

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

D.G. Karunapala
Kandekumbura
Kamburegama
Kandy.

PLAINTIFF

C.A. Case No.932/97(F)

DC Kandy Case No. 12762/P

Vs

1. R.M. Seneviratne
Kandekumbura
Kumburegama
Kandy.
2. C.T. Karunapala
Kandekumbura
Kumburegama
Kandy.

DEFENDANTS

AND NOW

R.M. Seneviratne
Kandekumbura
Kumburegama
Kandy.

1ST DEFENDANT-APPELLANT

-VS-

D.G. Karunapala
Kandekumbura
Kumburegama
Kandy.

PLAINTIFF-RESPONDENT

C.T. Karunapala
Kandekumbura
Kumburegama
Kandy.

2ND DEFENDANT-RESPONDENT

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Anura Maddegoda with

A.Amarasinghe for the 1st
Defendant Appellant.

Upul Ranjan Hewage for the
Plaintiff Respondent.

Romesh Karaliyadda for the 2nd
Defendant Respondent.

ARGUED ON

: 28th January, 2015

DECIDED ON

: 15th May, 2015

Deepali Wijesundera J.

This appeal has been filed by the defendant appellant seeking to set aside the judgment of the learned District Judge of Kandy delivered on the 30th of September 1997 in a partition action. The defendant appellant in the instant case was the first defendant in the partition case.

There was no dispute regarding the corpus “Alawalayehena” and the pedigree of the plaintiff was admitted up to a certain point. All parties have agreed ½ share of the said land was transferred to N.A.V. Rani by *deed no. 2731* (marked **P4**) by N.A. Ukku and the other ½ was transferred to Ukkuhamy by *deed no. 2732* (marked **P2**) plan marked and *no. 1273* and report was admitted by both sides. The plaintiff claimed Lot 1 in the said plan and both first and second defendants claimed Lot 2 shown in the said plan. The first defendant claimed the entirety of Lot 2 whereas the first defendant has claimed only ½ share of Lot 2. The plaintiff's share was not in dispute. The only dispute was between the first and second defendant over Lot 2. The issue to be decided is whether Rani had two daughters namely Piyaseeli and Premawathi as decided by the District Judge.

The plaintiff giving evidence in the District Court has stated that the first defendant is entitled to $\frac{1}{4}$ share of the land owned by Rani and marked **deed 1D1** and **1D2** which is the share of one of Rani's daughters namely Premawathi. Plaintiff has called Dharmasiri and Wimalasiri Dissanayake who are the two sons of Piyaseeli to prove that Rani had two daughters. They have said in evidence that Premawathi is their mother's sister and they called her "පුංචි අම්මා". They have said the plaintiff is a son of Premawathi.

Plaintiff's brother G.G. Amarasiri giving evidence in chief has stated that his mother had a sister whom he called "ලොකු අම්මා". In cross examination he had tried to give a vague answer.

The Learned District Judge in his judgment has analyzed all the evidence and the deeds marked before answering the issues. The counsel for the first defendant argued that the deeds marked **1D1** and **1D2**, it is stated that $\frac{1}{2}$ share of the said land is transferred to the first defendant and that the plaintiff's argument about $\frac{1}{4}$ share should be rejected.

The learned counsel submitted that the plaintiff has marked a deed as **P6** which is not a deed written on the subject matter of this case. The plaintiff has stated **P6** was marked to prove that Piyaseeli was a daughter of Rani and that it is regarding another land owned by Rani. The learned District Judge has stated this in his judgment. And there are no significant alternations made to the said deed as alleged by the first defendant.

The counsel for the first defendant appellant submitted that the findings of the Learned District Judge are erroneous and that the Learned District Judge has misdirected himself and that the Learned District Judge had failed to investigate the title of the parties as required by the partition law. He further submitted that the District Judge has failed to consider the evidence placed before him and only given undue consideration to the fact that the first defendant failed to give evidence at the trial to prove his title. The first defendant's counsel further submitted that in view of the failure of the District Judge to properly examine and investigate title in the light of the entirety of the evidence the District Judge has erred in law therefore the said judgment should be set aside and order should be given by this court to say that the entirety of Lot 2 and the buildings in Lot 2 of *plan no. 1273* shall go to the first defendant.

The learned counsel for the second defendant respondent submitted that the learned District Judge acting under *Sec. 25 of the partition law* correctly analyzed the title of each party and delivered the judgment. He has cited the judgments in ***Banda Vs Dasanayake 2006 2 SLR 87 and Don Samel Vs Don Sadiris 1986 3 CACR 791*** and stated that a trial judge should safeguard the rights of the parties before him as well as the parties who are not before court.

The second defendant further submitted that plaintiff's witness Dharmasiri and Wimalasiri Jayasinghe and G.G. Amarasiri have given evidence to prove that Rani had two daughters namely Piyaseeli and Premawathie. He also stated that the first defendant by not giving evidence failed to prove issues raised by him.

When considering the judgment of the learned District Judge it is evident that he has very correctly evaluated the evidence placed before him along with the documents marked before him. He has even considered deed marked as **P6** which is not a deed on the land in dispute to find out about Rani's two daughters. He has very carefully analyzed the evidence placed before him and very clearly in simple language has recorded his findings.

It is the duty of the trial judge to evaluate evidence and examine the title of each party. When the trial judge has examined the title fully and had come to a finding the court of Appeal can not interfere with the findings of the District Judge. In the instant case the District Judge has very clearly evaluated the evidence and has come to his finding on the title. Therefore I decide it is not necessary in law for this court to interfere with the findings of the learned District Judge. I affirm the judgment of the learned District Judge dated 30/09/1997 and dismiss the appeal of the appellant with costs fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL