

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

Andarage Podisingho
Gatamanna-South, Gatamanna.

Plaintiff

Case No. C. A. 505/2000(F)
D. C. Tangalle Case No. 2716/P

Vs.

1. Demalgiriya Gamage Don Samel
Gatamanna-South.
2. Gatamanna Vidana Pathiranage Wickramapala
Kotiya Kumbura, Ampe.
3. Palliyamulle Hapugamage Darasin
Gatamanna-South.
4. Palliyamulle Hapugamage Munidasa
Bathigama, Dikwella.
5. Palliyamulle Hapugamage Somasiri
Gatamanna-South.

(Dead) 6. Palliyamulle Hapugamage Alis Nona
Gatamanna-South.

6A. A. D. Saradiyas
Paluwatta, Radawela.

(Dead) 7. Demalgiriya Gamage Andarayas
Gatamanna-South.

7A. Demalgiriya Gamage Samadahami
Gorokkade, Gatamanna-South.

Defendants

AND

(Dead) Gatamanna Vidana Pathiranage Wickramapala
Kotiya Kumbura, Ampe.

NOW

Ayurvedic Eye Physician,
Gatamanna-South, Gatamanna.

Presently at –

Liyanagehena, Mahaheella, Beliatta.

2nd Defendant-Appellant

Maya Kaduwage Rupa Gothame Mayakaduwa
No. 226/A, Hatton Gedara, Mahaheella, Beliatta.

2A Substituted Defendant-Appellant

Vs.

(Dead) Andarage Podisingho

Gatamanna-South, Gatamanna.

Plaintiff-Respondent

Andarage Nimalsiri

Gatamanna-South, Gatamanna.

Substituted Plaintiff-Respondent

1. Demalgiriya Gamage Don Samel
Gatamanna-South.

3. Palliyamulle Hapugamage Darasin
Gatamanna-South.

4. Palliyamulle Hapugamage Munidasa
Bathigama, Dikwella.

4A. Palliyamulle Hapugamage Jagath Anura
Bathigama, Dikwella.

5. Palliyamulle Hapugamage Somasiri
Gatamanna-South.

(Dead) 6. Palliyamulle Hapugamage Alis Nona
Gatamanna-South.

6A. A. D. Saradiyas
Paluwatta, Radawela.

(Dead) 7. Demalgiriya Gamage Andarayas
Gatamanna-South.

7A. Demalgiriya Gamage Samadahami
Gorokkade, Gatamanna-South.

Defendants-Respondents

Before: Janak De Silva J.

Counsel:

M.C. Jayaratne P.C. with M.D.J. Bandara and Nishanthi Hettiarachchiwith for 2A Substituted
Defendant-Appellant

Saman Galappaththi for Substituted Plaintiff-Respondent

Thilan Liyanage for the 4A Defendant-Respondent

Written Submissions tendered on:

2A Substituted Defendant-Appellant 24.04.2019

4A Defendant-Respondent on 21.03.2019

Argued on: 21.01.2019

Decided on: ~~29.08.2019~~ 3.10.2019.

Janak De Silva J.

This is an appeal against the judgment of the learned Additional District Judge of Tangalle dated 30.06.2000.

The Plaintiff-Respondent (Plaintiff) instituted the above styled action to partition a land called Koradamaniyagahawatta more fully described in the 2nd paragraph of the Plaint, which is A.2-R.2-P.9 in extent.

The 1st Defendant-Respondent (1st Defendant), while accepting the pedigree of the Plaintiff, sought to exclude Lot L (said to be a portion of land called Nugahena owned by the 1st Defendant) and Lot M (a portion of the road) in Plan No. 870210 dated 15.02.1987 made by D. D. Y. Abeywardena, Licensed Surveyor from the corpus to be partitioned [Page 67 of the Appeal Brief].

The 2nd, 3rd, 5th, 6th and 7A Defendants-Respondents did not dispute the identity of the corpus but produced alternate pedigrees.

During the trial, the Plaintiff and the Defendants accepted that Lots L and M in Plan No. 870210 should be excluded from the land to be partitioned. Further all the Defendants accepted the pedigree of the Plaintiff.

Section 25(1) of the Partition Law requires the court to examine the title of each party and hear and receive evidence in support thereof and try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which the action relates.

The primary duty of the trial judge is to carefully examine and investigate the actual rights and titles to the land sought to be partitioned [*Sopinona v. Pitipanaarachchi and Two Others* (2010) 1 Sri.L.R. 87]. Acting in accordance with this principle, the learned Additional District Judge, after a careful perusal of the documents produced by the parties, concluded that the pedigree of the Plaintiff is incorrect and made an independent examination of the title of the parties and entered an interlocutory decree.

There is no dispute as to the identity of the corpus.

The only question that arises in this appeal is based on the interpretation of the two deeds bearing nos. 749 (4V1) (Appeal brief page 226) and 750 (2V1) (Appeal brief page 198) executed by Kawanihamy the widow of Andiris. The learned Additional District correctly concluded that Andiris became entitled to an undivided 33/72 share of the corpus.

Upon the death of Andiris the said undivided 33/72 share devolved upon his widow Kawanihamy and the surviving six children. Her undivided 33/144 (33/72X1/2) share would have in the ordinary course devolved on their children if not for Kawanihamy executing deed no. 749 dated 19.11.1963 (4V1) (Appeal brief page 226) by which she gifted an undivided ¼ share of her rights from the corpus to the 4th Defendant-Respondent (4th Respondent).

This meant that she transferred an undivided 36/144 share to the 4th Respondent which means that she transferred all her shares (she was entitled to only an undivided 33/144 share as explained above) to the 4th Respondent.

Accordingly, the learned Additional District Judge was correct in concluding that although Kawanihamy executed deed bearing no. 750 (2V1) (Appeal brief page 198) at the same time seeking to transfer $\frac{1}{4}$ undivided share to the 2nd Defendant-Appellant, there was nothing to transfer as she had already transferred all her interest by deed no. 749 dated 19.11.1963 (4V1) (Appeal brief page 226) to the 4th Respondent.

The learned President's Counsel for the Appellant submitted in the written submissions that although there was a discrepancy in the shares in terms of the schedule the undivided 33/144 share of Kawanihamy should be divided in equal shares between P.K.E. Munidasa and P.K. Hector Sirisena as undivided 33/288 each.

I reject this submission as Court cannot rewrite a contract entered into between parties. In *Arnold v. Britton* [(2015) UKSC 36] Lord Neuberger, President of the Supreme Court, commented that when "interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood [those intentions to be] using the language in the contract". A court will do that by assessing the meaning of the words used in light of i. the natural and ordinary meaning of the clause; ii. any other relevant provisions of the contract; iii. the overall purpose of the clause and the contract; iv. the facts and circumstances known or assumed by the parties at the time that the document was executed; and v. commercial common sense; but vi. **disregarding subjective evidence of any party's intentions.** (Emphasis added).

The learned Additional District Judge has carefully examined each of the deeds forming the chain of title and investigated the devolution of title. Having done so, he has correctly decided the entitlement of the parties.

For the foregoing reasons, I see no reason to interfere with the judgment of the learned District Judge of Tangalle dated 30.06.2000.

Appeal is dismissed with costs.

Judge of the Court of Appeal

