

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

In the matter of an Appeal.

C.A. Case No: DCF-183-97

01. Henakaralalage Anura Senannayake
Kehelwatta, Wathura
02. Henakaralalage Mahinda Senannayake
Kehelwatta, Wathura

D.C. Kegalle Case No: 25087/P

Plaintiffs

Vs.

1. Henakaralalage Mudiyanse Senannayake
2. Henakaralalage Dharmasena
3. Henakaralalage Jayasena
4. Henakaralalage Podi Nilame
5. Henakaralalage Podi Ralahami
6. S.M. Rosalin Samarakoon
7. Henakaralalage Sriyalatha Chandrasiri
Menike Samarakoon
8. Henakaralalage Daya Kumara Senannayake
(dead)
(8A) Rajapaksha Pathirage Piyaseeli
9. Henakaralalage Chandrika Pushpa Kumari
Samarakoon
10. Henakaralalage Devika Saman Kumari
Samarakoon
11. Henakaralalage Sriyalatha Chandrawathi
Menike
12. Henakaralalage Chandrika Pushpa Kumari
Senannayake
13. Henakaralalage Devika Saman Kumari
Senannayake
14. Henakaralalage Sadamali Senannayake
15. Henakaralalage Amila Kelum Senannayake
16. Rajapaksha Pathiranage Piyasili
all of Kehelwatta, Wathura

Defendants

And now between

1. Henakaralalage Dharmasena
2. Henakaralalage Jayasena
3. Henakaralalage Podi Nilame
all of Kehelwatta, Wathura

2nd, 3rd, 4th Defendant-Appellants

Vs.

01. Henakaralalage Anura Senannayake
02. Henakaralalage Mahinda Senannayake
all of Kehelwatta, Wathura

1st and 2nd Plaintiff-Respondents

- 08(A)Rajapaksha Pathirage Piyaseeli
11. Henakaralalage Sriyalatha Chandrawathi
Menike
 12. Henakaralalage Chandrika Pushpa Kumari
Senannayake
 13. Henakaralalage Devika Saman Kumari
Senannayake
 14. Henakaralalage Sadamali Senannayake
 15. Henakaralalage Amila Kelum Senannayake
 16. Rajapaksha Pathiranage Piyasili
all of Kehelwatta, Wathura

8th, 11th - 16th, Defendant-Respondents

Before: M.T.M. Laffar, J.
S.U.B. Karalliyadde, J.

Counsel: Hirosha Munasinghe for the 2nd, 3rd, 4th Defendant-Appellants
Romesh De Silva P.C. with Shanaka Cooray instructed by Ms. Bushra Hashim
for the Plaintiff-Respondents

Written submissions tendered on:

13.08.2021 and 10.03.2020 by the Plaintiff-Respondents

15.01.2021 by the 2nd, 3rd, 4th Defendant – Appellants

Argued on: 13.07.2021.

Decided on: 09.11.2021.

S.U.B. Karalliyadde, J.

This appeal is against the judgment dated 12.03.1997 of the learned District Judge of Kegalle in the partition action bearing No. P 25087. The 1st and 2nd Plaintiff-Respondents (hereinafter referred to as 1st and 2nd Plaintiffs) instituted that action in the District Court seeking to partition a land called and known as ‘*Ambalam owite watte*’ in the extent of one *Amuna* in paddy sowing extent. The Court has concluded that the land sought to be partitioned is depicted as lot No. 1 in plan No. 1221 (marked as X, at page 233 of the Appeal Brief) prepared by the Surveyor Mr. T.M.T.B. Tennakoon. By this appeal the 2nd - 4th Defendant-appellants (hereinafter referred to as the 2nd - 4th Defendants) seek to set aside the judgment of the learned District Judge on the basis that the land sought to be partitioned has not been identified correctly. Their argument before the District Court was that the land shown as lot 1 in the plan marked as X is a portion of a land known as ‘*Balagalahene watta*’ which is the extent of one *Amuna* in paddy sowing extent. Prior to the institution of the instant action, the 2nd - 4th Defendants had instituted the partition action bearing No. P 24926 in the District Court of Kegalle for partitioning the said ‘*Balagalahene watta*’. The preliminary plan bearing No. 436/P prepared by Surveyor Mr. A.C.P. Gunasena for the action bearing No. P 24926 has been tendered to Court marked as 2- E -1 (at page 178 in the Appeal Brief) at the trial in the instant action. The position of the 2nd - 4th Defendants in the instant action was that ‘*Balagalahene watta*’ is consisting of lots 1 - 6 in plan marked as 2- E -1 and lot 1 shown in plan X is the same lot which is shown as lot 6 in plan

2-ඒ-1. Nevertheless, plan 2-ඒ-1 has not been superimposed on the plan marked as X to establish that position. The 1st and 2nd Plaintiffs, tendering their statement of claim in the action bearing No. P 24926 had argued that lot 6 in plan 2-ඒ-1 is not a part of '*Balagalahene watta*' but it is a different land called and known as *Ambalam ovite watta*. On that basis, they sought to exclude lot 6 from the partition. The action in hand has been instituted by the 1st and 2nd Plaintiffs for partitioning that land which they call as '*Ambalam ovite watta*'. Even though, it has not been recorded as a formal admission at the trial, it has been admitted by both parties that the Commissioner, Mr. Tennakoon has surveyed lot 6 in Mr. Gunasena's plan as the subject matter of the action in hand. Nevertheless, the extent of lot 6 in plan 2-ඒ-1 is less than the extent of lot 1 shown in plan X by 2.4 Perches.

The position of the 2nd - 4th Defendants was that the boundaries and extent of the land mentioned in their title deeds marked as 2-ඒ-1 (අ) to 2-ඒ-3 for '*Balagalahene watta*' tallies with the boundaries and the extent of the land consisting of lots 1 - 6 in the preliminary plan marked as 2-ඒ-1 prepared for the action bearing No. P 24926 and hence, lot 6 in that plan should be a part of '*Balagalahene watta*'. They have drawn the attention of the Court to the fact that even though, the extent of the land mentioned in the title deeds executed for *Ambalan Ovita watta* is one *Amuna*, which is equivalent to approximately 5 Acres, the extent of the land surveyed for the purpose of the instant action is only 1A 2R 30P. They argue that *Ambalan Ovita watta* is situated to the south of lot 1 in plan marked as X. The position of the 1st and 2nd Plaintiffs was that *Ambalan Ovita watta* which is sought to be partitioned in the action was surveyed by Mr. Tennakoon and it is shown as lot 1 in plan X. They do not accept the position of the 2nd - 4th Defendants that the land shown in plan X is a part of *Balagalahene watta*.

The deeds which were marked and tendered at the trial as ජූ-3, ජූ-4 and ජූ-8 deals with both lands, *Ambalan Ovita watta* and *Balagalahene watta*. While deeds marked and tendered as ජූ1, ජූ-2, ජූ-5 and ජූ-6 deals with only *Ambalan Ovita watta*, deeds marked as 2-ඒ-1(අ) to 2-ඒ-3 deals only with *Balagalahene watta*. When concluding that the land sought to be partitioned in the instant action, *Ambalan Ovita watta* is shown as lot 1 in plan marked as X, the learned District Judge has considered the following evidence in the case.

As mentioned in the amended plaint dated 12.02.1993, the boundaries of the land sought to be partitioned are as follows;

නැගෙනහිරට - හෙට්ටිමුල්ලේ සිට ගැවිලිපිටියට යන කරන්න පාර ද,

දකුණට - නයිනන්කඩ ඔය ද,

බස්නාහිරට - චතුරේ ඔය ද,

උතුරට - ආණ්ඩුවට අයිති බලගල මුකලාන සහ පුංචිරාළට අයිති අම්බලම් ඕව්ටේ වත්තේ ඉම.

The boundaries of *Ambalan Ovita watta* mentioned in deeds marked as පැ-1 and පැ-2 are identical to the boundaries of the land shown as lot 1 in plan X.

The boundaries of the said land mentioned in the deeds පැ-1 and පැ-2 are as follows;

නැගෙනහිරට - හෙට්ටිමුල්ලේ සිට ගැවිලිපිටියට යන කරත්ත පාර ද,

දකුණට - නයිනන්කඩ ඔය ද,

බස්නාහිරට - චතුරේ ඔය ද,

උතුරට - ආණ්ඩුවට අයිති බලගල මුකලාන සහ පුංචිරාළට අයිති අම්බලම් ඕව්ටේ වත්තේ ඉම

The boundaries of lot 1 in plan X are as follows;

නැගෙනහිරට - හෙට්ටිමුල්ලේ සිට ගැවිලිපිටියට යන මහා මාර්ගය සහ අම්බලම් ඕව්ටේ

දකුණට - අම්බලම් ඕව්ටේ සහ නයිනන්කඩ ඔය

බස්නාහිරට - චතුරේ ඔය

උතුරට - කැ/කෙහෙල්වත්ත මහා විද්‍යාල භූමිය

The learned District Judge also has considered the following facts regarding the identification of the subject matter. That the 2nd Defendant, while giving evidence has admitted that the parametrical boundaries of the land formed by lots 1-3 in plan 2-ඒ-1 are identical to the boundaries of the land known as *Balagalahene watta* mentioned in the deeds marked as පැ-3, පැ-4 and පැ-8 which were dealt with both lands, the boundaries of lot 6 in plan 2-ඒ-1 are identical to the boundaries of *Ambalan Ovita watta* which is dealt in deed පැ-3 and that the boundaries of *Ambalan Ovita watta* dealt with in deeds පැ-1 and පැ-2 tallies with the boundaries of lot 1 in plan X.

One of the reasons which the learned Counsel for the 2nd - 4th Defendants argue that the land depicted in plan X is a part of *Balagalahene watta* is that in paragraph 9 of the Surveyor's report marked as X1 the Surveyor has reported that the land depicted in his plan is a part of the land shown in plan No. 436-P (marked as 2-ඒ-1) prepared by the Surveyor Mr. A.C.G. Gunesena for partitioning *Balagalahene watta* in the action bearing No. P 24926. The learned Counsel for the 2nd - 4th Defendants argue that at the trial, even though, on behalf of the 2nd -

4th Defendants points of contests have been raised about the identity of the land, the Plaintiffs have failed to call the Surveyor who prepared the preliminary plan marked as X to give evidence to establish the identity of the land.

In paragraph 5 of the report marked as X1, the Surveyor has reported that in his opinion, the land he had surveyed is substantially same as the land sought to be partitioned as described in the schedule to the amended plaint. In terms of section 18 (2) of the Partition Law, No. 21 of 1977, the facts stated in the Surveyor plan and the report can be used as evidence without further proof. Therefore, since the facts stated in a surveyor report can be used as *prima facie* evidence, in the instant action the burden of displacing facts stated in the surveyor report by calling the Surveyor or offering further evidence of an inconsistent or contradictory nature had been on the 2nd to 4th Defendants. Nevertheless, they have failed to make any application from Court to summon the Surveyor to examine him or to adduce any inconsistent or contradictory evidence. Therefore, the Court can come to the conclusion that the Plaintiff has discharged his onus to prove that the land sought to be partitioned is lot 1 in the preliminary plan marked as X. Even though, the Surveyor has stated in the paragraph 9 of his report marked as X1 that the land he had surveyed is a portion of the land shown in plan marked as 2-8-1, he has not superimposed 2-8-1 on the preliminary plan marked as X. The Court cannot believe that a surveyor would be able to make such a conclusion without preparing a superimposition plan. Under the above stated circumstances, the Court can conclude that it has been proved that the subject matter of the action is lot 1 in the preliminary plan marked as X.

The learned Counsel for the 2nd - 4th Defendants further argue that even though, the land sought to be partition is one *Amuna* in paddy sowing extent, the plan X does not show a land in the extent of one *Amuna*. That argument is based on the fact that according to the Sinhalese method of measuring the lands, in Kegalle District the extent of one *Amuna* should be equivalent to approximately 5 Acres according to the English measurement. The extent of the land depicted in plan X is only 1 Acre 2 Roods and 30 Perches. The Sinhalese land measures are computed according to the extent of land require to sow either paddy or kurakkan. The number of seed requires to sow in a particular extent of land would depend on varies factors like quality and the size of the seeds, fertility of the soil, etc. Therefore, the land area which require to sow the same number of seeds would vary from district to district or even in the same district and cannot be considered as an accurate and standard method of measuring land. When identifying the corpus in a partition action, the Court should consider the boundaries of the land as mentioned in the title deeds with the boundaries according to the Surveyor plans.

The deed marked as පැ-8 which had been executed in the year 1925 is a vital document in deciding the subject matter of the instant action. The 2nd Defendant has admitted that Ram Menike who was entitled to a half share of *Balagalahene watta*, by පැ-8 had transferred her rights to Appuhammy, Ukku Banda, Punchirala and Dingiri Banda (at page 127 of the Appeal Brief). They were the original owners of a half share of *Ambalan Ovita watta*, which is the subject matter of the instant action. Deed marked as පැ-8 deals with both lands, *Ambalan Ovita watta* and *Balagalahene watta*. The boundaries of *Ambalan Ovita watta* as mentioned in that deed are as follows;

නැගෙනහිරට - පාර සහ ඕවිට ද
 දකුණට - ඔය ද
 බස්නාහිරට - ඔය ද
 උතුරට - කැටකාලාගහ මුල හේනේ ඉම

Under cross examination, the 2nd Defendant has admitted that *Ketakalagaha mula hena* is the land which the Government School is situated (at page 141 of the Appeal Brief). The 2nd Defendant has further admitted that the boundaries of *Ambalan ovita watta* mentioned in deed marked as පැ-8 are identical to the respective boundaries of lot 6 in plan 2-වී-1. (at page 141 of the Appeal Brief). The boundaries of *Ambalan Ovita watta* mentioned in deeds marked as පැ-3, පැ-6 are also identical to the boundaries of the same land mentioned in deed පැ-8.

The boundaries of *Balagalahene watta* according to the deeds marked as පැ-3, පැ-4 and පැ-8 are as follows;

නැගෙනහිරට - අභල ද
 දකුණට - මහ පාර ද
 බස්නාහිරට - අභල ද
 උතුරට - ආණ්ඩුවේ මූකලාන

Under cross examination the 2nd Defendant has admitted that the said boundaries are identical to the respective boundaries of the land formed by lots 1, 2 and 3 in plan 2-වී-1 (at page 143 of the Appeal Brief).

In plan 2-වී-1, the eastern boundary of lots 1 and 2 is *Balagalahene watta* owned by H.R. Appuhamy and the eastern boundary of lot 6 is *Ambalan Ovita watta*. The 2nd Defendant has

admitted that the parties to the actions bearing No. P 24926 and No. P 25087 are not entitled to the rights of the said two lands and the evidence adduced in the instant action regarding the pedigrees of *Ambalan Ovita watta* and *Balagalahene watta* does not apply to the lands situated as the eastern boundaries of lots 1, 2 and 6 in plan 2-ඒ-1 (at page 138 of the Appeal Brief). According to the evidence of 2nd Defendant the original owner of *Ambalan Ovita watta* was Mudiyanse who was his grandfather and Punchirala who is shown as an heir of Mudiyanse was his father (at page 133 of the Appeal Brief). He has admitted that other than the land sought to be partitioned, his grandfather or father had no rights in any other land in the name of *Ambalan Ovita watta* (at page 137 of the Appeal Brief). By deed පැ-1, said Punchirala had transferred the inheritance rights from his father, Mudiyanse in *Ambalan Ovita watta* to Dingiri Appuhamy and Puchi Mahaththaya.

The boundaries of *Ambalan Ovita watta* as mentioned in deed පැ-1 are as follows;

- නැගෙනහිරට - හෙට්ටිමුල්ලේ සිට ගැවිලිපිටියට යන කරන්න පාර ද,
- දකුණට - නයිනන්කඩ ඔය ද,
- බස්නාහිරට - වතුරේ ඔය ද,
- උතුරට - ආණ්ඩුවට අයිති බලගල මුකලාන සහ පුංචිරාලට අයිති අම්බලම් ඔව්ටේ වත්තේ ඉම ද

Those boundaries tallies with the boundaries of lot 1 in plan X and lot 6 in plan 2-ඒ-1.

It was not in dispute that Mudiyanse who was the grandfather of the 2nd Defendant and Ran Menike were the original owners of half share each of the land sought to be partitioned. Mudiyanse's rights had been devolved on his son Punchirala who was the father of the 2nd Defendant. Punchirala had executed the deed marked as පැ-1. When he was executed පැ-1, he has mentioned that the extent of *Ambalan Ovita watta* is one *Amuna*. When Ran Menike was executing deed පැ-8 for her rights, she has mentioned that the extent of the land is 15 *Lahas*. The title deeds in the pedigree under Punchirala had been executed on the basis that the extent of *Ambalan Ovita watta* is one *Amuna* and under Ran Menike on the basis of 15 *Lahas*.

When considering the above evidence, the Court can be satisfied that the land sought to be partitioned in the instant action, *Ambalan Ovita watta* is lot 1 in plan marked as X. Therefore, I hold that the conclusion of the learned District Court Judge that the land sought to be partitioned is lot 1 in plan X is according to the evidence of the case. Hence, I affirm the impugned judgment of the learned District Court Judge and dismiss the Appeal. The 2nd – 4th

Defendants will pay Rs. 50,000/- as costs of this appeal. I direct the learned District Court Judge to enter the interlocutory decree according to the impugned judgment.

JUDGE OF THE COURT OF APPEAL

M.T. MOHOMAD LAFFAR J.

I agree.

JUDGE OF THE COURT OF APPEAL