

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

Mawella Vithanawassam Hinnihamina  
of c/o, Wathawana-Kade,  
Wathawana, Imaduwa.

PLAINTIFF

C.A. Case No.1305/2000 (F)

D.C. Case No.11997/P

-Vs-

1. Liyana Ganage Gunendra  
Wathawana, Imaduwa.
2. Magginona Wickremaratne,
3. Sopinona Wickremaratne,
4. Rangadasa Wickremaratne,
5. Hinninona Wickremaratne,
6. Punchinona Wickremaratne,
7. Don Somapala Wickremaratne,
8. Sunil Wickremaratne,
9. Karunadara Wickremaratne  
All of Wathawanagedara, Wathawana,  
Imaduwa.
10. D. Withanawassam  
of Wedagedara, Wathawana,  
Imaduwa.
11. S. Dias Wijegunasinghe  
of 'Samarasiriya', Wathawana,  
Imaduwa.
12. Mawella Vidhanawassam Emalihamy

of c/o, Wathawana-Kade, Imaduwa.

DEFENDANTS

And Now

Mawella Vithanawassam Hinnihamina

of c/o, Wathawana-Kade, Wathawana,  
Imaduwa.

PLAINTIFF-APPELLANT

-Vs-

1. Liyana Ganage Gunendra  
of Wathawana, Imaduwa.
2. Magginona Wickremaratne,
3. Sopinona Wickremaratne,
4. Rangadasa Wickremaratne,
5. Hinninona Wickremaratne,
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7. Don Somapala Wickremaratne,
8. Sunil Wickremaratne,
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All of Wathawanagedara, Wathawana,  
Imaduwa.
10. D. Withanawassam  
of Wedagedara, Wathawana,  
Imaduwa.
11. S. Dias Wijegunasinghe  
of 'Samarasiriya', Wathawana,  
Imaduwa.

12. Mawella Vidhanawassam Emalihamy

of c/o, Wathawana-Kade, Imaduwa.

DEFENDANT-RESPONDENTS

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

COUNSEL : Prof W.M.Karunadasa for the Plaintiff-Appellant  
Upul Kumaraperuma for the 11<sup>th</sup> Defendant-Respondent  
Dr.Sunil Coorey for the 12<sup>th</sup> Defendant-Respondent

Decided on 26.07.2019

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

The Plaintiff-Appellant (hereinafter referred to as the Plaintiff) instituted this action against the Defendants seeking to partition a land called “Paraveni Devel Addarawatta” described in the 2<sup>nd</sup> paragraph of the plaint. The preliminary survey was effected by Licensed Surveyor Withanachchi and the plan bearing No 725 and the accompanying report were returned to Court.

In order to identify the lot that had been incorporated into the subject-matter, the 11<sup>th</sup> Defendant moved for a commission and licensed surveyor Ranjan Weerasuriya was issued with a commission to execute this task and he returned plans bearing No.966 and 966A along with one report for both plans. The two plans were marked as ‘Z’ and ‘Y’ respectively. The preliminary plan marked ‘X’ depicted the land to be partitioned as “Paravenidivela Addarawatte” and indicated in the plan as ‘අ’. But the 11<sup>th</sup> Defendant contended that the northern portion of the land depicted as ‘අ’ belongs to him and this northern portion was depicted as A2 in the 2<sup>nd</sup> Plan bearing No.966. A2 was depicted as ‘අ2’ in the other plan (966A) drawn up by Ranjan Weerasuriya marked as Y.

The question before Court was whether A2 in 966(2) or 2 in 966A (Y) must be excluded from the subject-matter of the partition suit brought by the Plaintiff. In order to secure the exclusion, the 11<sup>th</sup> Defendant as well as the licensed surveyor Weerasuriya gave evidence.

The 11<sup>th</sup> Defendant attested to the fact that A2 in 966(Z) or 2 in 966A (Y) is her land and that there were a multitude of rubber trees in this lot. This assertion of the 11<sup>th</sup> Defendant is corroborated by the report of Weerasuriya (Y) in which the Surveyor refers to a proliferation of rubber trees on A2. Even in A1 which is depicted as part of the 11<sup>th</sup> Defendant's land, the surveyor indicated the presence of about 100 trees on that lot.

In comparison no such cultivation of rubber is found to be in the Plaintiff's land and this comparison gives credence to the story that there was a difference between what the 11<sup>th</sup> Defendant claims to be his land and the land that the learned Additional District Judge of Galle found to be Plaintiff's co-owned land. In addition the 11<sup>th</sup> Defendant gave clear evidence that she enjoyed the fruits of the cultivation in her land. No such evidence comes out quite convincingly from the evidence of the Plaintiff. Moreover, there is the unchallenged evidence of the 11<sup>th</sup> Defendant that when she was in the habit of selling the fruits of the cultivation on A1 in 966 or 2 in 966A, there was no impediment or obstruction that she encountered from the Plaintiff or anyone else. This evidence clearly shows that the 11<sup>th</sup> Defendant had uninterrupted and undisturbed possession of her A lots on 966 or 2 or 1 in 966A. So the 11<sup>th</sup> Defendant made out a strong case for exclusion of these lots which he alleged consistently that the Plaintiff had brought into the case as part of the corpus to be partitioned. The question before this Court is whether the 11<sup>th</sup> Defendant has established that the land depicted as Lot A2 in Plan No.966 is a portion of a separate contiguous land called "*Galagahawawatta, Heenkiriya, Heenkiriya Kumbura, Addarabedda alias Gagululenwatta alias Gagulena*". It has to be kept in mind that the preliminary plan X depicted a different land known as "*Paravenidivela Addarawatta*". It was into this "*Paravenidivela Addarawatta*" that the Plaintiff had brought in "*Galahenegoda*" the contiguous land so asserted by the 11<sup>th</sup> Defendant.

Mr. Upul Kumaraperuma, the learned Counsel for the 11<sup>th</sup> Defendant-Respondent took this Court through several items of evidence in the cross-examination of the Plaintiff that pointed to the fact that the Plaintiff had brought into the subject-matter the land of the 11<sup>th</sup> Defendant.

For instance at one stage the Plaintiff admitted in cross-examination that the boundaries in the preliminary plan had been erroneously shown to the Surveyor-Withanachchi who effected the preliminary survey.

The Plaintiff also admitted that the surveyor did the preliminary survey in the way she pointed out the boundaries. This admission estops the Plaintiff from asserting that the preliminary survey was accurately done. Withanachchi-the preliminary surveyor was not summoned by the Plaintiff and there is no other older plan that was produced to the preliminary surveyor to establish that it is the corpus depicted in X that was the correct corpus for partition.

Thus the assertion of the 11<sup>th</sup> Defendant that the Plaintiff had brought in A2, -a Lot which belongs to the 11<sup>th</sup> Defendant, into the partition action is amply corroborated by the admission of the Plaintiff-Appellant.

In order to establish that A2 in Plan No.966 whose exclusion that the 11<sup>th</sup> Defendant claimed, the 11<sup>th</sup> Defendant produced the Deed of Transfer bearing No.3406 dated 11.09.1946 (IV2) and the Deed of Transfer bearing No.13556 dated 09.02.1972 (11V3).

In her testimony Saraswathy Dias Wijegunasinghe (11<sup>th</sup> Defendant) quite clearly testified as to how the land devolved on her from her husband Jothipala Sirisena. She also said that Ajith Ranjan Weerasuriya (the surveyor who prepared the subsequent plans 966 and 966A has shown in these plans that A2 in Plan No.966 (Z) belongs to her.

I must further comment that fresh evidence that was brought into this case by way of documents is not relevant to this case at all and upon a perusal of the documents it is clear that the schedules of those documents refer to a totally different land. Since it has been established that A2 is a land that has been brought into the corpus put up for partition, it is justifiable that the land A2 has to be excluded and the 11<sup>th</sup> Defendant-Respondent has

conclusively established this fact. The learned Additional District Judge of *Galle* in his judgement dated 26<sup>th</sup> July 2000 is quite correct in holding that Lot A2 in Plan bearing no 966A must be excluded and restricting the corpus only to Lot A3 in Plan bearing No 966A. In the circumstances I see no merit in the appeal and I proceed to affirm the judgement of the learned Additional District Judge of *Galle* and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL