

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

Malthunga Arachchige Justin Ewiasman  
Malthunga

of Central Area, Kaikawala,  
Madurawala, Matale.

PLAINTIFF

C.A. Case No.1168/1999 (F)

D.C. Matale Case No.2045/P

-Vs-

1. Malthunga Arachchige Victor Emanuwel  
Malthunga

of Madurawala, Kalugasthanna.

2. H.M. Kumarihamy

of Community Farm, Pubudupura,  
Dahayiyagama,

Anuradhapura.

3. Malthunga Arachchige Anura Upathissa  
Malthunga

4. Mahasen Jayawira Malthunga

5. Hary Mosas Malthunga

6. Thamara Kumari Malthunga

7. Oliver Samsan Malthunga

8. Patrishiya Malthunga

All of Madurawala, Kalugasthanna.

DEFENDANTS

NOW BETWEEN

Malthunga Arachchige Justin Ewiasman  
Malthunga (Deceased)

PLAINTIFF-APPELLANT

1. Udagedara Bisomanike  
of Central Area, Kaikawala,  
Madurawala, Matale.

Substituted-PLAINTIFF-APPELLANT

-Vs-

1. Malthunga Arachchige Victor Emanuwel  
Malthunga
- 1A. Malthunga Arachchige Punyadasa Nandana  
Malthunga  
of Kalugastenn, Madurawela,  
Kaikawala.
- 1B. Malthunga Arachchige Chitra Iranganie  
No.418,A,5, Nirmala Uyana,  
Maharanugegoda,  
Kadawatha.
- 1C. Malthunga Arachchige Vimal Shantha Malthunga  
of Kalugastenn, Madurawela,  
Kaikawala.
- 1D. Malthunga Arachchige Vilashini Priyangika  
Malthunga  
of Kalugastenn, Madurawela,  
Kaikawala.

Substituted 1<sup>st</sup> DEFENDANT-RESPONDENTS

2. H.M. Kumarihamy  
of Community Farm, Pubudupura,  
Dahaiyagama,  
Anuradhapura.
3. Malthunga Arachchige Anura Upathissa  
Malthunga
4. Mahasen Jayawira Malthunga
5. Hary Mosas Malthunga
6. Thamara Kumari Malthunga
7. Oliver Samsan Malthunga
8. Patrishiya Malthunga  
All of Madurawala, Kalugasthanna.

DEFENDANT-RESPONDENTS

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

COUNSEL : Pubudu de Silva with D.D.P. Dassanayake for the  
Plaintiff-Appellant  
Aravinda Athurupana with P. Kenneth E. Perera for  
the 1A, 1B, 1C, 1D substituted Defendant-  
Respondents and 8<sup>th</sup> Defendant-Respondent

Decided on : 14.06.2019

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

The Plaintiff-Appellant instituted this action to partition a land known as "Wattegedara" depicted in the schedule to the plaint dated 23.09.1991. The contesting parties to the case-the Plaintiff-Appellant and the 1<sup>st</sup> Defendant-Respondent were two brothers and the Plaintiff's pedigree appended to the plaint begins with Alexander Smith Malthunga-his father owning an undivided four-fifth (4/5<sup>th</sup>) of the corpus concerned and

according to the Plaintiff's pleadings and pedigree, Alexander-the father of the Plaintiff had conveyed an undivided three-fifth ( $3/5^{\text{th}}$ ) of the land to the Plaintiff by a deed bearing No.615 of February 6, 1988 (P1).

Almost two years before, Alexander the father had conveyed an undivided  $1/5^{\text{th}}$  of the corpus to the 1<sup>st</sup> Defendant-the brother of the Plaintiff. This was by a conveyance bearing No.7376 of August 24, 1986. As the evidence, both oral and documentary, disclosed, there was Dingiri Menika, the grandmother of the Plaintiff as well as the 1<sup>st</sup> Defendant, who was the original owner of the land but the Plaintiff-Appellant failed to disclose her as the original owner. Instead he began with his father Alexander having  $4/5^{\text{th}}$  share of the corpus and as to how this  $4/5^{\text{th}}$  share devolved on his father Alexander is not explained by the Plaintiff and his subsequent testimony in court woefully failed to explain this devolution. It was out of this  $4/5^{\text{th}}$  share that the Plaintiff-Appellant claimed he should be given  $3/5^{\text{th}}$  because of the deed of sale P1, which the Plaintiff said his father had effected in his favour.

The statements of claim of the 1<sup>st</sup> Defendant-Respondent and the 8<sup>th</sup> Defendant-Respondent and their respective pedigrees alleged that Dingiri Menika was indeed the original owner who had five children, one among whom was the father of the Plaintiff-Appellant and the 1<sup>st</sup> Defendant-Respondent. If Dingiri Menika had five children, the undivided share that would devolve on Alexander-the father of Plaintiff and the 1<sup>st</sup> Defendant should be  $1/5^{\text{th}}$  of the land, because Alexander was one of the sons of Dingiri Menika-the original owner. But the Plaintiff-Appellant showed in his pedigree that Alexander had  $4/5^{\text{th}}$  share, which is not borne out by any evidence led in the case.

In fact, the Plaintiff was confronted in cross-examination as to how his father could have  $4/5^{\text{th}}$  share, and the feeble response of the Plaintiff was that this was how the notary had executed the deed. The Plaintiff admitted in cross-examination that Dingiri Menika was the original owner and she had five children inclusive of his father Alexander. Having inherited  $1/5^{\text{th}}$  share from his mother Dingiri Menika, Alexander later transferred this  $1/5^{\text{th}}$  share to the 1<sup>st</sup> Defendant by P2 of August 24, 1986.

By the date the purported deed in favour of the Plaintiff was executed namely February 6, 1998, the father Alexander was bereft of any share in the land and he had nothing to give by way of a conveyance. But the deed bearing No.615 of February 6, 1988 (P1), which the Plaintiff produced, gave him 3/5<sup>th</sup> share to him. The deed P1 could not have conveyed any 3/5<sup>th</sup> share belonging to Alexander, because Alexander did not have an undivided 3/5<sup>th</sup> share on February 6, 1988 and it is the unchallenged evidence in this case that Alexander had already disposed of his own 1/5<sup>th</sup> to his other son-the 1<sup>st</sup> Defendant. The deed P1 which was produced by the Plaintiff does not recite as to how Alexander inherited 3/4<sup>th</sup> share to pass on to the Plaintiff. On the contrary, Alexander's deed (P2) of August 24, 1986 in favour of Emmanuel-the 1<sup>st</sup> Defendant clearly recites that the 1/5<sup>th</sup> share of the corpus, which he was transferring to his son-the 1<sup>st</sup> Defendant was his maternal inheritance.

The admission on the part of the Plaintiff in Court that the original owner of the land was his grandmother-Dingiri Menika, whom he suppressed in his pedigree, clearly shows that the case of the Plaintiff was inheritably improbable and inconsistent *per se*. His pedigree came crashing down like ninepins in court and no amount of ingenuity could put it right. Quite rightly the learned District Judge of *Matale* held that the Plaintiff could not prove his pedigree and his claim to 3/5<sup>th</sup> share having devolved through P1 was without any foundation. I would go to the extent of saying that it was a falsehood that the Plaintiff uttered in his plaint and pedigree.

The learned District Judge of *Matale* in an incisive judgment dated 14.05.1999 has evaluated the evidence, both documentary and oral, and arrived at the conclusion that Dingiri Menika was the original owner and that Plaintiff had omitted her from his pedigree and apart from his father-Alexander, he culpably failed to disclose the four siblings of his father. The four children of Dingiri Menika, other than the father Alexander, were only revealed in the statements of claim of the 1<sup>st</sup> Defendant and the 8<sup>th</sup> Defendant. The finding that Alexander had no 3/5<sup>th</sup> share to transmit to the Plaintiff is also unassailable. In fact the case of the Plaintiff was one of *suggestio falsi et suppressio veri* (suppression of truth and suggestion of falsehood).

He suppressed the original owner because the fear of truth namely Dingiri Menika whose existence as the original owner would not have entitled him to claim a larger share which he tried to set up at the trial. One is only reminded of the oft-cited case of *Rex v. Lucas* (1981) 2 All ER 1008 which advances the proposition that a lie, if established, would corroborate the story of the opponents-see several instances of corroboration that a falsehood uttered by one party can afford in the perceptive article entitled "Can lies corroborate?" by Professor J.D. Heydon, University of Sydney (later a Justice of the High Court of Australia)-(1973) 89 L.Q.R. 552. Following the above, Atukorale, J. in *Karunanayake v. Karunasiri Perera* (1986) 2 Sri L.R. 27 (with Sharvananda, C.J and Colin-Thome, J. agreeing) expressed the view that *Lucas* principle applies equally to civil cases as it would to criminal cases.

The Plaintiff's claim in the plaint and pedigree that the devolution began with a fictional 4/5<sup>th</sup> share that his father had were all shown to be a tissue of falsehoods by his own admission in Court that Dingiri Menika was the original owner who could then be competent to transmit only 1/5<sup>th</sup> share to his father because she had 5 children. The father Alexander subsequently transmitted his 1/5<sup>th</sup> to another son-the 1<sup>st</sup> Defendant. So what was uttered in the plaint and pedigree was shown to be a tissue of falsehoods in the trial and this certainly corroborated and advanced the case of the 1<sup>st</sup> Defendant-Respondent.

The learned Counsel for the Plaintiff-Appellant sought to make out a discrepancy in the corpus but in view of the admission made by parties including the Plaintiff-Appellant at p 54 of the appeal brief, the identity of the corpus has been established because in terms of Section 58 of the Evidence Ordinance facts that have been admitted need no further proof.

In any event, some deeds marked at the trial namely IA11, ID9 and ID10 establish the fact that the land was an amalgamated entity and they had been held as one unit.

Even the testimony of the 1<sup>st</sup> and 8<sup>th</sup> Defendants show that the corpus had been formed by several lands and this evidence, along with IV1 and IV6, was not impugned at all.

In any event, the admission made at the trial estops the Plaintiff from renegeing on a question of fact.

I have carefully examined the evidence and the judgment dated 14.05.1999 and I find that the share allotment made by the learned District Judge in his judgment dated 14.05.1999 is explicable having regard to the evidence. In the circumstances, I see no reason to disagree with the conclusion reached by the learned District Judge of *Matale* and I affirm the judgment dated 14.05.1999.

Accordingly the appeal is dismissed with costs in this Court and the Court *a quo*.

JUDGE OF THE COURT OF APPEAL