

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

Welivita Angoda Liyanage Gnanawathie Perera
No. 321/A, Galahitiyawa,
Ganemulla.

PLAINTIFF

C.A. Case No.793/1997 F

D.C. Gampaha Case No.24720/P

-Vs-

1. Welivita Angoda Liyanage Somawathie
No. 312/A, Galahitiyawa,
Ganemulla.
2. Withana Arachchige Podi Nona
of Galahitiyawa, Ganemulla.
- 2a. Chitra Gamage
No. 310, Galahitiyawa,
Ganemulla.
3. Welivita Angoda Liyanage Themiyadasa
No. 1566, Aluth Mawatha,
Uyanwatta, Matara.
4. Welivita Santha Perera
of Mundala, Galhengoda,
Urugamuwa, Matara.
5. Welivita Susantha Perera
of Mundala, Galhengoda,
Urugamuwa, Matara.
6. Welivita Sujith Perera
of Mundala, Galhengoda, Matara.

7. Welivita Shirani Perera
of Mundala, Galhengoda, Matara.
8. Withana Arachchige Wimalasiri
of Galahitiyawa, Ganemulla.
9. Ratnayake Pathirennelage Premaratne
10. Delgoda Kankanamalage Yasawathie
of Mampe, Delgoda.
11. Delgoda Wimalasiri
No. 279/D, Galahitiyawa,
Ganemulla.
12. Withana Pathirage Sopihamy
of Mundala, Galhengoda,
Urugamuwa, Matara.
13. B.A. Karunawathie
No. 302/D, Galahitiyawa,
Ganemulla.
14. Rajapakse Mohottige Somawathie
of Galahitiyawa, Ganemulla.
15. Rajapakse Mohottige Somapala
of Galahitiyawa, Ganemulla.
16. Tharawgoda Galamanagodage Dharmadasa
17. Vidana Pathirage Sopihamy
(Guardian of the 4, 5, 6 and 7th Defendants)

DEFENDANTS

AND BETWEEN

3. Welivita Angoda Liyanage Themiyadasa
No. 1566, Aluth Mawatha,

Uyanwatta, Matara.

3rd DEFENDANT-APPELLANT

-Vs-

Welivita Angoda Liyanage Gnanawathie Perera

No. 321/A, Galahitiyawa, Ganemulla.

PLAINTIFF-RESPONDENT

1. **Welivita Angoda Liyanage Somawathie**
No. 312/A, Galahitiyawa,
Ganemulla.
2. **Withana Arachchige Podi Nona**
of Galahitiyawa, Ganemulla.
- 2a. **Chitra Gamage**
No. 310, Galahitiyawa,
Ganemulla.
4. **Welivita Santha Perera**
of Mundala, Galhengoda,
Urugamuwa, Matara.
5. **Welivita Susantha Perera**
of Mundala, Galhengoda,
Urugamuwa, Matara.
6. **Welivita Sujith Perera**
of Mundala, Galhengoda, Matara.
7. **Welivita Shirani Perera**
of Mundala, Galhengoda, Matara.
8. **Withana Arachchige Wimalasiri**
of Galahitiyawa, Ganemulla.

9. Ratnayake Pathirennelhelage Premaratne
10. Delgoda Kankanamalage Yasawathie
of Mampe, Delgoda.
11. Delgoda Wimalasiri
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of Mundala, Galhengoda,
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14. Rajapakse Mohottige Somawathie
of Galahitiyawa, Ganemulla.
15. Rajapakse Mohottige Somapala
of Galahitiyawa, Ganemulla.
16. Tharawgoda Galamanagodage Dharmadasa
17. Vidana Pathirage Sopihamy
(Guardian of the 4, 5, 6 and 7th Defendants)

DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Rohan Sahabandu, P.C. with Hasitha Amarasinghe for the 3 rd Defendant-Appellant P. Liyanarachchi for the Plaintiff-Respondent
Decided on	:	09.08.2018

A.H.M.D. Nawaz, J.

The Plaintiff Respondent (hereinafter sometimes referred to as "the Plaintiff") instituted this action in the District Court of *Gampaha* praying for a partition of a land known as *Godaparagahalanda* and *Kumbura* morefully described in the schedule to the plaint. Admittedly the land to be partitioned is in extent of 4 acres and 34.836 perches (A: 4 R: 0 P: 34.836). The 1st, 3rd and 8th Defendants filed a joint statement of claim and moved that the land be partitioned in conformity with the schedule of shares as given in their statement of claim.

The other Defendants to the action also filed their statements of claim. When the case was taken up for further trial on 29th March 1996, the parties reached an agreement as to the identity of the corpus and proceeded to reach a settlement or compromise as is reflected at pages 169, 170 and 171 of the Appeal Brief. After the parties reached the agreement to consensually allot the shares, they also reached a further compromise that the balance shares of 254 perches could be allotted according to the evidence to be given.

The brief evidence that was led was that of the Plaintiff's husband namely one Jayawardena Pathirana Jinadasa. Before I proceed to the evidence given and the judgment delivered thereafter on 16th October 1997, the initial settlement that was reached goes as follows-vide page 170 of the brief.

- | | |
|------------------------------|-------------|
| • 2 nd Defendant | 235 perches |
| • 8 th Defendant | 104 perches |
| • 9 th Defendant | 24 perches |
| • 10 th Defendant | 24 perches |
| • 11 th Defendant | 40 perches |

Thus a total extent of 419 perches were thus allotted among the parties in terms of the above settlement. It has to be remembered that on the day that the settlement was entered into namely on 29th March 1996, the 3rd Defendant who is the Appellant before this Court was represented by the same Counsel who appeared for the 1st and 8th Defendants. In other words he was privy to the consensual agreement.

After the testimony of Plaintiff's husband concluded, the learned Additional District Judge of *Gampaha* also made order that the schedule of shares to be allotted to parties be produced on 02nd May 1996-vide page 174 of the Appeal Brief. It is significant to observe here that the Appellant before this Court namely the 3rd Defendant along with the 1st and 8th Defendants submitted a share list wherein the 3rd Defendant had agreed to be allotted 1 rood and 15.966 perches in extent-vide page 54 of the Appeal Brief. It is this extent of land that the learned Additional District judge of *Gampaha* finally allotted to the 3rd Defendant-Appellant in his judgment dated 16th December 1997.

The Plaintiff was also allotted a share in one rood and 39.948 perches as were the other parties to the action. It would appear that none of the other parties including the Plaintiff have chosen to invoke the jurisdiction of this Court to challenge the judgment pronounced by the learned Additional District Judge of *Gampaha* based on the consensual share list put in by the 1st, 3rd and 8th Defendants. Having submitted the share list before the learned Additional District Judge as reflected at page 54 of the Appeal Brief and after the Court delivered its judgment based on the share list, the 3rd Defendant-Appellant now contends before this Court that he should obtain more than what was submitted by way of his share allotment before the learned Additional District Judge of *Gampaha*. The share list though was ordered to be submitted after evidence had been led. But it is the contention of the 3rd Defendant-Appellant that he should secure more shares over and above what had been specified in the share list.

If the only evidence that had been led at the trial revealed that the Appellant stood to gain more, that could have been incorporated in the share list but the Appellant declared that he was entitled only to 1 rood and 15.966 perches.

If one peruses the judgment of the District Court of *Gampaha* it would appear that the share allotment made by the learned Additional District Judge is definitely based on the consensual document as reflected at page 54 of the Appeal Brief.

In my view the learned Additional District Judge cannot be faulted for founding his judgment on the consent of parties. It would appear that the oral evidence led at the trial

does not give the 3rd Defendant-Appellant any share over and above the allotment declared by him in the consensual list (vide p.54 of the Appeal Brief). In the course of the argument this Court invited the parties to submit before this Court how much extra share is brought out by evidence oral or otherwise because the agreement had been that the balance shares would be decided upon according to evidence led. But such a determination of share entitlement based on oral evidence and any other testimony has not been tendered to this Court.

The attention of this Court has been drawn to the case of *W.G. Roslin v. H.B. Marihamy* 1994 3 Sri L.R 262 wherein S.N. Silva J. (as His Lordships then was) with Gunasekera, J. agreeing held as follows:-

“When an agreement is entered into, the court has to be satisfied only as to whether the agreement is between all the parties having interest in the land sought to be partitioned. In the event of such agreement, the respective shares or interests to given to each party is based upon the compromise that is reached and not on an examination of title”

In the circumstances, this Court finds no error as to the allotment of shares as regards the 3rd Defendant-Appellant. It is his voluntary submission of entitlement as to shares that has been approved by the learned Additional District Judge. Therefore, I proceed to affirm the judgment of the learned Additional District Judge of *Gampaha* dated 16th October 1997. Accordingly the appeal of the 3rd Defendant-Appellant is dismissed.

JUDGE OF THE COURT OF APPEAL