

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

Kuruppu Arachchilage Malani,
Gammanpila, Bandaragama.
1st Defendant-Appellant

C.A. NO.844/97 (FINAL)

DC Horana Case No.5370/P.

Vs.

1. Padmakumara Sooriarachchi,
Diddiwa South, Baddegama.

2. Wimaladasa Gamage, Polwatta,
Gammanpila, Bandaragama.

Plaintiff-Respondents

2. Kuruppu Arachchige Don Somasiri,
Gammanpila, Bandaragama.

3. Kuruppu Arachchige Chandrasiri,
Gammanpila, Bandaragama.

4. Kuruppu Arachchige Dosala,
Gammanpila, Bandaragama.

5. Kuruppu Arachchige Martin, (deceased)

5A. Kuruppu Arachchige Ebert,
Gammanpila, Bandaragama.

6. Kuruppu Arachchige Thomas (Deceased)

6a. Dayasiri Ratna Kuruppu

6aa. Asanka Chinthani Kuruppu

6b. Asanka Chinthani Kuruppu

Both Gammanpila, Pansala Idiripita,
Gammanpila, Bandaragama.

7. Kuruppu Arachchige Henri (deceased)

7a. Meril Kuruppu

7b. Danya Kuruppu, No.1C, Sujatha Mawatha,
Kalubowila, Dehiwala

8. Kuruppu Arachchige David (deceased)

8a. Asanka Chinthani Kuruppu, Gammanpila,
Pansala Idiripita, Gammanpila, Bandaragama.

9. Kuruppu Arachchige Don Hemalatha,
Gammanpila, Bandaragama.

10. Kuruppu arachchige Benjamin Premalatha,
Gammanpila, Bandaragama.

11. Kuruppu Arachchige Newton,
Gammanpila, Bandaragama.9

12. Kuruppu Arachchige Jayasena,
Gammanpila, Bandaragama.

Defendant-Respondents

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Tharanga Edirisingha
for the 1st Defendant - Appellant

Samantha Vithanage with Hiranaya Fernando
for Plaintiff- Respondants

Argument: By written submission

Date of Judgment: 15.11.2021.

K.K.A.V. SWARNADHIPATHI, J.

JUDGEMENT

Plaintiff-Respondent filed case No.5370/P in the District Court of Horana to partition the land more fully described in the schedule to the Plaint. The preliminary survey was carried out, and the plan and report were submitted to the court. At the trial, all parties admitted the preliminary plan and report. At the outset of the case, a Lis pendant was registered.

Therefore, on the face of it, there is no dispute regarding the corpus. However, both parties raised points of contest, and the trial proceeded, and the judgment was pronounced on 29th October 1997. The 1st Defendant, who was aggrieved by that judgment, filed an appeal in this court to set aside the judgment.

All parties agreed to dispose of the argument by way of written submissions. The aggrieved 1st Defendant-Appellant took the position that the learned District Judge had failed to evaluate evidence properly. Right throughout the case, the 1st Defendant-Appellant had admitted the corpus. His main dispute is regarding the devolution of title to the corpus.

The Appellant contends that the footing taken by the learned District Judge that one of the original owners, namely Phillip, had died unmarried and his siblings were his heirs was against

the evidence. Throughout the case, the 1st Defendant stated that Phillip was married and had children.

Mere saying that Phillip was married is not sufficient to prove that he was married. It was the duty of the party who proposed that such a marriage existed. The fact should be proved by producing the marriage certificate or calling witnesses to satisfy the court. The judge, evaluating evidence, had accepted the majority version, which is more compatible with the evidence.

According to the 1st Defendant-Appellant, she was an only child. Her father, Kuruppu Arachchige Don Surabiel, married Wikramage Joselin Nona. According to the claim of the 9th to 12th Defendants, their parents are the same as that of the 1st Defendant-Appellant. They further state that Surabiel and Joselin Nona had six children, including the 1st Defendant.

In cross-examination, the 1st Defendant had admitted that there were seven children to Joscelin and Kuruppu Arachchige Surabiel, including herself. In a partition action, all Defendants are treated as Plaintiffs as well.

Therefore, Defendant must disclose all material facts to the court. The 1st Defendant-Appellant admitted that she did not disclose her siblings even though they are also people who stand to inherit from the parents. Even the learned District Judge had pointed this out in his judgment.

The Plaintiff in his Complaint very clearly indicated that Phillip died unmarried and his heirs were his siblings. The 1st Defendant's statement of claim gives the same names as the children of Phillip. However, evidence had very clearly indicated that they are not children but siblings of Phillip.

1st Defendant-Appellant fails regarding Phillip heirs. It is a proven fact that Phillip died unmarried and issueless. The learned District Judge had very correctly analyzed that part of the evidence.

The second main argument of the 1st Defendant-Appellant is that the learned District Judge had decided that Deed No.14251 dated 29.12.1986 attested by S.P.D. Kulasekera, marked as [P1],

gets prior registration over Deed No.2708 dated 08.09.1989 attested by Sumanadasa Wickramasinghe.

The learned District Judge had discussed this matter in depth in writing the judgment. He had given reasons why he considered Plaintiff's Deed over the 1st Defendant's Deed. The document marked [P1] deed No.14251 was written on 29th December 1986. From that day onwards, the seller Kuruppu Arachchige Adwin Appuhamy had no title to the land he had already sold. The property now becomes the property of Gamage Wimaladasa.

Therefore, the said Adwin cannot again sell the exact property to the 1st Defendant. When comparing both Deeds, Kuruppu Arachchige Adwin had transferred his entire ownership to Gamage Wimaladasa by Deed 14251. Since he had transferred his ownership in 1986, he cannot write another Deed in 1989.

It is on that ground that the learned District Judge had accepted the 1st Deed. Another argument by the Appellant is that the learned District Judge had not considered Deed No.14419 marked as [1V8] when calculating shares.

The 1st Defendant had not raised any point of contest regarding Deed No.14419. However, evidence shows that Bastian had transferred all his shares to Mary Nona by [P2]. Therefore, when perusing the Deed of gift marked as [P2], it is evident that Kuruppu Arachchige Don Bastian Appuhamy had gifted his entire property to Dona Mary Nona Kuruppuhamine. Therefore, the learned District Judge's conclusion that [1v8] cannot be considered as the property covered by [1V8] had already passed over by [P2] is correct.

In reasoning out as above, I see no reason to disturb the judgment already entered. However, in the judgment, the learned District Judge had stated that he allocated shares according to the settlement entered by parties on 11.01.1996.

In Perusing the proceedings of 11.01.1996, there is no settlement recorded. Therefore, I consider that it is not necessary to mention that fact in the judgment. Other than that part of the

sentence "According to the settlement entered among the parties on 11.01.1996", I affirm the rest of the judgment.

I dismiss the Appeal of the 1st Defendant-Appellant subject to taxed cost.

The registrar of this court is directed to communicate this judgment to the District Court of Horana and remit the case record.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal