

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

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

1. Gamage Kumarapala (deceased)

C.A.648/2000(F)

D.C. Ratnapura 4440/P

- 1A. Angage Gunasiri Ananda Perera "Kithsiri"
Paradise Place, Kuruwita.
2. Gamage Madurawathi
3. Gamage Bodhipala
4. Gamage Sunila Jayantha Manamperi
All of Kitulpe, Kuruwita
5. Dorin Chandrakanthi
Gonapitiya
6. Yanakie Badhrangani
Gonapitiya
7. Gunela Irangani
Gonapitiya
8. Manel Chithrangani
Gonapitiya
9. Padma Sriyakanthi
Gonapitiya
10. Ramya Sri Gamage
Gonapitiya
11. Chandra Irangani
Gonapitiya
12. Bimba Ramyangani
Gonapitiya

13. Gamage Karunapala
(Presently Rev. Jinarathana)
Kuruwita ,Kithulpe

Plaintiffs

VS .
1. M.M. Martin
- 1A. Subasinghe Arachchige Vimalaratna.
2. K.H. Gunapala
3. K.H. Gunaseela
4. K.H. Sumathipala
5. K.H.Podinona
6. C.E.Kois (Deceased)
- 6A. Ealiyan Reginold Bernard Kois
7. V.H.Kois All of Kitulpe, Kuruwita
8. Ranjani Piyaseeli Esther Wijekoon
Aluth Mawatha, Colombo 15
9. I.A.N. Wickremasinghe
Aluth Mawatha, Colombo 15
10. M. S. Wickremasinghe
Aluth Mawatha, Colombo 15
11. Theresa Caroline Dora Kois
Kithulpe, Kuruwita
12. Florance Rosalin Kois Kithulpe,
Kuruwita
13. Margret Mary Kois Kithulpe,
Kuruwita
14. Alice Mary Kois Kithulpe,
Kuruwita
15. K.H. Nindoris
Kosgala,
Kithulpe

16. K.H.Chandrasiri Dewasinghe
Kosgala, Kithulpe
17. K.H. Sopinona
Kosgala,
Kithulpe
18. K.H. Samaris
Kosgala,
Kithulpe
19. V.G.Punchi Singho (Deceased)
- 19A. Udagedaralage Sirisena
Kithulpe, Kosgala
20. Ginadasa Udagedara (alias) Udagedaralage
Jinadasa
Kithulpe, Kosgala

Defendants

And Between

2. K.H. Gunapala (Deceased)
- 2A. K. H. Wasantha Dewasinghe
- 2B. K.H. Sarathchandra Dewasinghe
Both of Kithulpe, Kuruwita,
Ratnapura
3. K.H. Gunaseela
4. K.H. Sumathipala
5. K.H.Podinona (Deceased)
All of Kithulpe, Kuruwita
- 5A. H. Seelawathi
- 5B. H. Dayawansha
- 5C. H. Ranjith Ruwan Pathirana
All of Kithulpe, Kuruwita, Ratnapura
15. K.H. Nindoris (Deceased)
Kosgala, Kithulpe

- 15A. K.H. Samarajeewa Wickremasinghe
- 15B. K.H. Rohitha Kamal Wickremasinghe
- 15C. K.H. Nimal Wickremasinghe
- 15D. K.H. Dhammika Nalini Wickremasinghe All of
Kosgala, Kahangama, Ratnapura
16. K.H.Chandrasiri Dewasinghe
Kosgala, Kithulpe
17. K.H. Sopinona Kosgala,
Kithulpe
18. K.H. Samaris
Kosgala, Kithulpe

**2nd to 5th and 15th to 18th
Defendant/Appellants**

Vs

1. Gamage Kumarapala (deceased)
- 1A. Angage Gunasiri Ananda Perera, "Kithsiri"
Paradise Place, Kuruwita.
2. Gamage Madurawathi
3. Gamage Bodhipala
4. Gamage Sunila Jayantha Manamperi
All of Kithulpe, Kuruwita
5. Dorin Chandrakanthi
Gonapitiya
6. Yanakie Badhrangani
Gonapitiya
7. Gunela Irangani
Gonapitiya
8. Manel Chithrangani
Gonapitiya
9. Padma Sriyakanthi
Gonapitiya

10. Ramya Sri Gamage
Gonapitiya
11. Chandra Irangani
Gonapitiya
12. Bimba Ramyangani
Gonapitiya
13. Gamage Karunapala
(Presently Rev. Jinarathana)
Kuruwita Kithulpe

Plaintiff/Respondents
1. M.M.Martin (Deceased)
- 1A. Subasinge Arachchige Vimalarathna
6. C.E.Kois (Deceased)
- 6A. Ealiyan Reginold Bernard Kois
7. V.H.Kois
All of Kithulpe, Kuruwita
8. Ranjani Piyaseeli Esther Wijekoon
Aluth Mawatha, Colombo 15
9. I.A.N. Wickremasinghe
Aluth Mawatha, Colombo 15
10. M. S. Wickremasinghe
Aluth Mawatha, Colombo 15
11. Theresa Caroline Dora Kois
Kithulpe, Kuruwita
12. Florance Rosalin Kois
Kithulpe, Kuruwita
13. Margret Mary Kois
Kithulpe, Kuruwita
14. Alice Mary Kois
Kithulpe, Kuruwita
19. V.G.Punchi Singho (Deceased)

19A. Udagedaralage Sirisena
Kithulpe, Kosgala

20. Ginadasa Udagedara (alias) Udagedaralage
Jinadasa
Kithulpe, Kosgala

Defendant/ Respondents

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

&

R. Gurusinghe J.

Counsel: W.Dayarathna,PC with Hirantha Perera for the 2A, 2B, 3rd, 4th, 5B, 5C, 15A, 15C, 16th to 20th Defendant- Appellants.

Anuruddha Dharmaratne with F.Z. Hussin for the 1A Defendant-Respondent.

Written Submissions: By 2A, 2B, 3rd, 4th, 5B, 5C, 15A, 15C, 16th to 20th Defendant-Appellants on 13.01.2015 and 08.10.2019

By 1A Defendant-Respondent on 20.02.2014

Argued on: 23.05.2019 and 22.02.2021

Judgment on: 29.03.2021

N. Bandula Karunarathna J.

The 2nd to 05th and 16th to 18th Defendant-Appellants (hereinafter called and referred to as the “Appellants”) preferred this appeal against the Judgment dated 19.09.2000 of the learned District Judge of Rathnapura in case No. 4440/P.

The Plaintiff Respondents (hereinafter called and referred to as the “Respondents”) instituted the above action in the District Court of Ratnapura on 17/11/1980 originally against 12 Defendants seeking to partition the land called “Welikatiya Kumbura” depicted in Plan No. 1091

surveyed by D.E.A Balasooriya, Licensed Surveyor dated 21/03/1923 in extent of 3 Acres Roods and 33 Perches.

The said Plaintiff was amended on 23/06/1994 after the Preliminary Survey was carried out and the Appellants intervened at the Preliminary Survey and claimed 1/6th share of the corpus.

According to the pedigree disclosed by the Plaintiffs, they are entitled to 4/6th share and 1/6th share to one W.T.Thilakaratne and for the other 1/6th share there was a dispute between the 1st Defendant namely Martin, who claimed for the 1/6th share. As against the said claim the above-named Defendant Appellants too claimed same share and they filed their statements of claim.

The Preliminary Survey was carried out by the Court Commissioner A.E.C. Fernando licensed surveyor and submitted his Plan No.249 dated 07/12/1981 together with his report which was produced at the trial marked as X and X 1. When this case came up for trial on 09/05/1984 Plaintiffs raised Issues No 1 to 4 claiming 4/6th share from the corpus. The 1st Defendant claimed 1/6th share raising Issues No. 4 to 6.

The 2nd to 5th and 15th to 18th Defendants (The Appellants in this case) raised Issue No. 07 claiming 1/6th share and 6, 11 to 14 Defendants raised Issues No. 8 to 10 claiming prescriptive title for 1/4th share from the surface from the Land and 1/3rd share from the minerals. When this case came up for further trial on 16/09/199 (Vide page 127 onwards) it had been recorded that all the disputes in this case has been settled among the parties in the following manner.

a) There is no dispute with regard to the Plaintiffs undivided share to the corpus and the only dispute is among 1A Defendant as to whether the 1/6th share should go to the 1st Defendant and upon his death to his heirs including 1A Substituted Defendant or the said share should go to the 2nd to 5th and 15th to 18th Defendants.

Accordingly, all the issues raised on the previous date were removed by consent and only one Issue was raised as follows; (Vide page 128 of the brief)

පැමිණිල්ලේ 2 වැනි ඡේදයේ සඳහන් පරිදි මෙම ඉඩමෙන් නොබෙදූ 1/6 පංගුවක මුල් අයිතිකරු වූයේ කිතුල්පේ නිලමේ යන අයද, එසේ නැතිනම් 1 වැනි විත්තිකරුගේභිමිකම් ප්‍රකාශයේ සඳහන් පරිදි කට්ටිවෙන්තේ කිරියංචි කංකානම් හොහොත් කට්ටිවෙන්තේ හේවලයාගේ කිරියංචි යන අයද? එසේ නැතිනම් 2-15, සහ 15-18 විත්තිකරුවන්ගේ භිමිකම් ප්‍රකාශයේ සඳහන් පරිදි ඩිංගිරියා යන අයද?

අනිකුත් කරුණු සම්බන්දයෙන් සියලුම හබ කරුණු සමනයකට පත්කරගෙන ඒ අනුව 1 අ. පැමිණිලිකරු සාක්ෂියට කැඳවයි. මෙම සමනය පාර්ශවකරුවන්ගේ අනිකුත් ඉඩම්වල අයිතීන්ට බලනොපෑ යුතු බවට පාර්ශවකරුවන් එකඟ වේ.

Accordingly, 1A Substituted Plaintiff namely A.G. Ananda Perera gave evidence and submitted preliminary Plan and the report marked as X and X 1.

In regard to the title of all the Plaintiffs, 1A Substituted Plaintiff produced deeds marked පැ 1 to පැ 20 and through him, the 14th Defendant too produced a deed marked as 14වි1 and 19th Defendant produced a deed marked as 19වි1. According to his evidence parties who are entitled for the undivided share from the corpus are given as follows;

“ඒ අනුව පහත සඳහන් පරිදි නොබෙදූ අයිතිවාසිකම් යා යුතු බව මම කියා සිටිනවා.

පැමිණිලිකරුවන්ට නොබෙදූ 34/72 පංගුවයි.

(එයින් පොළොවේ යට බනිජ වස්තුවේ අයිතිය 1 වැනි පැමිණිලිකරුට පමණක් යා යුතුයි.)

11 වැනි විත්තිකරුට නොබෙදූ 8/72 පංගුවයි

14 වැනි විත්තිකරුට නොබෙදූ 8/72 පංගුවයි

20 වැනි විත්තිකරුට නොබෙදූ 5/72 පංගුවයි

19 වැනි විත්තිකරුට නොබෙදූ 5/72 පංගුවයි

ඉතිරිය වන්නේ නොබෙදූ 12/72 පංගුවයි. ඒ පිළිබඳව හබයක් ඇත. එම හබය තිබෙන්නේ 1 වැනි විත්තිකරුන්, 2-5 සහ 15-18 දක්වා විත්තිකරුවන් අතර වේ.”

There was no cross examination of the said witness and the Plaintiffs' case was closed on 16/09/1996.

It is evident that when this case came up for trial on 09/05/1984, the Plaintiffs raised Issues No 1 to 4 claiming 4/6th share from the corpus. The 1st Defendant claimed 1/6th share raising Issues No. 4 to 6. The 2nd to 5th and 15th to 20th Defendants (The Appellants in this case) raised Issue No. 07 claiming 1/6th share and 6, 11 to 14 Defendants raised Issues No. 8 to 10 claiming prescriptive title for 1/4th share from the surface from the Land and 1/3rd share from the minerals.

When this case came up for further trial on 16/09/1996 it had been recorded that all the disputes in this case has been settled among the parties in the following manner.

- a) There is no dispute with regard to the Plaintiffs undivided share to the corpus and the only dispute is among 1A Defendant as to whether the 1/6th share should goes to the 1st Defendant and upon his death to his heirs including 1A Substituted Defendant or the said share should goes to the 2nd to 5th and 15th to 20th Defendants.

1A Defendant gave evidence to produce the 1st Defendant's title originated from one K.A. Kirianchi Kankanama and upon his death the said rights devolved on his adopted son namely Loku Baba Sinno. Upon the death of said Loku Baba Sinno his rights devolved on his four children who

transferred the said rights to one Sanis Perera who transferred his rights to the 1st Defendant Martin. In proof of the same he produced documents marked 681 to 686.

He also produced and marked 687 to 6813 proceedings in DC Ratnapura case No. 5557 where Sanis Perera's title was challenged by one Haramanis and Podi Singho claiming their rights by Deed No. 13169 from Dingiriya, who claimed that upon the death of K.A. Kirianchi Kankanama his rights devolved on him and the adopted son Loku Baba Singho did not inherit the said K.A. Kirianchi Kankanama's right. In the said Case No. 5557, they sought for a judgement against Sanis Perera and they succeeded in the District Court. However, in the appeal to the Supreme Court, their Lordships held Loku Baba Singho inherited K.A. Kirianchi Kankanama's rights and Dingiriya had no title for the said property.

The aforesaid Haramanis and Podi Singho were the predecessors of title claimed by 2nd to 5th and 15th to 18th Defendants and therefore according to the said judgement it is Sanis who become entitled to the property which was transferred to the 1st Defendant, who became entailed to 1/6th share. In proof of the above proceedings in case No.5557 he has produced documents marked 687 to "6813".

1A Defendant was cross examined at length with regard to his pedigree on several dates and on behalf of the 2nd to 5th and 15th to 18th Defendants the abovementioned Deed No 13169 was produced and marked as 1587 and devolution of the title from the said deed they produced documents marked 1582 to 1583 and produced marked 1584 to 1587, the plaint and the proceedings up to the Fiscal Conveyance in DC Ratnapura Case No. 7558.

They also produced and marked 15813 to 15815 three more deeds and 15816 to 15820 Extracts from the Agricultural Land Register to prove that it is only 2nd to 5th and 15th to 18th Defendants who possessed the corpus.

The 1A Defendant closed his case only with his evidence. Thereafter the 15th Defendant gave evidence and he explained to Courts the pedigree he relied originating from the aforesaid original owner Dingiriya who transferred his rights to Podi Singho and Haramanis by deed No 13169 produced marked 1581. Thereafter he explained his position of the said land totally denying the rights claimed by 1A Defendant and specifically said that the 1st Defendant did not have possession at all of the corpus. He was cross examined at length on behalf of the 1A Defendant.

In support of the case of 2nd to 5th and 15th to 18th Defendants they summoned the tenant cultivator namely Keeralage Ranasinghe who said that no rents were paid to the 1st Defendant or the substituted 1A Defendant and the 15th Defendant who was in possession for well over 45 years. The 15th Defendant's case was closed with his evidence.

The last witness was the 20th Defendant who claimed 1/6th share from the corpus at the cross examination he said that he did not know whether the tenant cultivator gave rents to the original 1st Defendant.

The 2nd to 5th and 15th to 18th Defendant Appellants state that the Learned Trial Judge has not correctly analyzed all the evidence tendered. The 2nd to 5th and 15th to 18th Defendant Appellants further state that the 1(a) Defendant has not proved prescriptive title and therefore that the judgment of the Learned Trial Judge is contrary to the facts of the case. Thus, they submit that the 1st Defendant Appellant cannot maintain this action.

The 1st Defendant Respondent states that the learned District Judge of Ratnapura delivered Judgement holding, inter alia, that the issues in Case No.5557 are identical to the issues in the present partition action with regard to devolution. The Supreme Court has determined in the Appeal of Case No.5557 (S.C. Case No.56) that a person named Kiriyanchi had a legally adopted child by the name of Lokubaba Singho who inherited Kiriyanchi's estate and therefore title to the corpus would pass to Lokubaba singho's successors in title.

The main dispute then is as to who inherited Kiriyanchi's estate. i.e. adopted son or brother, and that the said matter was determined in Case No.5557.

The identical issue of inheritance of Kiriyanchi's estate was considered and determined upon in Case No.5557 by the Supreme Court where it was held that;

“on July 1, 1874 Kiriyanchi Kankanama and Petanchina (who gave their ages as 48 and 38) got their marriage registered long after their customary marriage and that they at the same time got the fact that they had adopted Baba Singho, aged 13 years recorded at the back of the register..... Very little further evidence was required to show that the adoption was for purposes of inheritance, and in my opinion, there was ample evidence to prove this further fact.”

It is my view that, if the said Lokubaba Singho was in fact an adopted son of the said Kiriyanchi, then the 1/6 share will be devolved according to the 1A Defendant's evidence. If, however, the said Kiriyanchi's share was inherited by his brother, the said Dingiriya, then the shares will be devolved according to the 15th Defendant's evidence

In this case it was proved that at the bottom of the said marriage certificate of Kiriyanchi it is stated that “child adopted by these two named Baba Singho aged 13 years”

Thus, Lokubaba Singho as the adopted son inherits the 1/6 share in the present corpus as well.

As Lokobaba Singho died his rights in the corpus devolved on his children, namely, one Ango, Agorisa, Enso and Suwaris who transferred the said 1/6 share on Deed No.14281 dated 17.08.1929 to Subasinghe Sanis Perera. The said Sanis Perera by Deed No.39828 dated 07.04.1959 transferred his rights to the 1st Defendant who thus became entitled to the said 1/6 share in the corpus.

Thus, it is my view that the 2nd to 5th and 15th to 18th Defendant are estopped from denying that Kiriyanchi had an adopted son who inherited his shares in the corpus. It is apparent that Dingiriya did not inherit any rights in the corpus from his brother, the said Kiriyanchi. Therefore, the

pedigree of the 2nd to 5th and 15th to 18th Defendants will fail as Dingiriya had no rights in the corpus to begin with.

Thus, the 1st Defendant is entitled to the 1/6th share in the corpus.

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 District Judge of Rathnapura dated 19.09.2000 is affirmed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal