

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

Francis Senerath,  
Dedduwawala,  
Nakulugamuwa.  
2<sup>nd</sup> Defendant-Appellant

**CASE NO: CA/105/1999/F**  
**DC TANGALLE CASE NO: 1678/P**

Vs.

Jasin Senerath,  
Dedduwawala,  
Nakulugamuwa.  
Plaintiff-Respondent  
Liyanagamage Don Gimarahamy,  
Dedduwawala,  
Nakulugamuwa.  
1<sup>st</sup> Defendant-Respondent  
And Several Other Defendant-  
Respondents

Before: Mahinda Samayawardhena, J.  
Counsel: Anuruddha Dharmaratne for the 2<sup>nd</sup>  
Defendant-Appellant.

Hirosha Munasinghe for the Substituted 4th Plaintiff-Respondent.

22nd and 23rd Respondents are absent and unrepresented. (No submissions-oral or written-were made on their behalf.)

Decided on: 25.06.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court seeking to partition the land described in the schedule to the plaint among the plaintiff and the 1<sup>st</sup>-16<sup>th</sup> defendants. Several parties were later added as defendants. All the defendants, except the 22<sup>nd</sup> and 23<sup>rd</sup>, accepted the pedigree of the plaintiff. After trial the learned District Judge accepted the pedigree of the 22<sup>nd</sup> and 23<sup>rd</sup> defendants and ordered to partition the land accordingly. Being dissatisfied with this Judgment, only the 2<sup>nd</sup> defendant has preferred this appeal.

The learned counsel for the 2<sup>nd</sup> defendant-appellant (appellant) in his written submissions dated 10.10.2018 challenges the said Judgment mainly on three grounds.

Firstly, the learned counsel states that the learned District Judge has failed to identify the corpus. The learned District Judge in his Judgment has identified the land to be partitioned as Lot 1 of the Preliminary Plan marked X at the trial. The contention of the learned counsel is that, in addition to Lot 1, Lot 3 shall also form part of the corpus. Without wasting time, I

must straightaway say that the appellant in his evidence has in no uncertain terms stated that the land to be partitioned is only Lot 1 of the Preliminary Plan<sup>1</sup>, and the rest of the Lots were acquired by the State.<sup>2</sup> The appellant has informed this to the Court Commissioner at the preliminary survey as well.<sup>3</sup> Hence I have no difficulty in rejecting that argument.

Secondly, the learned counsel states that the learned District Judge in the Judgment has answered wrong issues. I do not think so. The learned Judge in the Judgment has stated that five issues were raised at the trial. By reading the Judgment, it appears to me that the learned Judge has referred to issues which were raised on 06.03.1984<sup>4</sup> and 02.10.1985<sup>5</sup>. However when I read the Judgment it is clear that the affirmative answer given to issue No.2 is either a typographical mistake or a momentary lapse on the part of the Judge.

I must stress at this juncture that there is a misconception that judgment shall necessarily be understood by reading issues and answers only. But it is not so. When answering issues in a case at a stretch by a trial Judge, momentary lapses on the part of the Judge might occur. Those are innocuous human errors as Judges are also humans. Those lapses should not vitiate the judgment unless they go to the root of the case. As observed by Justice Edussuriya in the Supreme Court case of *Udugamkorale v. Mary Nona* [2003] 2 Sri LR 7 at page 9: “the answers to issues

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<sup>1</sup> Vide lines 11-13 from the top of page 101 of the Brief and lines 12-14 from the bottom of page 103 of the Brief.

<sup>2</sup> Vide lines 10-12 from the bottom of page 100 of the Brief.

<sup>3</sup> Vide page 136 of the Brief under “Lot 3”.

<sup>4</sup> Vide page 92 of the Brief.

<sup>5</sup> Vide overleaf of page 96 of the Brief.

*in a judgment are almost always monosyllabic and are a follow up on the matters in issues discussed, dealt with and decided in the body of the judgment. Hence the decision of the case must be arrived at by a careful reading of the body of the judgment and not on a superficial reading of the answers to the issues.”*

The learned District Judge in the Judgment has clearly stated his conclusions and at page 4 of the Judgment has given the calculation of undivided rights of the parties as well.

Hence I am not inclined to accept the second argument.

Thirdly, the learned counsel says that the learned District Judge erred in accepting the version of the contesting defendants in preference to that of the plaintiff on the question of the original owner of the land.

The main contest in respect of the pedigree was whether the original owner of the corpus was Davith Appuhamy as pleaded by the plaintiff or Juwan Appuhamy as pleaded by the contesting defendants. The District Judge accepted the latter one as the more probable one. In coming to that conclusion, the learned Judge has given more weight to the first deed of the plaintiff marked P1, which laid the foundation of the plaintiff's pedigree. The plaintiff produced that deed on the basis that Loku Hamine who was the wife of the Davith Appuhamy transferred her ½ share inherited on account of marriage from Davith Appuhamy to Don Seeman.<sup>6</sup> The same was suggested by learned counsel for the appellant during the cross-examination

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<sup>6</sup> Vide overleaf of page 92 of the Brief.

of the 22A defendant.<sup>7</sup> The learned District Judge, having perused the deed P1, has stated in the Judgment that the said assertion is incorrect and the transferor of that deed is not Loku Hamine but Davith Appuhamy himself who has derived title by two deeds mentioned therein and therefore the contention of the plaintiff that Davith Appuhamy is the original owner of the land is unacceptable.

Upon the death of the original 22<sup>nd</sup> defendant, her son-the 22A defendant aged 60 and the 23<sup>rd</sup> defendant aged 82, have given evidence at the trial and explained the extended pedigree. Their position is that Davith Appuhamy was a child of Punchi Hamine who was a child of Juwan Appuhamy-one time the original owner of the land.

In the facts and circumstances of this case, the District Judge cannot be found fault with accepting the version of the contesting defendants as the more probable one.

At the trial, the learned counsel for the appellant has not raised separate issues but stated that the appellant accepts the pedigree of the plaintiff.<sup>8</sup>

Regarding improvements, the only issue raised by the learned counsel for the appellant during the course of evidence of the plaintiff was about the well marked H in Lot 1 of the Preliminary Plan.<sup>9</sup> That issue has been answered in favour of the appellant.

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<sup>7</sup> Vide overleaf of page 109 of the Brief.

<sup>8</sup> Vide page 92 of the Brief.

<sup>9</sup> Vide overleaf of page 96 of the Brief.

I see no reason to interfere with the Judgment of the District Court.

Appeal is dismissed without costs.

Judge of the Court of Appeal