

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

Rasika Damayantha Gunasekara,
Meepawala,
Poddala.

2A Defendant-Appellant

And 5th, 6th, 11th, 13A Defendant-
Appellants

CA CASE NO: CA/1094/1998/F

CA/1095/1998/F

CA/1096/1998/F

DC GALLE CASE NO: 8454/P

Vs.

Godakanda Arachchige Mihilal,
“Preethi”, Meepawala,
Poddala.

Substituted Plaintiff-Respondent

And Several Other Defendants-
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Darshana Weraduwa for the 2A Defendant-
Appellant.

P. Liyanarachchi for the 5A Defendant-Appellant.

Dhammika Gabadage for the Substituted Plaintiff-Respondent.

Nimal Muthukumarana for the 1A Defendant-Respondent.

Decided on: 03.07.2019

Mahinda Samayawardhena, J.

The plaintiff filed this partition action naming 4 defendants seeking to partition the land described in paragraph 2 of the plaint among the plaintiff and the four defendants. By the time the case was to be taken up for trial, there had been 15 defendants, and all but 14 have raised issues.¹ At the trial, several parties have given evidence seeking to vindicate their undivided rights to the land, but the District Judge in the Judgment dated 24.08.1998 has given undivided shares only to the plaintiff and the 1st and 5th defendants, and left 338/720 shares unallotted. Being dissatisfied with this Judgment, the 2nd defendant, the 5th defendant, and 6th, 11th, 13A defendants have preferred these appeals.

The peculiar reason given by the District Judge not to have given any soil rights to any party other than the plaintiff and the 1st and 5th defendants is that, although the other parties have produced deeds at the trial, they have no possession in the land. According to the District Judge, for a party to have a partition

¹ Vide pages 165-172 of the Brief.

title to the land, he or she must have possessed the land!² This finding, to say the least, is absurd.

It is a very basic principle even law students should know that possession of one co-owner is possession of the other co-owners. It is also equally elementary that there is no law that the owner of a land must possess the land, and if he does not possess, he loses his title. He can possess only if he wants. Right to possession is an incident of ownership, but not an indispensable requirement to keep the ownership intact, although the owner may lose title on proof of prescriptive title by another.

I set aside the Judgment of the District Court in toto. There is no necessity to order retrial as some of the appellants have sought. The incumbent District Judge is directed to deliver the Judgment afresh on the evidence already lead. In order to assist the Judge, the counsel for the parties can be allowed to file written submissions before the matter is fixed for the Judgment.

Appeals allowed. No costs.

Judge of the Court of Appeal

² Vide pages 7-8, 12-13 of the Judgment at pages 387-388 and 392-393 of the Brief.