

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

Kasturi Arachchige Podiralahamy,  
"Kasturi Stores",  
Dembatanpitiya,  
Hakahinna.  
1A Defendant-Appellant

**CASE NO: CA/1105/1996/F**

**DC KEGALLE CASE NO: 22863/P**

Vs.

Atukoralage Dingiri Banda,  
Asideniya.  
1A Plaintiff-Respondent  
And 3 Other Plaintiff-Respondents  
And 6 Other Defendant-  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Amrith Rajapakse for the 1st Defendant-  
Appellant.

Mahinda Nanayakkara for the Plaintiff-  
Respondents.

Decided on: 28.06.2019

Mahinda Samayawardhena, J.

The plaintiffs filed this action to partition the land described in the Preliminary Plan marked X among the 4 plaintiffs and the 1<sup>st</sup>-7<sup>th</sup> defendants in the manner described in the amended plaint. Only the 1st, 3rd and 4th defendants filed a joint statement of claim. But, at the trial, in addition to the plaintiffs' issues, without any objection, issues were raised on behalf of all the defendants except the 2nd. After trial, the learned District Judge accepted the plaintiffs' pedigree with regard to devolution of title of Pinhamy's 1/2 share, and left Sinnappu's 1/2 share unallotted. Pinhamy and Sinnappu are admittedly two original owners, both having entitled to 1/2 share of the corpus. Being dissatisfied with that Judgment the 1st defendant has preferred this appeal.

As the learned District Judge has identified in the Judgment<sup>1</sup>, the two main issues which had to be determined at the trial were: (a) whether Pinhamy had a child by the name of Punchi Appuhamy as asserted by the plaintiffs but denied by the contesting defendants; and (b) whether the three daughters of Pinhamy, namely, PUNCHIHAMY, Manikhamy and Dingirihamy<sup>2</sup> contracted *diga* marriages thereby forfeiting paternal inheritance as asserted by the plaintiffs but denied by the contesting defendants. The learned District Judge has answered those two issues in favour of the plaintiffs.

The learned counsel for the 1st defendant-appellant in his written submissions having drawn attention of the Court to the contents of the deeds marked at the trial to say that PUNCHI APPUHAMY cannot

---

<sup>1</sup> Page 122 of the brief.

<sup>2</sup> It may be noted that according to the contesting defendants, Pinhamy had only two daughters, namely, PUNCHIHAMY and DINGIRIHAMY.

be a child of Pinhamy, nevertheless, shown his willingness to forgo that claim to put an end to this long litigation started nearly 4 decades ago, that is, in the year 1980. Court wishes to place on record its appreciation of that attitude of the learned counsel for the appellant in the name of justice.

Now all parties concede that Pinhamy had 7 children: namely, four sons, Punchi Appuhamy, Kiri Banda, Mudiyanse, Dingiri Appuhamy; and three daughters, PUNCHIAMI, Manikhami and Dingirihamy.

Then I am left with the question whether the three daughters of Pinhamy, namely, PUNCHIAMI, Manikhami and Dingirihamy, married in *diga*. Assuming that Manikhamy was a daughter of Pinhamy, there is no dispute that she married in *diga* and therefore did not inherit from the father. However, there is no such consensus with regard to the other two daughters, namely, PUNCHIAMI and Dingirihamy.

Kiri Banda, a son of Pinhamy, sold his share to his sister PUNCHIAMI by deed marked 1D1. Dingirihamy, a daughter of Pinhamy, also sold her share to her sister PUNCHIAMI by deed marked 1D2. Then PUNCHIAMI sold the said two shares and her own share as a child of Pinhamy to the 1st defendant-appellant by deed marked 1D3. These deeds were marked without any objections. If PUNCHIAMI and Dingirihamy did not marry in *diga*, the 1st defendant-appellant thereby becomes entitled to 3/12 share of the land.

Have the plaintiffs proved to the satisfaction of Court that PUNCHIAMI and Dingirihamy entered into *diga* marriages and left the ancestral home to live with their husbands? Certainly not.

On behalf of the plaintiffs, the 3rd plaintiff has given evidence. He was only 54 years of age at that time. In evidence in chief, he has stated that, whilst Pinhamy was alive, the three daughters married in *diga*, and Manikhamy went to Ussapitiya, Dingirihamy to Haththoradeniya, and Punchihamy to Haloluwa.<sup>3</sup> However, in cross examination he has stated that he was not aware whether Punchihamy and Dingirihamy were at least married (far from stating whether it was *diga* or *binna*) as he was not even born when they were allegedly married.<sup>4</sup> He has further stated that he did not have Marriage Certificates to prove their marriages.<sup>5</sup>

The 1st defendant who was 65 years of age at that time in his evidence has stated that he was not aware whether Punchihamy and Dingirihamy were married or not, and in any event, they were living in the ancestral home.<sup>6</sup>

The 4th defendant in her evidence has stated that he was not aware whether Punchihamy and Dingirihamy married in *diga*<sup>7</sup>, but Punchihamy was continuously living in the ancestral home<sup>8</sup>. Upon being asked whether Dingirihamy after marriage went to Koswatta, Kurunagala, he has answered that she was both in the ancestral home and Koswatta.<sup>9</sup> I must pause for a while to say that this suggestion is different from the earlier standpoint of the 3rd plaintiff that Dingirihamy after marriage went to Haththoradeniya, not to Koswatta, Kurunagala. It seems that the plaintiffs are not firm on that point.

---

<sup>3</sup> Pages 86-87 of the brief.

<sup>4</sup> Page 88 of the brief.

<sup>5</sup> Ibid.

<sup>6</sup> Pages 94, 101 of the brief.

<sup>7</sup> Pages 107-108 of the brief.

<sup>8</sup> Page 104 of the brief.

<sup>9</sup> Page 105.

The 3rd and 5th defendants in their evidence have not spoken of marriages of Punchihamy and Dingirihamy at all.

It is abundantly clear that with this scanty evidence without any scrap of documentary proof, no Court can come to the firm conclusion that Punchihamy and Dingirihamy married in *diga* and thereby forfeited paternal inheritance. The plaintiffs who asserted it have failed to prove it to the satisfaction of the Court.

Issue Nos. 23 and 24 raised on behalf of the plaintiffs are on this matter.<sup>10</sup> However issue No. 23 which has been answered by the learned District Judge in the affirmative is meaningless. It speaks of the three daughters of Pinhamy contracting second marriages and not *diga* marriages! Issue No. 23 is to the point. That issue is whether the three daughters of Pinhamy have forfeited paternal inheritance as they have married in *diga*. This has been answered in the affirmative, which, in my view, is unsupportable by the evidence led at the trial. Hence I set aside the finding of the learned District Judge on that issue and proceed to answer issue No. 22 on second marriage "Not Proved" and issue No.23 on *diga* marriage "No".

Accordingly, Pinhamy's 1/2 share shall devolve on the parties in the following manner.

1st Plaintiff	6/72
2nd Plaintiff	1/72
3rd Plaintiff	1/72
4th Plaintiff	1/72
1st Defendant	18/72

---

<sup>10</sup> Page 84 of the brief.

2nd Defendant	1/72
3rd Defendant	<u>8/72</u>
Total	<u>36/72</u>

Subject to the above variation, the Judgment of the District Court is affirmed.

Appeal is allowed with costs.

Judge of the Court of appeal