

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

In the matter of an appeal from the Final Judgment
in the District Court of Gampaha Case No. 32943/P

Balasooriya Lekamlage Gnanalatha Balasooriya alias
Yasawardanahamine
Uggalboda, Gampaha.

14th Defendant-Appellant

Case No. C. A. 1273/2000(F)
D. C. Gampaha Case No. 32943/P

Vs.

Balasooriya Lekamlage Mille Nona
No. 223, Saranapala Mawatha,
Akarawita, Gampaha.

Plaintiff-Respondent

1. Balasooriya Lekamlage Weerawardana
2. Balasooriya Lekamlage Ruban
3. Balasooriya Lekamlage Gnanawathie
4. Balasooriya Lekamlage Kusumawathie
5. Balasooriya Lekamlage Sumanawathie
6. Balasooriya Lekamlage Jayaweera
7. Balasooriya Lekamlage Leelawathie
All of Uggalboda, Gampaha.
8. Balasooriya Lekamlage Thomas Singho
9. Balasooriya Lekamlage Jasin (Deceased)
Both of No. 223, Saranapala Mawatha,
Akarawita, Gampaha.
- 9A. Balasooriya Lekamlage Thomas Singho
No. 223, Saranapala Mawatha,
Akarawita, Gampaha.

10. Balasooriya Lekamlage Nimanis
Yaththalgoda, Nawathalwatte, Ambepussa.

11. Balasooriya Lekamlage Sumanawathie
No. 217 B, Uggalboda, Gampaha.

12. Liyanage Sapin Jayasinghe
No. 10/1, Court Road, Gampaha.

13. Liyana Pathirennhelage Asilin Nona
No. 198, Udugampola Postal, Wathumulla.

Defendant-Respondents

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In the matter of an appeal from the Final Judgment
in the District Court of Gampaha Case No. 32943/P

Balasooriya Lekamlage Sumanawathie
No. 217 B, Uggalboda, Gampaha.

11th Defendant-Appellant

Case No. C. A. 1274/2000(F)
D. C. Gampaha Case No. 32943/P

Vs.

Balasooriya Lekamlage Mille Nona
No. 223, Saranapala Mawatha,
Akarawita, Gampaha.

Plaintiff-Respondent

1. Balasooriya Lekamlage Weerawardana
2. Balasooriya Lekamlage Ruban
3. Balasooriya Lekamlage Gnanawathie
4. Balasooriya Lekamlage Kusumawathie
5. Balasooriya Lekamlage Sumanawathie
6. Balasooriya Lekamlage Jayaweera
7. Balasooriya Lekamlage Leelawathie
All of Uggalboda, Gampaha.

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No. 198, Udugampola Postal, Wathumulla.
14. Balasooriya Lekamlage Gnanalatha Balasooriya
alias Yasawardanahamine
Uggalboda, Gampaha.

Defendant-Respondents

In the matter of an appeal from the Final Judgment
in the District Court of Gampaha Case No. 32943/P

1. Balasooriya Lekamlage Weerawardana
2. Balasooriya Lekamlage Ruban
3. Balasooriya Lekamlage Gnanawathie
4. Balasooriya Lekamlage Kusumawathie
5. Balasooriya Lekamlage Sumanawathie
6. Balasooriya Lekamlage Jayaweera
7. Balasooriya Lekamlage Leelawathie
All of Uggalboda, Gampaha.

1st – 7th Defendant-Appellants

Case No. C. A. 1275/2000(F)
D. C. Gampaha Case No. 32943/P

Vs.

Balasooriya Lekamlage Mille Nona
No. 223, Saranapala Mawatha,
Akarawita, Gampaha.

Plaintiff-Respondent

8. Balasooriya Lekamlage Thomas Singho
9. Balasooriya Lekamlage Jasin (Deceased)
Both of No. 223, Saranapala Mawatha,
Akarawita, Gampaha.
- 9A. Balasooriya Lekamlage Thomas Singho
No. 223, Saranapala Mawatha,
Akarawita, Gampaha.
10. Balasooriya Lekamlage Nimanis
Yaththalgoda, Nawathalwatte, Ambepussa.
11. Balasooriya Lekamlage Sumanawathie
No. 217 B, Uggalboda, Gampaha.
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No. 198, Udugampola Postal, Wathumulla.
14. Balasooriya Lekamlage Gnanalatha Balasooriya
alias Yasawardanahamine
Uggalboda, Gampaha.

Defendant-Respondents

Before: Janak De Silva J.

Counsel:

C.J. Fernando for 14th Defendant-Appellant in C.A. 1273/2000(F)

Nimal Wickremasinghe for 11th Defendant-Appellant in C.A. 1274/2000(F)

Dr. Sunil Cooray with Amila Kiripitige for 1st to 7th Defendants-Appellants in C.A. 1275/2000(F)

H. Withanaachchi for Plaintiff-Respondent

Argued on: 13.02.2019

Written Submissions tendered on:

14th Defendant-Appellant in C.A. 1273/2000(F) on 19.10.2018

11th Defendant-Appellant in C.A. 1274/2000(F) on 02.07.2013, 10.07.2018 and 04.04.2019

1st to 7th Defendants-Appellants in C.A. 1275/2000(F) on 12.10.2018 and 05.04.2019

Plaintiff-Respondent on 22.05.2019

Decided on: 22.11.2019

Janak De Silva J.

These are three appeals against the judgment of the learned District Judge of Gampaha dated 14.11.2000.

The Plaintiff-Respondent (Plaintiff) instituted the above styled action in the District Court of Gampaha seeking inter alia to partition the land called Bulugahawatta containing in extent A.2-R.2-P.0 morefully described in the schedule to the plaint dated 23.03.1990. The said land is also depicted in preliminary plan No. 524 dated 01.12.1990 made by T. A. D. A. Senanayake, Licensed Surveyor as Lots A – C and contains in extent A.2-R.0-P.35.9. The Licensed Surveyor, in the Surveyor's Report dated 05.12.1990 [Page 258 of the Appeal Brief], has identified the said Lots A – C of the said preliminary plan No. 524 as the land to be partitioned.

The Plaintiff averred in her plaint that –

1. The original owner of the said land was Juwanis Wedarala;
2. By Deed No. 2613 dated 11.03.1905, he conveyed an undivided 1/2 share of his entitlement to Saradiel Appu, Appu Singho, Punchi Appu and Elisahamy;

3. The said Juwanis Wedarala died intestate and the remainder of his entitlement to the land called Bulugahawatta was devolved among his children namely Saradiel Appu, Appu Singho, Punchi Appu, Elisahamy and Rapiel;
4. Thereafter, Rapiel transferred an undivided 1/8 share to Saradiel Appu, Appu Singho and Punchi Appu by Deed No. 21194 dated 23.02.1925 (පැ.2);
5. The said Punchi Appu died intestate and issueless hence his entitlement to the said land devolved among his siblings namely Appu Singho, Saradiel Appu, Rapiel and Elisahamy;
6. Rapiel transferred his entitlement to Appu Singho by Deed No. 11675 dated 24.10.1964 (783);
7. Saradiel Appu died intestate and his entitlement to the said land devolved among his children namely Podihamy, Punchi Nona, Thimanis (i.e. the 10th Defendant) and Hami Nona;
8. The said Podihamy together with her husband, Jakolis, transferred her undivided share to the said land to Rapiel by Deed No. 3571 dated 01.05.1944;
9. The said Punchi Nona transferred her entitlement to the said land to Rapiel by Deed No. 858 dated 23.09.1948 (පැ.3);
10. Rapiel transferred the entitlement he got by the said Deeds No. 3571 and No. 858 to Appu Singho by Deed No. 1184 dated 02.04.1949 (පැ.4);
11. Appu Singho transferred an undivided 5/6 share of 1/2 an acre to Balasuriya Lekamlage Gabosingho by Deed No. 8554 dated 12.11.1960 (පැ.5) and he conveyed it to Hapuwalana Arachchige Karlinahamy by Deed No. 11684 dated 26.10.1964 (පැ.6);
12. By Deed No. 2195 dated 28.04.1985 (පැ.7), Karlinahamy transferred her entitlement to the said land to Balasuriya Lekamlage Milinona (i.e. the Plaintiff);
13. Aforementioned Hami Nona died intestate and her entitled devolved to her husband (i.e. the 2nd Defendant) and her children (i.e. the 1st and 3rd – 7th Defendants);
14. Appu Singho died intestate and his entitlement devolved to his wife (i.e. Hapuwalana Arachchige Karlinahamy) and his children (i.e. the 8th and 9th Defendants, the Plaintiff and Balasuriya Lekamlage Martin);
15. The said Martin, by Deed No. 20 dated 21.05.1975, transferred an undivided 1/2 share of his entitlement to Balasuriya Lekamlage Irangani Chandra Balasuriya and Wimaladasa subject to his life interest;
16. Thereafter, Irangani Chandra Balasuriy, Wimaladasa and Martin transferred their entitlement to the 1st Defendant by Deed No. 1603 dated 09.12.1987 (184);

17. The said Martin transferred the remainder of his entitlement to Seelin Nona by Deed No. 2333 dated 24.02.1986 (181) and she conveyed it to the 1st Defendant by Deed No. 1622 dated 12.01.1988 (182).

Accordingly, the Plaintiff prayed that the said land to be partitioned among the parties to the action in the following manner –

Plaintiff	Undivided 6790/15360
1 st Defendant	Undivided 2895/15360
2 nd Defendant	Undivided 556/15360
3 rd – 7 th Defendants	Undivided 464/15360
8 th Defendant	Undivided 488/15360
9 th Defendant	Undivided 488/15360
10 th Defendant	Undivided 1112/15360
Unallotted Shares	Undivided 2567/15360

The 1st – 5th and 7th Defendants-Appellants (Appellants), by their Statement of Claim dated 09.06.1993, disputed the pedigree produced by the Plaintiff and submitted an alternative devolution.

The 11th – 14th Defendants-Appellants (Appellants) intervened and filed Statements of Claim. The 11th Appellant, by her Statement of Claim dated 28.09.1992, disputed the corpus to be partitioned and produced an alternative devolution. She further claimed absolute ownership to the allotment of land marked Lot B in the aforementioned preliminary plan No. 524. The 12th and 13th Appellants, by their Statement of Claim dated 31.08.1992, partially accepted the pedigree of the Plaintiff but claimed an undivided 1/8 share of the land to be partitioned as heirs of Elisahamy. The 14th Appellant, by her Statement of Claim dated 02.04.1996, disputed the corpus to be partitioned and claimed absolute ownership to the allotment of land marked Lot C in the said preliminary plan No. 524.

After a lengthy trial, the learned District Judge entered a judgment in favour of the Plaintiff and decided that the said land should be partitioned in the manner laid down in the plaint. An undivided 2567/15360 share of the land to be partitioned was given to the 12th and 13th Appellants. Aggrieved by the said judgment the 1st – 7th, 11th and 14th Appellants 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 is 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 the plaint, the original owner of the land to be partitioned was Juwanis Wedarala. It is claimed that, by Deed No. 2613 dated 11.03.1905, he conveyed an undivided 1/2 share of his entitlement to Saradiel Appu, Appu Singho, Punchi Appu and Elisahamy. The said Deed No. 2613 was not marked in evidence. A document issued by the Registrar of Gampaha Land Registry marked as 'ඵ.1' shows that the duplicate kept at the Gampaha Land Registry is decayed making it impossible to produce a certified copy of the said Deed No. 2613.

However, if Juwanis Wedarala conveyed an undivided 1/2 share of Bulugahawatta by the said Deed No. 2613, then Saradiel Appu, Appu Singho, Punchi Appu and Elisahamy got an undivided 1/8 share each.

It is further stated in the plaint that after the demise of Juwanis Wedarala, the remainder of his entitlement (the remaining undivided 1/2 share) to the land to be partitioned devolved among his children namely Saradiel Appu, Appu Singho, Punchi Appu, Elisahamy and Rapiel (i.e. an undivided 1/10 share each).

Accordingly, the entitlement of the children of Juwanis Wedarala to the land to be partitioned should be as follows –

Saradiel Appu	Undivided 9/40
Appu Singho	Undivided 9/40
Punchi Appu	Undivided 9/40
Elisahamy	Undivided 9/40
Rapiel	Undivided 1/10

However, according to 'ඵ.2', Rapiel has transferred an undivided 1/8 share of Bulugahawatta to Saradiel Appu, Appu Singho and Punchi Appu. As I observed earlier, Rapiel only became entitled to an undivided 1/10 share of Bulugahawatta as paternal inheritance. Therefore, it is possible that he either purchased an undivided 1/40 share from one of the siblings (which would make him entitled to an undivided 1/8 share of Bulugahawatta) or a sibling who got entitled to an undivided 1/8 by virtue of Deed No. 2613 dated 11.03.1905 transferred that entitlement to Rapiel (which would make him entitled to an undivided 9/40 share of Bulugahawatta).

The recital of 'පැ.2' states as follows –

“... දොන් රජියෙල් බාලසූරිය අප්පුහාමි වන මට පේ. ඩබ්ලිව්. පී. සමරසේකර ප්‍රසිද්ධ නොනාරිස් මහත්මයා සහතික කළ වර්ෂ 1912 ක් වූ මාර්තු මස 7 වැනි දින හා අංක. 12531 දරණ සින්නක්කරය පිට (එක් උග්ගල්බොඩ පදිංචි ජාගොඩ කංකානමලාගේ සින්නොහාමිගේ ජීවිත භුක්තියට යටත් ව) අයිති වූ මෙහි පහත දක්වනු ලබන ගොඩමට ඉඩම් කොටස්...” [emphasis added].

It is clear, by the recital of 'පැ.2', that what Rapiel transferred to Saradiel Appu, Appu Singho and Punchi Appu is not what he got as paternal inheritance but what he became entitled to by virtue of Deed No. 12531 dated 07.03.1912. The said Deed No. 12531 was not marked in evidence nor was an explanation given to justify such failure. It is possible that “someone” transferred an undivided 1/8 of Bulugahawatta to Rapiel. It could be any one of four siblings of Rapiel (i.e. Saradiel Appu, Appu Singho, Punchi Appu and Elisahamy), if it is assumed that the pedigree laid down in the Complaint is correct.

It was held in the case of *Mohamedaly Adamjee and Others v. Hadad Sadeen and Others* (58 N.L.R. 217 at 225) as follows –

“The Trial Judge should insist upon the production of the relevant extracts from the registers kept under the Land Registration Ordinance. They may reveal registered instruments suggesting the possible existence of title in persons other than the parties before the Court. The names of all such persons should be ascertained by due investigation and they should be given notice of the proceedings. Whether they appear in the Court or not, the effect of such instruments upon the title set up by the parties before the Court should be examined.”

On the face of 'පැ.2', it is stated that the same is registered in folio C 143/88 and 89 at Negombo Land Registry. If the said folio was produced before the learned District Judge, it would have been easy to discover the identity of the grantor of the said Deed No. 12531. Not only was the said folio was not produced before the Court but also the Plaintiff has failed to lead any evidence regarding the said Deed No. 12531 during the trial. Thus, the identity of the grantor of the said Deed No. 12531 remains unknown.

By virtue of 'පැ.2', Saradiel Appu, Appu Singho and Punchi Appu became entitled to an undivided 1/24 share of Bulugahawatta each. However, the uncertainty of the identity of the grantor of the said Deed No. 12531 renders it impossible to calculate the total shares owned by each of the five siblings subsequent to the execution of 'පැ.2'.

In the case of *Maddumaralalage Dona Mary Nona v. Maddumaralalage Don Justin and Others* (2016 B.L.R. 130) Eva Wanasundera, P. C., J. held as follows –

*“In a partition action, the Judge has to decide what share of the land should be allotted to which party. It is different from answering issues in a money recovery case, a divorce case, a rent and ejectment case, a land dispute case, a debt recovery case, a case based on contract or a case based on delict etc. In those cases, the answers could be in the affirmative or in the negative, may be with some comment or a remark which would show the inclination to the final decision. But in a partition action, each party claims different portions of one big land and the Judge is expected to sort out what share of the land should be granted to which plaintiff and/or defendant. For this reason, I find that **the onus of the Judge in a partition case is somewhat more difficult than in any other kind of case, since the Judge has to specifically calculate the share of entitlement.**” [emphasis added].*

Even though the identity of the grantor of the said Deed No. 12531 remains unknown, if an inference can be gathered as to the proper entitlement of the parties to the land to be partitioned by the other deeds/documents marked by them, I am of the opinion that the partitioning of the land can proceed.

To establish her title to the land to be partitioned, the Plaintiff has marked the Deed No. 858 dated 23.09.1948 as ‘පැ.3’. The recital of ‘පැ.3’ states as follows –

“... ඉහත කී විකුණුම්කාර මට (1) බලසූරිය ලේකමලාගේ සරදියෙල් අප්පුහාමිගෙන් පිය උරුම ව ද (2) සුළු පියාණන් වූ බලසූරිය ලේකමලාගේ පුංචි අප්පුහාමිගෙන් උරුම ව ද අයිති ව තිරවුල් ව හුක්කි විදගෙන එන මෙහි පහත උපලේඛනයේ විස්තර කරන දේපළ ...”

The Schedule of ‘පැ.3’ describes two defined portions of Bulugahawatta with certain boundaries. The only inference that can be gathered by the contents of ‘පැ.3’ is that the five siblings (i.e. Saradiel Appu, Appu Singho, Punchi Appu, Elisahamy and Rapiel), at some point subsequent to the execution of ‘පැ.2’, have come to an amicable settlement to possess defined portions of the land to be partitioned. However, there is neither documentary nor oral evidence to substantiate the said premise.

Deeds marked ‘පැ.4’, ‘පැ.5’, ‘පැ.6’ and ‘පැ.7’ by the Plaintiff and the Deeds marked ‘1ව1’ and ‘7ව1’ by the Defendants refer to the said defined portions of Bulugahawatta. Even though the Deeds marked ‘1ව1’, ‘1ව2’, ‘7ව2’ and ‘7ව3’ refer to the land to be partitioned what is conveyed by the said Deeds are the undivided entitlements (සියලු ම නොබෙදූ අයිතිවාසිකම්) of the grantors of the said Deeds and not their specific entitlements. It must also be noted that the deeds marked during the trial refer to several other deeds that were not produced before the Court.

In view of the above, I hold that the Plaintiff has failed to properly establish her entitlement to the land to be partitioned and that the chain of title laid down in the plaint of the Plaintiff is broken. Thus, I hold that the learned District Judge has erred in entering a judgment in favour of the Plaintiff without calculating the correct share of entitlement of each party.

On an appeal in a partition action, if it appears to the Court of Appeal that the investigation of title has been defective, it should set aside the decree and make an order for proper investigation [*Mohamedaly Adamjee and Others v. Hadad Sadeen and Others* (supra)].

For all the foregoing reasons, I set aside the judgment of learned District Judge of Gampaha dated 14.11.2000. I make further order that trial de novo to be held before the District Court expeditiously and the learned District Judge to take every reasonable step to conclude the trial early.

Appeals are allowed to the extent set out above. The Appellants will be entitled to the costs of this appeal.

Judge of the Court of Appeal