

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

In the matter of an Appeal to the Court of Appeal in the Democratic Socialist Republic of Sri Lanka.

**CA Appeal No.1118/99(F)
DC Balapitiya Case No.928/P**

Meera Maar Beach Hotel Company Limited
No.137, Vauxhall Street,
Colombo 2.

PLAINTIFF

- Vs -

1. Heethaka Sanison de Soysa (Deceased)
Paratharathe
Kosgoda
And 29 Others
Defendants

And Now Between

- 1A. Anthonidura Pushpa de Soysa
Paratharathe, Kosgoda
2. Heethaka Seelin Nona de Soysa
Paratharathe, Kosgoda
18. Heethaka Karunawathie de Soysa (Deceased)
Wilegoda, Ambalangoda
- 18A Lokuliyana Kapila Chandima De Soyza
No. 88/1 Galle Road,
Pinwatte, Panadura
- 19 Heethaka Abeyasiriwardhana
Wilegoda, Ambalangoda
20. Heethaka Chandrawathie de Soysa
Wilegoda, Ambalangoda

Defendants –Appellants

Vs

Meera Maar Beach Hotel Company Limited
No. 137, Vauxhall Street, Colombo

Plaintiff – Respondent

3. Heethaka Disilin Nona de Soysa
Paratharathe, Kosgoda
And 19 others

Defendant - Respondents

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

&

R. Gurusinghe J.

Counsel: Gamini Marapana PC with Naveen Marapana PC, Keerthi Sri Gunawardana and Tersh Abeyratne, for 1A, 2nd, 19th and 20th Defendant – Appellants.

Morkshi Jayamanne instructed by P.Kumara for 26th Defendant-Respondent.

Anuraddha Dharmaratne with Zahara Hassim for Plaintiff-Respondent.

Written Submissions: By the 1 (A), 2nd, 19th & 20th Defendant-Appellants on 02.09.2019 and 07.08.2019

By the Plaintiff- Respondent on 23.08.2019

By the 26th Defendant- Respondent on 19.08.2019

Argued on: 17-05-2019 and 22-02-2021

Judgment on: **01-04-2021**

N. Bandula Karunarathna J.

The 1 (A), 2nd, 19th to 20th Defendant-Appellants (hereinafter called and referred to as the “Appellants”) preferred this appeal against the Judgment dated 22.10.1999 of the learned Additional District Judge of Balapitiya in case No. 928/P.

The Plaintiff Respondent (hereinafter referred to as the Plaintiff) instituted this action on the 23.11.1983 in the District Court of Balapitiya, seeking *inter alia* that the corpus more fully described in the Schedule to the Plaint be divided amongst the parties of the action as set out in the body of the Plaint. As per the original Plaint, action was instituted only against 11 Defendants.

Thereafter the Plaintiff filed an Amended Plaint dated 02.04.1984 seeking to have the property described in the Schedule thereto, be divided amongst the parties to the action in the following manner;

1 to 3rd, 14th, 15th, 16th Defendants	-	93/3600
8th and 9th Defendants	-	30/3600
10th and 11th Defendants	-	12/3600
7th Defendant	-	60/3600
4th to 6th Defendants	-	12/3600
17th to 25th Defendants	-	18/3600

The 1st, 2nd and 17th to 20th Defendant Appellants filed their Statement of Claim on the 15.05.1991 seeking **only a dismissal** of the action and **not to partition** the land in the manner that reflects their purported rights.

Thereafter, the 26th Defendant Respondent made an application to Court, to be added as a party to the action and filed a statement of claim, as a party entitled to a portion of the corpus of the action, the Plaintiff was seeking to have partitioned. The 26th Defendant was permitted to be added as a party to the action and was further permitted to file a statement of claim subject to costs be paid to the Plaintiff and the 1A, 2, 17 to 20 Defendants. Thus, the 26th Defendant filed statement of claim on the 15.12.1995 in terms of which the 26th- Defendant set out her rights and entitlement to a certain portion of the corpus.

The case went to trial on 25 Issues. The 1st to 15th issues raised by the Plaintiff and the 16th to 25th issues raised by the 1A, 2, 17th to 20th Defendants.

The Plaintiff commenced his case, and led the oral evidence of, Rabin Chandrasiri the Licensed Surveyor, who prepared the Preliminary Plan No. 563 dated 14.02.1987 and 04.03.1987. Dharmakeerthi Somasiri Perera also gave evidence. The Plaintiff closed his case reading in evidence documents marked X, X 1, X2 and P1 to P10. It is salient to note that at the time of the plaintiff closing his case, the learned Counsel for the 1 (A), 2nd, 17th to 20th Defendant-Appellants did not object to the said documents marked by the Plaintiff being accepted as evidence.

The 1A, 2nd, 17th to 20th Defendants commenced their case, by calling witness M. C. Mendis, Licensed Surveyor and Shiela de Soyza. After they were led the said Defendants closed their case reading in evidence documents marked 1E1 to 1E20.

The 1a, 2nd, 19th and 20th Defendant Appellants state that the pedigree chart of the Appellants marked 'B' and point out that, the pedigree chart on the extreme right-hand side contains reference to several old deeds.

The Appellants state that the Amended Plaint does not show the separate title to the 1/4th share acquired by Doisahamy on Deed 6009 dated 20.2.1874, 1E3 (at page 377). A search would have undoubtedly revealed this. But this was concealed both in the Plaint and in the

Amended Plaintiff, as it did not tally with the Plaintiff's story that the said Doisahamy had seven other brothers and sisters.

Further, the Appellants state that the Amended Plaintiff also does not even show any of the earlier deeds 1 5 4 (at page 379), 1 5 7 (at page 386), 1 5 10 (at page 396), 1 5 16 (at page 418) and 1517 (at page 422) all of which, ex fade, have also been duly registered and are more than 30 years old and thus entitled to the presumption stipulated in Section 90 of the Evidence Ordinance.

The Appellants stated that there are lapses in the examination of the title of the Plaintiff. Firstly, there is no proof whatsoever that Agampodi Sadiris ever owned the Land in suit. Secondly, there is also no proof whatsoever that the said Agampodi Sadiris had 8 children as stated in the Amended Plaintiff. It is their submission that the pedigree put forward in the Amended Plaintiff is a fake pedigree coined up for the purposes of this case.

The Appellants further state that the only person who gave evidence on behalf of the Plaintiff, as regards the title was, one Dharmakeerthi Somasiri Perera.

The Appellants argued that an examination of Dharmakeerthi Somasiri Perera evidence would clearly shows that:

- i. He is not a person referred to in the Plaintiff's pedigree nor is he a person who claims to be related to anyone mentioned in that pedigree.
- ii. At the very commencement of his evidence, when asked whether he has any knowledge of the pedigree put forward by the Plaintiff, his response was "I have a general knowledge". Vide page 195.
- iii. Vide page 236 - where it was specifically suggested to this witness that he knew nothing of the Plaintiffs pedigree and he replied "I know nothing"
- iv. He also admits that he does not know as to who the ancestors of Doisahamy are. Vide page 227;
- v. He admits that Pedrick Soysa was married to Agampodi Doisahamy Mendis; page 227- This is exactly the position of the Appellants.
- vi. Pedirick Soysa and Agampodi Doisahamy Mendis had two children namely, William and Hendrick- Vide page 227 & 232 This is exactly the position of the Appellants. -Vide Pedigree of the Appellants marked 'B'
- vii. He admits that he does not know Doisahamy's details- Vide page 227;
- viii. He says that Hendrick Soysa was married to Lamahamy & had 8 children; Vide page 232;
- ix. Then later he admits that he does not know the Plaintiff's pedigree- Vide page 236;
- x. He also admits that he does not know the boundaries of the land. - Vide page 230;

- xi He was not present at survey - Vide page 237;
- xii He also admits that he does not know the devolution of title from Siyadoris (an alleged 1/5th owner on the Plaintiff's pedigree) - Vide page 236;
- xiii. He further admits that he does not know the devolution of title from Laisohamy- (also an alleged 1/5th owner on the Plaintiff's pedigree) Vide page 236;
- xiv. He goes on to admit that he does not know the devolution of title from Lamaris- (also an alleged 1/5th owner on the Plaintiff's pedigree) Vide page 227;
- xv He further admits that he does not know the devolution of title from Aladin (a child of Baton- an alleged 1/10 share owner on the Plaintiff's pedigree) Vide page 227.
- xvi On the strength of the aforesaid critical admissions how could the Learned Trial judge have ever held that the Plaintiff had proved its title to the land in suit.
- xvii This witness has come to Court without being paid any batta and without summons. Vide page 223 and 237
- xviii He admits that he is not a shareholder of the Plaintiff company. Vide page 237
- xix He also admits that he is only giving evidence because he helped the Plaintiff to buy the land. Vide page 237

The Appellants state that there are glaring discrepancies and deficiencies in the deeds referred to in the Plaintiffs pedigree. Most of the Deeds have been executed in March, April and May, 1983, just 5 months before the Plaintiff, instituted this action. They were attested by the same Notary and the same witnesses. The Appellants argued that the fact that the names of almost all of the executants of the deeds referred to in the Amended Plaint do not tally with the names given in the deeds produced on behalf of the Plaintiff and it was a serious defect in the title pleaded and relied on by the Plaintiff.

Appellants say that an analysis, of the Plaintiff's deeds, reveals the following discrepancies and deficiencies.

The Appellants state that the said deed 1 § 4 (at page 379) specifically refers to the fact that Agampodi Doiso Mendis Hamy (also referred to as Doisohamy) was a resident on the said land. This, tallies with the 2nd Defendant Appellant's evidence that their Mulgedara is situated on this land and that she was also born in that same house. Vide pages 263-264 where the 2nd Defendant Appellant has stated that the present house was built by her grandfather Appuwadura Hendrick Soysa who as admitted by the Plaintiff's own witness, was a child of the Doisohamy.

The Appellants further state that the admission of the Plaintiff's witness that Doisohamy's full name was Agampodi Doiso Mendis is also important in the context that deed 1 § 3 at page 377 clearly refers to Agampodi Doiso Mendis hamy.(Vide page 377.)

The Appellants state that at this juncture it is important that we once again draw our attention to the fact that the Plaintiff's witness Somasiri Perera too has at page 227 clearly admitted

that Pedrick Soysa was married to Agampodi Doisoahmy Mendis and that they had two children called Hendrick and William. (Vide page 227).

The Appellants state that as per the Appellants pedigree the aforesaid Hendrick and William were the children of the said Appuwadura Pedrick Soyza and Angampodi Doisoahmy Mendis. The said Hendrick and William, at one time owned ½ share each of the land in suit by William's deed 1 B 8 in 1911 (at page 388) to Hendrick which specifically refers to a ½ share.

The 26th Defendant commenced her case and gave evidence by herself, and closed her case reading in evidence, documents marked 26B1 to 26B4.

Thereafter, parties filed their written submissions along with the documents marked in evidence. The learned Trial Judge delivered the Judgment in favor of the Plaintiff, partitioning the corpus as described in the Schedule to the Plaint as follows:

Plaintiff	- 2430/3600
1 st to 3 rd Defendants.	- 93/3600 (each)
4 th to 6 th Defendants	- 14/3600 (each)
7 th Defendant	- 62/3600
8 th to 9 th Defendants	- 30/3600 (each)
10 th and 11 th Defendants	- 14/3600 (each)
14 th to 16 th Defendants	- 93/3.600 (each)
17 th to 25 th Defendants	- 20/3600 (each)
26 th Defendant	- 240/3600

1A, 2nd 17th to 20th Defendants, allegedly being aggrieved by this Judgment preferred this appeal, seeking only to **dismiss** the Plaintiffs action.

The Appellants state that the Learned District Judge in his Judgement has refused to take into consideration that the said Deed allegedly on the sole basis that Hendrick, in his subsequent deed 1 B 9 dated 20.2.1914 (at page 392), has not referred to the same in the recital of title.

This is what the Learned Trial Judge said at page 299: -

“මෙයට ඉහතින් සඳහන් කර ඇති පරිදි 1B9 ඔප්පුවෙහි 1B8 ඔප්පුව සම්බන්ධයෙන් සඳහන් කර නැත. 1B8 සහ 1B9 ඔප්පු අතර සම්බන්ධය එම ඔප්පු දෙකෙන් පැහැදිලි වන්නේ නැත. 1B9 පැමිණිල්ලේ පෙළපතේද එන ඔප්පුවකි. “

It is the Appellants' contention that in Deed 1B9 Hendirick was dealing with a share less than the share he was then entitled to and thus there was no need for him to recital of title on the aforesaid deed 1 B 8.

The Appellants argue that in any event the non-recital of title on a previous deed in a subsequent deed, is no ground whatsoever for holding that no title passed on that previous deed.

The Appellants state that the Learned Trial Judge has refused to take into account the fact that all the donors and transferors on the said deeds 1 Ե 3, 1 Ե 4, 1 Ե 7, 1 Ե 8, 1 Ե 10, 1 Ե 14, 1 Ե 16, 1 Ե 17 ranging from 1865 to 1968 have all dealt with the exact share which the Appellants statement of claim says that they were entitled to. This they is very important fact and it is this type of fact that ought to be taken into consideration on the balance of probability when weighing conflicting claims in a case of this nature.

The Appellants argue that at page 293, the Learned Judge attempts to explain away 1 Ե 8 by saying that since William died issueless his share would in any event has gone to Hendrick. That deed dealt with a specific $\frac{1}{2}$ share which is in keeping with the Appellants' pedigree. It certainly ought to have titled the balance of probability in the Appellants favor. The Appellants state that the Learned Judge has totally ignored the fact that the Plaintiff's only witness admitted that he did not know the Plaintiff pedigree, did not know the devolution of title of 4 of the alleged $\frac{1}{5}$ th owners and also did not know the boundaries of the land.

The Plaintiff- Respondent states that the 1st, 2nd, and 17th to 20th Defendants contest this matter by stating that the original owner of an undivided $\frac{3}{4}$ share of the corpus was one Appuwadura John de Soysa while the original owner of an undivided $\frac{1}{4}$ share of the corpus was one Sidda Handi Anthony. The contesting Defendants have offered no explanation as to how they can claim that one original owner was entitled to an undivided $\frac{3}{4}$ while the other was entitled to an undivided $\frac{1}{4}$ share. The contesting Defendants have not explained as to whether the $\frac{3}{4}$ and $\frac{1}{4}$ share was on the basis of inheritance or deeds. The Plaintiff- Respondent states that the Learned Trial Judge has thus rejected the pedigree of the contesting Defendants on a balance of probabilities and accepted the Plaintiff's pedigree in directing a partition of the corpus.

It is pertinent to note that Doisohamy is one of the 8 children of the original owner Agampodi Sodiris Mendis. It was argued that initially the said Doisohamy gets an undivided $\frac{1}{8}$ th share and upon the death of 3 of her siblings without issue, the said Doisohamy gets an undivided $\frac{1}{5}$ th share.

I further note that the 1A, 2nd, 18th, 19th and 20th Defendants claim that the said Doisohamy became entitled to a further undivided $\frac{1}{4}$ th share in the corpus upon 1 Ե 3 (page 377). This position is incorrect as the corpus in the present action is 'Orudinapitiyawatta' which has a river as the Northern boundary is not described as the Northern boundary in the deed of 1Ե3. The river is a fixed boundary. Therefore, the said Deed 1 Ե 3 has no application to this matter.

The 1A, 2nd, 18th, 19th and 20th Defendants further submitted that the Plaintiff has not pleaded deed numbers, 1 Ե 4, 1 Ե 7, 1 Ե 10, 1 Ե 16 and 1 Ե 17 which purportedly dealt with the corpus and purportedly duly registered.

The duty of the Plaintiff in terms of Section 4 (c) of the Partition Law is as follows: -

"The names and addresses of all persons who are entitled or claim to be entitled to any rights, share, or interest to, of, or in that land or to any improvements made or effected on or to that land and the nature and extent of any such right, share, interest

or improvements, so far as such particulars are known to the Plaintiff or can be ascertained by him;”

The said Amended Plaint sufficiently discharged the said duty and the 1A, 2nd, 18th, 19th and 20th Defendants have failed to prove that the said deeds. 1 Ɔ 4, 1 Ɔ 7, 1 Ɔ 10, 1 Ɔ 16 and 1 Ɔ 17 have been duly registered in a folio which can be ascertained by the Plaintiff.

The 1A, 2nd, 18th, 19th and 20th Defendants claim that the Plaintiff has not proved the original ownership of Agampodi Sadiris Mendis. It is however pertinent to note that this runs counter to the 1A, 2nd, 18th, 19th and 20th Defendants’ own position. Deed numbers, 1 Ɔ 3, 1 Ɔ 4, 1 Ɔ 7, 1 Ɔ 10, 1 Ɔ 16 and 1 Ɔ 17 which the 1A, 2nd, 18th, 19th and 20th Defendants claim to have dealt with the corpus in the present action refers to either Doisohamy or his successors which goes to prove Agampodi Sadiris Mendis rights in the corpus.

The principle laid down in the case of Maglin Perera Vs. Abraham Perera [1986] 2 SLR 208 appears in the present circumstances as well. It was held in the said case as follows: -

“When Partition action is instituted the Plaintiff must perforce an original owner or owners of the land. A Plaintiff having commence at some point, such owner or owners need not necessarily be the very first owner or owners and, even if it be so claimed, such clam need not necessarily and in every instance be correct because when such an original owner is shown it would theoretically and actually be possible to go back to still an earlier owner. Therefore, in actual practice it is the usual, and in my view sensible, attitude of the Court that it would be reasonable to expect proof within very high degrees of probability on questions such as those relating to the original ownership of land. Court by and large countenance infirmities in this regard, if infirmities they be, in an approach which is realistic rather than legalistic as to do otherwise would be to put relief given by partition decrees outside the reach of very many persons seeking to end their co-ownership”

The Plaintiff’s witness, one Dharmakirthi Somasiri Perera was a long-time resident of the area and has given clear oral testimony of the relationships and therefore the said oral testimony can be accepted with regard to Agampodi Sadiris Mendis successors. The said Dharmakirthi Somasiri Perera therefore had a special knowledge of the said devolution of title to the corpus. The said witness has clearly stated that he is distantly related to the children of Sodiris Mendis [vide pages 215 and 216 of the Appeal Brief]

Going by the case of Magalin Perera vs. Abraham Perera (supra) it is stated, that the Plaintiff’s witness’ oral evidence on the original ownership of the subject matter is sufficient to satisfy Court of the fact that the said Agampodi Sodiris Mendis was the original owner in the 1800s. Further, the evidence given by the 26th Defendant supports the Plaintiff’s case. The said witness stated that the original owner was Agampodi Sodiris Mendis and he had four children who were male and four children who were females and out of them three of them died without issues.

The evidence of the 26th Defendant on Laisohamy also remains uncontradicted and she states that Laisohamy died leaving two children Werisihamy and Barton, and Barton died leaving six children namely, Amis, Girigoris, Amaris, Deesan, Dabilin and Alison. I therefore believe that the 26th Defendant is a blood relation and her evidence as regards the devolution of title is acceptable and can be relied on as having been on special knowledge.

The fact that the 26th Defendant is a relation has been admitted by the contesting Defendants [vide pages 271 of the Appeal Brief]

In Wijesekera – v.-Weliwitigoda, 61 NLR 133 at page 136 and 137 it was held that;

“All that Section 32(5) requires is that the statement should relate to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship, in any way, the person making the statement has special means of knowledge and that the statement should have been made before the question in dispute was raised. The provision is an exception to the rule against hearsay and has been enacted primarily to meet a situation where the matters sought to be established involves remote facts of family history which are incapable of direct proof.

In the words of the Lord Blackburn in Strula v. Frecia (1979 5AC 623 at 641). The ground is “that there were matters relating to a long time passed and that it was really necessary to relax the strict rules of evidence there for the purpose of doing justice”.

The Appellants further state that the Learned Judge has totally ignored the 26th Defendant’s admission at page 256 that the Appuwadura people had rights in this land. The Appellants state that in view of the above it is clear that the Learned District Judge has not merely erred in weighing the conflicting evidence but has also failed to identify the conflict itself. Further it is their argument that the said Judgment totally lacks analysis and thus it fails to apply the correct basis or standard of proof of title in a partition action. Therefore, it was argued that the judgement be set aside with costs.

The Plaintiff – Respondent in reply to the 1A, 2nd, 18th, 19th and 20th Defendant – Appellants’ submissions state that the 1A, 2nd, 18th, 19th and 20th Defendants have failed to adduce any evidence to prove that the said deeds have been duly registered at the Land Registry in a folio which is connected to a folio in which the Lis pendens has been registered.

