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

Manikpedige Gunasinghe
of Pahala Atugoda, Ambanpitiya.
DEFENDANT-APPELLANT

C.A. Case No.564/2000 (F)

D.C. Kegalle Case No.23756/P

-Vs-

1. Liyanalage Siripina
2. Hewapedige Chandrasena
of Atugoda, Ambanpitiya.
PLAINTIFF-RESPONDENTS

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

COUNSEL : Sunil Abeyratne with Buddhika Alagiyawanna for the 1st Defendant-Appellant

Upali de Z. Gunawardhana with Nimal Muthukumarana for the Plaintiff-Respondent

Decided on : 07.09.2018

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

At the hearing before this Court the argument on behalf of the parties was focused on whether Lot No.2 in preliminary Plan bearing No.3380 should be part of the corpus sought to be partitioned by the Plaintiff. If one peruses the petition of appeal, the aforesaid dispute as to the corpus appears to be the one and only point that has been raised. In other words the judgment of the District Court of *Kegalle* dated

4th August 2000 has not been challenged in regard to the correctness of the devolution of title set up in the plaint dated 3rd May 1983. It would then follow that the finding of the learned Additional District Judge of *Kegalle* that devolution of title to the land should be on the basis of the pedigree pleaded in the plaint is not challenged by the 1st Defendant-Appellant in his petition of appeal.

The only question that arises would be whether Lot No.2 in preliminary plan which is at page 215 of the brief should form part of the corpus. The plaintiff's consistent position has been that Lots 1 and 2 in the preliminary plan marked **"X"** constituted the corpus called *"Ranapanaduraya Watte"*. The 2nd Defendant too states at para 2 of his statement of claim that the corpus is *"Ranapanaduraya Watte"-see* page 71 of the brief.

It is the 1st Defendant (who is the Defendant-Appellant in this case) who states at para 2 of his statement of claim at page 48 of the brief that only Lot No.1 in the preliminary Plan No.3380 should be the corpus and that Lot No.2 should be excluded. According to the 1st Defendant, Lot No.2 is a part of a land called *"Berakaraya Watte"*.

The question whether or not Lot No.2 is a portion of the corpus must no doubt be determined with reference to the boundaries in the deed.

**Is Lot No.2 a part of a land called *"Berakaraya Watte"* as claimed by the 1st Defendant-Appellant?**

The Deed No.2876 at page 206 of the brief shows that the 1st Defendant-Appellant has purchased his interests to his land through this deed but the deed clearly demonstrates that *"Berakaraya Watte"* is situated to the east of the corpus. Even the preliminary plan No.3380 at page 215 shows that *"Berakaraya Watte"* is to the east of Lot No.2. Therefore it follows that Lot No.2 as depicted in the plan cannot possibly be a portion of *"Berakaraya Watte"*, because *"Berakaraya Watte"* being the eastern boundary of the corpus falls outside the corpus.

As contended by the learned Counsel for the Plaintiff-Respondent, even the Deed bearing No.2876 upon which the 1st Defendant-Appellant derived his rights shows that

"*Berakaraya Watte*" falls outside the corpus. In the circumstances the more probable version is that Lot No.1 and Lot No.2 would form the corpus.

According to Denning J. in ***Miller v. Minister of Pensions*** (1947) 2 All ER 372 (KBD) at page 374:-

> "*If the evidence is such that the tribunal can say: 'we think it more probable than not,' the burden is discharged, but, if the probabilities are equal, it is not.*"

In civil cases the test is not whether one party's version is more probable than the other party's for it may be that neither version of events is credible-*see* ***Rhesa Shipping v. Edmunds*** (1985) 1 WLR 948 (House of Lords). The party bearing the burden will discharge it only if the tribunal of fact is satisfied that his version of events is more probable than any alternative version.

However, the phrase 'balance of probabilities' is often employed as a convenient phrase to express the basis upon which civil issues are decided but the test says nothing about how far above 50 per cent the probability should be that his version of events is correct. One theory holds that *anything* over 50 per cent suffices, no matter what the nature of the allegation (the so-called '51 per cent test'-*see* ***Davies v. Taylor*** [1972] 3 WLR 801 (HL) p.810).

It is abundantly clear that the version of the Plaintiff-Respondents is more probable than that of the Defendant-Appellant as to the corpus and in my view the evidence proffered by the Plaintiff-Respondents satisfies the standard of proof as postulated by Denning J, and even its probability over the 50 percent watershed as articulated in ***Davies*** *(supra)*.

In the circumstances I proceed to affirm the judgment of the District Court of *Kegalle* dated 4th August 2000 and dismiss the appeal of the Defendant-Appellant.

JUDGE OF THE COURT OF APPEAL