

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

C.A. Case No.665/2000 (F)
D.C. Kalutara Case No.6277/P

Mawathage Caralain Fernando
No. 256, Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.

PLAINTIFF

-Vs-

1. Beruwalaralalage Stela Chavi
of Kuda Paiyagala, Paiyagala.
2. T. Mery Agnas Cooray
of Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
3. Beruwalaralalage Pearl Chavi
4. Beruwalaralalage Sherin Chavi
5. Beruwalaralalage Meril Chavi
6. Beruwalaralalage Thrissa Chavi
All of Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
7. Victor Fernando
of Kuda Paiyagala, Paiyagala.
8. Manapperumapatabendiralalage Albert
of St. Mary's Road,
Kalamulla, Kalutara.
9. Madanakonda Arachchiralalage Dona Matilda
Arsakularatne
of Wilsaid, Maggona.

10. Weerawarnakulakulasooriya Boosa Baduge John
Edward Fernando
of Diyalagoda, Maggona.
11. Patabendige Ann Cooray
of Kuda Paiyagala, Paiyagala.
12. Wannakuwattawaduge Margert Fernando
of Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
13. Weerawarnakulakulasooriya Boosa Baduge
Joseph Anthony Fernando
of Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
14. Warnakulaarachchiralalage Don Peter Anthony
of St. Mary's Road,
Kuda Paiyagala, Paiyagala.
15. Maggona Widaneralalage Alis Swaris
16. Petigiri Arachchilage Don Anton
17. Petigiri Arachchilage Don Francis Perla Cyous
18. Petigiri Arachchilage Don Marian Agnes
19. Petigiri Arachchilage Don John Kemilous
20. Petigiri Arachchilage Don Shiela Rohini

15 to 21 DEFENDANTS added by Order dated
10.07.1995

15. Dona Mary Esmi Philicia Warnakula
No. 30, Katukurunda, Kalutara.
16. Dona Mary Murial Dorin Warnakula
No. 1/63, Kuda Paiyagala, Paiyagala.
17. Don Peter Lenard Warnakula
of Kuda Paiyagala, Paiyagala.

15 to 17 DEFENDANTS added by Order dated
18.03.1998

DEFENDANTS

AND BETWEEN

Mawathage Caralain Fernando

No. 256, Joseph Sowis Mawatha,

Kuda Paiyagala, Paiyagala.

PLAINTIFF-APPELLANT

-Vs-

1. Beruwalaralalage Stela Chavi (Deceased)

1a. Warnakula Arachchiralalage Rajitha

1b. Warnakula Arachchiralalage Don Jude Sanjeewa

1c. Warnakula Arachchiralalage Rukshan Anthony

1d. Warnakula Arachchiralalage Tharindu Devushan

All of Near Water Tank

Kuda Paiyagala, Paiyagala.

2. T. Mery Agnas Cooray (Deceased)

2a. Beruwalaralalage Pearl Chavi

2b. Beruwalaralalage Sherin Chavi

2c. Beruwalaralalage Meril Chavi

2d. Beruwalaralalage Thrissa Chavi

All of Joseph Sowis Mawatha,

Kuda Paiyagala, Paiyagala.

3. Beruwalaralalage Pearl Chavi

4. Beruwalaralalage Sherin Chavi

5. Beruwalalaralage Meril Chavi
6. Beruwalalaralage Thrisa Chavi
All of Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
7. Victor Fernando (Deceased)
- 7a. Mawathage Caraline Madonsa *alias* Mawathage
Caraline Fernando *alias* Mawathage Carlin Nona
No. 256, Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
- 7b. Tukkappulage Anton Rohan
No. 02, Viharakanda,
Paiyagala North, Paiyagala.
- 7c. Tukkappulage Margarita Rohini
No. 47, Isuru Palace,
Abeya Mawatha,
Nagoda, Kalutara.
- 7d. Tukkappulage Joseph Jeewan
of Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
- 7e. Tukkappulage Viraj Jerom
of Gangabadawatta, Maggona.
- 7f. Tukkappulage Benny Rabel
No. 256, Joseph Sowis Mawatha,
Kuda Paiyagala, Paiyagala.
8. Manapperumapatabendiralalage Albert
of St. Mary's Road,
Kalamulla, Kalutara.
9. Madanakonda Arachchiralalage Dona Matilda
Arsakularatne

of Wilsaid, Maggona.

10. Weerawarnakulakulasooriya Boosa Baduge John
Edward Fernando

of Diyalagoda, Maggona.

11. Patabendige Ann Cooray

of Kuda Paiyagala, Paiyagala.

12. Wannakuwattawaduge Margret Fernando

of Joseph Sowis Mawatha,

Kuda Paiyagala, Paiyagala.

13. Weerawarnakulakulasooriya Boosa Baduge
Joseph Anthony Fernando

of Joseph Sowis Mawatha,

Kuda Paiyagala, Paiyagala.

14. Warnakulaarachchiralalage Don Peter Anthony

of St. Mary's Road,

Kuda Paiyagala, Paiyagala.

15. Maggona Widaneralalage Alis Swaris

16. Petigiri Arachchilage Don Anton

17. petigiri Arachchilage Don Francis Perla Cyous

18. Petigiri Arachchilage Don Marian Agnes

19. Petigiri Arachchilage Don John Kemilous

20. Petigiri Arachchilage Don Shiela Rohini

15 to 21 DEFENDANTS added by Order dated
10.02.1995

15. Dona Mary Esmi Philicia Warnakula

No. 30, Katukurunda, Kalutara.

16. Dona Mary Murial Dorin Warnakula

No. 1/63, Kuda Paiyagala, Paiyagala.

17. Don Peter Lenard Warnakula

of Kuda Paiyagala, Paiyagala.

15 to 17 DEFENDANTS added by Order dated
18.03.1998

DEFENDANT-RESPONDENTS

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

COUNSEL : Champika Laduwahetti for the Plaintiff-Appellant
W. Dayaratne, PC with Achala Srimal, Nadeeka K.
Arachchi and Navinda Pathirage for the 1(a) and
1(c) Defendant-Respondents

Decided on : 12.11.2018

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

The contest at the hearing of this appeal was focused on a half a share of the corpus being given to an original owner called Kankanamalage Sawariel Fernando. The complaint of the Plaintiff-Appellant was that having put in issue that the corpus was originally owned by eight persons referred to in the plaint, no issue was raised initially that there was an original owner called Sawariel Fernando.

Long after the Plaintiff had concluded his case, it was only in the course of the 1st Defendant's evidence that the issue pertaining to Sawariyal Fernando was raised.

It was the contention of the Counsel for the Plaintiff-Appellant that the 1st Defendant has not established as to how the original owner Sawariyal Fernando became entitled to 60/120 share. The learned District Judge has however stated in detail as to how the said 60/120 share devolved on the parties to this case-see page 14 of the judgment which appears on page 17 of the brief.

“මුල් අයිතිකර කොරවාකංකානමගේ සවරියල් යටතේ 1 වන විත්තිකරුවා 20/120
7 වන විත්තිකරුවා 10/120
8 වන විත්තිකරුවා 10/120
පැමිණිලිකරුවා 20/120”

According to the pedigree of the 1st Defendant, Sawariyal had 3 children namely Bastian, Selesthina and Andrias, who all became entitled to 1/6th share of the corpus each.

Bastian's Rights

Bastian died leaving two children namely Peduru and Ana and as Ana died unmarried and issueless, her rights devolved on Peduru and according to the evidence given by the 1st Defendant, Peduru died leaving Juse, Anthony and Maria and as Juse and Maria died unmarried and issueless, their rights devolved on Anthonis and as Anthonis died leaving his only heir his wife Juliana, she possessed the said rights and transferred them to the 1st Defendant by deed No.2012 and dated 26.07.1984, which was produced marked 152.

Selestina's Rights

It transpired in evidence through Bastian that Sawariyal's daughter Selesthina's undivided 1/6th share devolved on Maria and Peduru and Peduru had a child called Ana Fernando who had a child called Evfrashia and said Evfrashia's rights devolved on the 8th Defendant.

On a perusal of the birth certificate of the 8th Defendant produced marked 801, the 8th Defendant's mother was Evfrashia and in terms of the birth certificate produced marked as 802, her father was Bastian and upon a perusal of the birth certificate produced marked 803, Ana *alias* Albina's father was Peduru. Therefore the 8th Defendant has established his devolution from Sawariyal to him.

The Plaintiff also admitted that Peduru had a child called Dona Maria whose rights have devolved on the 7th Defendant.

Dona Maria was entitled to undivided 1/2 share of Peduru's rights as the other half share devolved on Ana and Albina. Thus it is clear that the evidence led in the case establishes the 7th Defendant's rights.

Therefore Selesthina's 1/6th share devolved as undivided 1/12th share each to 7th and 8th Defendants.

Andria's Rights

As regards Sawariyal's other child namely Andrias, the Plaintiff too admitted the 1st Defendant's pedigree to the effect that the said rights devolved on Poralosthina, Ewsethia, Dusthina and Mercilina.

Poralesthina's rights devolved on Ananthasia and by deed produced marked **පැ2** the said rights had been transferred to the Plaintiff.

Ewsethia's rights devolved on Maria Nonis and in turn the said rights devolved on her two children Lucia and Esebella and they transferred the said rights to the Plaintiff by deed produced marked as P1.

As the 1st Defendant in his evidence has stated, the said rights devolved on the Plaintiff from the Andria's four children and the Court does not disbelieve this evidence.

The Plaintiff also became entitled to Dustina's rights which devolved on Ewsethia and she transferred the same by **පැ4** to the Plaintiff.

The aforesaid Mercilina's rights too were transferred by **පැ3** to Ananthasia and the said rights were transferred by her to the Plaintiff by P2. Therefore the Plaintiff became entitled to the entire 1/6th share of Sawariyal's son Andriyas.

There was no dispute by the Plaintiff regarding the devolution of Sawariyal's entire rights to the Plaintiff, 1st, 7th, and 8th Defendants. This devolution has been established by both oral and documentary evidence.

Plaintiff's Pedigree

According to the pedigree of the Plaintiff there were eight original owners who had acquired prescriptive title to the corpus.

Issue No.1 of the Plaintiff on page 106 of the brief brings out this fact.

“දිව්‍යකාලින හා අබණ්ඩ ඉක්තිය මත අයිතිවාසිකම් ලැබීමෙන් බෙදීමට යෝජිත ඉඩමේ මුල් අයිතිකරුවන්වූයේ පහත සඳහන් අයදු එනම්;

18/120 කොටසකට කොරුවකංකානම්ගේ මරියානු ද

20/120 කොටසකට කොරුවකංකානම්ගේ පේදුරු ද

4/120 කොටසකට කොරුවකංකානම්ගේ මර්සලින් ද
 12/120 කොටසකට පොත්තින්බදුගේ මරියානෝතිස් ද
 30/120 කොටසකට විරවර්ණ කුරුකුලසූරිය බ්‍රහ්මදේව් කසිතන් ප්‍රනාන්දු ද
 6/120 කොටසකට විරවර්ණ කුරුකුලසූරිය බ්‍රහ්මදේව් එච්. සේනියා ප්‍රනාන්දු ද
 15/120 කොටසකට පල්ලියරාළලාගේ දෝන මොරාය ඉසබෙලා ද
 15/120 කොටසකට පල්ලියරාළලාගේ දොන් ලොරෙන්දු අප්පු යන අයවරුන් ද”

The court cannot accept this issue as no original co-owner could acquire undivided shares by way of prescription whereas the eight original owners themselves claimed to have had undivided shares according to the plaint.

If one peruses the evidence given by the Plaintiff, it is crystal clear that the Plaintiff could give satisfactory answers as regards her pedigree, she eventually accepted the pedigree of the 1st Defendant.

In the judgment dated 04.07.2006, the learned District Judge of *Kalutara* has quite clearly highlighted this at pages 4 and 5 of the judgment.

“1 වන පැමිණිලිකරු විසින් මෙම නඩුවේ දී ඇති සාක්ෂිය සලකා බැලීමේදී ඇයට මෙම පෙළපත සම්බන්ධයෙන් පැහැදිලි අවබෝධයක් නොමැති බව අධිකරණයට පෙනීයන ලදී. පැමිණිල්ලෙන් විෂය වස්තුවට 1/4 ක් අයිතිවාසිකම් පෙන්වා ඇති විරවර්ණ කුරුකුලසූරිය බ්‍රහ්මදේව් කසිතන් ප්‍රනාන්දුට කාගේ කොටස හිමිවූහිද දැන් නැති බව පවසා ඇත. එම කසිතන් ප්‍රනාන්දුගේ පවුලේ අය ගැන තමා නොදන්නා බවත් පවසා ඇත. මෙම නඩුවේ පාර්ශවකරුවන් විසින් නඩුව ආරම්භයේදී පිළිගන්නට යෙදුන මොරාය ඉසබෙලා හා දොන් ලොරෙන්දු අප්පු පිළිබඳව තමා දන්නේ නැති බව පවසා ඇත. ඇයගේ පෙලපතේ පෙන්වා ඇති 20/120 ක මුල් අයිතිකරුවන් වශයෙන් පෙන්වා ඇති කොරුවකංකානම්ගේ ජේදුරට ආනා ප්‍රනාන්දු යනුවෙන් සහෝදරියක් සිටි බව තමා දැනසිටි බවත් කියා ඇත. ජේදුරගේ පියා බැස්ටියන් බවට තමා නොදන්නා බවත් කියා ඇත. 1 වන විත්තකරුගේ පෙලපත සම්බන්ධයෙන් තමා දන්නේ නැති බවත් කසිතන්ගේ අයිතිවාසිකම් කාට ගියාද තමා දන්නේ නැති බවත් කියා ඇත.”

In the circumstances there was no requirement to ascertain as to how Sawariyal acquired prescriptive title to the corpus as devolution of his rights for well over 50 years was clearly established by proving devolution of his entire 60/120 share as aforesaid.

The 1st Defendant also established the following:-

- i. Identity of the corpus without any dispute.
- ii. There was no application by any of the parties to exclude any part of the corpus on the ground of prescription or on a different pedigree.
- iii. The most relevant title deeds and other documents including the birth certificates too were submitted by the contesting parties.
- iv. It is also an admission that cultivation and the improvements in the corpus should be given to the parties as claimed by them before the court commissioner at the preliminary survey.

Thus upon a careful consideration of the judgment dated 04.07.2000 having regard to the evidence, it is quite clear that the learned District Judge of *Kalutara* has clearly analysed all oral and documentary evidence and arrived at the right decision.

In the case of *Pathmawathie v. Jayasekara* (1997) 1 Sri L.R page 248 the Court held thus:-

“It must always be remembered by judges that a system of civil law that prevails in our country is confrontational and therefore the jurisdiction of the judge is circumscribed and limited to the dispute presented to him for adjudication by the contesting parties.”

In the case of *Thilagaratnam v. Athpunathan and others* (1996) 2 Sri L.R 66 Ananda Coomaraswamy, J. held as follows:-

“Although there is a duty cast on court to investigate title in a partition action, the court can do so only within the limits of pleadings, admissions, points of contest, evidence both documentary and oral.”

“Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them; otherwise parties will tender their pleadings and expect the Court to do their work and their Attorneys-at-Law’s work for them to get title to those shares in the corpus”

As the learned District Judge of *Kalutara* has given cogent reasons for his conclusions and the issue raised on Kaitan Fernando’s right namely Issue No.9 which was the focal point of argument before this Court has been quite convincingly answered having regard to the evidence, the decision reached by him has been in accordance with the evidence led in the

trial. In the circumstances I see no reason to disturb the findings of the learned District Judge.

Accordingly I proceed to affirm the judgment dated 04.07.2006 and dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL