

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

Ilaperuma Arachchige Francis Appuhamy of
Ambagastenna Watte, Pundaluoya.

Plaintiff

- Vs -

CA Appeal No. 1072/99(F)
DC Gampola – Case No.320 (P)

1. Padmawathi Rathasamy Nee Thambirajah
of 126, Kurukuthalawe, Ragama.
2. Wellamadagedara Appuhamy of Wetehena
Road,Pundaluoya.
3. Wellamadagedara Punchirala of Wetehena
Road,Pundaluoya.

(Deceased) 04. Kuruppiah Pillai Rajaratnam

4. A. Maheswari Rajaratnam of BA No. 14,
Thamby Lane, Jaffna.
5. Ranthengedera Appuhamy of Pundaluoya.
6. Munamalpe Beragamage Piyadase of
Udakavidiya, Pundaluoya

(Deceased) 07. Kotigalage Podiappuhamy of Pundaluoya.

7. A. W.P.Punchimanike of Kosgahapathana,
Pundaluoya.
8. Uduwate Mudiyanseelage Mudiyanse of
Wewahena Road, Pundaluoya.
9. M. P. Jayasena of Saman Stores,
Thalawakela.
10. M. K. Somawathi of Saman Stores,
Thalawakela.

11. W.P.Punchimanike of Kosgahapathana, Pundaluoya.
12. Yousoff Abubakar of Ambagastenna, Pundaluoya.
13. Chandrambal Rajasingham of Ambagastenna Watte, Pundaluoya.
14. Rajasingham Raj Kumar.
15. Rajasingham Raja Mohan.
16. Rajasingham Randeep Kumar.
17. Rajasingham Deerga Lakshmi.
18. Rajasingham Sree Kanth.

Defendants

AND NOW BETWEEN

Maheswari Rajaratnam of BA No. 14, Thamby Lane, Jaffna.

4A Defendant Appellant

Vs

(Deceased) Ilaperuma Arachchige Francis Appuhamy of Ambagastenna Watte, Pundaluoya.

- 1A. Padma Rohini
 - 1B. Indra Rohini
 - 1C. Lalitha Rohini
- All of Ambagastenna Watte, Pundaluoya.

Plaintiff Respondent

1. Padmawathi Rathasamy Nee Thambirajah of 126, Kurukuthalawe, Ragama.
2. Wellamadagedara Appuhamy of Wetehena Road, Pundaluoya.
3. Wellamadagedara Punchirala of Wetehena Road, Pundaluoya.
- (Deceased) 4. Kuruppiyah Pillai Rajaratnam

4.A. Maheswari Rajaratnam of BA No. 14, Thamby Lane, Jaffna.

5. Ranthengedera Appuhamy of Pundaluoya.

(Deceased) 6. Munamalpe Beragamage Piyadase of Udakavidiya, Pundaluoya

6.A. Munamalpe Beragamage Thushara Deepanath Gamage of No. 40C, Wellana Panatiyana, Weligama.

(Deceased) 7. Kotigalage Podiappuhamy of Pundaluoya.

7.A. W.P.Punchimanike of Kosgahapathana, Pundaluoya.

8. Uduwate Mudiyanseage Mudiyanse of Wewahena Road, Pundaluoya.

(Deceased) 9. M. P. Jayasena of Saman Stores, Thalawakela.

9.A. Atapattu Hewakomanagodage Somawathi

9.B. Nilmini Geetha Kumari

9.C. Munamalpe Gamage Gajah Kumar

9.D. Renuka Pushpa Kumari

9.E. Samath Kumar

9.F. Kumuduni Kumari All of No. 42/17A, Nadukarawatte, Baddagana Road, Kotte.

10. M. K. Somawathi of Saman Stores, Thalawakela.

11. W.P.Punchimanike of Kosgahapathana, Pundaluoya.

(Deceased) 12. Yousoff Abubakar of Ambagastenna, Pundaluoya.

12.A. Kathija Bee Bee

12.B. Yousoff Abubakar Mohamed Ismail

- 12.C. Yousoff Abubakar Mohomed Haniffa All of 278/36
Ambagastenna Watte, Pundaluoya.
13. Chandrambal Rajasingham of Ambagastenna
Watte, Pundaluoya.
14. Rajasingham Raj Kumar.
15. Rajasingham Raja Mohan.
16. Rajasingham Randeep Kumar.
17. Rajasingham Deerga Lakshmi.
18. Rajasingham Sree Kanth.

Defendant Respondents

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Rohan Sahabandu, PC with Chathurika Elvitigala for the Substituted
4A Defendant-Appellant

Ranjan Suwadaratne, PC with Y.P. Mathugama and Indika
Hendawitharana for the Plaintiff-Respondent.

D.Malalasekera for the 7A, 9th,11th ,12A – 12C Substituted-
Defendant-Respondents.

Written Submissions: By Substituted Plaintiff Respondent on 22.11.2019

By 9A, 9B, 9D, 9E, 9F,12A, 12B, and 12C Substituted-Defendant-
Respondent on 22.11.2019

Substituted 4A Defendant Appellant on 20.12.2019

Argued on: 02.09.2019 and 22.02.2021

Judgment on: **23.03.2021**

N. Bandula Karunaratna J.

This is an Appeal preferred by the 4A Defendant-Appellant (hereinafter referred to as the Appellant) against the judgement dated 18.11.1999 by the learned Additional District Judge of Gampola.

The Plaintiff-Respondent instituted this action in the District Court of Gampola, seeking to partition the land in question the extent of 15 Acres 2 Roods and 29 Perches called "Ambagasthenna Estate".

The subject matter is depicted in Plan No. 1753, surveyed by D.A. Jayagoda, Licensed Surveyor dated 06th & 07th of June 1980 and the new extent was 14 Acres 0 Rood and 39 Perches.

The original Plaintiff-Respondent (herein after referred to as the Plaintiff) Ilamperuma Arachchige Francis Appuhamy on or around 04th of October 1979, instituted this action bearing No.P/320 at Gampola District Court against the original 1st to 13th Defendants seeking to partition the property called and known as 'Ambagasthenna Estate'. It was in extent of 15 Acres 2 Roods 29 Perch as per Plan No. 78 dated 11th April 1920, made by Oswald Bartholemuez Licensed Surveyor. It was also described the same property in terms of Plan No.1753 dated 06th and 7th of June 1980, as a land in extent of 14 Acres and 39 Perch.

After instituting the action thereafter several amended plaints were filed and finally proceeded to trial based on the amended plaint dated 15th of August 1995, and by the said amended plaint the deceased Plaintiff was suggested to be given 1111/2279 shares and 1st to 11th Defendants were also given undivided rights.

Thereafter, the said District Court case was taken up for trial on 24.06.1996 and the parties admitted that the corpus depicted in the schedule to the amended plaint which is the subject matter of the partition action P/320 is depicted as Lot 1 to 17 in Plan No. 1753 dated 06th and 7th of June 1980 made by D.A. Jayagoda Licensed Surveyor.

The parties at the very outset have identified the corpus to be partitioned as shown in the preliminary Plan No.1753 dated 17.08.1980 prepared by D.A. Jayagoda, Licensed Surveyor. Thus, there seems to be no dispute as to the corpus and it was admitted by the contesting parties

The 7th, 9th and 11th Defendants along with the 6th and 10th Defendants filed a joint statement of claim and contended inter-alia that the undivided 40 perches be given to the 9th Defendant upon Deed No.301 dated 01.04.1974. They also claimed that the undivided one rood and ten perches (A.0 R.1 P.10) should be given to the 10th Defendant upon the Deed No.295 dated 29.02.1973. Moreover, they contend that undivided 20 perches (A.0 R.0 P.20) be given to the 11th Defendant upon the Deed No.310 dated 18.01.1974.

The 13th to 18th Defendant-Respondents claimed rights in the said property from Thambiraja Rajasingham

The contention of the 12th Defendant is that the 4th Defendant, prior to his death had transferred his shares upon the Deed No.10625 dated 26.10.1984. The 12th Defendant is claiming 171/2279 and also the building depicted as 'A' in the preliminary Plan No.1753.

The learned trial Judge of Gampola District Court, delivered the judgement on 18.11.1999 and explained clearly in the said judgment the devolution of rights between the parties and inter alia stated that the deceased 4th Defendant should only get undivided 110 perch and finally be given the deceased Plaintiff 1036/2279 shares. The 4th Defendant-Respondent was given undivided 110 perch and also made order keeping undivided 209 perch area unallotted but mentioned that it should be devolved on the heirs of the 5th Defendant. As per the judgement of the learned District Judge the shares should be allotted as follows:

| | | |
|----------------------------------------------|---|-----------------------|
| Plaintiff | - | 1037/2279 |
| 01 st Defendant | - | 94/2279 |
| 02 nd Defendant | - | 26/2279 |
| 03 rd Defendant | - | 26/2279 |
| 04 th Defendant | - | 110/2279 |
| 05 th Defendant | - | 209/2279 (unallotted) |
| 06 th Defendant | - | 160/2279 |
| 07 th Defendant | - | 310/2279 |
| 08 th Defendant | - | None |
| 09 th Defendant | - | None |
| 10 th Defendant | - | 50/2279 |
| 11 th Defendant | - | 40/2279 |
| 12 th Defendant | - | 60/2279 |
| 13 th -18 th Defendant | - | 98/2279 |
| 17 th Defendant | - | another 58/2279 |

There is no dispute as regards the identity. The learned District Judge held that the extent in 14A.0.39 Perches as in X- there is no dispute on this issue when one examines the evidence it is appreciated that, the original owners were Thambiraja and Rajarathnam. On this basis -

Thambiraja's 1/2 share of the estate devolved on Yogeshwari - Rajasingham- Padmavatie and Rajarathnam each getting 1/4 share. On that basis each gets 284 P, that is on the accepted extent that the corpus is 2279 P.

The 4th Defendant-Appellant, refuted the averment in the plaint that an extent of 209 Perches of the soil rights would accrue to the 5th defendant. This has been kept unallotted (209 Perches) as the 5th defendant had died before Interlocutory Decree was entered. It was contended by the other contesting parties that the extent of 209 Perches - had been transferred in entering by P20- Deed No 62/364 dated 8.1.1967. The position of the 4th Defendant was that, on a correct reading of P20 the Appellant is entitled to 2/3 of 209 Perches or 140 Perches with buildings and vegetation therein.

The learned District Judge held that- the 4th Defendant is entitled to only 110 Perches and to buildings. It was also the position of the Appellant that he is entitled to buildings F, G and H.

The contention of the 12th is that the original 4th Defendant K. Rajarathnam prior to his death had transferred her rights to the 12th Defendant by deed bearing No.10625 dated 26.10.1984. The 12th Defendant has arrived into settlement with other contesting parties on 21.09.1998. The said 12th Defendant had relinquished other share entitlements, if 60 perches of the land of the corpus be given to him along with the building depicted as 'A' in the preliminary Plan.

Although the 4th Defendant, whose share entitlement is been transferred to the 12th Defendant had claimed for the buildings depicted as 'A', 'C', and 'J' in view of the said settlement. It was argued by the Appellant that, 12th Defendant is only entitled to the building depicted as 'A' only.

The Appellant took up the position that by Deed marked P20, the Appellant should get 2/3 of 209 perches and it will come to about 140 perches out of the soil rights in the corpus of the said partition action.

The grounds upon which the 4A Defendant-Appellant advanced this appeal is as follows;

The 4A Defendant-Appellant challenged the share allocation given to the 5th Defendant. In the judgement, the learned trial Judge observed that 209 perches (209/2279) be given to the 5th Defendant. However, since the 5th Defendant has passed away and his heirs are unknown the learned trial Judge has kept unallotted the said shares.

The 4A Defendant-Appellant also challenged the observation made by the learned trial Judge in respect of the deed marked as 'P20'. The contention of the Appellant is that, by deed of 'P20' the entirety or the schedule there which is 1 Acre 1 Rood and 9 Perches (A.1 R.1 P.9) (which is 209 perches) and had not been transferred to the 5th Defendant. The main point advanced in this regard by the Appellant is that, the Appellant is entitled to 2/3 of the extent, that is 140 perches out of 209 Perches. The Appellant states that there is no corpus dispute and also there is no dispute with regard to the pedigree sets out by the Plaintiff. The Appellant emphasizes that the

only dispute is with regard to the allocation of shares and entitlement of certain buildings standing thereon in the corpus.

Therefore, it could be seen the appeal is solely based on only one question which depends on the interpretation of the exact extent granted by virtue of Deed produced marked P20 at the trial.

In the schedule of the Deed marked P20 bearing No.42/364 dated 08th January 1967, attested by Somasunderam Mahadeva N.P., the following is stated;

"a divided one-third ($1/3^{\text{rd}}$) share of the paddy field referred to as Lot D in Deed of Lease No.49 dated 22.09.1957"

It was argued that the entire extent of the property in the schedule is given as 1 Acre 1 Rood 9 Perches which is in fact 209 perches in all. The wordings given in the schedule, a divided one third share of the paddy field referred to in Lot D of Lease No.49 of 22.09.1957 makes it clear that the said Deed carried only $1/3^{\text{rd}}$ of 209 perches land which is around 69.67 perches and there is no basis for the Appellant to claim the 209 perches out of the corpus of this action which is depicted in Plan No.1753 at page 257 of the appeal brief and the total extent of the said corpus of the partition action is 14 acres and 39 perch.

Therefore, the Plaintiff-Respondent states that the Appellant cannot get anything more than undivided 69.67 perch out of the said land and the purported interpretation attempted to be given by the Appellant by the wordings of Deed P20 cannot be accepted. As the schedule of the said deed makes it absolutely clear that the Vendors of the said deed had only intended to convey the $1/3^{\text{rd}}$ of 209 perches or in another words 1 acre 1 rood and 9 perches.

The 4 A Defendant-Appellant states that she would not refer to the shares allotted by the learned District Judge to other parties, though the trial Judge has reduced certain shares given to contesting parties by the Plaintiff. The impugned Deed 62/364 dated 8.1.1967 shows 6 parties transferring the corpus to quote the schedule.

"A divided $1/3$ share of the paddy field called Ambagastenna defined as Lot 3 in the Partition Plan (Lot D in Deed of Lease 49) within the stated boundaries which is in extent of 1 Acre 1 Rood and 9 Perches (Total 209 Perches) as held by right of paternal inheritance from Karuppiyah Pillai Rajarathnam."

The deed also states that the aforesaid Karuppiyah Pillai Rajartahnam, his wife and 4 children transferred the property to the 5th Defendant Ratnagedara Appuhamy. One of the transferees is Maheshwari Rajaratnam. The original 4th Defendant was Karuppiyah Pillai Rajaratnam. The substituted 4A Defendant is his daughter Maheshwarie, a transferee in the impugned Deed 62/364.

The question as submitted earlier is what was the extent transferred by P20, the impugned deed. The 4A Defendant Appellant argues, what was transferred on P20 was 1/3 of 209 Perches. The Plaintiff states the whole extent of 209 Perches, was transferred by P20.

The learned District Judge has indicated that what has been transferred was the whole of Lot B paddy field and not 1/3. It was reason out why 1/3 was stated in the deed in 1930 because there had been a settlement and an agreement to give the paddy filed.

This was not in evidence. Section 91 and 92 of the Evidence Ordinance prohibits the consideration of new matters without going on the deed. The evidence led in this case does not support this contention. If this position was in the agreement it should have been put to the plaintiff, when he was giving evidence and he could not be able to sustain his position. Strangely, this position was not put to the 4A Defendant also when he was giving evidence.

The schedule of the Impugned Deed 62/364 states a divided 1/3 share of the paddy field in extent of 1 Acre 1 Rood and 9 Perches (Total 209 Perches). The schedule starts off by referring to a share "it is the divided 1/3 share of" and ends by stating that, of the land in extent of 1 Acre 1 Rood 9 Perches. The land is identified as a 1/3 share of a land and there would be a difference if it reads as 1/3 share which is in extent 209 or in extent of 1 Acre 1 Rood 9 Perches.

The use of the word of the land at the very beginning of the schedule and ending up as continuing in extent 1 Acre 1 Rood 9 Perches denotes that, it is 1/3 of the 1 Acre 1 Rood 9 Perches. extent that is been conveyed by the said deed. When the words are themselves precise and unambiguous those words must be expounded in their ordinary and natural sense. It is a well-known rule, that, too much strain should not be put to construct a meaning, for when the language is clear and precise and unambiguous gives effect to it whatsoever may be the consequences. The words will speak the intention.

It is important to question whether, Maheshwari Rajaratnam was having the intention to dispose of all her rights. Did the other co-owners in that said deed P20 have that intention to dispose of the whole of 209 perches? The function of the court is to interpret an Act so that its intention is deduced from the language used.

In the case of Capper and Another v. Baldwin [1965] 1 All ER 787, 791, it has been said that "if the literal reading did not produce on intelligible construction and result the court in interpreting a deed is not expected to fill in the gaps or to add a word or two. The need for a common standard of interpretation and there can hardly be a better standard than the ordinary or in appropriate cases, the technical, meaning of English words."

The evidence led on this point, shows unmistakably that the interpretation given by the learned District Judge cannot be accepted, further there arose no reason for the transferor to divest herself of the whole property. Therefore, the Appellant is entitled to a further 140 Perches of land from the corpus and the total extent should be calculated as 250 perches.

The Appellant is further entitled to the buildings shown as "F", "G", "H" in the Preliminary Plan No. 1753, surveyed by D.A. Jayagoda, Licensed Surveyor dated 17th August 1980.

Considering the above reasons 5th Defendant's entitlement is reduced to 69 Perches and that portion should be kept unallotted.

The rest of the shares which were allotted should be remained as it is according to the judgement dated 18.11.1999.

The Judgement and the Interlocutory Decree should be amended as follows;

| | | |
|---------------------------|---|----------------------|
| 4 A Defendant-Appellant | - | 250/2279 |
| 5 th Defendant | - | 69/2279 (unallotted) |

In view of the foregoing circumstances appeal allowed.

No order for Cost.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal