated in the Judgment the land has to be identified more by the boundaries than by the extent. The southern boundary of the land to be partitioned is Weliketiyahena. This is shown in the Preliminary Plan. According to the 1st defendant's Plan No.1635, the southern boundary is Gamsaba Road. The 1st defendant himself has admitted in evidence that the southern boundary of the land to be partitioned is Welliketiyehena possessed by the 2nd defendant.[7]

Hence the pivotal argument of the learned counsel for the 1st defendant fails.

The learned counsel for the 1st defendant in appeal raised the point that Tennedeniyahena and Pangollehena are two different lands, and latter land has been introduced to claim more rights. Such a clear position has not been taken up by the 1st defendant by way of an issue at the trial. In some of the plaintiff's deeds, the land has been described as Tennedeniyahena alias Pangollehena. This argument is clearly not a genuine one because the 1st defendant's effort from the beginning was to expand the corpus and not to shrink it. I reject that argument.

[7] Pages 324-325 of the brief.

The pedigree dispute of the 1st defendant is also baseless. According to the pedigree of the plaintiff, the original owner Sethuwa had four children including Wasthuwa. This was admitted by the 1st defendant in the 1st and 2nd statements of claim[8] and also in evidence.[9] The 1st defendant now says that Wasthuwa is not a child of Sethuwa because Wasthuwa's surname is different from that of Sethuwa in the deeds. That is not a ground to rule out an already admitted fact.

The appeal is manifestly devoid of merit. I dismiss the appeal with costs fixed at Rs.50,000/= payable by the 1st defendant to the 2nd defendant.

Judge of the Court of Appeal

[8] Page 91 and 93 of the brief.
[9] Page 310 and 322 of the brief.