

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

C.A. Case No. 425/1997 (F)

D.C. Matara Case No. 16307/P

4. Mirissa Wellagage Ranaseeli *alias* Ranohamy  
(dead)
- 4(a) Weerakutti Arachchige Karunawathie
5. Wellalage Pemadasa *alias* Edwin (dead)
- 5(a) Mirissa Wellalage Kamalawathie
6. Mirissa Wellalage Pathuma Kusum

All of Godellawatta,  
Kamburugamuwa,  
Matara.

4<sup>th</sup>, 5<sup>th</sup> AND 6<sup>th</sup> DEFENDANT-APPELLANTS

-Vs-

Hewa Bettage Pemachandra,  
Godellawatta,  
Kamburugamuwa,  
Matara.

PLAINTIFF-RESPONDENT

Hewa Bettage Karunawathie,  
Godellawatta,  
Kamburugamuwa,  
Matara.

And others

## DEFENDANT-RESPONDENTS

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

COUNSEL : Anura Guneratne for the Defendant- Appellant.  
Athula Bandara Herath with Madubashini Rajapaksha  
and Shashika De Silva for the Plaintiff-Respondent.

Decided on : 27.08.2018

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

When this case was taken up for argument before this Court it was brought to the notice of Court that the trial Judge had not properly analyzed the evidence led before Court. In the said circumstances Appellant informed Courts that there are serious errors in the share list and hence the allotment of shares are erroneous. In the aforesaid situation to Your Lordships' Court directed the parties to address on the calculation of the share list and tender further written submission.

The 4<sup>th</sup> to 6<sup>th</sup> Defendant-Appellants (hereinafter sometimes referred to as "the Appellants") have preferred this appeal to this Court against an order made by the District Judge of *Matara* on 09.07.1997 pertaining to an application made under Section 189 of the Civil Procedure Code in the above numbered partition case. Let me narrate the background of the partition case that has led to this appeal.

The Plaintiff-Respondent<sup>1</sup> instituted the partition action bearing No.16307/P in the District Court of *Matara* to partition a land called "Palliyagurugewatta" at Kamburugamuwa described in the 2<sup>nd</sup> paragraph of the plaint (P37 of the brief).

The Plaintiff-Respondent averred in his plaint that the said land contains an extent of about 1 acre and the original owner was one Hewa Battage Coranelis who held it by

virtue of the deed 12060 dated 16.01.1890. The devolution of title from Coranelis was also elaborated by a pedigree-page 4 of the brief.

Only two statements of claims were filed by the Defendants out of which;

- (i) 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> defendant-Respondent have sailed with the Plaintiff-Respondent.
- (ii) 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendant-Appellants and 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> defendant-Respondents filing a common statement of claims admitted the pedigree described in the plaint.
- (iii) Mr. A.D. Palihakkara Licensed Surveyor had prepared the preliminary plan and his Plan bearing No.2087 dated 1993.12.20 and his report marked as XI were accepted by all the parties uncontested.
- (iv) As there was no contest over the pedigree and the preliminary plan, only the Plaintiff's evidence was led in Courts. Thereafter the learned trial Judge had delivered a judgment on 24.01.1995 for which he accepted the Plaintiff's share list (P51).

At a subsequent stage the Plaintiff as well as some Defendants having observed that there was an error in calculation of the share list moved Court to hold a fresh inquiry to rectify the errors. Both the Plaintiff and 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants tendered two separate share lists and the two lists were not identical and hence it created an issue.

- (v) The trial Judge *though* refused to hold a fresh inquiry pertaining to the variance in the share lists, holding that he has no right to interfere with the judgment of his predecessor.

It is thereafter the Appellants have preferred this appeal against the said order of the District Court of *Matara* delivered on 09.07.1997 (P63) which the parties claimed is in the nature of a judgment.

(vi) When the appeal was taken up before this Court, the Court directed both counsel to see whether the parties could calculate the correct share list and come to a settlement. However they brought it to the attention of this Court the following:

- (a) the pedigree of the Plaintiff given in the plaint does not tally with the evidence led before Court thus disclosing a discrepancy;
- (b) the evidence led before Courts, varies widely with the documentary evidence (namely deeds before Courts).

Based on the above both Counsel submitted that the learned Trial Judge had not properly evaluated the evidence led before Courts. He has not properly indulged in an analysis of documentary evidence by way of deeds tendered to Court and as a result, it had become difficult to prepare a correct share list and hence the trial judge's judgment is erroneous which deserves to be quashed by this Court. Some of the serious errors in the judgment are described below:-

**(i) Errors in the pedigree**

The Plaintiff avers in his plaint that the original owner of the land to be partitioned was one Hewabattage Coranelis who held the property by virtue of the deed bearing No 12060 dated 1890. 01. 16.

It was contended that the Plaintiff failed to tender the aforesaid deed to Court. Furthermore none of the deeds tendered to courts reveals that the original owner was Coranelis.

**(ii) Error in the devolution of title.**

The Plaintiff avers in his plaint that the original owner had 5 children namely Dauthis; Sisiliyana; Anagihamy *alias* Podihamy; Karalinahamy and Saradihamy.

However there was no documentary evidence to corroborate the said position.

It would then appear that the oral evidence led by the Plaintiff-Respondent cannot corroborate the devolution of title given in the Plaintiff-Respondent's pedigree.

The learned Additional District Judge of *Matara* has failed to evaluated evidence properly, there is no proper investigation of title and I proceed to set aside the judgement dated 24.01.1995 and remit this case back to the District Court of *Matara* for a trial *de novo* with a direction that the learned District Judge will give priority to this case and conclude it as expeditiously as he could. He may consider all parties who wish to be added and take all such evidence as is necessary in order to ensure due process for all parties concerned.

JUDGE OF THE COURT OF APPEAL