

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

Dahaneka Ralalge Dingiri Banda,
Kapuwarala,
Alawwa.
Plaintiff-Appellant

CASE NO: CA/62/1997/F

DC KURUNAGALA CASE NO: 3149/P

Vs.

1. Menikramayalage Jamis,
2. Dahaneka Ralalage Tikiri Banda,
Kapuwarala,
Alawwa.
And Others
Defendant-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: S.A.D.S. Suraweera for the Plaintiff-Appellant.

Lakshman Perera, P.C., with Anjali
Amarasinghe for the 2nd Defendant-
Respondent.

Decided on: 14.11.2019

Mahinda Samayawardhena, J.

The plaintiff filed this partition action seeking to partition the land known as *Diggedigahamula Kumbura* among the plaintiff and the 1st-3rd defendants. The 4th defendant was later made a party. However, the 1st, 3rd and 4th defendants neither filed statements of claim nor participated in the trial. The contest was between the plaintiff and his brother, the 2nd defendant. After trial, the District Judge dismissed the plaintiff's action on the basis that the 2nd defendant has prescribed to the land. Hence this appeal by the plaintiff.

There are two lands. One is *Diggedigahamula Kumbura*, which is the subject matter of this case, and the other is *Midellagaha Kumbura*, which is a different land.

The plaintiff in his evidence says that he told his brother, the 2nd defendant, to cultivate one land, and that he (the plaintiff) would cultivate the other.¹ That was an amicable settlement.²

Accordingly, the plaintiff admits that he cultivated *Midellagaha Kumbura*, and the 2nd defendant cultivated *Diggedigahamula Kumbura* to the exclusion of each other for more than 30 years, at the time he was giving evidence in 1995.³ This had been the case, when their mother, Punchi Manika, was alive.⁴ The plaintiff further admits that transferors of his deeds also did not possess *Diggedigahamula Kumbura*, to partition of which land, this case was filed.⁵

¹ Vide page 58 of the brief.

² Vide page 70 of the brief.

³ Vide pages 61-63, 68-70 of the brief.

⁴ Vide page 63 of the brief.

⁵ Vide pages 68-69 of the brief.

In the teeth of that clear evidence of the plaintiff himself, I do not see any necessity to interfere with the Judgment of the District Court.

I dismiss the appeal but without costs.

Judge of the Court of Appeal