

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

Udage Achchige Premaratne,
No. 170,
Indolamulla,
Dompe.
2nd Defendant-Appellant

CASE NO: CA/500/2000/F
DC PUGODA CASE NO: 285/P

Vs.

Malporuwage Premasiri,
No. 330J 2/4,
Serpentine Road,
Borella.
Plaintiff-Respondent

Udage Achchige Karunaratne
Liyanagama,
Dompe.
And 3 Others
Defendant-Respondents

Before: Mahinda Samayawardhena, J.
Counsel: A.S.M. Perera, P.C., for the 2nd Defendant-
Appellant.
S.A.D.S. Suraweera for the Plaintiff-
Respondent.
Decided on: 14.11.2019

Mahinda Samayawardhena, J.

The plaintiff filed this partition action naming two defendants to partition the land described in the Preliminary Plan among the plaintiff and the two defendants. The 3rd-5th defendants were later made parties. After trial, the District Judge delivered the Judgment dated 23.06.2000. It is against this Judgment, the 2nd defendant (hereinafter “the appellant”) has preferred this appeal.

On behalf of the appellant, no written submissions were filed either before or after the argument. On behalf of the plaintiff-respondent, written submissions were filed both before and after the argument. That shows the enthusiasm of the appellant in prosecuting this appeal.

Let me now consider the contest, which the appellant raised at the trial. The appellant raised 4th-7th issues at the trial.

By the 4th and 5th issues, the appellant claimed prescriptive title to the entire land on the basis that he alone possessed the land. This has rightly been rejected by the District Judge as possession by one co-owner enures to the benefit of other co-owners; and it is not possible for such a co-owner to put an end

to that possession by any secret intention in his mind; and nothing short of ouster or something equivalent to ouster could bring about that result.¹

By the 6th issue, the appellant claimed the entire plantation. In the facts of the case, the District Judge has given ½ of the plantation above 30 years old, to the plaintiff, who is entitled to undivided ½ share of the land; and the balance to the 2nd-5th defendants. I see no reason to interfere with that finding.

The 7th issue is whether the plaintiff is a child of Piyasena. This has been proved by the plaintiff *inter alia* by producing the plaintiff's birth certificate marked P3 and by producing the Decree Absolute entered in the divorce case between his parents marked P7. The plaintiff was born during the subsistence of the marriage of his parents. No evidence has been led by the appellant to prove non-access or impotency on the part of the plaintiff's father, Piyasena.²

I dismiss the appeal without costs.

Judge of the Court of Appeal

¹ Vide *Corea v. Iseris Appuhamy* (1910) 15 NLR 65

² Vide section 112 of the Evidence Ordinance.