

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

C A. 347/99 F

DC Homagama 523/P

Kathri Achchig Mary Nona,
181, Delagahawatta,
Pitipana South,
Homagama

5th Defendant- -Appellant

Vs

Karawitage Premawathie,
No 264, Ihala Kosgama,
Kosgama

Plaintiff-Respondent and others

BEFORE: A.W.A.SALAM, J (P/CA) & SUNIL
RAJAPAKSHE, J

COUNSEL: Wickrama Jayathilaka for the 5th
defendant-appellant and Sudath Wickramaratna for
the plaintiff-respondent.

ARGUED ON: 14.03.2013

WRITTEN SUBMISSIONS TENDERED ON: 29 & 31
May 2013

DECIDED ON: 21.07.2014

Sunil Rajapaksha, J

This appeal arises from the judgment and
interlocutory decree entered in a partition action.
The plaintiff-respondent (hereinafter referred to as the
"plaintiff") filed an action to partition the land

described in the schedule to the plaint and there was no dispute as to the identity of the corpus. The only question that arose for determination in the partition action was the authenticity of deed No 27397 dated 29 June 1979 which was marked by the plaintiff at the trial as P3. The points of contest No 1 and 5 relate to the authenticity of this deed. The plaintiff took up the position that P3 was duly executed valid deed by which the plaintiff's father-in-law gifted certain rights in the subject matter to her husband. The plaintiff takes up the position that after the demise of her husband the rights conveyed on P3, in addition to certain other rights devolved on the plaintiff and her 2 children. The party who contested the position of the plaintiff with regard to P3 was the 5th defendant-appellant who has preferred the present appeal and referred to in the rest of this judgment as the "appellant". The appellant maintained in the lower court that P3 had never been signed by the Donor who is her father and the father-in-law of the plaintiff. The appellant in other words as per point of contest No 5 took up the position that P3 was the fraudulent deed. The learned that district judge answered point of contest No 5 in the negative and the point of contest of the plaintiff as regards the validity of P3 in the affirmative. In other words the learned district judge accepted P3 as a duly executed deed by the Donor and decided that the undivided rights that had passed on P3 ultimately devolve on the

plaintiff and her 2 children.

The main question that appears to have arisen for decision in this appeal is limited to the issue relating to the finding of the learner district judge as to the validity of P3. The learned counsel for the plaintiff has cited the decision in Samarawickrama Vs Jayasingha and others 2009 Bar Association Law Journal page 85. In that case it was held that Section 101 of the Evidence Ordinance deals with the burden of proof and whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Based on the above rule when the plaintiff's case is examined it appears that the plaintiff relied on P3 as one of the deeds by virtue of which she became entitled to undivided shares in the corpus along with her 2 children. In order to prove the documents marked as P3 in terms of Section 68 of the Evidence Ordinance, the plaintiff called one of the attesting witnesses of the deed. Further when the deed P3 was marked it was not objected to by the appellant nor was it produced subject to proof. As such under section 154 of the Civil Procedure Code this deed can be taken as a legal evidence for all purposes. This principle has been laid down in the often cited judgment of the Supreme Court in Sri Lanka Ports Authority and another vs Jugolinija Boal East 1981 1 SLR 18 where Supreme Court held

that if no objection to any particular document marked at the trial is taken at the close of a case when document is already in evidence they are evidence for all purposes.

The appellant has not discharged the burden of adducing any proof that the document in question P3 has been executed in a fraudulent manner or at least that it did not contain the signature of the donor. As such, the learned that district judge cannot be faulted for her decision giving effect to P3 which has been duly proved at the trial. For reasons stated above, this appeal is dismissed subject to costs.

Judge of the Court of Appeal

A W A Salam, J

I agree

President/ Court of Appeal

TW/-