The Plaintiff- Respondent states that the deeds marked as P1 to P10 by the Plaintiff was in support of their pedigree. The said Deeds deal with the corpus based on the pedigree pleaded by the Plaintiff, whereas the contesting Defendant’s Deeds marked 1 Ծ 3, 1 Ծ 4, 1 Ծ 7, 1 Ծ 8, 1 Ծ 9, 1 Ծ 10, and 1 Ծ 11 does not deal with the pedigree of the corpus in the present partition action.

The Plaintiff is a Company and is not a natural person in the sense of being a human being having the ability to give evidence with personal knowledge of title to property but is a legal juristic person with the power to sue and be sued, in view of the fact that it has been duly

registered as a Company in terms of the laws of the land. The Plaintiff is therefore a legal entity, having the power and right to hold property in its name. This is the reason a Company can institute legal action in a Court of Law, seeking for instance a declaration of title to immovable property or to recover moneys due and owing to it by certain other entities.

It is the contention of the 1A, 2nd, 17th to 20th Defendants that the Plaintiff has failed to prove its title and the pedigree on which it has based his case, as the Plaintiff's witness testified to, not having personal knowledge of the said pedigree. The said Plaintiff Dharmakeerthi Somasiri Perera has testified that he is giving evidence in this matter on behalf of the Plaintiff Company, has a reasonable knowledge of the facts of the case.

In this case, the Plaintiff is a Company, which on the strength of the legal rights imputed to it, is holding title to property through lawfully binding transactions and consequently is in possession of the said immovable property, which it came to own through lawful transactions. This is clearly seen by the Deeds that have been led in evidence by the Plaintiff which demonstrate how its predecessors in title came to own the corpus of the action and purchased the said subject matter of the action by legally binding instruments, vesting title in the Plaintiff.

The Plaintiff cannot itself give evidence or be called to testify before Court, in view of the fact that it is not a natural person with the ability to testify before Court itself. But it can have person representing it to do so, based on the knowledge such an individual would have garnered from perusing documents, through instructions received and also by any personal knowledge he may have. This role has been duly discharged by the aforesaid Dharmakeerthi Somasiri Perera.

There is no obligation placed on a company to produce a witness who was personally involved in a transaction which forms the subject matter of an action and who was himself an eye witness to the transaction entered into between the Plaintiff, to prove and establish the nature of such a transaction. The Company could call an individual to represent its interest and give evidence and such an individual may not have been personally involved in a transaction of the company. If the contention of the 1A, 2nd, 17th to 20th Defendants is taken to its logical conclusion, and a company is only able to produce a witness who is personally involved in a transaction to testify regards the same, no company would litigate.

In this regard, the following excerpts from Phipson on evidence 14th Edition is important;

Chapter 16 — The proof of physical conditions - Knowledge and notice

16-10: "Actual knowledge may be inferred circumstantially, from the fact that a party had reasonable means of knowledge, e.g.; possession of or access to documents containing information."

"A limited company can only know of things through its agents of servants, and in the absence of evidence of delegation probably only the knowledge of the board.⁴ directors will be imputed to it. If, however, the duty of investigating and ascertaining- facts has been delegated to a subordinate official, in civil; cases the company will be bound by his knowledge."

It was argued by the Plaintiff Respondent that, the said Dharmakeerthi Perera has performed the same thing, on behalf of the Plaintiff in this case. Witness Perera has testified under oath that he does have reasonable knowledge of the matters related to the pedigree of the Plaintiff

The witness of the Plaintiff has testified to the manner in which the Plaintiff came to be the owner of the property in question and furthermore regards the metes and boundaries of the property as well from his personal knowledge and knowledge gathered from the documents made available to him and facts which he verily believes to be true. It shows that the Plaintiff has discharged its burden of proof. Thus, the contention of the 1A, 2nd, 17th to 20th Defendants is devoid of any merit and does not warrant any serious consideration.

The 26th Defendant, has corroborated the evidence of the Plaintiff whilst establishing her title to the portion of the property which she came to be the owner of and has been in possession of for in excess of 30 years. She has testified from her personal knowledge being a resident since her birth.

The Plaintiff has through cogent evidence proven its title and pedigree.

It is my view that on account of the totality of evidence, the finding of the Learned Trial Judge is the only finding any judge could have arrived at, in considering the evidence given by the parties.

For the foregoing reasons the Appeal is hereby dismissed with cost.

The Judgment of the Learned Additional District Judge of Balapitiya dated 22.10.1999 is affirmed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal