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

Karunaratnage Saaraananda
Wijesiri
Siyambalawala, Ruwanwella

DC Avissawella
Case No: 16027/P

Plaintiff

Karunaratnage Lalith Wijesiri
Siyambalawala, Ruwanwella

Substituted Plaintiff

Vs

1. Adasi Gamaralalage Jayasinghe Appuhamy
   Siyambalawala, Ruwanwella

1. A) Adasi Gamaralalage Ariyasena
   Siyambalawala, Ruwanwella

2. Adasi Gamaralalage Mudiyanse
   Siyambalawala, Ruwanwella

2. A) Adasi Gamaralalage Mahinda Niwunhella
   Siyambalawala, Ruwanwella

3. D.K.B. Lewis Appuhamy
   Siyambalawala, Ruwanwella

3. A) D.K.D.M.G. Romiel
   (Rathnasiri/ Singho Naide)

Siyambalawala, Ruwanwella

4. Karunapedige Simon
Siyambalawala, Ruwanwella

4. A) Karunapedige Samarapala
Siyambalawala, Ruwanwella

5. Karunapedige Seba
Siyambalawala, Ruwanwella

6. Karunapedige John
Siyambalawala, Ruwanwella

7. Karunapedige Jema
Siyambalawala, Ruwanwella

7. A) R.P.Babi
Siyambalawala, Ruwanwella

7. A1) K.G. Siripala
Siyambalawala, Ruwanwella

8. Adasi Gamaralalage Nandasena
Siyambalawala, Ruwanwella

9. Adasi Gamaralalage Gunatilake
Siyambalawala, Ruwanwella

9. A) Adasi Gamaralalage
Hamimahatmaya
Siyambalawala, Ruwanwella

10. Adasi Gamaralalage
Amaratunge
Siyambalawala, Ruwanwella

11. Adasi Gamaralalage Leelawathi
Siyambalawala, Ruwanwella

12. Adasi Gamaralalage
Hamimahatmaya
Siyambalawala, Ruwanwella

13. Adasi Gamaralalage
Dharmadasa
Siyambalawala, Ruwanwella

14. Adasi Gamaralalage Jephin
Sudharma
Siyambalawala, Ruwanwella

15. Kottalbadda Vidanelage
Jinohami
Siyambalawala, Ruwanwella

16. Kottalbadda Vidanelage
Elarishamy
Siyambalawala, Ruwanwella

16. A) Kottalbadda Vidanelage
Chandrasiri
Siyambalawala, Ruwanwella

17. K.P. Kirah
Siyambalawala, Ruwanwella

18. K.P. Peiris
Siyambalawala, Ruwanwella

Defendants

Karunaratnelage Lalith Wijesiri
Siyambalawala, Ruwanwella

Substituted – Plaintiff – Appellant

Case No. - CA/573/99 (F)

Vs

1. A) Adasi Gamaralalage
   Ariyasena
   Siyambalawala, Ruwanwella

2. A) Adasi Gamaralalage
   Mahinda Niwunhella
   Siyambalawala, Ruwanwella

3. A) D.K.D.M.G. Romiel
   (Rathnasiri/ Singho Naide)
   Siyambalawala, Ruwanwella

4. A) Karunapedige Samarapala
   Siyambalawala, Ruwanwella

5. Karunapedige Seba
   Siyambalawala, Ruwanwella

6. Karunapedige John
   Siyambalawala, Ruwanwella

7. A1) K.G. Siripala
   Siyambalawala, Ruwanwella

8. Adasi Gamaralalage Nandasena
   Siyambalawala, Ruwanwella

9. A) Adasi Gamaralalage
   Hamimahatmaya
   Siyambalawala, Ruwanwella

10. Adasi Gamaralalage
Amaratunge
Siyambalawala, Ruwanwella

11. Adasi Gamaralalage Leelawathi
Siyambalawala, Ruwanwella

12.Adasi Gamaralalage
Hamimahatmaya
Siyambalawala, Ruwanwella

13. Adasi Gamaralalage
Dharmadasa
Siyambalawala, Ruwanwella

14. Adasi Gamaralalage Jephin
Sudharma
Siyambalawala, Ruwanwella

15.Kottalbadda Vidanelage
Jinohami
Siyambalawala, Ruwanwella

16.A) Adasi Gamaralalage
Chandrasiri
Siyambalawala, Ruwanwella

17. K.P. Kirah
Siyambalawala, Ruwanwella

18. K.P. Peiris
Siyambalawala, Ruwanwella

Defendants – Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: Rohan Sahabandu, PC with Nathasha Fernando for the Substituted Plaintiff-Appellant
Widura Ranawaka with R.J. Upali de Almeida for the 5b, 6a and 6b Defendant-Respondents

Argued on : 04.08.2022
Decided on : 17.10.2022

C.P. Kirtisinghe – J

The substituted Plaintiff-Appellant has preferred this appeal from the judgment of the learned District Judge of Avissawella dated 29.01.1999.

By the aforesaid judgment, the learned District Judge has dismissed this partition action on the basis that the Plaintiff has failed to prove his title to the corpus.

The original Plaintiff had instituted this action in the District Court to partition the two amalgamated lands which are described in the first and second schedules to the amended Plaint. The Commissioner of the case P.K. Sumanadasa Licensed Surveyor who conducted the preliminary survey has shown the corpus as lots 1 and 2 in the preliminary plan marked X at the trial. There was no corpus dispute in the case as admitted by the parties. But there were several pedigree disputes among the parties.

According to the pedigree disclosed by the original Plaintiff in his amended Plaint, Karunapedige Ukkuthina and Adasi Gamaralalage Punchirala had been the original owners of the corpus who owned one half of the corpus in equal shares and that fact was admitted by all parties at the commencement of the trial. Ukkuthina's rights had devolved on his three children namely Rankira alias Ukkuwa, Ukkuhathana alias Upendara and Ukkuwa. The rights of Ukkuhathana alias Upendara and Ukkuwa who had died issueless had devolved on their brother Rankira alias Ukkuwa. The rights of Rankira alias Ukkuwa had devolved on the original Plaintiff who was Rankira's only son. The rights of Punchirala who owned a one-fourth share had devolved on his children Pieris Appuhamy and Appu Singho. Peiris Appuhamy's rights had devolved on his two children, the 1st and 2nd Defendants. Appu Singho's rights had devolved on the 8th, 9th, 10th, 11th, 12th and 13th Defendants. The 1st and 2nd Defendants and the 8th to 13th Defendants had conveyed their right title and interest to the Plaintiff on

11.04.1984 by Deed no. 4915 pending the partition action. At the trial, issues no. 1, 2, 3, 4, 5 and 6 had been raised on behalf of the Plaintiff on that basis.

As admitted by the parties and evidenced by the extracts of the Land Registry marked පැ1, Ukkuthina was the owner of a one-fourth share in the corpus by virtue of the Deed of Transfer no. 33367 dated 17.09.1900. The dispute arises in respect of the devolution of Ukkuthina's rights. Issue no. 2 had been raised on behalf of the Plaintiff on the basis that the entire rights of Ukkuthina should devolve on the Plaintiff, a fact which is disputed by the contesting Defendants. Although the learned District Judge had not answered that issue, he had carefully examined the oral and documentary evidence regarding that dispute and come to a correct finding regarding same. The substituted Plaintiff in his evidence had stated that Ukkuthina had three children namely Rankira alias Ukkuwa, Ukkuhathana alias Upendara and Ukkuwa. Ukkuwa and Ukkuhathana had died issueless and their rights had devolved on Rankira alias Ukkuwa. Rankira alias Ukkuwa was the father of the original Plaintiff. According to the substituted Plaintiff, his grandfather had two names and was called as Rankira as well as Ukkuwa. The contesting Defendants had disputed that fact. Their contention was that Rankira was never called as Ukkuwa. In the Birth Certificate of the original Plaintiff who was known as Saronchiya earlier (marked පැ3), the name of the father is mentioned as Rankira and not as Ukkuwa. It does not say that Rankira was also known as Ukkuwa. The marriage certificate of Rankira marked පැ4 does not refer to the name Ukkuwa. It does not refer to the name as Rankira alias Ukkuwa. In the deed marked 5වි1, Rankira is not referred to as Rankira alias Ukkuwa. According to the pedigree of the Plaintiff, Upendara is a son of Ukkuthina and Upendara's rights had devolved on the Plaintiff through Rankira. But according to the Birth Certificate marked පැ6, Upendara is not a son of Ukkuthina but a son of one Pincha alias Puncha. Therefore, Upendara's rights cannot devolve on the Plaintiff. According to the pedigree of the Plaintiff, Ukkuthina had two children who had the same name Ukkuwa. The Birth Certificates of the two Ukkuwas had been marked as පැ5 and පැ7. In both these Birth Certificates, the name of the father is mentioned as Ukkuthina and the mother's name is also the same. One Ukkuwa was born in 1885 and the other in 1895. It was the case of the substituted Plaintiff that පැ5 was the Birth Certificate of his grandfather Rankira alias Ukkuwa. But in that Birth Certificate, there is no reference to the name Rankira. It does not say that the Ukkuwa mentioned in the Birth Certificate was also known and called as Rankira. According to the pedigree of the Plaintiff and the evidence of the substituted Plaintiff, the father

of Rankira alias Ukkuwa is Ukkuthina. But in the Marriage Certificate of Rankira marked පැ4, the name of Rankira's father is mentioned as Puncha and not as Ukkuthina. The substituted Plaintiff had admitted in evidence that Puncha and Ukkuthina were brothers who were living together with the same wife. Later Puncha had contracted a separate marriage and had children out of that marriage. Puncha's Marriage Certificate had been marked as පැ8. The contents of Rankira's Marriage Certificate marked පැ4 and the contents of the Birth Certificate marked පැ5 have an important bearing on this issue. පැ4 does not refer to Rankira as Ukkuwa. It does not say that Rankira was also known as Ukkuwa. In that Marriage Certificate, the name of the father of Rankira is not mentioned as Ukkuthina. It is mentioned as Puncha. In the Birth Certificate marked පැ5, the name of the informant of the Birth is mentioned as Puncha. According to the evidence of the substituted Plaintiff, Puncha is the brother of Ukkuthina. In පැ5 it is mentioned that Puncha is informing the birth of his brother's son. In පැ3, the Birth Certificate of the Plaintiff, the informant is his father, Rankira. But Rankira had not mentioned the fact that he was also known as Ukkuwa. When one takes into consideration all these factors, on a balance of probability of evidence one can come to the conclusion that the substituted Plaintiff had failed to prove that his grandfather Rankira was also known as Ukkuwa and the so called Rankira alias Ukkuwa was a son of Ukkuthina. According to the Marriage Certificate of Rankira marked පැ4, Rankira's father is Pincha and not Ukkuthina. Therefore, the substituted Plaintiff-Respondent had failed to establish that පැ5 is the Birth Certificate of his grandfather Rankira. After taking into consideration all these factors, the learned District Judge has come to a correct finding regarding the devolution of title of one of the original owners Ukkuthina and we see no reason to interfere with those findings. Therefore, the answer to the issue no. 02 is obvious although the learned District Judge had not answered it.

Now I will consider the devolution of the rights of the other original owner Punchi Rala who owned a one-fourth Share. According to the pedigree of the Plaintiff, Punchi Rala's rights had devolved on his two children Pieris Appuhamy and Appu Singho. Pieris Appuhamy's rights had devolved on his two children the 1st and the 2nd Defendants. Appu Singho's rights had devolved on the 9th to 13th Defendants. The 1st and the 2nd Defendants and 9th to 13th Defendants had transferred their right title and interest to the Plaintiff pending this partition action. At the trial, issues no. 03, 04 ,05 and 06 were raised on behalf of the Plaintiff on that basis. Issues no. 07, 08, 09 and 10 had been raised on behalf of

the Plaintiff on the basis that out of the balance ½ share, a 3/8 share was owned by the 3rd Defendant and a 1/8 share was owned by Yashohamy and Wijenaide and those rights had devolved on the Plaintiff on deeds executed pending this partition action. As against those issues, the 4th, 5th and 6th Defendants had raised the following two issues.

16)පැමිණිල්ල ඉදිරිපත් කරන අවස්ථාවේ පැමිණිලිකරුට නඩුවට අදාළ ඉඩමේ කිසිදු අයිතිවාසිකමක් තිබුනාද?

17) 16 වැනි විසදියයුතු ප්‍රශ්නයට නැත යයි පිළිතුරු දුනහොත් මෙම නඩුව දැනට ව්‍යවස්ථාපිත අන්දමට පවත්වාගෙන යා හැකිද?

The learned District Judge has answered those issues in favour of the 4th, 5th and 6th Defendants and dismissed the Plaintiff's action based on those two answers.

According to the original pedigree filed by the Plaintiff along with the original Plaint, the Plaintiff gets rights only from Ukkuthina. The balance one-fourth share of Punchi Rala had devolved on the 1st and 2nd Defendants. The Plaintiff had not shown the devolution of the balance ½ share. Therefore, it is obvious that the Plaintiff had purchased the balance rights after the institution of this partition action. The partition action was instituted on 28th August 1980. The deed no. 4915 marked පැ2 upon which the Plaintiff had purchased the rights of the 1st, 2nd, and 9th to 13th Defendants had been executed on 11th April 1984 after the institution of this partition action. According to the averments in the amended petition, the Plaintiff had purchased the other rights also after the institution of the partition action.

The schedule of the deed marked පැ2 reads as follows;

"..... පංගුව වෙනුවට අවිස්සාවේල්ල දිසා අධිකරණයෙහි විභාග වෙමින් පවතින අංක 16027 දරණ බෙදුම් නඩුවේ තීන්දුව පිට ලැබෙන වාසිය හෝ අවාසියද"

It is possible to execute a deed in that manner intending to transfer whatever the rights that will be allotted to the transferors by the judgment of a pending partition case. But those rights will accrue to the transferee only after the entry of the final decree of the partition action. In the case of **Sirinatha Vs Sirisena [1998] 3 SLR 19** it was held that in considering the legal effect of a transfer of whatever rights that will be allotted to the transferor by a final decree in a partition action the transferee cannot claim to be added as a necessary party. The transferor's rights will be determined in the partition action and the transferee of the yet undetermined rights is not a necessary party. Therefore,

the Plaintiff in this case who had purchased the rights of the transferors which are yet to be determined in the partition action is not even entitled to be a party to this action on that basis. Those rights will accrue to the Plaintiff only after the entry of the final decree of this case. Those rights cannot be allotted to the Plaintiff by the judgement and the interlocutory decree in this case. The Plaintiff did not have those rights at the time of the institution of this partition action. In the case of **Silva Vs Fernando 15 NLR 499** it was held that the rights of the parties to an action have to be ascertained as at the commencement of the action. In the case of **Thalagune Vs De Livera [1997] 1 SLR 253** Senanayake – J held that it is settled law. Therefore, the Plaintiff in this case did not have any undivided rights in the corpus at the time of the institution of this partition action and he was not a co-owner of the corpus within the meaning of Section 02 of the Partition Law No. 21 of 1997. Therefore, the original Plaintiff was not entitled in law to institute and maintain this partition action and therefore the learned District Judge was justified in dismissing this partition action on that basis as the Plaintiff had also failed to prove his inheritance under Ukkuthina.

When this matter was taken up for argument, the learned President's Counsel for the Plaintiff-Appellant submitted to court that the learned District Judge had failed to answer all the issues raised at the trial. Instead, the learned District Judge had dismissed the case by answering only two issues. Therefore, it was the submission of the learned President's Counsel that the case should be sent back to the District Court for a trial *de novo* without going into the merits of the case. I have expressed the opinion that the court cannot decide whether the learned District Judge should have answered all the issues instead of disposing the case by answering only two issues without going into the merits of the case.

The learned President's Counsel for the Plaintiff-Appellant has relied on the judgments of **Sopinona Vs Pitipanaarachchi and two others [2010] 1 SLR 87** and **Madduma Ralalage Susil and others Vs Madduma Ralalage Mary Nona and others [2016] 1 SLR 49**. Both those judgments have to be considered in the light of the circumstances of those cases.

The case of **Madduma Ralalage Susil and others Vs Madduma Ralalage Mary Nona and others [2016] 1 SLR 49** was a case where the learned District Judge had ordered to partition the land. The main grievance of the Appellants against the judgment of the District Court was that all the issues raised at the trial were not answered by the Trial Judge and by doing so, the court had not investigated the title of the parties concerned.

The Supreme Court held that the learned District Judge had not investigated a title of the parties to the action. Eva Wanasundara – J has observed as follows,

"According to the way he has written the judgment, if it is decided that the Plaintiff is correct, it is not necessary to look into other issues raised and/or other claims placed before court by others even though they all lead evidence of the trial."

In that case the learned District Judge had failed to investigate title of all the parties by not answering the issues raised by the Appellants on their paper title. The learned District Judge had just held that the shares should be allocated according to the pedigree of the Plaintiff without considering the claim of the Appellants put forward by their issues.

A similar situation arose in the case of **Sopinona Vs Pitipanaarachchi and two others [2010] 1 SLR 87.** In that case also the District Judge had ordered to partition the corpus. The Respondent's allegation before the Court of Appeal was that their deeds were not at all considered. The learned District Judge had decided on the allocation of shares in accordance with the pedigree of the Plaintiff without examining the title of all the parties and without examining and considering the deeds produced by the Appellants. Thus, the learned District Judge failed to analyze the totality of the evidence lead at the trial. The learned District Judge had answered only one issue – namely issue no. 01 raised by the Plaintiff which he had answered in the affirmative. That issue was based not only on the devolution of title of the Plaintiff but also on the prescriptive rights of the plaintiff. Therefore, it became necessary to consider and analyze the evidence to ascertain whether parties disclosed in the plaint had prescribed which the learned District Judge had failed to do.

In Sopinona's case Saleem Marsoof – J observed thus, "In fact a careful examination of the issues formulated at the commencement of the trial in this case shows that there was no way in which the court could have avoided answering all the issues raised at the commencement of the trial and it is ironic that the learned trial Judge had gone through the entire trial but had chosen to answer only issue – 01. Indeed, if the learned District Judge had focused even for a moment on the other 13 issues, she may have answered issue – 01 differently."

In the same judgment, Dr. Justice Bandaranayake – J had observed as follows,

"Accordingly in a partition action, it would be the prime duty of the trial Judge to carefully examine and investigate the actual rights and titles to the land, sought to be partitioned. In that process it would essential for the trial Judge to consider the evidence lead on the points of contest and answer all of them stating as to why they are accepted or rejected."

Therefore, the need to answer all the issues arises out of the necessity of carefully examining the title of all the parties.

The facts of this case can be distinguished from the facts of the aforementioned two cases. In Sopinona's case and Madduma Ralalage Susil's case, the Appellants were prejudiced by the failure of the learned District Judge to answer all the issues. By not answering the issues raised by the contesting Defendants, the learned District Judge had failed to investigate the title of the contesting Defendants and the claims put forward by them. In this case, no such prejudice had caused to the Plaintiff-Appellant by not answering all the issues. Although the learned District Judge has not answered all the issues raised by the Plaintiff-Appellant he has carefully examined the evidence and considered the entire pedigree and the devolution of title of the Plaintiff's pedigree. Therefore, in reality he has taken into consideration all the issues raised by the Plaintiff-Appellant on his devolution of title although he had failed to answer those issues except the issues no. 16 and 17. But the answers to all those issues are obvious out of the findings of the learned District Judge. Out of those findings, issue no. 1 can be answered in the affirmative and issue no. 2 can be answered in the negative as not proved. Issues no. 4, 6 and 10 can be answered in the negative as not proved. None of the Defendants had appealed against the judgment on the basis that they were prejudiced by the failure of the learned District Judge to answer the issues raised by them. None of the Defendants except the 4th, 5th and 6th Defendants had asked for a partition of the corpus. Although the 4th, 5th and 6th Defendants who had claimed for one-fourth of the corpus had asked for a partition and raised the issues no. 12, 13, 14 and 15 on that basis, they had not appealed against the judgment on the basis that they had been prejudiced for the failure to answer those issues. Instead, the learned Counsel for the 5b, 6a and 6b substituted Defendant-Respondents supported the judgment in the argument.

The learned President's Counsel for the Plaintiff-Appellant submitted that the court has not considered the question whether the Plaintiff got shares from Punchi Rala. He also submitted that the learned District Judge has not considered the question whether the Plaintiff got shares from the other limb of

the pedigree – from Ukkuthina. Although the learned District Judge has failed to answer the issue no. 2 which is based on the devolution of title of Ukkuthina, he has considered that question and analyzed the evidence and come to correct conclusion that the Plaintiff does not inherit rights from Ukkuthina. He has also considered the question whether the Plaintiff gets rights from Punchi Rala and has come to the correct conclusion that the Deed marked පැ2 upon which the Plaintiff claimed the rights of Punchi Rala is a Deed which had been executed after the institution of this partition action and those rights had not accrued to the Plaintiff at the time of the institution of this action. Mr. Sahabandu submitted that once the Plaint and the Statements of Claim are accepted by court, all the parties become Plaintiffs as this is a partition action. Several parties had claimed for undivided rights in the corpus and once the partition action is dismissed those parties get affected. He also submitted that there is no cause of action in a partition case and therefore, in deciding the rights of the parties, the date of the institution of the action is immaterial. Although there is no cause of action in a partition case, the Plaintiff must have undivided rights in the corpus to institute same. According to the provisions of Section 2 of the Partition Law No. 21 of 1977, only a co-owner of the corpus can institute a partition action. It refers to a land belonging in common to two or more owners and states that any one or more of them may institute a partition action. At the time of the institution of this partition action, the Plaintiff was not a co-owner of the corpus. He did not inherit rights from Ukkuthina and the rights he had purchased upon the deed marked පැ2 will accrue to the Plaintiff only after the entry of the final decree of this case. Therefore, those rights cannot be granted to the Plaintiff by the judgment of this case and he was not entitled to those rights at the time of the institution of this partition action. Although several parties had claimed for undivided rights in the corpus, only the 4th, 5th and 6th Defendants had asked for a division of the corpus on the basis of the undivided rights they were claiming. None of the others had claimed for the partition of the corpus. Even the 4th, 5th and 6th Defendants had abandoned their claim for a partition decree. Therefore, it is unnecessary to take into consideration the undivided rights of the other parties and come to a determination on those rights. This is not an action for declaration of title and the court is not bound to declare the undivided rights of the parties when the court decides to dismiss the action. Therefore, one cannot say that the other parties had got affected once the partition action was dismissed. None of them had appealed against the judgment on that basis and they are not entitled for a declaration of their rights.

In the case of **Weerakoon Vs Lenoris Waas 52 CLW 70**, where the Trial Judge had proceeded to allot certain plantations and buildings among some of the Defendants after investigating their rights, after the dismissal of a partition action on the ground that the Plaintiffs had no title to the corpus, Basnayake ACJ (with Pulle J agreeing) observed as follows,

"We do not think that after having dismissed the action on the ground that the plaintiff had no title the learned District Judge had any jurisdiction to proceed to allot the plantations and the houses among the parties to it."

For the aforementioned reasons, we see no merit in this appeal. We are of the view that the learned District Judge has come to a correct conclusion in this case and we see no reason to interfere with those findings. Therefore, we affirm the judgment of the learned District Judge dated 29.01.1999 and dismiss this appeal. In the circumstances of this case, we make no order for costs.

Judge of the Court of Appeal

Mayadunne Corea – J
I agree

Judge of the Court of Appeal