

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

Gnanawathie Abeysekera
"Ganga", Bandaranaike Mawatha
Ingiriya.

PLAINTIFF

C.A. Case No.654/96(F)

DC Horana Case No. 3266/P

Vs

1. Sirisena Jayalath
No. 51, Ingiriya.
2. Seelawathie Jayalath
Athura, Bulathsinghala.
3. Hethiringe Don Siripala
98, Jayalathgama Road,
Ingiriya.
4. Gunananda Jayalath
Jayalathgama Road, Ingiriya.
5. Dayananda Jayalath
Jayalathgama Road, Ingiriya.
6. Dona Rasika Wickramabhahu
Senerath Paranayapa
Opposite Police Station,
Ingiriya.

7. Kulawathie Kalubowila
Jayalathgama, Ingiriya.
8. Kushanthi Jayalath
Jayalathgama, Ingiriya.
9. Thilanga Jayalath
Jayalathgama, Ingiriya.
10. Lakshmi Jayakodi
"Weeragiriya",
Jayalathgama, Ingiriya.
11. Rambukkanage Jayapala
Jayalathgama, Ingiriya.
12. Rambukkanage Jinapala
(Deceased)
Jayalathgama, Ingiriya.
- 12A. Rambukkanage Jayapala
Jayalathgama, Ingiriya.
13. Rambukkanage Chandradasa
Opposite Police Station
Ingiriya.
14. Rambukkanage Lucy Nona
(Deceased)
Jayalathgama, Ingiriya.
- 14A. Jayalathge Jayasena
Jayalathgama, Ingiriya.
15. Kaluarachchige Premawathie
Jayalathgama, Ingiriya.
16. Rambukkanage Pela Nona
Jayalathgama, Ingiriya.
17. Hewa Bethmage Rathnasoma
Opposite Police Station
Ingiriya.

18. Rambukkanage Sirisena
Opposite Police Station
Ingiriya.
19. Jayalathge Aranolis
Opposite Police Station
Ingiriya.
20. Kirikankanage Albert Perera
Elabada Road, Ingiriya.
21. Rambukkanage Martin **(Deceased)**
Jayalathgama, Ingiriya.
- 21.A R. Karunawathie
Kandhana, Rathmalgoda
Poruwedanda.
22. Jayalathge Podinona
Jayalathgama, Ingiriya.
23. Jayalathge Chandrasa
Opposite Police Station
Ingiriya.
24. Rambukkanage Dhanawathie
Jayalathgama, Ingiriya.
25. Rambukkanage Roselyn
Jayalathgama, Ingiriya.
26. Jayalathge Sanath
Jayalathgama, Ingiriya.
27. Jayalathge Yasanthi
Jayalathgama, Ingiriya.
28. Jayalathge Vajira Champani
Jayalathgama, Ingiriya.
29. Jayalathge Jayasena
Jayalathgama, Ingiriya.

AND NOW BETWEEN

11. Rambukkanage Jayapala
Jayalathgama, Ingiriya.
- 12A. Rambukkanage Jayapala
Jayalathgama, Ingiriya.
15. Kaluarachchige Premawathie
Jayalathgama, Ingiriya.
- 17.Hewa Bethmage Rathnasoma

Opposite Police Station,
Ingiriya.
- 21A. R.Karunawathie
Kandhana, Rathmalgoda
Poruwedanda.
22. Jayalathge Podinona
Jayalathgama, Ingiriya.
23. Jayalathge Chandradasa

Opposite Police Station
Ingiriya.

DEFENDANT-APPELLANTS

VS

Gnanawathie Abeysekera
"Ganga, Bandaranaike Mawatha
Ingiriya.

PLAINTIFF-RESPONDENTS

- 01.Sirisena Jayalath (Deceased)**
No. 51, Ingiriya.
- 1A. Weerasooriya

- MudiyanselageGunawathie
Manike
No. 51, Ingiriya.
02. Seelawathie Jayalath
Athura, Bulathsinghala.
03. Hethiringe Don Siripala
98, Jayalathgama Road,
Ingiriya.
04. Gunananda Jayalath
Jayalathgama Road, Ingiriya.
05. Dayananda Jayalath
Jayalathgama Road, Ingiriya.
06. Dona Rasika Wickramabhahu
Senerath Paranayapa
Opposite Police Station,
Ingiriya.
07. Kulawathie Kalubowila
Jayalathgama, Ingiriya.
08. Kushanthi Jayalath
Jayalathgama, Ingiriya.
09. Thilanga Jayalath
Jayalathgama, Ingiriya.
10. Lakshmi Jayakodi
"Weeragiriya",
Jayalathgama, Ingiriya.
- 14A. Jayalathge Jayasena
Jayalathgama, Ingiriya.
16. Rambukkanage Pela Nona
Jayalathgama, Ingiriya.
17. Rambukkanage Sirisena
Opposite Police Station
Ingiriya.

18. Jayalathge Aranolis
Opposite Police Station
Ingiriya.
19. Kirikankanange Albert Perera
Elabada Road, Ingiriya.
20. Rambukkanage Martin
Jayalathgama, Ingiriya.
21. A R. Karunawathie
Kandhana, Rathmalgoda
Poruwedanda.
22. Jayalathge Podinona
Jayalathgama, Ingiriya.
23. Jayalathge Chandradasa
Opposite Police Station
Ingiriya.
24. Rambukkanage Dhanawathie
Jayalathgama, Ingiriya.
25. Rambukkanage Roselyn
Jayalathgama, Ingiriya.
26. Jayalathge Sanath
Jayalathgama, Ingiriya.
27. Jayalathge Yasanthi
Jayalathgama, Ingiriya.
28. Jayalathge Vajira Champani
Jayalathgama, Ingiriya.
29. Jayalathge Jayasena
Jayalathgama, Ingiriya.

DEFENDANT-RESPONDENT

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Prashan Mendis for the 17th

Defendant Appellant

Vinodh Wickremasooriya for the
Plaintiff Respondent.

Saliya Pieris with Anjana
Rathnasiri for the 1st Defendant
Respondent.

Shantha Jayawardena with
Dinesh De Silva for the 14A
Defendant Respondent.

ARGUED ON

: 26th January, 2015

DECIDED ON

: 08th May, 2015

Deepali Wijesundera J.

The defendant appellants have filed this appeal against the Judgment delivered on 25/07/1996 by the Learned District Judge of Horana. The plaintiff respondent had instituted a partition case in the District Court seeking to partition a land called "Puwakwatte" also known as "Millagahawatte" described in the schedule to the plaint. At the trial

the plaintiff has marked the preliminary plan as “X” and the surveyor’s report as “X1” in evidence both documents have been admitted without any objection from the defendants. Therefore there was no dispute regarding the land to be partitioned.

Only the plaintiff has given evidence in support of the plaintiff marking and producing documents “X”, “X1” P1, P2 and P3. On behalf of the defendants sixth and third defendants have given evidence marking and producing documents 6V1 to 6V5 and 17V1 and also 10V1 to 10V10 and 14V1. The Learned District Judge in his judgment while admitting the pedigree of the plaintiff has stating that the sixth to ninth and eleventh to eighteenth defendants have failed to prove the pedigree forwarded by them. Although the appeal against the said judgment was filed by many defendant appellants when the appeal was taken up for argument the only dispute to be argued was between the seventeenth defendant appellant and the fourteenth defendant appellant.

The learned counsel for the seventeenth defendant appellant informed court that the District Judge has correctly evaluated the evidence and held that the seventeenth defendant is entitled to the share he claimed in his statement of claim and as stated by the plaintiff in her pedigree in the body of the judgment but if had not been so stated

in the last page where the shares are allotted to the parties which he claims is a very clear typographical error. He argued that the share given to the fourteenth defendant is what should have been given to the seventeenth defendant. He stated that the judgment clearly states that the fourteenth defendant is not entitled to any share of the property but only for compensation for improvements done to Lot 6.

The learned counsel for the seventeenth defendant appellant argued a clear typographical error could be corrected under *Sec. 189 of the Civil Procedure Code* by the District Judge with notice to the parties under section *189 (1) and 189 (2) of the Civil Procedure Code*. The learned counsel further submitted since the other parties to this appeal other than the fourteenth defendant are not objecting to his application to correct the typographical error this court could correct it exercising the inherent powers vested under *Sec. 773 of the Civil Procedure Code* which empowers this court to affirm, reverse correct or modify any judgment, decree or order.

The learned counsel for plaintiff respondent submitted that the Learned District Judge after evaluating the evidence placed before him has given his findings and in doing so he has held that the seventeenth defendant is entitled to a share of the land but in allotting shares due to

a typographical error has mentioned fourteenth defendant instead of seventeenth defendant. He further stated that there is no evidence to establish any entitlement of shares of the corpus to the fourteenth defendant.

The learned counsel for the fourteenth defendant submitted that by the judgment dated 25/07/1996 fourteenth defendant respondent has been given a share and that the defendant appellants in their petition of appeal concedes that fourteenth defendant is entitled to a share of the land as stated in the statement of claim. He also stated that setting aside the judgment and ordering a re-trial would cause irreparable loss and severe prejudice to all the parties to this case and therefore the appeal against the fourteenth defendant should be dismissed.

The issue to be decided by this court is whether the allocation of shares at the end of the Learned District Judge's judgment dated 25/07/1997 contains a typographical error. The survey plan and the report marked X and X1 was admitted by all parties therefore the land mentioned in the schedule to the plaint was not contested and was admitted by all parties. The Learned District Judge has analyzed the evidence and documents placed before him and come to his findings on the title parties who were entitled to the land. On the title of the

seventeenth defendant he has mentioned in page 8 of the judgment
“ලීලාරත්න යන අය 17 වී 1 දරණ ඔප්පුව මත තම අයිතිවාසිකම් 17 වන
විත්තිකරුට විකුණා ඇත.” With regard to the fourteenth defendant’s title he
has stated in page 9;

*මෙහිදී තවදුරටත් පෙනෙන කරුණක් නම් අංක: 6 දරණ කැඩැල්ලේ 14 ඒ.
විත්තිකරු සහ 15 වන විත්තිකරුවන් නිමිකම් පා ඇති නමුත්, ඔවුන්ට මෙම ඉඩමින්
කොටස් ලැබෙන්නේ නැති බවයි. ඒ අනුව අංක: 6 දරණ බිම් කොටසේ වගාවන්
සහ වැඩි දියුණු කිරීම් නඩුවේ බිම් කොටස් ලැබෙන පාර්ශවකරුවන්ට
ප්‍රමාණානුකූලව ලැබිය යුතු අතර, එහි වැඩි දියුණු කිරීම් වන්දි පමණක් 14 සහ 15
විත්තිකරුවන්ට නිමිවිය යුතු බවට නියම කරමි.*

It is clearly stated in the body of the judgment that the fourteenth
defendant is only entitled to compensation for the improvements to the
land. But at the end of the judgment when allotting shares he has
allotted a share to the fourteenth defendant whom he earlier stated is
not entitled to a share of the said land. This is a very clear typographical
error which has to be corrected.

Sec. 773 of the Civil Procedure Code states;

***“Upon hearing the appeal, it shall be competent to the
Supreme Court to affirm, reverse, correct or modify any judgment,
decree, or order, according to law.....”***

Acting under *Sec. 773 of the Civil Procedure Code* the typographical error in page 10 of the said judgment is corrected to read as the seventeenth defendant instead of the 14A defendant. The appeal of the seventeenth defendant appellant is allowed subject to the said correction.

Registrar of this court is directed to send the original case record to the District Court Horana for the Learned District Judge to enter decree accordingly.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL