

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

In the matter of an appeal from the  
final judgment in the District Court  
of Kandy in Case No. 9063/P.

**CASE NO: CA/DCF/1102/98**

D.C. Kandy, Case No. 9063/P

Mahalekamge Abhaya Ranjini  
Mahalekam,  
Mathukumnura,  
Murutalawa.

**9<sup>th</sup> Defendant-Appellant**

**Vs.**

1. M.I.R.V. Amarawansa  
Gunasekera,  
Danthura

**Plaintiff-Respondent**

2. M.I.R.V. Anulawathi Gunadasa,  
Dodanwala,  
Murutalawa.

3. M.I.R.V. Karunawathi,  
Dodanwala,  
Murutalawa.

4. B.M. Abeygunawardena,  
Dodanwala,  
Murutalawa.

5. B.M. Subadra,  
Dodanwala,  
Murutalawa.

6. B.M. Senatahana,  
Dodanwala,  
Murutalawa.

7. B.M. Leelawathie,  
Dodanwala,  
Murutalawa.

8. U. Karunaratne,  
Buthgodapitiya,  
Menikdiwela.

9. P.M.P. Gunadasa.  
Dodanwala,  
Murutalawa.

**1<sup>st</sup> to 8<sup>th</sup> Defendant-  
Respondents**

Before: **M.T. MOHAMMED LAFFAR, J. and  
S.U.B. KARALLIYADDE, J.**

Counsel: Lakshman Perera, P.C., instructed by Niluka S.  
Dissanayake for the Substituted 9A Defendant-  
Appellant.

Rohan Sahabandu, P.C., with Chathurika Elvitigala,  
for the Plaintiff-Respondent.

Gamini Hettiarachchi for the 1<sup>st</sup> – 8<sup>th</sup> Defendant-  
Respondents.

Written Submissions on: 27.07.2021 (by the 9<sup>th</sup> Defendant-  
Appellant).

05.08.2021 (by the Plaintiff-Respondent).

06.08.2021 (by the 1<sup>st</sup> – 5<sup>th</sup> Defendant-  
Respondents).

Decided on: 28.10.2021

**MOHAMMED LAFFAR, J.**

This is an appeal preferred by the 9<sup>th</sup> Defendant-Appellant (hereinafter referred to as the “9<sup>th</sup> Defendant”) from the judgment of the learned District Judge of Kandy dated 14.07.1998.

The facts, briefly, in this case are as follows. The Plaintiff-Respondent (hereinafter referred to as the “Plaintiff”) instituted action to partition four lands, namely (1) Kiriwane Kumbura & Thale Kumbura, (2) Nuwara Pakshapedi Gedera Watta, (3) Thoradeniya Watta and (4) Ketawalahena, that have respectively been described in 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> schedules to the amended plaint dated 02.03.1998, amongst the co-owners as set out in paragraph 9 of the same.

After trial, the learned District Judge of Kandy pronounced the impugned judgment dated 14.07.1998 in order to partition the lands described in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> schedules, among the co-owners as set out in the judgment.

Being aggrieved by the judgment, the 9<sup>th</sup> Defendant has preferred the instant appeal.

**Corpus:**

There is no dispute as to the identification of the subject matter sought to be partitioned. Admittedly, the corpus in this case is described as follows:

1. The land more fully described in the 1<sup>st</sup> schedule to the amended plaint, namely Kiriwane Kumbura and Thale Kumbura is depicted in the preliminary plan bearing No. 2309 dated 03.03.1981 made by A.B. Kiridena, Licensed Surveyor marked P1.

2. The land more fully described in the 2<sup>nd</sup> schedule to the amended plaintiff, namely Nuwara Pakshapedi Gedera Watta is depicted in the preliminary plan bearing No. 2311 dated 03.03.1981 made by A.B. Kiridena, Licensed Surveyor marked P3.
3. The land more fully described in the 3<sup>rd</sup> schedule to the amended plaintiff, namely Thoradeniya Watta is depicted in the preliminary plan bearing No. 2312 dated 03.03.1981 made by A.B. Kiridena, Licensed Surveyor marked P5.
4. The land more fully described in the 4<sup>th</sup> schedule to the amended plaintiff, namely Ketawalahena is depicted in the preliminary plan bearing No. 87/51 dated 28.05.1987 made by A.B. Kiridena, Licensed Surveyor marked P7. (*Vide, admissions, 1, 2, 3 and 4. See, page 74 of the Appeal brief*)

However, the learned District Judge, in the impugned judgment dated 14.07.1998, has confined the corpus sought to be partitioned to the lands described in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> schedules of the amended plaintiff, and excluded the land shown in the 4<sup>th</sup> schedule (vide judgment at page 129 of the Appeal brief). It is to be noted that there is no appeal preferred against the aforesaid findings of the learned trial Judge.

**Devolution of title:**

Section 25 of the Partition Law, No. 22 of 1871 (as amended) imposes on the court the obligation to investigate title of each party carefully.

In ***Juliana Hamine v. Don Thomas*** [1957] 59 NLR 546, it was held that,

*“Section 25 of the Act makes it obligatory on the Court to scrutinize, quite independently of what the parties may or may*

*not do, the title of each party before any share is allotted to him. Where a party fails to produce his material documents of title, or omits to prove his title, the procedure prescribed in sections 20 and 61 of the Act should be followed.”*

In the case of **Magilin Perera v. Abraham Perera** [1986] 2 Sri LR 208, the Court of Appeal observed that,

*“When a partition action is instituted the plaintiff must performe indicate an original owner or owners of the land. A plaintiff having to 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 Courts that it would not be reasonable to expect proof within very high degrees of probability on questions such as those relating to the original ownership of land. Courts 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”*

In **Thilagaratnam v. Athpunadan and Others** [1996] 2 Sri LR 66, it was decided that,

*“Although there is a duty cast on court to investigate title in a Partition action, the court can do so only within the limits of pleadings, admissions, points of contest, evidence both documentary and oral.”*

*Per Anandacoomaraswamy, J.*

*"Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them; otherwise parties will tender their pleadings and expect the court to do their work and their Attorneys-at Law's work for them to get title to those shares in the corpus."*

In the instant case, as per the pedigree set out in the plaint, by virtue of the final decree of the Partition action bearing No. 21524 marked P10 (Partition action in the District Court of Kandy), Kiribandu and Rankiri became the original owners of the land described in the 1<sup>st</sup> and 2<sup>nd</sup> schedules to the amended plaint. The said Kiribandu by deed No. 283 dated 14.07.1933 marked P12 conveyed his rights to the aforesaid Rankiri who transferred the same to Somawathi by deed No. 23590 dated 05.08.1927 marked P13 and deed No. 10847 dated 13.02.1947 marked P14.

By virtue of the deed bearing No. 11325 dated 23.12.1908 marked P9, the said Rankiri became the original owner of the land more fully described in the 3<sup>rd</sup> schedule to the amended plaint who conveyed that right to the aforesaid Somawathi by P14.

By virtue of the final decree of the Partition action bearing No. 3318 in the District Court of Kandy marked P15, the said Somawathi became the original owner of the land described in the 4<sup>th</sup> schedule to the amended plaint. Accordingly, the said Somawathi became the owner of the entire corpus sought to be partitioned.

Admittedly, on the demise of the said Somawathi, her rights devolved on her children, namely the Plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondents (hereinafter referred to as the respective "Defendants").

It was the contention of the Plaintiff that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not entitled to succeed the right of the said Somawathi on the basis that they had *Deega* marriage before the death of Somawathi. Hence, the Plaintiff is entitled to an undivided 1/2 share and the 3<sup>rd</sup> defendant is entitled to an undivided 1/2 of the subject matter.

The finding of the learned trial Judge was that, in terms of the Kandyan Law, the daughters who contracted *Deega marriage* before the death of their father are not entitled to succeed father's rights. But this position does not apply to the properties of mother. In short, according to the Kandyan Law, the daughters who contracted *Deega marriage* before the death of their mother are also entitled to succeed mother's inheritance rights. Accordingly, the learned trial Judge held that Somawathi's rights should devolve on the Plaintiff and 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as follows:

Plaintiff : 1/4

1<sup>st</sup> Defendant : 1/4

2<sup>nd</sup> Defendant : 1/4

3<sup>rd</sup> Defendant : 1/4

It is pertinent to be noted that the Plaintiff has opted not to appeal against the foregoing determination of the learned trial Judge.

Having scrutinized the pedigree set out in the judgment, it appears to this Court that the learned trial Judge has properly investigated the title of the parties in terms of the Partition Law.

I shall now deal with the grounds of appeal advanced by the 9<sup>th</sup> Defendant who has preferred the instant appeal.

The contention of the 9<sup>th</sup> Defendant was that the said Rankiri died leaving a last Will. The said last Will was proved in a Testamentary action bearing No. T/1130. According to the last Will, the 9<sup>th</sup> Defendant became the owner of the entire rights of said Rankiri in

respect of the lands described in the 1<sup>st</sup> and 2<sup>nd</sup> schedules. Moreover, by virtue of the Deed bearing No. 9354 dated 03.11.1960, one Siriya who was the father of the 9<sup>th</sup> Defendant became the owner of the lands described in schedule 3 and 4. On the demise of said Siriya, the 9<sup>th</sup> Defendant became entitle to the said rights by virtue of the Testamentary action bearing No. 2926 in the District Court of Kandy.

The learned District Judge has rightly observed the fact that the 9<sup>th</sup> Defendant cannot obtain title from said Rankiri to the lands described in the 1<sup>st</sup> and 2<sup>nd</sup> schedule, since Rankiri has already conveyed his entire rights to Somawathi by deeds marked P13 and P14. Further, it is pertinent to be noted that the said deeds marked P13 and P14 have not been disputed by the 9<sup>th</sup> Defendant.

Furthermore, since the said Rankiri had obtained title to the land described in the 3<sup>rd</sup> schedule by P9 in 1908, the 9<sup>th</sup> Defendant's father, Siriya cannot obtain title by deed bearing No. 9354 in 1960.

Having considered the evidence adduced, it is manifestly clear that the 9<sup>th</sup> Defendant totally failed to establish the purported pedigree set out in his statements of claim.

The learned President's Counsel for the 9<sup>th</sup> Defendant also contended that several lands cannot be partitioned in one action such as in the instant case. I decline to accept this contention.

It is settled law that the co-owners are entitled to have common lands partitioned in a partition action, provided that there should be a common pedigree pertaining to the lands sought to be partitioned. As correctly held by Garvin S.P.J. (Macdonell C.J. concurring) in ***Eliyatambi v. Kanapathy Veeragathie*** [1934] 35 NLR 211, at p. 213, it is not contemplated by the provisions of the Partition Ordinance that any more than one land will be partitioned in one



proceeding (Also see, **Richard and Another v. Seibel Nona and Others** [2001] 2 Sri LR 1, at p. 8).

**Conclusion:**

In these respects, I see no basis to interfere with the judgment of the learned District Judge of Kandy dated 14.07.1998. Accordingly, I affirm the judgment of the District Judge and dismiss the appeal with costs fixed at Rs. 30,000/-.

The Registrar is directed to dispatch a copy of this judgment along with the original case record to the District Court of Kandy.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**S.U.B. KARALLIYADDE, J.**

I Agree.

**JUDGE OF THE COURT OF APPEAL**