

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

Gamage Lilinona,
Gammanpila,
Bandaragama.
12th Defendant-Appellant

**CASE NO: CA/1169/2000/F
CA/1170/2000/F
DC HORANA CASE NO: 4861/P**

Vs.

Wilegoda Wickramage Mathelis
Silva,
Divalakanda,
Bulathsinhala.
Plaintiff-Respondent
And Several Other Defendant-
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Rohan Sahabandu, P.C., with Hasitha
Amarasinghe for the 12th Defendant-Appellant.
Vinod Wickremasooriya for the Plaintiff-
Respondent.
Decided on: 02.07.2019

Mahinda Samayawardhena, J.

This is an appeal filed against the Judgment of the learned District Judge of Horana dated 02.11.2000.

Notices of Appeal have been filed only by the 12th defendant and the 22nd defendant. Thereafter, in addition to the said 12th and 22nd defendants, Petitions of Appeal have been filed by the 23rd, 24th, 36th, 38th, 40th-47th defendants. Without first Notices of Appeal being filed, 23rd, 24th, 36th, 38th, 40-47th defendants cannot file Petitions of Appeal.

The 22nd defendant did not participate at the argument.

At the argument, counsel for the parties agreed to dispose of argument by way of written submissions.

Some parties, who have neither filed Notice of Appeal nor Petition of Appeal, have filed written submissions challenging the Judgment. That is not possible.

The only outstanding appeal to be considered is the 12th defendant's appeal. In paragraph 5 of the Petition of Appeal, the 12th defendant-appellant has stated her grievance.

At the trial, the 12th defendant has raised 14-19 issues. All those issues have been answered in the affirmative. However, the learned Judge in the Judgment has given only 0.014286 share to the 12th defendant. It is the position of the 12th defendant that she should have been given 0.2 share in the manner the issues have been answered. That position is acceptable.

The District Judge has accepted that Adonis Silva to be the original owner of the land and he had 11 children and one of them died issueless making the remaining 10 children to be entitled to 1/10 share to the land. The plaintiff, 1st-5th defendants are 6 of Adonis Silva's children. The District Judge in the Judgment has given each of the said 6 children, except the 4th defendant, 0.1 share.

The District Judge, in answering the plaintiff's issues in the affirmative, accepts that Viyonis is a child of Adonis Silva. The said Viyonis by Deed marked 12D1 (at page 217 of the Appeal Brief) transferred his rights to the 12th defendant. Issue No.14 is on that transfer and the learned Judge has answered that issue in favour of the 12th defendant. As a child of Adonis Silva, Viyonis also shall get 0.1 share and that share shall go to the 12th defendant.

The 4th defendant, Yasonona, is also a child of Adonis Silva and therefore she also, as the other children, is entitled to 0.1 share. The 4th defendant, by Deed marked 12D4 (at page 229 of the Appeal Brief), has transferred her share to the 12th defendant.

Accordingly, the 12th defendant shall get 0.2 share and not 0.014286 share given by the District Judge.

The 12th defendant's appeal is allowed. Subject to the above variation on the 12th defendant's share, the Judgment of the District Court is affirmed. No costs.

Judge of the Court of Appeal