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

1. Vandala Ralalage Lucy Nona

2. Gajanegge Dayananda
   Both of Bisowela, Galigamuwa Town.

Plaintiffs

Case No. C. A. 657/2000(F)
D. C. Kegalle Case No. 25445/P

Vs.

1. Vandala Ralalage Ukku Banda

2. Vandala Ralalage Rosalin Nona

3. Vandala Ralalage Kiribanda

4. Vandala Ralalage Emilin Nona

5. Vandala Ralalage Alice Nona

6. Vandala Ralalage Heen Banda
   All of Bisowela, Galigamuwa Town.

Defendants

AND NOW BETWEEN

1. Vandala Ralalage Ukkubanda

2. Vandala Ralalage Rosalin Nona

3. Vandala Ralalage Kiribanda

4. Vandala Ralalage Emilin Nona

5. Vandala Ralalage Alice Nona

6. Vandala Ralalage Heen Banda
   All of Bisowela, Galigamuwa Town.

Defendants-Appellants

Vs.

1. Vandala Ralalage Lucy Nona

2. Gajanegge Dayananda
Both of Bisowela, Galigamuwa Town.

Plaintiffs-Respondents

Before: Janak De Silva, J.

Counsel:

Rishal Serasinghe and Lasodha Siriwardhana for the 1st – 6th Defendants-Appellants

Prinath Fernando for the Plaintiffs-Respondents

Written Submissions tendered on:

1st – 6th Defendants-Appellants on 12.07.2013 and 12.02.2014

Plaintiffs-Respondents on 24.08.2018

Argued on :26.02.2019

Decided on :29.10.2019

Janak De Silva, J.

This is an appeal against the judgment of the learned District Judge of Kegalle dated 23.06.2000. The Plaintiffs-Respondents (Plaintiffs) instituted the above styled action in the District Court of Kegalle seeking inter alia to partition Lot B1 of Hitinawatta containing in extent A.0-R.0-P.34.5 more fully described in the schedule to the plaint dated 05.02.1991. The Plaintiffs averred in their plaint that –

1. The original owner of the said Lot B1 was W. Dingiri Appuhamy;
2. Under and by virtue of Deed No. 19369 dated 21.07.1925 (පැ.2), Appuhamy and Punchirala became entitled to the said Lot B1;
3. Appuhamy transferred his share to Punchirala by Deed No. 21757 dated 22.09.1927 (පැ.3) who transferred it back to Appuhamy by Deed No. 4642 dated 30.10.1942 (පැ.4);
4. Appuhamy again transferred his share to Punchirala by Deed No. 204 dated 17.11.1945 (පැ.5) who later conveyed it back to Appuhamy by Deed No. 560 dated 20.02.1952 (පැ.1);
5. Under and by virtue of Deed No. 3359 dated 26.11.1964 (පැ.6), Lucy Nona (1st Plaintiff), Punchi Nona and Albin Nona became entitled to Appuhamy's share;
6. By Deed No. 2548 dated 10.12.1990 (පැ.8), Punchi Nona and Albin Nona conveyed their shares to the 1st Plaintiff who transferred 1/12 share of her title and the tile roofed house to the 2nd Plaintiff by Deed No. 9650 dated 25.09.1990 (පැ.7);
7. Appuhamy and the 2nd Plaintiff built the said tile roofed house in 1975 and Appuhamy lived there till his death in 1985;

8. The said tile roofed house was partly built on the land belonging to R. G. Podi Singho and in terms of the settlement of Case No. 720/B, Appuhamy paid Rs. 200/- to said R. G. Podi Singho who transferred 456 sq. ft. (on which the house was partly built) to Appuhamy;
9. Subsequent to Punchirala's demise, his title devolved to his children (1st – 6th Defendants).

Accordingly, the Plaintiffs prayed the said Lot B1 to be partitioned among the parties to the action in the following manner –

1st Plaintiff	Undivided 2/12 and 2/3 of 456 sq. ft.
2nd Plaintiff	Undivided 1/12 and 1/3 of 456 sq. ft.
1st Defendant	Undivided 1/24
2nd Defendant	Undivided 1/24
3rd Defendant	Undivided 1/24
4th Defendant	Undivided 1/24
5th Defendant	Undivided 1/24
6th Defendant	Undivided 1/24

The Defendants-Appellants (Defendants) filed their statement of claim on 08.11.1991 and took up the position that –

1. Punchirala became entitled to the entire Lot B1 under and by virtue of Deed No. 204 dated 17.11.1945 (වැ.5);
2. After his demise, the 1st – 6th Defendants became entitled to the said Lot B1;
3. Punchirala never transferred his title to Appuhamy as stated in paragraph 4 of the plaint [i.e. he never executed Deed No. 560 dated 20.02.1952 (වැ.1)].

A commission was issued to survey the land to be partitioned. Accordingly, Plan No. 43/91 dated 19.07.1991 made by H. M. T. B. Samarasinghe, Licensed Surveyor [Page 121 of the Appeal Brief] and the Surveyor's Report [Page 123 of the Appeal Brief] were produced and the Licensed Surveyor has identified Lot 1 of the said Plan No. 43/91 as Lot B1 of Hitinawatta (i.e. the land to be partitioned).

After a lengthy trial, the learned District Judge held that the land to be partitioned is depicted as Lot 1 in the said Plan No. 43/91 and the said Lot 1 (Lot B1 of Hitinawatta) should be partitioned in the following manner –

1st Plaintiff	Undivided 2/12
2nd Plaintiff	Undivided 4/12
Not allotted	Undivided 6/12

Being aggrieved, the Defendants appealed.

In a partition case, it is incumbent on the judge to investigate into title of each party before he arrives at a determination [*Chandrasena v. Piyasena and Others* (1999) 3 Sri.L.R. 201] and it would be the prime duty of the trial judge to carefully examine and investigate the actual rights and titles to the land sought to be partitioned [*Sopinona v. Pitipanaarachchi and Two Others* (2010) 1 Sri.L.R. 87]. Although there is a duty cast on the 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. The court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them [*Thilagaratnam v. Athpunathan and Others* (1996) 2 Sri.L.R. 66].

According to 'පැ.2' [Page 139 of the Appeal Brief], W. Dingiri Appuhamy transferred an undivided ½ share of Hitinawatta and the thatched house situated thereon to Appuhamy and Punchirala. Then, Appuhamy transferred his undivided ¼ share of Hitinawatta together with an undivided ½ share of the thatched house to Punchirala by 'පැ.3' [Page 142 of the Appeal Brief]. Accordingly, Punchirala became entitled to an undivided ½ share of Hitinawatta and to the thatched house situated thereon.

By 'පැ.4' [Page 146 of the Appeal Brief], Punchirala transferred "an undivided ½ share of Lot B1 out of the land called Hitinawatta of Thirty-four and Half Perches (A.0-R.0-P.34½) in extent with a like share of the house standing thereon" to Appuhamy.

It is clear, by the wording of 'පැ.4', that Lot B1 is a defined portion of Hitinawatta and it contains Thirty-four and Half Perches (A.0-R.0-P.34.5) in extent. Also, an inference can be gathered by the contents of 'පැ.4' that Lot B1 is the undivided ½ share of Hitinawatta transferred to Appuhamy and Punchirala by 'පැ.2'.

Therefore, I hold that what Punchirala transferred by 'පැ.4' is not an undivided ½ share of Hitinawatta but an undivided ½ share of Lot B1 of Hitinawatta. Accordingly, Appuhamy became entitled to an undivided ½ share of Lot B1 and an undivided ½ share of the house.

Then, by 'පැ.5' [Page 148 of the Appeal Brief], Appuhamy again transferred "an undivided ½ share of Lot B1 out of the land called Hitinawatta of Thirty-four and Half Perches (A.0-R.0-P.34½) in extent with a like share of the house standing thereon" to Punchirala. As a result, Punchirala became the sole owner of Lot B1 and the house.

According to paragraph 4 of the plaint, by Deed No. 560 dated 20.02.1952 [Page 135 of the Appeal Brief], Punchirala transferred an undivided ½ share of Lot B1 and everything else standing thereon (ඉඩමෙන් සහ ඊට අයිති ගොඩනැගිලි ආදී සියලු ම දෙයින් නොබෙදූ දෙකෙන් පංගුව ද) to Appuhamy. But the Defendants denied the execution of the said Deed No. 560 and claimed the sole ownership of Lot B1 [5th paragraph of the statement of claim].

Therefore, it is essential to consider whether Punchirala transferred an undivided ½ share of Lot B1 and everything else standing thereon to Appuhamy by the said Deed No. 560 and whether the learned District Judge was correct in holding that the said Deed No. 560 is admissible in evidence. Section 90 of the Evidence Ordinance reads –

> *"Where any document purporting or proved to be thirty years old is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."*

The presumption laid down in Section 90 of the Evidence Ordinance recognizes two essential preconditions for it to apply.

1. The document must be at least thirty years old; and
2. It must be produced from proper custody.

Accordingly, the document must "purport or be proved to be thirty years old". E. R. S. R. Coomaraswamy in the *Law of Evidence* (Page 150 of Vol. II – Book 1, 2nd Edition) states that what is meant by 'purporting' is 'stating itself to be'. It assumes that the document was in existence for thirty years. The period of thirty years is to be reckoned, not from the date on which the deed is filed in the court, but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof.

On the face of it, the said Deed No. 560 was executed on 20.02.1952 whereas the instant action was instituted on 05.02.1991. The execution of the said Deed No. 560 was denied by the Defendants by their statement of claims dated 08.11.1991.

Whether or not a particular custody is proper is a question of fact to be determined in the circumstances of each case [*Davoodbhoy v. Farook* (58 N.L.R.126)]. A duplicate of a deed over thirty years old produced from the office of the Registrar General is admissible in evidence without further proof; it must be held to have been produced from proper custody within the meaning of Section 90 of the Evidence Ordinance. A duplicate cannot be treated as a copy of the original deed; it is in all respects an original deed [*Kirimenika v. Duraya et al* (17 N.L.R. 11)].

A careful perusal of the evidence shows that the Land Registrar of Kegalle was summoned to give evidence regarding the said Deed No. 560. A clerk from the Kegalle Land Registry has produced the duplicate of the said Deed No. 560 to the court. However, the duplicate was not marked in evidence but a certified copy was marked in evidence as 'පැ.1'. The clerk compared 'පැ.1' with the duplicate and admitted that 'පැ.1' is a certified copy of the said Deed No. 560.

In view of the above, I hold that the said Deed No. 560 fulfills the preconditions laid down is Section 90 of the Evidence Ordinance. The question to be considered now is whether the learned District Judge was correct in holding that 'පැ.1' is admissible in evidence.

The presumption of due execution of a dead thirty years old may be drawn under Section 90 of the Evidence Ordinance, only upon production of the very document in regard to which the court is invited to draw such presumption. The production of a copy, even if it is a certified copy, is not sufficient [*Dingiri Appu v. Mohottihamy* (68 N.L.R. 40)].

In *Dingiri Appu v. Mohottihamy* (supra), the original of the deed was at no time produced before the trial judge (Judge Wijayatilake) or his successor who decided the case. The duplicate of the deed was produced before Judge Wijayatilake by a clerk from the Land Registry and it was taken back. His successor (the one who delivered the judgment) only had a certified copy before him to base his conclusions on.

However, in the instant action, the duplicate was brought to the court by the clerk from the Land Registry who compared it with the certified copy of the said Deed No. 560 which was marked in evidence as 'පැ.1' before the same judge who later delivered the judgment dated 23.06.2000.

E. R. S. R. Coomaraswamy in the *Law of Evidence* (Page 153 of Vol. II – Book 1, 2nd Edition) states the court is not bound to draw the presumption laid down in Section 90 of the Evidence Ordinance. The presumption is not a compulsory one, and the words, "may presume" show that there is no direction to draw the presumption. The court may, therefore, require the document to be proved in the ordinary way, as by calling a witness. If the court considers that there are suspicious features which throw great doubt on the genuineness of the document, the court may exercise its discretion in the matter and refuse to admit the document, unless formal proof is given, even though it was produced from proper custody.

It is clear that the learned District Judge had the discretion to draw the presumption laid down in Section 90 of the Evidence Ordinance. If the duplicate produced by the clerk of the Land Registry had suspicious features, the learned District Judge had ample opportunity to refuse to admit 'පැ.1' as admissible evidence. But being satisfied as to the genuineness of the duplicate produced by the clerk of the Land Registry, the learned District Judge allowed to mark 'පැ.1' in evidence after it was duly compared with the duplicate produced.

Therefore, I hold that 'පැ.1' being a certified copy of the duplicate of the said Deed No. 560 produced before the judge who decided the case attracts the presumption laid down in Section 90 of the Evidence Ordinance and the learned District Judge was correct in holding that 'පැ.1' is admissible in evidence.

Under and by virtue of 'පැ.1', Appuhamy became entitled to an undivided ½ share of Lot B1 and everything else standing thereon. Accordingly, it is safe to conclude that he became entitled to an undivided ½ share of the house as well.

Thereafter, 'පැ.6' was executed by Appuhamy by which he transferred an undivided ¼ of Hitinawatta to the 1st Plaintiff-Respondent (1st Plaintiff), Punchi Nona and Albin Nona. 'පැ.6' was admitted in evidence without any objections.

The Defendants contend that what Appuhamy transferred by 'පැ.6' is not the undivided ½ share of Lot B1 he got by virtue of 'පැ.6' but an undivided ¼ share of Hitinawatta and therefore, the Plaintiffs are not entitled to partition Lot B1 of Hitinawatta to which the Plaintiffs have no entitlement [Page 2 of the Written Submissions dated 12.02.2014]. However, it must be noted that this contention of the Defendants was never put before the learned District Judge during the trial.

A careful perusal of the evidence given by the 2nd Plaintiff shows that what Appuhamy transferred by 'පැ.6' is his entitlement to Hitinawatta [Pages 61 – 62 and Page 76 of the Appeal Brief]. According to the wording of 'පැ.6', Appuhamy got entitled to what he transferred to the 1st Plaintiff, Punchi Nona and Albin Nona by a deed not produced before the Notary who attested 'පැ.6'. In that event, it is clear that what Appuhamy intended to transfer is the undivided ½ of Lot B1 to which he became entitled under and by virtue of 'පැ.1'. Thus, I hold that the 1st Plaintiff, Punchi Nona and Albin Nona became entitled to an undivided 1/6 share of Lot B1 each under and by virtue of 'පැ.6'.

Then, by 'පැ.7', the 1st Plaintiff transferred an undivided 1/12 share of Hitinawatta to the 2nd Plaintiff. 'පැ.7' was also admitted in evidence without any objections. However, it is clear, by the wording of 'පැ.7', that what the 1st Plaintiff transferred to the 2nd Plaintiff is what she became

entitled to by virtue of 'පැ.6' (i.e. an undivided 1/6 share of Lot B1). This was admitted by the 2nd Plaintiff in his evidence [Pages 76 – 77 of the Appeal Brief]. In view of the above, I hold that the 2nd Plaintiff became entitled to an undivided 1/6 share of Lot B1 under and by virtue of 'පැ.7'.

By 'පැ.8', which was admitted in evidence without any objections, Punchi Nona and Albin Nona transferred what they became entitled to under 'පැ.6' to the 1st Plaintiff. Accordingly, I hold that the 1st Plaintiff became entitled to an undivided 1/3 share of Lot B1.

Therefore, I hold that Lot B1 of Hitinawatta and the tile roofed house standing thereon should be partitioned among the parties to the action in the following manner –

1st Plaintiff	Undivided 2/6
2nd Plaintiff	Undivided 1/6
1st – 6th Defendants	Undivided 3/6
(being the heirs of Punchirala)	

The Defendants further urged that the learned District Judge has misdirected herself that the Plaintiffs only sought to partition Lot 1 whereas no party has sought to exclude any portion of the surveyed land which consists of Lots 1 and 2 of the said Plan No. 43/91.

In a partition action, there is a duty cast on the judge to satisfy him as to the identity of the land sought to be partitioned [*Jayasuriya v. Ubaid* (61 N.L.R. 352)] and there are certain duties cast on the court quite apart from objections that may or may not be taken by the parties. In addition to the duty that is cast on the court to resolve the disputes that are set out by the parties in their issues, the court has a supervening duty to satisfy itself as to the identity of the corpus and also as to the title of each and every party who claims title to it *[Wickremaratne and Another v. Alpenis Perera* (1986) 1 Sri.L.R. 190]. Without proper identification of the corpus it would be impossible to conduct a proper investigation of title *[Sopinona V. Pitipanaarachchi* (2010) 1 Sri.L.R. 87].

According to the plaint, the Plaintiffs sought to partition Lot B1 of Hitinawatta. By their statement of claim on 08.11.1991, the Defendants also admitted that the land to be partitioned is Lot B1 of Hitinawatta.

As I observed earlier, a commission was issued to survey the land to be partitioned. H. M. T. B. Samarasinghe, Licensed Surveyor who prepared Plan No. 43/91 dated 19.07.1991 accordingly has recognized Lot 1 of the said Plan No. 43/91 as the land to be partitioned [Page 121 and Page 124 of the Appeal Brief].

Even though there is a minor discrepancy in extent, the learned District Judge has decided Lot 1 of the said Plan No. 43/91 to be the land to be partitioned (i.e. Lot B1 of Hitinawatta). The learned District Judge has based her conclusions on the fact that the boundaries of Lot 1 of the said Plan No. 43/91 tally with the boundaries of Lot B1 of Hitinawatta.

Identifying a land by its boundaries has been the practice for a long period of time and I am of the opinion that it can still be considered as a valid method in identifying lands. Therefore, I agree with the finding of the learned District Judge that Lot 1 of the said Plan No. 43/91 and Lot B1 of Hitinawatta are the same land.

Also, if the portion of land is clearly described and can be precisely ascertained, a mere inconsistency in extent will not affect the question of identity [*Gabriel Perera v. Agnes Perera* (43 C.L.W. 82, *Yapa v. Dissanayake Sedara* (1989) 1 Sri.L.R. 361]. Since the land to be partitioned can clearly be identified by the said Plan No. 43/91 as well as by the boundaries, I hold that the minor discrepancy in extent can be disregarded.

For all the foregoing reasons, I allow this appeal to the extent set out above and answer the issues as follows –

1. මෙම නඩුවට අදාළ ඉඩම එච්. එම්. ටී. බී. සමරසිංහ තැන විසින් මැන සාදන ලද අංක. 43/91 දරණ සැලැස්මේ කැබලි අංක. 1 සහ 2 වශයෙන් පෙන්වා ඇත් ද? නැත. කැබලි අංක. 1 ට පමණක් සීමා කරමි.
2. එම හිටිනාවත්ත නමැති ඉඩමේ මුල් අයිතිකරු ඩිංගිරි අප්පුහාමි ද? ඔව්
3. එම ඩිංගිරි අප්පුහාමි 1925.07.21 දින අංක. 19369 ඔප්පුවෙන් අප්පුහාමිට සහ පුංචිරාළට පවරා ඇත් ද? අප්පුහාමිට සහ පුංචිරාළට නොබෙදූ ½ ක් පවරා ඇත.
4. එම අප්පුහාමිගේ ½ පංගුව පැමිණිල්ලේ පෙන්වා තිබෙන ඔප්පුව මත පුංචිරාළ නැමැත්තාට හිමි වුණේ ද? අප්පුහාමිට හිමි වූ නොබෙදූ ¼ අංක. 21757 සහ 1927.09.22 දිනැති ඔප්පුව මගින් පුංචිරාළට පවරා ඇත.
5. එම පුංචිරාළගේ අයිතිවාසිකම් 1952.02.20 වැනි දින අංක. 560 දරණ ඔප්පුව මත අප්පුහාමි නැමැත්තාට පැවරුවේ ද? ඔව්
6. එම අප්පුහාමිගේ අයිතිය 1964.11.26 වැනි දින අංක. 3359 දරණ ඔප්පුවෙන් ලුසි නෝනා වන පැමිණිලිකරුවත්, පුංචි නෝනා, ඇල්බින් නෝනා යන අයට පැවරුවේ ද? හිටිනාවත්තේ Lot B1 දරණ කැබැල්ලෙන් නොබෙදූ ½ ක් පවරා ඇත (මුළු ඉඩමෙන් ¼ ක්).
7. එම ලුසි නෝනා 1990 අංක. 9650 දරණ ඔප්පුව මත 2 වැනි පැමිණිලිකරුට පවරා ඇත් ද? ඔව්
8. පුංචි නෝනා සහ ඇල්බින් නෝනා යන අයගේ අයිතිවාසිකම් අංක. 3548 දරණ ඔප්පුව පිට 1 වැනි පැමිණිලිකාර ලුසි නෝනාට පැවරුවේ ද? ඔව්

9. මුලින් සඳහන් කළ ½ පංගුවක පුංචිරාළගේ අයිතිය පැමිණිල්ලේ පෙන්වා තිබෙන අන්දමට එම පාර්ශවකරුවන්ට හිමි වේ ද? පුංචිරාළට හිමිකම් තිබූ Lot B දරණ කැබැල්ලෙන් නොබෙදූ ½ ක පංගුව ඔහුගේ උරුමකරුවන් වන 1 සිට 6 දක්වා විත්තිකරුවන්ට හිමි වේ.
10. ඉහත සඳහන් ලුසි නෝනා 1990 අංක. 4650 දරණ ඔප්පුව පිට 2 වැනි පැමිණිලිකරුට පවරන විට ගොඩනැගිල්ලත් සමග පැවරුවේ ද? ලුසි නෝනාට හිමිකම් ඇත්තේ ඉඩමේ ඇති ගොඩනැගිලිවලින් නොබෙදූ ½ ක් සඳහා පමණි. එකී නොබෙදූ ½ ක අයිතිය 2 වැනි පැමිණිලිකරුට පවරා ඇත.
11. මෙම පැමිණිලිකරුවන් සහ පෙර හිමිකරුවන් ඉහත අයිතිවාසිකම් දස අවුරුද්දකට අධික කාලයක් භුක්ති විඳීමෙන් භුක්ති අයිතිවාසිකම් ලබාගෙන තිබේ ද? ඔව්
12. මිනින්දෝරු වාර්තාවේ පෙන්වා තිබෙන "ඉ" සහ "ඊ" ගොඩනැගිලි පැමිණිලිකරුවන්ට හිමි වේ ද? නොබෙදූ ½ ක් හිමි වේ.
13. මේ අනුව ඉඩම බෙදා වෙන් කර ගත හැකි ද? ඔව්
14. බෙදීමට යෝජිත ඉඩමෙන් ½ පංගුවක් හිමි ව සිටි අප්පුහාමි, ඔහුගේ අයිතිවාසිකම් 1927.09.22 වැනි දින අංක. 21757 දරණ ඔප්පුවෙන් පුංචිරාළට පවරා ඇත් ද? ඔව්
15. එකී පුංචිරාළගේ අයිතිවාසිකම් 1942.10.30 වැනි දින අංක. 4642 දරණ ඔප්පුවෙන් නැවතත් එම අයිතිවාසිකම් අප්පුහාමිට පවරා ඇත් ද? ඔව්
16. එකී අප්පුහාමිගේ අයිතිවාසිකම් 1945.11.17 වැනි දින අංක. 204 දරණ ඔප්පුවෙන් එම අයිතිවාසිකම් නැවතත් පුංචිරාළට පවරා හිමි කර දී ඇත් ද? ඔව්
17. ඒ අනුව බෙදීමට යෝජිත ඉඩම සම්පූර්ණයෙන් පුංචිරාළට හිමි ව තිබුණේ ද? අංක. 560 සහ 1952.02.20 දිනැති ඔප්පුව ප්‍රකාර ව පුංචිරාළට හිමි ව තිබුණේ නොබෙදූ ½ ක් පමණි.
18. එකී පුංචිරාළ ඔප්පු නොලියා මිය ගියෙන් එම අයිතිවාසිකම් ඔහුගේ දරුවන් වන 1 සිට 6 දක්වා විත්තිකරුවන්ට පමණක් උරුම වී භුක්ති විඳිනු ලබන්නේ ද? පුංචිරාළට හිමි ව තිබුණේ නොබෙදූ ½ ඔහුගේ දරුවන් වන 1 සිට 6 දක්වා විත්තිකරුවන්ට උරුම වේ.
19. ඒ අනුව බෙදීමට යෝජිත ඉඩමෙන් පැමිණිලිකරුට කිසිම අයිතියක් හිමි නොවන්නේ ද? නොබෙදූ ½ ක් හිමි වේ.
20. එසේ නම් පැමිණිල්ල නිශ්ප්‍රභා විය යුතු ද? නැත
21. බෙදීමට යෝජිත ඉඩමේ ඇති එකී පුංචිරාළ විසින් සාදා පදිංචි ව භුක්ති විඳිනු ලැබූ නිවසක් ද එකී නිවසේ අයිතිවාසිකම් මෙම විත්තිකරුවන්ට පමණක් හිමි විය යුතු ද? නැත
22. පැමිණිලිකරුගේ පැමිණිල්ලේ බෙදීමට යෝජිත ඉඩමේ උපලේඛනයේ සඳහන් වන්නේ පර්චස් 34½ ක් ප්‍රමාණයක් නම් ඊට වැඩි ප්‍රමාණයක් මෙම නඩුවෙන් බෙදා වෙන් කර ගැනීමට පැමිණිලිකරුට ඉල්ලා සිටිය හැකි ද? බෙදිය යුතු ඉඩම කැබලි අංක. 1 ට පමණක් සීමා කිරීම නිසා උද්ගත නොවේ.
22. (අ) පැමිණිලිකරුගේ පැමිණිල්ලේ බෙදීමට යෝජිත ඉඩමේ උපලේඛනයේ සඳහන් වන්නේ පර්චස් 34½ ක් විශාල වූ ඉඩමක් ද? ඔව්

22. (ආ) මෙම නඩුවට මැන ඇති අංක. 43/91 පිඹුරේ පෙන්වා ඇති ඉඩම රූඩ් 1 යි පර්චස් .77 ක ඉඩමක් ද? ඔව්

22. (ඇ) පැමිණිල්ලෙන් බෙදීමට ඉල්ලා ඇති ඉඩමට විශාල ඉඩමක් ඒ අනුව පැමිණිලිකරුට බෙදීමට ඉල්ලා සිටිය හැකි ද? උද්ගත නොවේ.

22. (ඈ) මෙම නඩුවේ ලිස්පෙන්ඩනය ලියාපදිංචි වී ඇත්තේ මැන ඇති ඉඩමට වඩා කුඩා ඉඩමක් නම් පැමිණිලිකරුවන්ට මෙම පැමිණිල්ල පවත්වාගෙන යා හැකි ද? බෙදිය යුතු ඉඩම කැබලි අංක. 1 ට පමණක් සීමා කර ඇති බැවින් පැමිණිල්ල පවත්වාගෙන යා හැකි වේ.

23. එසේ නම් පැමිණිලිකරුගේ පැමිණිල්ල නිශ්ප්‍රභා විය යුතු ද? පැමිණිල්ල එසේ ම තිබිය යුතු ද? පැමිණිල්ල නිශ්ප්‍රභා නොවේ.

24. පැමිණිල්ලේ 4 වැනි ඡේදයේ සඳහන් අංක. 560 සහ 1952.02.22 දරණ ඔප්පුව පුංචිරාළ විසින් සහතික කරන ලද්දක් නොවන්නේ ද? පුංචිරාළ විසින් සකස් කරන ලද්දකි.

25. පැමිණිල්ලේ 4 වැනි ඡේදයේ සඳහන් අප්පුහාමිට හිමිකම් හිමි වන්නේ ද? නොබෙදූ ½ ක් හිමි වේ.

26. ඉහත විසඳිය යුතු ප්‍රශ්න විත්තියේ වාසියට තීන්දු වන්නේ නම් පැමිණිලිකරුගේ පැමිණිල්ල නිශ්ප්‍රභා විය යුතු ද? නැත.

The learned District Judge of Kegalle is directed to enter decree accordingly.

Appeal partly allowed.

Judge of the Court of Appeal