

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

Geeganage Jayawardana,
Sevana Niwasa,
Walasmulla

Plaintiff

Vs.

Court of Appeal Case No:

CA 906/2000F

DC Walasmulla Case No:

198/P

1. Subasin Kattadige Josoline,
Paraluppa,
Wijesiripura,
Walasmulla.
2. Hewa Suduhakuruge Silinda,
Bettgahakoratuwe,
Walasmulla
3. Hewa Kuda Anthonige Menchina,
Opposite Temple,
Walasmulla.
4. Subain Kattadige Kusumawathie,
Opposite Temple,
Walasmulla
5. Emawasan Gunapala,
Opposite Temple,
Walasmulla
6. Geeganage Leelawathie,
Sewana Niwasa,
Walasmulla
7. Emawasan Karunawathie,
Sewana Niwasa,
Walasmulla
8. Emawasan Jayasena,
Sewana Niwasa,
Walasmulla
9. Kattadige Suwadiris,
Wijaya Niwasa,
Walasmulla

10. Wijamunige Samela,
Bettgahakoratuwe,
Walasmulla.
11. Agampodi Durage Yasohamy,
Thiththagahawatta,
Walasmulla.
12. Emawasan Sirirsena,
Thiththagahawatta,
Walasmulla.
13. Walhenage Wimalasena,
Karahinna, Olura,
Walasmulla.
14. Darlin Geeganage,
Pallekanda,
Walasmulla.
15. Walhenage Dissanchi,
Pelawatta,
Walasmulla.
16. Emawasan Kumandira,
Pelawatta,
Walasmulla.

Defendants

AND

13. Walhenage Wimalasena,
Karahinna, Olura,
Walasmulla.
14. Darlin Geeganage,
Pallekanda,
Walasmulla.
15. Walhenage Dissanchi,
Pelawatta,
Walasmulla.
16. Emawasan Kumandira,

Pelawatta,
Walasmulla.

Defendant- Appellants

VS

Geeganage Jayawardana,
Sevana Niwasa,
Walasmulla

Plaintiff- Respondent

01. Subasin Kattadige Josoline,
Paraluppa,
Wijesiripura,
Walasmulla.
02. Hewa Suduhakuruge Silinda,
Bettgahakoratuwe,
Walasmulla
03. Hewa Kuda Anthonige Menchina,
Opposite Temple,
Walasmulla.
04. Subain Kattadige Kusumawathie,
Opposite Temple,
Walasmulla
05. Emawasan Gunapala,
Opposite Temple,
Walasmulla
06. Geeganage Leeelawathie,
Sewana Niwasa,
Walasmulla
07. Emawasan Karunawathie,
Sewana Niwasa,
Walasmulla
08. Emawasan Jayasena,
Sewana Niwasa,
Walasmulla
09. Kattadige Suwadiris,
Wijaya Niwasa,

Walasmulla
10. Wijamunige Samela,
Bettgahakoratuwe,
Walasmulla.

11. Agampodi Durage Yasohamy,
Thiththagahawatta,
Walasmulla.

12. Emawasan Sirirsena,
Thiththagahawatta,
Walasmulla.

Defendant-Respondents

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Srihan Samaranayake for the 15A Defendant-Appellant
Plaintiff-Respondent-Respondent appears in person.

Written Submissions: 31.01.2023 for the 15A Defendant-Respondent.
filed on

Delivered on : 23.03.2023

Prasantha De Silva, J.

Judgment

The Plaintiff-Respondent in this appeal has instituted action by plaint dated 19.06.1984 to have the land called Bettigahakoratuwa alias Beligahakoratuwa about one acre in extent partitioned. The 3rd, 4th and 5th Defendant-Respondents have filed their statement of claim dated 16.12.1986. The 6th to 12th Defendant-Respondents have not filed their statements of claim and neither have they participated at the trial.

When the matter was taken up for trial, no points of contest had been raised by either party and it had been informed that parties are not disputing the corpus. Thereafter, the Plaintiff had adduced evidence. However, he had not been cross-examined as there was no contest among parties. The learned District Judge had delivered the Judgement on 10.02.1987 in favour of the Plaintiff allocating an undivided 20/1680 share. The 1st Defendant was allocated an undivided 960/1680 share and 2nd and 3rd

Defendants were allocated 144/1680 and 92/1680 undivided shares respectively. The 4th and 5th Defendants were allocated an undivided 46/1680 share each and 6th, 7th, 8th Defendants were given an undivided 20/1680 share each, 9th and 10th Defendants were also allocated an undivided 80/1680 and 40/1680 share respectively. It is relevant to note that the learned District Judge has kept 192/1680 share unallotted.

After delivering the said Judgement, 13th - 16th Defendants had been added as Party Defendants on their application by petition dated 20.11.1995. The said 13th - 16th Defendants had drawn the attention of Court to paragraph 11 of the plaint. It is specifically stated that Plaintiff is unaware who the owners of 192/1680 share are. It was further stated that the said 192/1680 share should be kept unallotted until the claimants come forward to claim their rights.

It was further submitted on behalf of the Appellants that it is clear from the petition filed by 13th to 16th Defendant-Appellants that original owner whom they are claiming title from was not disclosed by the Plaintiff in his plaint nor evidence adduced in this regard. The Plaintiff has simply stated in paragraph 11 of his plaint that he is unaware of the owners. However, at the inquiry, the Plaintiff seems to had known all the owners pertaining to unallotted share.

It was further submitted that 13th to 16th Defendant-Appellants have proved that they have certain entitlements to the said unallotted share. By the evidence of the Plaintiff and the Petitioners, it was elicited that there are proper heirs to the unallotted shares. The only arguments which were leveled against the Petitioners was that a fuller pedigree was not shown before Court by them. However, the Petitioners had established that there are proper heirs to the unallotted shares. Therefore, the Petitioners sought to file amended papers in the District Court showing the fuller pedigree and to have a fresh inquiry before the District Court to establish their rights to the said unallotted shares.

As there are no objections by the Plaintiff-Respondent and other Defendant-Respondents, we allow the said application of the Petitioners and send this case back to the District Court of Walasmulla. We direct the learned District Judge to allow the Petitioners to file amended statement of claim and to have a fresh inquiry in order to decide the entitlement of Petitioners to the unallotted 192/1680 share. Further, we direct the learned District Judge to conclude this matter with minimum delay.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL