

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

D.G. Gunatileke

Galgodegedara

Puwakmote

Yatagama

Rambukkana.

2ND DEFENDANT - APPELLANT

C.A. Case No.320/96(F)

DC Kegalle Case No. 24915/P

Vs

1. D.G. Herath Banda

Puwakmote

Yatagama

Rambukkana.

SUBSTITUTED PLAINTIFF-RESPONDENT

2. D.G. Karunaratne

Galgodegedara

Puwakmote

Yatagama

Rambukkana.

1ST DEFENDANT - RESPONDENT

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: S.A.D.S. Suraweera for the

2nd Defendant Appellant

D.M.G. Dissanayake with

L.M.C.D. Bandara for the

Substituted Plaintiff Respondent

and 1st Defendant Respondent.

ARGUED ON

: 30th January, 2015

DECIDED ON

: 22nd May, 2015

Deepali Wijesundera J.

The plaintiff respondent had filed a partition case in the District Court of Kegalle to partition the land described in the schedule to the plaintiff. The plaintiff respondent stated that the second defendant appellant is in occupation of the land without any title and sought the land to be partition amongst the plaintiff respondent and the first defendant respondent. The learned District Judge after trial delivered the judgment on the 07/06/1996 answering the points of contest in favour of the plaintiff respondent and made order to partition the said land between the plaintiff respondent and the first defendant

respondent. The second defendant appellant has preferred the instant appeal against the said judgment.

Both parties have agreed that the original owner of the land was Ukkurala and after his death Mudalihamy became the owner. The appellant's position was that upon Mudalihamy's death his rights devolved on Punchirala, Mudalihamy and Appuhamy. The appellant has stated in the District Court that Punchirala and Mudalihamy's rights devolved on Wijeratne who held 2/3 shares and the balance 1/3 share devolved on Punchibanda and Dingiribanda. All three of them were parties to the District Court case number 9957 in which case their shares were consolidated in the judgment. The appellant has stated in the District Court that Punchibanda and Dingiribanda transferred their rights by deed no. 3205 dated 27/07/1987 to him and that the said Wijeratne never possessed his 2/3 shares and that it was Punchibanda and Dingiribanda who possessed the entire land.

The second defendant appellant has stated a different argument in the instant case. The counsel for the appellant stated that the appellant is an outsider to the pedigree of the plaintiff respondent and Mudalihamy had a child named Mudalihamy who owned 1/3rd share of the land which was transferred to the appellants predecessors in title. In

addition to this 1/3 share the appellant has claimed the entire land on prescription. The counsel for the appellant stated that the learned District Judge has misdirected herself and arrived at an erroneous conclusion when deciding that Appuhamy did not have any rights to transfer. He further submitted that the District Judge has misdirected herself on the point where the said Mudalihamy had a son by the same name whose title was not considered in the appellant's pedigree by which he was deprived of his paper title. The appellant's counsel further stated that the learned District Judge's findings on prescription on the basis of co-ownership is erroneous since the appellant has not claimed co-owned rights and that according to the plaintiff respondent the appellant is a complete outsider.

The plaintiff respondent has marked deed no. 1488 as **P1** which dated back to 1912 the plaintiff respondent stated that by this deed Mudalihamy gave his rights to Punchirala and Dingiri Appuhamy therefore the said Mudalihamy did not have any title to give Punchirala, Mudalihamy and Appuhamy from whom the appellant claimed title by deeds marked as **2V1** and **2V2** did not have rights to transfer. The plaintiff respondent's counsel stated the first and second respondents derived this title to the entire land from the said Punchirala and Dingiri Appuhamy.

The counsel for the respondents stated that the appellant in the District Court by giving evidence has asked for 1/3 share of the corpus and also the buildings he claimed before the surveyor and stated that he built the same in the year 1978 but has not claimed any rights by way of prescription.

The defendant's counsel further submitted that in the deeds marked by the appellant the land described is different from the land surveyed in the District Court action. They further stated that the appellant has failed to prove his title on the deeds relied upon by him to the corpus as stated by the learned District Judge in the said judgment.

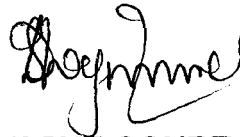
On perusal of **P1**, **2V1** and **2V2** I find that the name of the land and boundaries described in the schedule is different. The plan marked **X** in the District Court action the land is described as Munkanatthe aramba (මුන්කනත්තේ අරඹ) in **P1** also the land described is called “මුන්කනත්තේ අරඹ” but in **2V1** and **2V2** the land is called Munkotuwe watte (මුන්කොටුවේ වත්ත) in which schedules I find the boundaries differ from **P1** and plan **X**. The only conclusion this court can arrive at is that the deed **2V1** and **2V2** are not for the land described in the plaint.

P1 dates as far back as 1912 by which Mudalihamy gives title to Punchirala and Dingiri Appuhamy and is the deed for the land sought to be partitioned in the District Court. This deed no. 1488 date 26/04/1912 has bestowed all Mudalihamy's rights to Punchirala and Dingiri Appuhamy therefore he had to rights to give Punchirala, Mudalihamy and Appuhamy as described in the appellant's pedigree.

The appellant had not called the said Punchibanda and Dingiribanda from whom he claimed he got title to the said land to give evidence. The deeds he marked as 2V1 and 2V2 were written in July 1987 and the partition case has been filed on 01/07/1988. The lands described in these two title deeds are different from the land in suit.

The learned District Judge has considered the evidence placed before court and also gone into the title of the plaintiff and the defendants. When the trial judge has evaluated the evidence and come to a conclusion the appellate court should not interfere in the findings of the trial judge unless there is a violation of the law. In the instant case the Trial Judge has carefully evaluated the evidence to examine the title of the plaintiff and arrived at the findings.

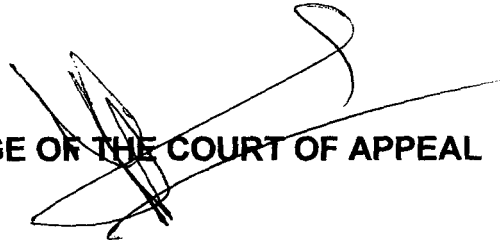
For the afore stated reasons I affirm the judgment of the learned District Judge delivered on 07/06/1996 and dismiss the appeal of the appellant with costs fixed at Rs. 10,000/=.



JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree.



JUDGE OF THE COURT OF APPEAL