

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

**S.C. Appeal 139/2011**

**SC/HC/CALA/201/2011**

**WP/HCCA No. KAL/14/2003 [F]**

**D.C. Matugama No. 1015/L**

In the matter of an Application for Leave  
to Appeal against the Judgment of Civil  
Appellate High Court of Western  
Province Holden at Kalutara.

Don Gunawardana Weththasinghe,  
Egaloya, Bulathsinhala.

**PLAINTIFF-APPELLANT-PETITIONER**

Vs.

- 1A. D. Ariyawathi Mudalige, Egaloya,  
Bulathsinhala.
2. M.D. Munidasa, Raigam Waththa, Haburugala.
3. A.A. Somapala, Kobawaka, Gowinna.
4. J.V. Ranawaka. Egaloya, Bulathsinhala.
- 5A. Soma Mahanthanthila Manjula, Kobawaka,  
Gowinna.
6. Samanpura Nimalsena, Meegahakumbura,  
Bulathsinhala.

**DEFENDANTS-RESPONDENTS-RESPONDENTS**

**BEFORE** : **TILAKAWARDANE.J**  
**DEP.P.C. J &**  
**MARASINGHE J**

**COUNSEL** : Mahinda Ralapanawa with Ms. Nadeesha Maduwanthi for  
the Plaintiff-Appellant-Appellant.

**S.C. Appeal 139/2011**

Uditha Egalahewa, P.C., with Ranga Dayananda instructed  
by Ms. Lilanthi de Silva for the 1A and 3<sup>rd</sup> Defendants-  
Respondents-Respondents

**ARGUED ON** : 13.06.2013

**DECIDED ON** : 18.11.2013

**TILAKAWARDANE.J**

The Appellant has sought Leave to Appeal from the decision of Judgment of the Civil Appellate High Court of Kalutara dated 03.05.2011 whereby the Civil Appellate High Court dismissed the Appeal of the Appellant.

This Court granted Special Leave to Appeal on 28.09.2011 on the following two questions of law as indicated in paragraph 23 of the Petition dated 13.06.2011: -

- (1) Is the judgment of the District Court of Matugama Case bearing No. 1015/P supported by the evidence placed before the said Court?
- (2) If the said judgment is supported by the evidence placed before Court, should the judgment of the District Court be affirmed?

The two questions set out above would encapsulate the essence and substance of the case and in order to give a correct decision on the matter, it may involve re-agitating a point already decided.

The Plaintiff-Appellant-Appellant [hereinafter referred to as the Appellant] has instituted an action in the District Court of Matugama seeking to partition Lot No. 4 of a land known as Egallawedeniya which is marked A and depicted in the Partition Plan No. 119 prepared by H.D. Perera, Licensed Surveyor which was in extent 3 Roods and 10.31 Perches.

## **S.C. Appeal 139/2011**

This Court accepts the plan prepared subsequent to the decree of partition held by the Learned Judge of the District Court of Kalutara bearing No.28363. There appears to be no dispute with regards to the allotted partition of the corpus, whereby  $2/3^{\text{rd}}$  of the land was allotted to Dona Louisa Edirimanna Hamine and the remaining  $1/3^{\text{rd}}$  to Kalutara Muhandiramge Misilin Rodrigo, which was claimed by the 4<sup>th</sup> Defendant – Respondent, and she was granted  $1/3^{\text{rd}}$  share of the corpus which is not challenged.

Both parties have contended that the Honorable Judges of the Civil Appellate High Court Holden in Kalutara, in their Judgment dated 03.05. 2011 wrongly dismissed the Appeal of the Appellant who challenged the allotment of 15 perches of the corpus to the 3<sup>rd</sup> Defendant-Respondent (herein after referred to as the 3<sup>rd</sup> Respondent). In the Judgment, the High Court Judges had allotted  $1/3^{\text{rd}}$  undivided share to the Appellant,  $1/3^{\text{rd}}$  undivided share to the 1A Respondent including the transfer of the land according to his soil rights, 15 Perches from the northern side with road frontage to the 3<sup>rd</sup> Respondent and  $1/3^{\text{rd}}$  undivided share to the 4<sup>th</sup> Defendant- Respondent (herein after referred to as the 4<sup>th</sup> Respondent) and had, therefore, erred in fact and made a perverse finding as the total of the shares exceeded the extent of the corpus by 15 perches.

The Appellant's Counsel correctly asserted that the allotments of shares are inaccurate. Accordingly, the Judgment of the Civil Appellate High Court dated 03.05. 2011 has to be set aside and having considered these facts this Court sets aside the said judgment.

