

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

Madampage Somadasa,

No.13, Jayanthi Mawatha,

Galle.

C.A. Case No. 1381/99 (F)

Plaintiff

D.C.(Galle)

Kande Karlin Nona,

Case No. 9060/P

No.13, Jayanthi Mawatha,

Dadalla,

Galle.

1st Defendant and 17 others

Defendants

And Now

Madampage Somadasa,
No.13, Jayanthi Mawatha,
Galle.

Plaintiff Appellant

Kande Karlin Nona,
No.13, Jayanthi Mawatha,
Dadalla,
Galle.

1st Defendant and 17 others

Defendants - Respondents

COUNSEL

: Hasitha Chaminda for the
Plaintiff Appellant.
Sanath Singhage for the 11 A
and 12th for the Defendant
Respondent.

ARGUED ON : 30.03.2015

DECIDED ON : 24.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Appellant has instituted this partition action by the plaint dated 08.02.1984 to terminate the co-ownership of the land called “Nilamange Wattha” alias “Nilamanage Wattha” situated in Dadalla. According to the pedigree disclosed in the plaint, the Plaintiff and the 1 to 11 Defendants were co-owners of this land. The 12 to 22 Defendants had been added during the proceedings 8 A, 9 A, 11 A and 13 A substituted Defendants had been added as legal representatives of deceased Defendants. The commissioner appointed, M.C. Mendis, licenced surveyor has prepared the preliminary plan No.473, dated 19.02.1986 which has been marked as X at the trial. 11 A and 12 Defendants had filed statements of claim deviating from the pedigree of the plaint. The trial had commenced on 04.06.1991. All parties had admitted the subject matter depicted in the preliminary plan at the commencement of the trial.

The Plaintiff's pedigree begins with the names of four original owners who owned undivided shares of the corpus. The 11 A Defendant had shown a pedigree starting with the name, Thelenis as the original owner of the entire corpus. The 12 Defendant had shown the devolution of the title only for an undivided share of 8/15. The trial had proceeded on the issues framed according to those three positions.

The evidence of the Plaintiff had been led on 01.02.1993, 26.08.1993, 30.04.1997 and 13.01.1998 that is for a period of nearly five years at intervals. Although only the evidence of the Plaintiff had been led in the Plaintiff's case, it has not been recorded that Plaintiff's case is closed. However, the evidence of the Plaintiff had been closed before the trial judge who had delivered the judgment adopting the previous proceedings without re-examining the Plaintiff. The 12 Defendant had given evidence to present the case of 11 Defendant. The case of 13 – 22 Defendants had been presented with the evidence of 18 Defendant and a clerk of the Land Registry. The learned District Judge had come to the conclusion that the proved pedigree is the one that was submitted in the 11 Defendant's case in which Thelenis was the original owner. Therefore, he had decided that only the heirs of Thelenis were entitled to the rights of the corpus. The learned counsel for the Plaintiff Appellant contended that the trial court has totally failed to appreciate the vital role which the court is entrusted with in a

judgment that the Plaintiff had admitted that only the Plaintiff, the 11 Defendant and the 9 Defendant were in possession of the subject matter.

He has added that the evidence of the Plaintiff itself makes it evident that Thelenis, the father of the 11 Defendant, had possessed this land and it was only Thelenis who had possessed it. He has further observed that the 12 Defendant who had been called to give evidence for the 11 Defendant had stated that the land had been possessed by Thelenis and his six children. The opinion of the learned judge is that the evidence of 12 Defendant had been corroborated by the evidence of the Plaintiff. The learned counsel for the Respondent has cited the decision of ***Banda Vs Dissanayaka***³ to emphasize that the court should be satisfied that the Plaintiff has made out his title to the share claimed by him.

In the instant case the learned counsel contended that despite the fact that the Appellant is required to prove before court as to the manner in which he is entitled to the claimed share of the land, the Appellant contradicts himself in evidence on number of occasions with vague statements in relation to his purported entitlement of the land. He has pointed out that the Appellant, claiming to have bought a portion of the subject matter by P 3 approximately 1 ½ years before filing the action, challenges the ownership of his grandfather, Thelenis who, along with his original heirs, has been living in the subject matter

from a time immemorial to which he also claims a portion thereof on the basis of the ownership of his grandfather.

As contended by the counsel for the Respondents, the learned trial judge had comprehensively analysed all evidence led before court and answered all the issues framed in accordance with the dispute among parties. Therefore, this court is of the opinion that there is no reason to interfere with the judgment of the trial court. As such, this court dismisses the Appeal.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

1. (6 NLR 246)
2. (1 NLR 362)
3. (2006 – 2 SLR 87)