

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

K.A. Thomas

Baduraliya.

**6<sup>th</sup> Defendant-Appellant-Petitioner**

**VS.**

**C.A. Case NO.1095/96/F**

DC Mathugama Case No.186/P.

1. Sammu Arachchige Ariyasena Mahepala,  
Lathpandura, Banduraliya.  
(Deceased)

1a. Allanaheewage Adelin  
Kosgodawatte, Baduraliya

2. Sammu Arachchige Elpi-nona  
(Deceased)

2a. Allanaheewage Adelin  
Kosgodawatte, Baduraliya

**Plaintiff-Respondent**

1. Sammu Arachchige Simomn Maheepala  
Appuhamy  
Iiukpelessa, Baduraliya, Lathpandura.

1a. Akuranage Sumanasiri  
Iiukpelessa, Baduraliya, Lathpandura.

2. Sammu Arachchige Elo Singho Maheepala  
Appuhamy  
Iiukpelessa, Baduraliya, Lathpandura.

3. Sammu Arachchige Marthalis Maheepala.  
Iiukpelessa, Baduraliya, Lathpandura

4. Sammu Arachchige Hemasiri Maheepala  
Iiukpelessa, Baduraliya, Lathpandura.

5. S.S. Batiyan,  
Ukgawatha, Baduraliya

7. Gama Etige Herman.  
Baduraliya.

8. K.A. Wijepala,  
Ukgawatha, Baduraliya.

**Defendant-Respondent**

Before : **M.T. Mohammad Laffar, J.**  
**K.K.A.V. Swarnadhipathi J.**

Counsel : Mr C. Ladduwahetty with Mrs Lakmi Silva  
for the 6<sup>th</sup> Defendant-Appellant.  
Mr T. Weerackoddy  
for the 1<sup>st</sup> to 4<sup>th</sup> Defendant-Respondents.  
Mr Sandeepa Gamahetige  
for the 1<sup>st</sup> (a) and 2<sup>nd</sup> (a)

Date of argument: 02.03.2021

Date of Judgment: 10.11.2021

Argument : On written submission

Date of judgment : 10.11.2021

**K.K.A.V. Swarnadhipathi J.**

**JUDGEMENT**

Plaintiff-Respondent instituted a partition action to partition two allotments of land, shown as Lot 4A, 4B, 4C, 5A, 5B, 5C and 5D in the Preliminary Plan NO.846 dated 12.07.1997. The 5<sup>th</sup> Defendant of the partition case claimed the prescriptive right to Lot 5D of the preliminary plan and prayed to exclude that from the partition. The 6<sup>th</sup> Defendant, with his father, the 7<sup>th</sup> Defendant claimed Lots 4A, 4B, 4C, 5B and 5C on prescription. The 8<sup>th</sup> Defendant claimed Lot 4B.

After the trial at the District Court, District Judge delivered the judgment on 28.11.1996 and held that the land described in the preliminary plan should be partitioned among the Plaintiff and 1<sup>st</sup> to 4<sup>th</sup> Defendants and exclude Lot 5D. Accordingly, District Judge had dismissed the claim of the 6<sup>th</sup> Defendant.

While the case was proceeding, the 8<sup>th</sup> Defendant had settled with Plaintiff and the 1<sup>st</sup> to 4<sup>th</sup> Defendants. Therefore, on payment of Rs.1000/=, Lot 4B was given to the 8<sup>th</sup> Defendant. However, the judgment was silent on anything regarding 8<sup>th</sup> Defendant. This settlement is found in the proceedings of the 20<sup>th</sup> day of June 1984.

Aggrieved by the judgment, the 6<sup>th</sup> Defendant had filed this Petition of Appeal. On the written submissions and at the argument, the 6<sup>th</sup> Defendant-Appellant took the stand that the learned District Judge had not adequately analyzed the Plaintiff's pedigree.

According to Plaintiff, his pedigree arises from the interlocutory decree in case No.11922. Further, the Plaintiff states that Charles Appuhamy and Davith Appuhamy bought Lot 4 and Lot 5 in case No.11922 by a certificate of sale marked as [P1]. Charles Appuhamy sold his ½ share by Deed No.6111 attested by N.U.A. Wijesiriwardena, N.P. on 11.01.1960 to the 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiffs. Thereby, the Plaintiffs become co-owners to ½ share of Lots 4 and Lot 5 of case No.11922. Davith, who bought the balance ½ share, died leaving his heirs as 1<sup>st</sup> to 4<sup>th</sup> Defendants.

The 6<sup>th</sup> Defendant-Appellant argues that the order in case No:11922 was to divide the land among 24 co-owners. The interlocutory decree does not hold an order to sell; it only speaks of a partition of the corpus among co-owners. The idea of a sale was introduced after entering the interlocutory decree, which came into the case much later, on 19th June 1928. It was on 19. 06. 1928 an order was made to sell the land in blocks according to Plan No.5495. As the law does not allow for amending the decree in a partition case, the decree to sale becomes null and void.

The 6<sup>th</sup> Defendant-Appellant contends that there were no provisions in the partition law to sell in blocks as of 1928.

When perusing the contest points, the case record carries no points on behalf of the 6<sup>th</sup> and 7<sup>th</sup> Defendants. Even though an argument is formed in this court regarding points raised by the 6<sup>th</sup> and 7<sup>th</sup> Defendants, it is not fair to say that the learned District Judge had not given his mind to points that were not raised for his consideration.

Furthermore, the 6<sup>th</sup> Defendant had opted to be silent regarding the earlier partition case. No points were raised and discussed regarding case no 1192 at the District Court. Therefore, the other party had no opportunity to address those points. Even in the Petition of Appeal dated 24<sup>th</sup> January 1997, there is no mention of facts spoken in the argument and written submission by the 6<sup>th</sup> Defendant-Appellant regarding the earlier partition case.

The Appellant had overlooked to inform this court of the points that had not been evaluated in the judgment. Instead, it appears that the Appellant was trying to make a new case.

The main reason for settling points of the contest is for parties to build up the case on those points. According to law, points of the contest can be raised at any point in the case. If Appellant brought to the notice of court at any point of the trial regarding the point he is trying to argue now, District Judge would have raised and answered a point when writing the judgment.

On the other hand, if what had happened in partition case No.11922 needs to be challenged, it should be in an appeal against any order or judgment entered in; that case and not in this case. Whatever happened in case No.11922 is a deciding factor and as it is a judgment in rem. All parties, including the learned District Judge who entered the present case's judgment, are bound

by that final decree. As no appropriate court had altered the judgment and final decree in case No.11922, it cannot be challenged now.

Therefore, there is no reason to set aside the judgment entered by the learned District Judge in this case. Accordingly, the appeal is dismissed with costs.

**Judge of the Court of Appeal**

**M. T. MOHAMMED LAFFAR, J.**

I agree.

**Judge of the Court of Appeal**