The partition action was filed by the Plaintiff-Appellant and there was no dispute with regard to the identity of the corpus.

It has further been accepted by the parties that the predecessor in title of the Plaintiff, Don Ilian Somapala Ranawaka, by Deed No 169 dated 03.06.1979 attested by W. Wimalasena, was only entitled to  $1/3^{\text{rd}}$  share of the undivided portion of the corpus and by virtue of Deed bearing No. 67 dated 16.05.1953 attested by Cholmondeley de Fonseka Gunawardana, Notary Public from Dona Louisa Edirimanna Hamine, she transferred the other half of her  $2/3$  share of land by virtue of Deed bearing

## **S.C. Appeal 139/2011**

No. 66 dated 18.05.1953 prepared by the same Notary Public to the deceased to the 1<sup>st</sup> Defendant-Respondent-Respondent, was Don Moses Herman Ranawaka Appuhamy. After his demise, D. Ariyawathi Mudalige, the 1A Defendant-Respondent-Respondent [hereinafter referred to as 1A Respondent] was substituted in the place of the 1<sup>st</sup> Defendant-Respondent-Respondent.

Parties also concede unequivocally that the corpus that relates to this partition action was described in the Schedule to the Plaint as set out in the action instituted by the Plaintiff dated 09.07.1982. Parties have also agreed that the corpus is depicted in the Preliminary Plan No. 1045 dated 22.10.1982 marked as X, prepared by Athulathmudali, Licensed Surveyor in the District Court of Matugama bearing Case No. P/1015. This Plan was admittedly prepared by reference to a partition of Lot A of Egallawedeniya being Lot 4 in Plan No. 119 dated 18.07.1953 prepared by H.D. Perera, Licensed Surveyor that had been obtained from the records in D.C. Kalutara Case No. 28363. The vendor in this case was Don Ilian Somapala Ranawaka who was admittedly entitled to 1/3<sup>rd</sup> share of the undivided corpus in this case. They also admitted that the buildings in Lot 1 of the said Plan marked 1, 2, 3, 4 and 5 were allotted to the 1<sup>st</sup> Defendant and the buildings 6 and 7 were allotted to the Plaintiff-Appellant. Neither the 1<sup>st</sup> Defendant's allocation of 1/3<sup>rd</sup> share nor the 4<sup>th</sup> Defendant's allocation of 1/3<sup>rd</sup> share of the corpus was disputed.

Parties have accepted that the only question to be determined in this case pertains to the allocation that has been made to the Plaintiff-Appellant. Indeed, the main facts in this case are not disputed. It is agreed that the undivided portion of the said corpus was transferred first by the Agreement to Sell bearing No. 674 marked as P7 prepared by W.S.D. Fonseka and in a formal transfer, the vendor admittedly executed a Deed of Sale bearing Deed No. 169 marked as P8 attested by W.S.D. Fonseka on 08.03.1979. The gravamen of the arguments in this case pertains to the question of what rights and what share the vendor, Don Ilian Somapala Ranawaka possessed to transfer by the Agreement to Sell: P7 and the Deed of Sale: P8, to Don Goonewardane Wettasinghe, the vendee, the Plaintiff-Appellant.

In this context, a thorough examination of the words contained in P7 and P8 is necessary. It is to be

## **S.C. Appeal 139/2011**

noted that at this time the corpus, which is the subject matter of this case, was undivided and a partition was sought by the case brought before the District Court of Matugama bearing No. 518/P. The Appellant's contention was that in terms of the words contained in P8 on 03.06.1979, by P8 he was allotted, he said “මට අයිතිවෙන සියලුම අයිතිවාසිකම්” where the vendor refers to the transferred share as being part of the land depicted and partitioned as Lot 4 set out in Plan No. 119 dated 18.07.1953. In his submissions he provides us with reasons for his entitlement, and challenged the 3<sup>rd</sup> Respondent. The translation of the document 3VI of page 337 is as follows:

*In the Western Province, the District of Kalutara, in Pasdun Korale, in Gangaboda Pattu the 4th lot of the land of Egallawe Deniya; situated in Bulathsinhala; is surrounded by the main road and Land No 3 from the North, the Lot B of the land of Egallawe Deniya from the East, the land of Agallawe Deniya owned by A. P. Fernando from the South, the Lot 2 and 3 of this land from the West, and encompasses 3.0 Roods and 10.31 Perches.*

*This land as per the Promise to Sale No. 674 as certified by Notary Public of Bulathsinhala, Ms. Malani Fonseka, as per the Sale of Title No. 169 as certified by Notary Public of Bulathsinhala, W. Wimalasena, includes a building built by me on the right hand side and excluding such building and my share from the right hand side, there is a balance share of undivided 15 Perches land and its trees and fruits facing the main road of 18 feet in the North.*

This claim preferred by the 3<sup>rd</sup> Respondent, which was challenged by the Appellant, was through a Deed of Conveyance bearing No.304 prepared by W. Wimalasena dated 22.7.1988 produced as 3V1. It is the Appellant's argument that as the entirety of the share that the vendor 'Don Illian Somapala Ranawaka' would have been entitled to by the Partition Case bearing No. 518/P, which was pending at the time, was transferred by P8 to Don Gunawardana Weththasinghe who was the predecessor in title of the Appellant. The 3<sup>rd</sup> Respondent could not have been given any share in this land nor was there any share left to be transferred through the Deed bearing No. 304 marked 3V1, on which the 3<sup>rd</sup>

Respondent relied.

It is also to be noted that the Partition Action bearing No. 518/P was withdrawn and no decree was entered subsequently and it was settled. On the admission of all parties to this case, the same vendor Don Ilian Somapala Ranawaka who purported to transfer all his rights in P8 was only entitled to 1/3<sup>rd</sup> of the corpus; he had no claim to any rights to the land which exceeded his share and therefore, he could not have transferred the 15 perches to the 3<sup>rd</sup> Respondent.

This court is of the opinion that deeds P8 and 3V1 require appropriate interpretation. It is clear to this Court that the intent of the vendor was to transfer a land which was a part of a larger land of 3 Roods and 10.31 Perches and P8, the Deed on which the Appellant claimed and 3V1 on which the 3<sup>rd</sup> Respondent claimed was the same land, as it referred to the same allotment of Lot 4 and the same boundaries which was the entirety of the land allotted to Don Ilian Somapala Ranawaka. Yet this was not challenged during the submissions. All rights, title and interest he acquired through the partition case, were transferred to Don Gunawardana Weththasinghe the Appellant while the partition case was pending, by documents P7 and P8 referred to above. So Don Ilian Somapala Ranawaka had no rights left to transfer at the time he wrote 3V1 to the 3<sup>rd</sup> Respondent.

Hence, it must be noted that the partition decree had not been entered into at the time of transfer by P8. Therefore, it was incumbent upon the 3<sup>rd</sup> Defendant-Respondent to prove that the vendor Don Ilian Somapala Ranawaka retained, reserved or kept back a portion of the land within that corpus when he divested himself of the land referred to in P8.

This Court is of the view that the clauses relevant to the transfer explicitly states in Deed P8 dated 03.06.1979 that the vendor is transferring the shares that devolved on him in the partition case and he had not reserved any right, title and interest of that allotment to himself. Therefore, having freed himself of all rights devolved on him of this 1/3<sup>rd</sup> share that he was admittedly entitled to, he could not have thereafter transferred 15 Perches by 3V1 through the Deed bearing No. 169 to the 3<sup>rd</sup>

Defendant-Respondent.

The 3<sup>rd</sup> Respondent did not and could not prove that there was any portion that was remaining after the vendor Don Ilian Somapala Ranawaka transferred his share in terms of P8, as no reservation of any right, title and interest was made in terms of P8.

Therefore, this Court holds that no rights would be transferred by the Conveyance bearing No. 304 and marked as 3V1 and that the 3<sup>rd</sup> Respondent has no rights whatsoever in the said corpus.

The Appellant further claimed that the share that was allotted to him should be, in terms of Deed: P8, the land that is situated to the right hand side of Lot 4. It must be noted that at the time P7 and P8 were written there were buildings along the southern boundary. Therefore the intent of the transferor could not have been to transfer houses belonging to other persons and clearly what was intended was the land appurtenant the right side of Lot 4 in Plan No. 119 adverted to above, and is entitled to the buildings marked 6 and 7 of the said plan, which would include 1/3<sup>rd</sup> of the corpus.

For aforesaid reasons this Appeal is allowed. Therefore, the Judgment of the Civil Appellate High Court dated 03.05.2011 is set aside. The Judgment of the Additional District Judge, Mathugama dated 31.01.2003 is affirmed subject to variations set out above. No costs.

**JUDGE OF THE SUPREME COURT**

**DEP. P.C. J**

I agree.

**JUDGE OF THE SUPREME COURT**