

643/99(F)

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

Thalpitiyagedera Jayatissa,
Peramadulla, Udumulla, Mawanella.

Plaintiff

C.A. Case No:-643/99(F)

D.C. Kegalle Case No:-21887/P

V.

1.J.P.Davith Singho,

Weliwathura, Udumulla, Mawanella

2.Jayasinghepurayalage Nandawathie

No.21/2, Beragala Road, Kegalle.

3.Amukotuwegedera Premawathie

No.E68, Weliwatura, Udumulla,

Mawanella.

4.Jayasinghepurage Sumanawathie

Weliwatura, Udumulla, Mawanella

5.A. Gamini Gnanasinghe,

Peramadulla, Udumulla, Mawanella

6. J.D.Martin

7. P. Babynona

Both of Weliwatura, Udumulla,
Mawanella.

Defendants

AND NOW BETWEEN

Jayasingepurage Sumanawathie

4th Defendant-Appellant

Thalpitiyagedera Jayatissa

Peramadulla, Udumulla, Mawanella

Plaintiff-Respondent

1.J.P.Davith Singho

Weliwathura, Udumulla Mawanella

2.Jayasinghepurayalage Nandawathie

No.21/2, Beragala Road, Kegalle

3.Amukotuwegedera Premawathie

No.E68, Weliwathura, Udumulla

Mawanella.

5.A.Gamini Gnanasinghe

Peramadulla, Udumulla, Mawanella

6.J.D.Martin

7. P.Babynona

Both of Weliwathura, Udumulla,

Mawanella.

1-3,5-7 Defendant-Respondents

Before:- H.N.J.Perera, J.

Counsel:- H. Hisbulla with Nadun Wijesiriwardena for the Defendant-Appellant

Rakitha Abeysinghe with Samanthi Gamage for the 6th & 7th Defendant-Respondents

Argued On:-13.02.2014/28.04.2014

Written Submissions:-27.06.2014

Decided On:-26.10.2015

H.N.J.Perera, J.

The plaintiff-respondent instituted the above styled action in the District court of Kegalle for the partition of a land called “Kahatagaspitiya Waththa” described in the 2nd schedule to the plaint. The land described in the 2nd schedule to the plaint is depicted as lots 1 & 2 in Plan No.888 dated 22.12.1977 made by Surveyor G.Hubert Perera. Though originally the plaintiff-respondent filed this action to partition the land described in the 1st and 2nd schedules to the plaint later on 08.09.1986 informed court that he will confine his case to partition the land described in the 2nd schedule to the plaint namely “Kahatagaspitiya waththa” depicted as lot 1 & 2 in Plan 888.

According to the pedigree set out in the plaint the land in suit , was originally owned by one Malhonda and Puncha. After the demise of Malhonda the said rights devolved on his two children Nonahamy and Nandirishamy. Nonahamy transferred her rights by Deed No.21364 marked P1 at the trial to Babanis Fernando. The said Babanis Fernando

was a son of Nandirishamy. The other children of Nandirishamy was Hendrict Singho, Davith Singho 1st defendant, Chandrawathie, Nandawathie the 2nd defendant, Premawathie the 3rd defendant, Sumanawathie the 4th defendant. The said Babanis Fernando transferred his rights to Hendrict Singho by Deed No. 24854 marked P2 and Hendrict Singho in 1964 transferred his rights by Deed No.66582 marked P3 to the plaintiff-respondent in this case. A daughter of Nandiris , Chandrawathie in 1977 transferred her rights by Deed No738 marked P4 to the plaintiff-respondent. The other son of Nandiris , Hendrict Singho too transferred his rights in 1975 by deed No 464 marked P5 to the plaintiff-respondent. The balance rights went to 1-5 defendants. Puncha's ½ share devolved on Martin the 6th defendant.

The plaintiff-respondent led the evidence of Hendrict Singho who was a son of Nandiris to prove that Nandiris and thereafter he too possessed the land in suit and did hand over the possession to the plaintiff-respondent in this case.

The 4th defendant-appellant's position was that the original owner was one Siyatu and he transferred his rights to Malhonda and Baiya. The said Baiya died leaving his brother Malhonda and the said Malhonda's rights came to the 4th defendants by deeds marked 4V2 to 4V3. The 6th and 7th defendant-respondents though had raised several matters as issues before the learned trial Judge does not contest the judgment of the Learned District Judge in appeal. In their written submissions they had sought a dismissal of the appeal filed by the 4th and 5th defendant-appellants.

The main contention of the appellant in this case is that the Learned District Judge had failed to investigate the title of parties in this case.

In partition proceedings the paramount duty is cast by the Act upon the District Judge himself to ascertain who the actual owners of the land. The

plaintiff, in his pleadings and throughout the trial, based his claim on the footing that Malhonda and Puncha were the original owners of this land. Therefore it was incumbent on the plaintiff to prove that the original owners of this land were Malhonda and Puncha. The first thing the court has to do is to satisfy itself that the plaintiff has made out his title; for unless he makes out his title, his action cannot be maintained, must prove his title strictly.

Unlike the judgments in the other cases, the judgment in partition actions bind not only the parties to the action, but also the whole world. Therefore the trial judges in partition actions are burdened with a severe responsibility in investigating the title of parties.

After trial the learned trial Judge delivered judgment dated 06.07.1999 to partition the land among the parties in the manner set out in the said judgment. Aggrieved by the said judgment of the learned trial Judge the 4th and 5th defendant-appellants had preferred this appeal to this court.

The plaintiff has set up his title on the basis that the original owners of lots 1 & 2 were Malhonda and Pincha. The plaintiff's witness Hendrick Singho who is a son of Nandirishamy had very clearly stated that the original owners of the land to be partitioned was Malhonda and Puncha. The rights the said witness had inherited from his father Nandiris too had been transferred to the plaintiff. The said evidence given by the witness Hendrick Singho is also corroborated by the deeds marked P1 to P5 on behalf the plaintiff in this case. The 6th defendant and the appellants too had admitted the fact that Malhonda had a brother called Puncha.

On perusal of the said judgment it is clearly seen that the learned trial Judge had considered the evidence placed before court by the 6 and 7 defendants and had clearly held that Puncha's rights devolved on the 6 and 7 defendants by deeds marked 6V1 to 6V4. The contesting 5th

defendant-appellant had produced the deed marked 4V1 to show that one Siyatuwa had transferred the said land to be partitioned to Malhonda and Baiya. The said deed refers to a land called Hitinawatta alias Kahatagaspitiyewatta. The learned trial Judge had considered the evidence before the court and has held that there is no evidence to show that the land to be partitioned was ever referred to as Hitinawatta and that the extent of the said land too differs from the land to be partitioned. The 4th defendant-appellant also had taken up the position that Nonahamy had entered into a Deega marriage and disinherited the rights she was entitled from her father Nandiris. This position too had been considered by the learned trial judge and rejected on the basis that the 4th defendant had failed to lead any evidence to prove that the said Nonahamy ever had entered into a Deega Marriage.

The learned trial Judge had considered all the evidence that was before her at the trial and had come to a clear decision that the plaintiff-respondent had proved the title to the land to be partitioned .and had accordingly considered all the oral and documentary evidence that was before her and held that the original owners of the land to be partitioned are Malhonda and Puncha. And after considering the deeds had held that each party is entitled to the share that is given in the judgment. The learned trial Judge had examined the pedigree put forward by the plaintiff –respondent in detail and also had considered all the deeds and the oral evidence that had been led before her before making an order to partition the said land. The learned trial Judge had proceeded to answer all the issues that had been raised in his case by the parties and had accordingly proceeded to allocate shares as proved by the evidence led in this case.

The Learned District Judge has correctly analysed the evidence before her and had clearly decided as to how the land to be portioned among the owners and also about the improvements that has been made in the

corpus. I have considered the entire judgment and see no reason to interfere and the trial Judge has given cogent reasons.

In *M.P.Munasinghe V.C.P.Vidanage* 69 N.L.R 98 it was held that the jurisdiction of an appellate court to review the record of the evidence in order to determine the conclusion reached by the trial Judge upon evidence should stand has to be exercised with caution.

Further in *Gunewardena V. Cabral and others* (1980) 2 Sri.L.R 220 it was held that the appellate court will set aside inferences drawn by the trial Judge only if they amount to findings of fact based on:-

- (1) Inadmissible evidence; or
- (2) After rejecting admissible and relevant evidence; or
- (3) If the inferences are unsupported by evidence; or
- (4) If the inferences or conclusions are not rationally possible or Perverse.

In the case before me I do not see that the findings of the learned trial Judge and the inferences drawn by him are vitiated by any of these considerations. In my view there is no justification for interfering with the conclusions reached by the Learned District Judge which I perceive are warranted by the evidence that was before her. For the above reasons I see no reason to disturb the judgment of the Learned District Judge. Accordingly the appeal of the 4th defendant-appellant is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL