

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

CA 477/1997 (F)

D.C. Panadura Case No.186/P

1. Weerappereuma Arachchi Athukoralage
Don Gunasena of No.115, Makandana,
Madapatha.

2. Weerapperuma Achchi Athukoralage
Dona Somawathie (Dead)

2A. Habaragamuwa Ralalage Renuka of
NO.55/1, Pathiragoda Road,
Maharagama.

3. Weerapperuma Achchi Athukoralage
Dona Karunawathie (Deceased)

3A. Padukkage Nandani

3B. Padukkage Sunil,

3C. Padukkage Saman

All are Demaladuwa, Piliyanda.

4. Weerapperuma Achchi Athukoralage
Dona Premawathie (Dead)

4A. Bamunu Arrachchige Nishantha Kumara,

4B. Bamunu Arrachchige Sandana Priyanka

4C. Bamunu Arrachchige Kumari Manel
Sepalika

All are Damaladuwa, Piliyandala.

5. Weerapperuma Achchi Athukoralage
Dona Sumanawathie,
6. Weerapperuma Achchi Athukoralage
Don Piyasena
7. Weerapperuma Achchi Athukoralage
Don Jayaratne
8. Weerapperuma Achchi Athukoralage
Don Ratnaweera of Demaladuwa,
Piliyandala.

Plaintiffs

Vs.

1. Dorathihamy
2. Weerapperuma Achchi Athukralage Don
Karunasena (Dead)
- 2A. Kapuhentuduwage Joslin Nona
- 2B. Weerapperuma Achchi Athukoralage
Don Chandrasena
- 2C. Weerapperuma Achchi Athukoralage
Don Padmasiri
- 2D. Weerapperuma Achchi Athukoralage
Don Dharmadasa
- 2E. Weerapperuma Achchi Athukoralage
Dona Indrani Athukorala
- 2F. Weerapperuma Achchi Athukoralage
Dona Chandrani

- 2G. Weerapperuma Achchi Athukoralage
Don Samasiri
- All are No.112, Sudharshana Mawatha,
Makandana, Madapatha.
3. Weerapperuma Achchi Athukoralage
Dona Belin Nona (Dead)
- 3A. Palpolage Dona Buddhimathie Nalika
Gunawardhana of No.180/1, Bokundara
South, Bokundara.
- 3B. Palpolage Dona Chitra Nandani
Gunawardana, “Ukwatta Niwasa”,
Palannoruwa, Gonapola Junction.
- 3C. Palpolage Don Nawarathna Gunawardena
of No.40/1, Bandaragama Road,
Makandana, Kesbewa.
- 3D. Palpolage Dona Disna Ranjani
Gunawardena of No.100/6,
Welituduwatta, Mahabellana,
Alubomulla.
- 3E. Palpolage Dona Desi Upula
Gunawardena, of No.16/2/2, Beruwala,
Madapatha.
- 3F. Palpolage Dona Jinawathie Warma
Gunawardena of No.39, Athkam Niwasa,
Newngama.
- 3G. Palpolage Dona Puspa Malkanthi
Gunawardena of No.29/1, Uyana, De Mal
Mawatha, Moratuwa.

- 3H. Palpolage Don Jinasiri Gunawardena of
No.40/3, Bandaragama Road,
Makandana, Kesbewa, Pliyandala.
- 3I. Palpolage Dona Ganga Safalika
Gunawardena of No.182/5, 4th Lane,
Moonamalwatta, Kiriwattuduwa.
4. Weerapperuma Achchi Athukoralage
Don Viyonis (Dead)
- 4A. Weerapperuma Achchi Athukoralage
Sandaya of No.96/1, Makandana,
Madapatha.
- 4B. Weerapperuma Achchi Athukoralage
Chithra Athukorala of No.C/26/G11,
Soyzapura, Moratuwa.
- 4C. Weeraapperuma Achchi Athukoralage
Don Dulcy of No.113/3,
Gramasanwardena Mawatha, Madapatha.
- 4D. Weerapperuma Achchi Athukoralage
Chandani Indika Athukorala of No.11/2,
Nimal Road, Colombo 04.
5. Weerapperuma Achchi Athukoralage
Dona Ariyawathie,
6. Weerapperuma Achchi Athukoralage
Dona Josalin Nona (Dead)
- 6A. Illeperumage Dona Ramani Rupika
- 6B. Ileperumage Dona Chandralatha

- 6C. Ileperumage Dona Bandumathie
- 6D. Ileperumage Dona Wimalawathie
- 6E. Illeperumage Don Upali Illeperuma

All are of Demaladuwa, Piliyandala.

- 7. Hettiarachchige Seelawathie
- 8. Kaththiarachchige Jayathilake
- 9. Kaththiarachchige Nishanthi Majula
- 10. Kaththiarachchige Chandrasiri
All of Demaladuwa, Piliyandala.

Defendants

- 7. Hettiarachchige Seelawathie
- 8. Kaththiarachchige Jayathilake
- 9. Kaththiarachchige Nishanthi Majula
- 10. Kaththiarachchige Chandrasiri,
All of Demaladuwa, Piliyandala.

Defendant-Appellants

1. Weerappereuma Arachchi Athukoralage
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Don Jayaratne
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Don Ratnaweera of Demaladuwa,
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Plaintiff-Respondents

Vs.

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- 2B. Weerapperuma Achchi Athukoralage
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- 2C. Weerapperuma Achchi Athukoralage
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Don Dharmadasa
- 2E. Weerapperuma Achchi Athukoralage
Dona Indrani Athukorala
- 2F. Weerapperuma Achchi Athukoralage
Dona Chandrani
- 2G. Weerapperuma Achchi Athukoralage
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All are No.112, Sudharshana Mawatha,
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- 6D. Illeperumage Dona Wimalawathie
6E. Illeperumage Don Upali Illeperuma
All are of Demaladuwa, Piliyandala.

Defendant-Respondents

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

COUNSEL: K. V. Sirisena (For the Appellant)

Ranjan Suwandarathne, PC with Ineka Hendawitharana
(For the 1st, 5th, 6th, 7th, and 8th Plaintiff-Respondent)

U. L. Abayaratna
(For substituted Defendant Respondents)

Argument: By Written Submissions

Date of Judgment: 10.12.2021

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

JUDGMENT

The 7th to 10th Defendants of Case No.186/P of the District Court of Panadura had appealed against the Judgment dated 4th June 1997. The Plaintiffs had filed the Partition case to divide the land described in the schedule to the Plaint.

According to the Plaintiffs, the 1st Plaintiff had filed a partition case on an earlier occasion. The said case was withdrawn, reserving the right to file a new case. The 7th to 10th Defendants filed

their statement of claim on 7th May 1990 and pleaded to reject the Plaint. The other main prayer of the Defendants was for a declaration on prescription. Both parties raised 16 points of contest on 31st October 1990. Plaintiffs raised eight contest points, and another eight were raised on behalf of the 7th to 10th Defendants. Point of contest No.2 was raised regarding the Preliminary Plan and identification of the corpus. On behalf of the 7th to 10th Defendants, no point of contest was raised regarding the identification of the corpus. After settling the points for the contest, the trial proceeded. The learned District Judge held with the Plaintiffs. Being aggrieved by that decision, the Defendants have moved this court to intervene and set aside the Judgment of the learned District Judge of Panadura dated 04.06.1997.

In the appeal, the Defendant-Appellants had informed this court on the strength of their points raised at the contest; they had a strong case; therefore, the Judgment should be in their favour. The learned District Judge had failed to answer all the points raised at the trial. The Defendant-Appellants raised the 17th point at the time the 1st Plaintiff was under Cross-examination. The said point was, "As the Plaintiff's evidence is contrary to his Plaint can he maintain the case." When perusing the Judgment, there is no answer to the number 17 in evidence of the 1st Plaintiff. He had testified Ensinahamy, entitled to undivided shares of land called Kosgahawatte, divided it into three lots by Plan No.831 of M. D. A. Gunathilaka, Licensed Surveyor and transferred to Liyanasingho. By Deed No.2062 Liyanasingho transferred Lot B and C to Katri Arachchige Ordiris.

In evidence-in-chief, the 1st Plaintiff had testified regarding the pedigree. Referring to [P2], evidence was given that Lot B [P2] was given to Muthukutige Juvanis Perera. After many transfers, Lot B finally came to Thegiris by [P4] and [P5]. Lot [C] of [P2] was also transferred to Thegiris by [P6]. However, according to evidence, Ensinahami, the wife of Thegiris, made a Plan depicting all she had of [P2] and drew a Plan by M. D. A. Gunathilaka in 1933. The said Plan No.831 was subdivided into three lots. Later all three lots of Plan No.831 was transferred to Linansingho. Even though the Appellants tried to show that the evidence was not what was said in the Plaint, a close perusal shows that evidence is the same.

However, the learned District Judge had analysed this evidence. Since there are two plans, the first Plan has five lots naming from [A] to [E], and the 2nd Plan has three lots. The evidence shows that Plaintiff referred to the 2nd Plan, which was marked as [P9]. Going back to the question regarding points of contest No.17, the Appellants have failed to show any discrepancies in the evidence of the 1st Plaintiff. The Judge analysed the evidence and gave reasons why the plaintiff' evidence was accepted. The Defendants had failed to establish uninterrupted possession of ten years prior to 1988. [P15] the letter of demand had not been answered. When a letter was sent to the Defendants to hand over the possession to Gunasena, the Defendants kept silent. His silence was never discussed in the case. If the Defendants were clear about their claim, why have they not taken steps to safeguard their rights?

The learned District Judge had even discussed the evidence of the Officer of Rubber Control Department and shown that all lands speak of the Plaintiffs' version and not of the Defendants. Even though the point of contest No.17 was not explicitly answered, it is clear the entire Judgment had discussed whether there are any discrepancies. The Appellant must show this court where and what part of the Judgment is incorrect. Even though the Defendant-Appellant believes that point of contest No.17 was not answered, the entire Judgment had discussed why the Plaintiff's evidence was accepted. Purely on technical ground, it is not fair to set all the efforts taken by the District Court.

Therefore, even though every point of the contest should be answered with reasons, In the present case, the learned District Judge had considered the point of contest No.17 at length discussing and evaluating the Plaintiffs' evidence. Therefore, it is clear that the learned District Judge, in writing the Judgment, had set out his reasons and answered why he accepted the Plaintiffs' evidence. Since he had accepted the Plaintiffs' evidence, the Judgment should enter in his favour.

The next ground of appeal was that of the identification of the land. Appellants argue that the learned District Judge had not identified the land. Therefore, the Judgment should be set aside. The preliminary plan was drawn by Mr K. P. Fernando, Licensed Surveyor and marked in

evidence as [X] and his report as [X1]. The point of contest No.2 was raised regarding identifying the land to be partitioned. In fact, by that point, Plaintiff raised a question about whether the land described in the schedule to the Plaint is the same as Plan NO.653 dated 11.04.1989 of Mr K. P. Fernando, Licensed Surveyor.

The schedule to the Plaint described a land of 03 Roods and 18 Perches. Boundaries are described as for,

North	P. D. Mary Nona's land
East	Gamsabha Road
South	7 of Plan No.831
West	Road

The land was named Kosgahawatta, alias Kosgahakanatha. The preliminary Plan had identified the land as Kosgahakanatha and depicted the boundaries as follows: -

North	Land of Eden Singho and others
East	Road
South	Land of Albert Kulasinghe, who is enjoining a part of the land
West	Road extent is given as 3 Roads and 17.59 Perches.

The Appellants tried to establish that the 1st Plaintiff failed to identify the land. Citing some evidence phrases, they tried to establish that the witness was unaware of the land to be partitioned. Perusing those phrases of Cross-examination, the 1st Plaintiff was referring to Lots [A], [B] and [C] of Plan No.831, which was marked as [P4]. The schedule to the Plaint speaks of Lot [A] of [P4].

Evidence-in-chief of the 1st Plaintiff had discussed the pedigree of lots [B] and [C] of [P4] and further stated that Lot A remained with Liansingho. At his death, what remained, his estate was administered at the testamentary case. Evidence was clear that Liansigho was the owner of Lot A of [P9]. When perusing [P14] and [P13], the position of the Plaintiff is clear that Lot [A] of [P9] was the subject matter of a testamentary case. This position was discussed at length in the

Judgment. Even though the 1st Plaintiff in Cross-examination had stated that Lots [A], [B] and [C] compromise the present partition case, he had said in Evidence-in-chief that Lot [B] and [C] were not in possession of Liansingho at the time he died. The subject matter of his estate is the subject matter of this partition case.

The 1st Plaintiff was a fifty-five-year-old farmer at the time of giving evidence. His evidence need not be tested with the measure beyond a reasonable doubt. What has to be considered is the balance of probability? When his evidence is subject to the test of balance of probability, the position the learned District Judge had taken is acceptable.

Further considering the schedule to the Plaint and report marked as [X1] and the Survey plan [X], the land is the same. Slight differences in the land cannot be considered when boundaries are the same in *Yapa vs Desanayaka Sadera (1989) 1 SLR 361* held that the extent of land should not be considered when boundaries are the same. The difference of one perch cannot be considered in this case. Grounds Plaintiff had not identified the land to be partitioned and that a different land had been partitioned are both set aside according to the judgment mentioned above. Appellants' final ground prayed from this court was to set aside the Judgment of the learned District Judge and enter a judgment as prayed for by the 7th to 10th Defendant-Appellants in their statement of claim.

When perusing the Judgment and evidence of the witness, it is clear that Abraham, the predecessor of the 7th to 10th Defendants, was a servant of Liansingho. [P15] the letter of demand was dated 17.03.1980 Liansingho had passed away on 26th July 1979. [P17] is a document where the 1st Plaintiff made a complaint against Abraham regarding the felling of eight trees.

When considering [P13], the Plaint of the testamentary case of deceased Liansingho the 7th to 10th Defendants or their predecessor Abraham was not considered a beneficiary. When calculating the time to consider prescription, the learned District Judge will have to consider the testamentary case. In settling the Judgment, the learned District Judge had clearly

considered all these aspects. [P15], which was addressed to Abraham to deposit money from the land into the testamentary case, had been considered. This shows that Abraham was aware of the testamentary case. If he had any rights, he should have intervened in that case. Therefore, the learned District Judge's position to reject the prayer of the 7th to 10th Defendants is in accordance with the law.y

For reasons set out above, I affirm the Judgment entered on 4th June 1977 by the learned District Judge of Panadura and reject the appeal of the 7th to 10th Defendants.

Registrar of this court is ordered to remit the case record with this Judgment back to the District Court of Panadura.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J

I agree.

Judge of the Court of Appeal