

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

- 5A H. M. A. Padma Dissanayake
Dematawa, Moragane.
- 7A Hitihamie Mudiyanseelage Jayantha Kumara
Wijayaratne
Hiththarapola, Magulagama.

5A & 7A Defendants-Appellants

Vs.

Jayasinghe Mudiyanseelage Pinhami
Ehala Dematawa,
Moragane.

Substituted-Plaintiff-Respondent

**Case No. CA 633/2000(F)
D. C. Kuliypitiya Case No. 8168/P**

1. Jayasinghe Mudiyanseelage Sundara Bandara
Maya Kadawara, Magulagama.
2. Jayasinghe Mudiyanseelage Guna Banda
No. 116, Mahawaskaduwa,
Waskaduwa.
3. Jayasinghe Mudiyanseelage Lilawathi
4. Jayasinghe Mudiyanseelage Jayasena
Both of Ihala Dematawa,
Moragane.
- 6A. Nawarathne Mudiyanseelage Ukku Banda
Dematawa, Moragane.
- 8A. H. M. Podiratne
No. 71, Subharathie Mawatha, Kuliypitiya.
9. Jayasinghe Mudiyanseelage Dharmasena
10. Jayasinghe Mudiyanseelage Karunawathie
- 11A. J. M. Pemawathie
All of Dematawa, Moragane.
12. Jayasinghe Mudiyanseelage Seelawathie
Yayagedara, Bandarakoswatte.
13. Jayasinghe Mudiyanseelage Weerathilake
Angamuwa, Moragane.

14. Jayasinghe Mudiyansele Sirisena
Mullegama, Nawattegama, Anamaduwa.
15. Jayasinghe Mudiyansele Wijeratne
Weeragoda, Moragane.
16. Jayasinghe Mudiyansele Leelawathie
Kandaboda, Magulagama.
17. Jayasinghe Mudiyansele Gnanawathie
18. Jayasinghe Mudiyansele Kusumawathie
Both of Elathalawa, Deegalla.
19. Jayasinghe Mudiyansele Nandawathie
Nelibewa, Moragane.
20. Jayasinghe Mudiyansele Wimalaweera
21. Jayasinghe Mudiyansele Sarath Kumara
Both of Ihala Dematawa, Moragane.
22. W. H. M. Ariyaratne
Thalakolawewa, Anamaduwa.
23. W. H. M. Nandawathie
Muriyakulama, Kottukachchiya.
24. B. M. Kumari Wijayawatne
In front of the Police, Anamaduwa.
25. Mathanganie Wijyaratne
C/O Thilak Jayasinghe,
'Jayasinghe Niwasa', Yatagama,
Walgama, Rambukkana.
26. Ranjanie Wijyaratne
'Jayantha Motors', Puttalam Road,
Anamaduwa.
27. B. M. Seetha Wijyaratne
28. Indrani Wijyaratne
29. B. M. Shiwanthi Wijyaratne
30. B. M. Shantha Wijyaratne
All of in front of the Police, Anamaduwa.
31. J. H. Piyasena
Kamburapola, Moonamaldeniya.
32. J. M. Punchimenika
Dematawa, Moragane.
33. J. M. Anagihamy
Nelibewa, Moragane.

34. J. M. Jayasena
Dematawa, Moragane.
35. J. M. Ranmenika
Gomugomuwa.
36. Niroscha Jayasinghe
C/O R. B. Ranbanda Basnayake,
Kadawalagedara, Moonamaldeniya.
37. L. Indika Bandula Jayasinghe
C/O Lindamulage,
Kadawalagedara, Moonamaldeniya.
38. P. Dingiramma
C/O H. M. Dhanapala,
Pahala Kadigamuwa, Ihala Kadigamuwa.
39. P. Seelawathie
40. P. Karunaratne
41. P. Dayaratne
42. P. Thilakaratne
43. P. Nandawathie
All of C/O J. M. Kirimenika, Mahadanwila,
Boraluwewa.
44. J. M. Dingiramma
45. J. M. Jayasinghe
46. J. M. Somathilake
47. J. M. Gnanawathie
48. J. M. Chadralatha
All of Yayagedara, Bandarakoswatte.
49. A. M. Podimenika
Ihala Dematawa, Moragane.
50. A. M. Wijesena
Dematawa, Moragane.
51. A. M. Ukkumenika
Mandapola, Hettipola.
52. A. M. Bandaramenika
Dandagamuwa, Kuliypitiya.
53. A. M. Dayananda
Angamuwa, Moragane.
54. A. M. Kiribanda
Medirigiriya, Medirigiriya.

55. A. M. Dingirimenika
Dematawa, Moragane.
1-4th, 6A, 8A, 9, 10, 11A,12 -55th Defendant-
Respondents

Before: Janak De Silva J.

Counsel:

5A and 7A Defendants-Appellants absent and unrepresented

M.C. Jayaratne with M.D.J. Bandara for Substituted-Plaintiff-Respondent

Written Submissions tendered on:

Substituted-Plaintiff-Respondent on 26.10.2018

Argued on: 18.02.2019

Decided on: 31.05.2019

Janak De Silva J.

This is an appeal against the judgment of the learned District judge of Kuliypitiya dated 19.09.2000.

The Plaintiff instituted the above styled action to partition the land morefully described in the schedule to the plaint One Acre extent. The 5th and 7th Defendants sought a dismissal of the action or in the alternative to partition only Lots 2 and 3 morefully described in the preliminary plan no. 113/kuli/87 [Appeal Brief page 268] and Lot 1 therein to be excluded. The other parties did not dispute either the pedigree pleaded by the Plaintiff or the identity of the corpus.

It is trite law in partition actions that the trial judge is under a "supervening duty to satisfy itself as to the identity of the corpus" [*Wickremaratne v. Alpenis Perera* [1986] 1 Sri. L.R. 190 at 199] as "clarity in regard to the identity of the corpus is fundamental to the investigation of title in a partition case." [*Sopinona v. Pitipanaarachchi and two others* (2010) 1 Sri.L.R. 87 at 106]

Since the Plaintiff and the 5th and 7th Defendants were disputing the identity of the corpus it was incumbent on the learned Judge to clearly identify the corpus sought to be partitioned. The identity of the corpus assumes greater importance on the facts as the preliminary survey report of the surveyor indicates that he was not in a position to state clearly to court whether the land surveyed is the land sought to be partitioned [Appeal Brief page 270]

However, this is a result of two divergent positions taken by the Plaintiff and the 5th and 7th Defendants during the preliminary survey where the Plaintiff pointed out Lots 1 and 2 of preliminary plan no. 113/kuli/87 [Appeal Brief page 268] as the corpus in the partition action whereas the 5th and 7th Defendants pointed out Lots 2 and 3 therein as the corpus in the partition action.

However, during the trial, the 5A and 7A Defendants agreed to exclude Lot 3 of preliminary plan no. 113/kuli/87 [Appeal Brief page 268] from the corpus sought to be partitioned [Appeal brief page 177]. Hence the remaining issue was whether Lot 1 of preliminary plan no. 113/kuli/87 [Appeal Brief page 268] should be partitioned along with Lot 2 therein.

The preliminary plan no. 113/kuli/87 [Appeal Brief page 268] identifies the corpus as Paranawatta. The position taken up in the statement of claim by the 5th and 7th Defendants is that Lot 1 of preliminary plan no. 113/kuli/87 [Appeal Brief page 268] is called Ambagahamulawatta and is not part of Paranawatta.

The 5A and 7A Defendants rely on deeds no. 3494 (501) and 43905 (502) [Appeal Brief pages 258-263] to prove their title. However, the lands referred to therein are Ambagahamulawatta and Halambagahakumbura and they have failed to take out a commission to prove that these two lands are part of the corpus in the partition action.

The learned District Judge has carefully considered the evidence led and correctly concluded that Lot 1 of preliminary plan no. 113/kuli/87 [Appeal Brief page 268] is part of Paranawatta. In particular the learned Judge has accepted the evidence of the 1st Defendant that although there were three lines of barbed wire on the western boundary of Lot 1 of preliminary plan No. 113/kuli/87 [Appeal Brief page 268] previously they were not there when the preliminary survey was done. The learned judge has concluded that Lot 1 of the preliminary plan no. 113/kuli/87 [Appeal Brief page 268] is part of Paranawatta.

I have given careful consideration to the evidence led in this matter and the conclusions thereon of the learned District Judge. I see no reason to interfere with the judgment of the learned District judge of Kuliyaipitiya dated 19.09.2000.

Appeal is dismissed with costs.

Judge of the Court of Appeal