

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

Imihamillage Punchi Mahaththaya
Pahalagama

Plaintiff

Vs

1. Uduwearachchige Podiappuhamy
Ellawala
2. Mahara Lekamlage Gunewardena
(Dead)
Pahalagama
- 2A. Mahara Lekamlage Somarathne
Pahalagama
3. Disanayakege Wiliyomsinno
(Dead)
Pahalagama
- 3A. Disanayakege Maginona
Pahalagama
4. Mahara Lekamlage Appuhamy
Pahalagama
5. Hulathduwa Arachchige
Punchimahathmaya
Pahalagama
6. Hewapalleha Mandiyage Sirisena
Agalawatta
7. Yakdehirallage Mudalihamy

(Dead)
Ellawala

- 7A. Mahara Vidanelage Punchinona
Ellawala
8. Mahara Vidanelage Podinona
Parakaduwa.
9. Mahara Vidanelage Punchinona
Ellawala
10. Mahara Vidanelage Elpinona
Ellawala
11. Mahara Vidanelage Janenona
Ellawala
12. Mahara Vidanelage Emalishamy
Ellawala
13. Mahara Vidanelage Wasthuhamy
Ellawala
14. Hulathduwa Arachchilage
Abeyratne
Ellawala
15. Dissanayakalage Sumathipala
Ellawala
16. Ellawala Lekamlage
Lokumahaththaya
Ellawala
17. Imihamillage Lokumanike
Ellawala

18. Deheragoda Mudiyansele
Dingiri Bandara
Ellawala
19. Karadhana Lekamlage
Yasawardhana
"Sirimadhura"
Ellawala
20. Uduwage Arachchige
Podimahaththaya
"Sirimadhura"
Ellawala
21. Gale Kankanamalage
Hendriksinno
Ellawala
22. Gale Kankanamalage
Brampisinno
Ellawala
23. K. Rupawathi
Ellawala
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30. K. Sarath Wickramage
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34. K. Rathnewardhane
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35. K.L. Punchimanike
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36. E.M.M. De Sarath
Ellawala
37. Reginold Dilast Kendret
Angammana
Ellawala
38. Chandi Angammana
Kalatuwawa
39. Mallika Angammana Kumarihamy
Getaheththa,
Marabe
40. Sujatha Angammana
Kumarihamy
Panawala
41. Wilman Angammana

Ekneligoda, Kuruvita

42. G. Sirimathi Angamma Menike
Abegahahena
Kiriialla
43. Udakaradana Kapuge Ranmanike
Akurana,
Ellawala
44. Gale Kankanamalage Pablis
Appuhamy
Akurana,
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Baronsincho
Akurana,
Ellawala
50. Kithsiri Lakshman Gunetilake
Dalugama,

Kelaniya

51. Chula Rohini Gunewardhane
Dalugama,
Kelaniya

52. Disanayakalage Maginona

Defendants

And between

14. Hulanduwa Arachchilage
Abeyrathna
No.618/A,
Ellawala
Pahalagama

C.A. No.: CA/636/99(F)

14th Defendant-Appellant

D.C. Avissawella Case No.:
12335/P

Vs

Imihamillage Punchi Mahaththaya
Pahalagama

Plaintiff-Respondent

Imiyahamillage JInadasa
Suharshan,
Ellawala,
No.356/E, Mahinda Mawatha,
Bulugahapitiya,
Ehaliyagoda

Substituted Plaintiff-Respondent

Vs

1. Uduwearachchige Podiappuhamy

Ellawala

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41. Wilman Angammana
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Dalugama,
Kelaniya
51. Chula Rohini Gunewardhane
Dalugama,
Kelaniya
52. Disanayakalage Maginona

Defendant-Respondents

And between

2A. Mahara Lekamlage Somarathne

Pahalagama

C.A. No.: CA/637/99(F)

2A Defendant-Appellant

D.C. Avissawella Case No.:
12335/P

Vs

Imihamillage Punchi Mahaththaya
Pahalagama.

Plaintiff-Respondent

Imiyahamillage Jinadasa Suharshan
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51. Chula Rohini Gunewardhane
Dalugama,
Kelaniya

52. Disanayakalage Maginona

Defendant-Respondents

And between

3A. Disanayakege Maginona

C.A. No.: CA/638/99(F)

3A Defendant-Appellant

D.C. Avissawella Case No.:
12335/P

Vs

Imihamillage Punchi Mahaththaya

Plaintiff-Respondent

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Dalugama,

Kelaniya

51. Chula Rohini Gunewardhane
Dalugama,
Kelaniya

52. Disanayakalage Maginona

Defendant-Respondents

Before: C.P. Kirtisinghe – J

Counsel: Sandamal Rajapakshe for the 2A and 3A Appellants
Upali Ratnayake for 14th Defendant-Appellant
Thishya Weragoda for the 1A Defendant-Respondent
Chamath Jayasekara with Tharindu Wickremasinghe for
Substituted Plaintiff-Respondent

Argued On :03.02.2022

Decided On :11.03.2022

C.P. Kirtisinghe – J

The 14th Defendant-Appellant, 2A Defendant-Appellant and 3A Defendant-Appellant have preferred these three connected Appeals from the judgement of the learned District Judge of Avissawella dated 23.07.1999.

The Plaintiff Respondent had instituted this partition action to partition the corpus in this case – Uduwagewatta alias Hulathduwa Arachchilage Watta which is morefully described in the schedule to the plaint. The Commissioner in this case M.A. Somarathne L.S. who had done the preliminary survey had tendered to court the preliminary plan no. 36 marked X and the report marked X1. In that plan the land surveyed has been depicted as lot 1, 2 and 3. There was no corpus dispute in the case. Parties had agreed that the corpus consists of lot 1 in the aforesaid plan and lots 2 and 3 should be excluded from the corpus.

The main dispute in this case was the dispute relating to the pedigree. According to the pedigree disclosed by the plaintiff there had been four original owners, namely Jayathuhamy, Mohottihamy, Nilhamy and Ran Ethana who owned the corpus in equal shares. Mohottihamy had gifted his rights to Siriwardhenahamy

on the deed marked 371. The said Siriwardhenahamy and jayathuhamy had sold their rights to Lekamlage Siriwardhenahamy on the deed marked 372. Lekamlage Siriwardhenahamy had gifted his rights to Punchi Appuhamy on the deed marked 373 and Punchi Appuhamy had gifted same to the plaintiff on the deed marked 374. The plaintiff is claiming for an undivided half share on the chain of that devolution. Nilhamy and Ran Ethana who had owned an undivided half share had sold an undivided 1/10th share to Wasthuhamy on the deed marked 375. Wasthuhamy had died leaving the plaintiff as his sole heir and the plaintiff had inherited those rights. Thus, the plaintiff was claiming for a 6/10th share in the corpus.

According to the original pedigree and the amended pedigree of the 1st, 2nd, 4th, 7th to 14th Defendants there had been two original owners namely, Pinhamy and Arachchi Appu who owned a 1/4th share each and those rights had devolved according to the pedigree disclosed by the amended statement of claim of those Defendants.

According to the pedigree disclosed by the 3A defendant one Anadahamy and Nilhamy were entitled for an undivided half share in the corpus and they had transferred an undivided 1/10th share to Mohottihamy and Mohottihamy in turn had transferred same to Jayasinghe Bandara. Jayasinghe Bandara had gifted his rights to his three children namely, Jayawardhena Bandara, Richard Bandara and Wijesinghe Bandara who became entitled to that 1/10th share. By a family arrangement entered in to between the three Jayawardhena Bandara had possessed the entire 1/10th share and acquired a prescriptive title to that share. Upon the death of Jayawardhena Bandara his rights had devolved on his son Lenard Kiriella who sold those rights to the 3rd Defendant W. Dissanayake. One Wijehamy who had owned an undivided 1/20th share had died leaving his daughter Ran Ethana as his only heir and the said Ran Ethana had sold all rights to Charles Dissanayake who in turn had transferred same to the 3rd Defendant. Therefore, the 3A Defendant is claiming for an undivided 1/10 + 1/20 share.

According to the pedigree disclosed by the 5th and 14th Defendants one Dingirihamy was the original owner of a 1/20th share and she had sold her rights to Seelawathie Angamma Kumarihamy who in turn had transferred same to Conred Angamma. Conred Angamma had transferred those rights to the 14th Defendant.

The learned District Judge has come to the conclusion that the plaintiff had proved his pedigree and given the plaintiff the entire share (6/10) claimed by

the plaintiff. To the 2A Defendant Appellant the learned District Judge has granted undivided rights lesser than the share claimed by the 2A defendant.

The learned District Judge has come to the conclusion that the 3A Defendant Appellant has failed to prove his pedigree. He has also come to the conclusion that the 14th Defendant Appellant has failed to prove his pedigree.

Therefore the 14th Defendant Appellant, 2A Defendant Appellant and the 3A Defendant Appellant have preferred these three connected Appeals against those findings of the learned District Judge.

I will first consider the appeal of the 14th Defendant Appellant. It is the case of the 14th Defendant Appellant that the learned District Judge has failed to analyze the prescriptive rights of the 14th defendant and the learned District Judge has failed to take into consideration the paper title of the 14th Defendant. The 14th Defendant has not come forward to give evidence to prove his pedigree. The three deeds marked 14 ̄ 1, 14 ̄ 2 and 14 ̄ 3 had been marked through the plaintiff in cross examination when the plaintiff had no knowledge of those deeds. Although the 2A Defendant had admitted that the 14th Defendant had purchased an undivided right in the corpus on the deed marked 14 ̄ 1 none of the defendants including the 2A Defendant had any knowledge about the pedigree disclosed by the 14th Defendant. Therefore, the learned District Judge was justified in coming to the conclusion that the 14th Defendant Appellant has failed to prove the devolution of title disclosed by him. He was also justified in coming to the conclusion that the 14th Defendant Appellant had failed to prove a prescriptive right to the corpus. The learned District Judge has correctly observed that the 14th Defendant has failed to prove that the 14th Defendant and his predecessors had been in possession of this land for a period exceeding 10 years prior to the institution of this action. There is no evidence to show that the predecessors in title in the 14th Defendant's pedigree had possessed this land. The 14th Defendant and his father the 5th Defendant had not come forward to give evidence to establish that they were in possession for a period exceeding 10 years prior to the institution of this action. The 4th Defendant giving evidence in 1995 had stated that the 14th Defendant was in possession for 25 years which means that he was in possession since 1970. The 2A Defendant had also stated in 1996 that the 14th Defendant had been residing in the corpus for 25 years which means that the 14th Defendant was residing in the corpus since 1971. Thereafter the 2A defendant had stated the 14th Defendant's father, the 5th Defendant had come into occupation 28 years ago. He had stated so in 1996.

Thereafter the 2A Defendant had stated that the 5th Defendant came to reside in the corpus about 30 years ago. That means that the 5th Defendant had come into occupation somewhere around 1966 – 1968. The plaintiff had instituted this partition action in 1967. Therefore, the learned District Judge was justified in coming to the conclusion that the 14th Defendant has failed to prove a prescriptive right to the corpus. Therefore, there is no merit in the appeal of the 14th Defendant-Appellant and it has to be dismissed.

Now I will consider the appeal of the 3A Defendant-Appellant. The learned District Judge has come to the conclusion that the 3A Defendant has failed to prove the devolution of title disclosed by him. The 3A Defendant-Appellant in his appeal states that the learned District Judge has failed to take into consideration the deeds marked 3B1 to 3B6 and analyze the evidentiary value of those documents and the learned District Judge has erred in law when he unallotted the undivided rights that should devolve on the 3rd Defendant on the deed marked 3B3 when there was no dispute regarding same. According to the pedigree disclosed by the 3rd Defendant one Anadahamy and Nilhamy had owned a ½ a share in the corpus. Out of that share those two original owners had transferred a 1/10th share to Mohottihamy on the deed marked 3B1. The learned District Judge has not accepted the fact that those two original owners owned a ½ a share in the corpus, but he has accepted the fact that Anadahamy and Nilhamy had transferred a 1/10th share which they had inherited by paternal inheritance to Mohottihamy on 3B1. Mohottihamy had transferred those rights to Jayasinghe Bandara on 3B2. According to the pedigree of the 3rd Defendant, Jayasinghe Bandara has transferred his rights to his three children Jayawardhena Bandara, Richard Bandara and Wijesinghe Bandara on 3B3. Those rights had devolved on Lenard Kiriella who had transferred same to the 3rd Defendant William Dissanayake on 3B4. However, the 3A Defendant had failed to produce the original or a certified copy of the deed marked 3B3. He has only tendered a photocopy of that deed. Therefore, the learned District Judge was justified in unallotting that 1/10th share that would devolve on the 3rd Defendant on that chain of devolution. The learned District Judge has a duty to investigate into the devolution of title of parties in a partition case. Just because there had been no dispute regarding this chain of devolution and no one had challenged this particular deed the learned District Judge cannot deviate from his paramount duty to accept a photocopy of a deed as evidence. As the learned District Judge has left this share unallotted it is always open to the 3A Defendant to produce

the original or a certified copy of that deed to the District Court and ask for that unallotted share.

According to the pedigree disclosed by the 3A Defendant, one Wijehamy had owned a 1/20th share. Wijehamy had died leaving his daughter Ran Ethana as his sole heir and those rights had devolved on Ran Ethana. Ran Ethana had transferred those rights to Charles Dissanayake and Charles Dissanayake in turn had transferred those rights to the 3rd Defendant, William Dissanayake. According to the 3A Defendant that 1/20th share had devolved on the 3rd Defendant on the deeds marked 385 and 386. When one examines the contents of 385 it appears that Ran Ethana had transferred a 1/20th share which she has inherited by paternal inheritance to Charles Dissanayake. But Charles Dissanayake had not conveyed those rights to the 3rd Defendant, Willy Dissanayake on 386 as disclosed by the 3A Defendant in his pedigree. On 386, Charles Dissanayake had gifted those rights to one Maggie Dissanayake who is not shown in the 3A Defendant's pedigree. There is no evidence to show that Maggie Dissanayake's rights devolved on the 3rd Defendant. Therefore, the 3rd Defendant will not get a 1/20th share on that chain of devolution and the learned District Judge has come to a correct finding on the same.

For the aforementioned reasons, I see no merit in the appeal of the 3A Defendant-Appellant which should stand dismissed.

I will now consider the appeal of the 2A Defendant-Appellant. The 2A Defendant-Appellant had shown two original owners namely Pinhamy and Arachchi Appu in his original pedigree and the amended pedigree. According to both pedigrees, Pinhamy and Arachchi Appu had owned a 1/4th share each. The learned District Judge has given the 2A Defendant a share which is less than what he had claimed. The 2A Defendant-Appellant in his appeal had stated that the learned District Judge has failed to take into consideration the contents of the deeds marked on behalf of the 2A Defendant.

According to the original pedigree and the amended pedigree of the 2A Defendant, Pinhamy who was one of the original owners who owned a 1/4th share had died leaving five children Dingirihamy, Nilhamy, Anadahamy, Ukkuhamy and Mudalihamy. Mudalihamy's four brothers and sisters had died issueless and intestate and therefore, their rights also had devolved on Mudalihamy who became entitled to a 1/4th share. Mudalihamy had transferred a 1/20th share on deed no. 1411 to his son Siriwardhenahamy and after the death of Mudalihamy his balance rights also had devolved on Siriwardhenahamy

by paternal inheritance. Siriwardhenahamy had transferred a 1/20th share to his son Podi Appuhamy, the 1st Defendant on 181 and after the death of Siriwardhenahamy, his balance rights also had devolved on his son, the 1st Defendant. As the learned District Judge has correctly observed there is no sufficient evidence to establish the fact that Pinhamy's other four children had died issueless and their rights had devolved on their surviving brother Mudalihamy. The 2A Defendant had not produced the deed no. 1411 on which Mudalihamy had transferred a 1/20th share to Siriwardhenahamy according to the pedigree. Therefore, the learned District Judge has correctly concluded that the 1/20th share which Mudalihamy had inherited from his father Pinhamy had devolved on Siriwardhenahamy by paternal inheritance. Siriwardhenahamy had transferred that share to the 1st Defendant on the deed marked 181.

The 2A Defendant in his pedigree had shown a 1/4th share to Arachchi Appu who was one of the two original owners in the pedigree. Arachchi Appu's rights had devolved on Menikhamy on 281. Regarding the devolution of Menikhamy's rights, the pedigree attached to the amended statement of claim of the 2A Defendant differs from his original pedigree.

According to the amended pedigree Menikhamy's rights had devolved on her five children namely Mohottihamy, Siriwardhenahamy, Mudalihamy, Nicholoshamy and Punchi Ethana.

According to the original pedigree Menikhamy's rights had devolved on her five children – Pehamy, Wijayahamy, Nicholoshamy, Punchi Ethana and Pinhamy. After going through the deeds produced by the 2A Defendant the learned District Judge has accepted the original pedigree of the 2A Defendant which is more probable. The amended pedigree of the 2A Defendant is not compatible with the deeds produced by him and the learned District Judge has come to a correct conclusion regarding that matter. Therefore, the learned District Judge has come to correct finding that Pehamy, Wijayahamy, Nicholoshamy, Punchi Ethana and Pinhamy were the 5 descendants of Menikhamy. Pehamy's right had devolved on his 3 children namely Mohottihamy, Siriwardane and Mudalihamy. Mohottahamy's rights had devolved on the 3 children namely the 2nd, 12th and 13th Defendants. Siriwardane's rights had devolved on the 2nd Defendant on 283. Mudalihamy's rights had devolved on Serahamy who had transferred same to the 2nd Defendant on 284. The 2nd Defendant had not proved the devolution of Wijayahamy's rights. Nicholoshamy and Punchi Ethana had transferred their rights to Malhamy on 285. Malhamy's rights had devolved

on his 7 children namely Mudalihamy, Podi Nona (8th Defendant), Punchi Nona (9th Defendant), Elpi Nona (10th Defendant), Jen Nona (11th Defendant), Hamy and Appuhamy (4th Defendant). The 2A Defendant in his original statement of claim had shown that Hamy's rights had devolved on the 8th Defendant and Mudalihamy's rights had devolved on the 7th Defendant. The learned District Judge has correctly concluded that the 2 A Defendant had failed to prove the devolution of rights of Mudalyhamy and Hamy. The rights of 4th, 8th, 9th and 11th Defendants are subjected to 2B6. Pinhamy's rights had devolved on Siriwardane on 12B7. Siriwardane had transferred those rights to the 12th Defendant Emali Hamy on 12B1. The learned District Judge has carefully considered the devolution of title of Pinhamy and Arachchi Appu and come to a correct finding.

It has been submitted on behalf of the 2A Defendant-Appellant that the learned District Judge has failed to take into consideration whether the deeds produced by the Plaintiff – B71 to B75 are applicable to the corpus in this case. The learned District Judge has gone through those deeds and come to the correct conclusion that the boundaries described in the deeds tally with the boundaries in lot 1 in the preliminary plan marked X.

In the case of **Sopi Nona Vs. Coranelis [2010] BLR 109 SC** Saleem Marsoof, P.C., J held that a basic principle in all the enactments in respect of partition actions is that where there has been no proper investigation of title any resulting partition action necessarily has to be set aside. In the case of **Chandrasena Vs. Piyasena [1999] 3 SLR 201** it was held that in a partition action it is incumbent on the Judge to investigate into title of each party. In the case of **De Silva Vs. Dayarathna [2008] BLR 284**, it was held that it is the paramount duty of the trial Judge to determine precisely the share to which each party is entitled and this duty cannot be delegated to anybody. Failure by the trial Judge to determine precisely the shares to which each party is entitled to is alone sufficient to set aside the impugned Judgment. In the case of **Abesinghe Vs. Kumarasinghe [2008] BLR 300**, it was held that it is nothing but the sacred duty of the Court to investigate title to the entire land proposed to be partitioned. Therefore, the District Judge has a paramount and a sacred duty to investigate in to the devolution of title of the parties shown in the pedigrees. It has been submitted on behalf of 2A Defendant-Appellant that the learned District Judge had failed to consider the deeds produced by the 2A Defendant. It is the case of the 14th Defendant-Appellant that the learned District Judge had failed to consider the deeds produced by the 14th Defendant. It is the submission of the 3A Defendant-Appellant that the learned District Judge had failed to consider the deeds

produced by the 3A Defendant. I am of the view that the learned District Judge had made a deep study into all the pedigrees disclosed by the parties in this case and carefully taken into consideration all the deeds produced by the parties and also the oral testimony of the witnesses regarding the devolution of title. Therefore, I see no reason to interfere with the findings of the learned District Judge. Therefore, I affirm the Judgement of the learned District Judge dated 1999.07.23 and dismiss the appeals of the 2A Defendant-Appellant, 3A Defendant-Appellant and 14th Defendant-Appellant. Each Appellant shall pay a sum of Rs. 10,500/- to the Plaintiff-Respondent as the costs of these appeals.

Judge of the Court of Appeal