

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

In the matter of an appeal in terms of
Section 5(2) of the High Court of the
Provinces (Special Provisions) Act No 10
of 1996 read with Article 118 of the
Constitution.

SC / Appeal / 124/11

SC/ HC/LA/ 209/2010

DC/Ratnapura/11409/P

1. Wathukarage Sirisena
 2. Wathukarage Ariyasena (Deceased)
- 2A.A. Nanda Jayawardena,
Both of Maddakanda,
Balangoda.

Plaintiffs

Vs.

1. Wathukarage alias Rantheiyalage
Karolis Fernando,
1A.W. Jayasooriya,
Wathukarakanda, Maddekanda,
Balangoda.
2. Wathukarage Robet,
C/o W. Seelawathie,
Wathukarakanda, Maddekanda,
Balangoda.

3. M. M. A. Haramanis

3A.Muhubada Manik Arachchige
Padmalatha

4. Wathukarage Seelawathie,

5. Wathukarage Jayasinghe,

6. Wathukarage Wimalasena,

7. P.A. Karunaratne,

All of Wathukarakanda,

Maddekanda, Baolangoda.

Defendants

AND

W. Jayasooriya,

Wathukarakanda, Maddekanda,

Balangoda.

Substituted 1A Defendant Appellant

Vs.

1. Wathukarage Sirisena

2. Wathukarage Ariyasena (Deceased)

2A.A. Nanda Jayawardena,

Both of Maddakanda,

Balangoda.

Plaintiffs Respondents

2. Wathukarage Robet,

C/o W. Seelawathie,

Wathukarakanda, Maddekanda,

Balangoda.

3. M. M. A. Haramanis

3A.Muhubada Manik Arachchige
Padmalatha

4. Wathukarage Seelawathie,

5. Wathukarage Jayasinghe,

6. Wathukarage Wimalasena,

7. P.A. Karunaratne,

All of Wathukarakanda,

Maddekanda, Baolangoda.

Defendant Respondents

AND NOW BETWEEN

W. Jayasooriya,

Wathukarakanda, Maddekanda,

Balangoda.

**Substituted 1A Defendant Appellant
Petitioner**

Vs.

1. Wathukarage Sirisena

2. Wathukarage Ariyasena (Deceased)

2A.A. Nanda Jayawardena,

Both of Maddakanda,

Balangoda.

Plaintiffs Respondents-Respondents

2. Wathukarage Robet,

C/o W. Seelawathie,

Wathukarakanda, Maddekanda,

Balangoda.

3. M. M. A. Haramanis

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4. Wathukarage Seelawathie,

5. Wathukarage Jayasinghe,

6. Wathukarage Wimalasena,

7. P.A. Karunaratne,

All of Wathukarakanda,

Maddekanda, Baolangoda.

Defendant Respondents-Respondents

BEFORE : CHANDRA EKANAYAKE, J.
SISIRA J DE ABREW, J.
UPALY ABEYRATHNE, J.

COUNSEL : Rohan Sahabandu PC with Hasitha
Amarasinghe for the substituted 1A
Defendant Appellant Petitioner
Harsha Soza PC with Anuruddha
Dharmaratne for the Plaintiff Respondent
Respondent

ARGUED ON : 17.03.2015

WRITTEN SUBMISSION ON: 10.04.2015 (Appellant)
13.12.2011 (Respondent)

DECIDED ON : 19.02.2016

UPALY ABEYRATHNE, J.

This is an appeal from the judgment of the learned Judges of the High Court of Civil Appeal of the Sabaragamuwa Province holden at Ratnapura dated 01.06.2010. By the said judgment the High Court of Civil Appeal has refused an appeal preferred by the substituted 1A Defendant Appellant-Appellant (hereinafter referred to as the Appellant) from the judgment of the learned Additional District Judge of Ratnapura dated 01.04.2004. The learned Additional District Judge, by the said judgement, has dismissed the Appellant's claim and allowed the partition of the corpus as prayed for in the paint.

This court granted leave to appeal from the said judgment of the High Court of Civil Appeal on the following grounds of law set out in paragraph 21 (a), (b), and (c) of the petition of appeal dated 07.07.2010.

- (a). Is the land referred to in the schedule to the plaint different from the land shown in the preliminary plan No. 3303?
- (b). Did the District Court and the High Court err in law and facts in not appreciating that the Plaintiff has not been able to identify the land?
- (c). In the circumstances should Lots 5A and 5B be excluded from the corpus?

The Appellant contended that Lot 313 and Lot 314 in Final Village Plan (FVP) bearing No. 461 dated 27.05.1939 should be excluded from the corpus

of the action since said lots had been settled on Raththarana, the original owner, in 1934 after the execution of the title deed bearing No. 108 dated 18.09.1923 (P3). The Appellant's contention was that since the Plaintiffs Respondents-Respondents (herein after referred to as the Respondents) had based their title solely on the said deed P 3 and by that time said Raththarana had no title to Lot 313 and Lot 314 in Final Village Plan No. 461 as the said crown grant was in 1939 and hence the corpus of the present action should be confined to soil rights of Raththarana which could have been transferred by said deed No 108 (P 3).

According to the plaint of the Respondents they have sought to partition a land called "Gedarewatta" bounded on the north by Mahakumbura on the east by Agala and Tewaththe Maima (The boundary of Tea Estate) on the south by Heraligaswetiya and Agala on the east by Maduge and Mahagala containing in extent 10 Kurunis of Kurakkan sowing.

The Respondents in paragraph 2 and 3 of the said plaint dated 16th of March 1993 have averred that Wathukarage Ransiya who being the original owner of the said land, by deed of gift bearing No 1905 dated 15.12.1872, had gifted to Wathukarage Kirimenika, the land called "Gedarawatta" bounded on the north by Kumbura on the east by Agala on the south by Agala and Heraligaswetiya on the west by Maduge and Mahagala containing in extent 4 Kurunis of Kurakkan sowing. In proof of that the Respondent had produced an extract of the Register of Land marked P 1.

It is important to note that Northern and Eastern boundaries and the extent of the land described in the schedule to plaint differ with the Northern and Eastern boundaries and the extent of the land described in the schedule to P 1.

Accordingly it is clearly apparent that the Respondents have sought to partition a larger land than the land described in the schedule to the P 1.

Said Wathukarage alias Rankeiyalege Kirimenika by deed of gift bearing No 796 dated 19.07.1903 had gifted the said land to Wathukarage alias Rankeiyalage Raththarana. In proof of that the Respondent has produced the said deed marked P 2. According to the schedule of the said deed of gift a land called “Gedarawatta” bounded on the north by Mahakumbura on the east by Agala and Tewaththe Baundariya (The boundary of Tea Estate) on the south Heraligaswetiya and Agala on the east by Maduge and Mahagala containing in extent 10 Kurunis of Kurakkan sowing.

It must be noted that by P 2 said Kirimenika had gifted a larger land containing in extent 10 Kurunis of Kurakkan sowing instead of her rights of 4 Kurunis of Kurakkan sowing which devolved on her by P 1. It also must be noted that Northern and Eastern boundaries in P 2 differ with the boundaries described in the schedule to the deed of gift P1.

The Respondents have further averred said Raththarane by deed of gift bearing No 108 dated 18.09.1993 (P 3) had gifted the said land to;

1. Wathukarage alias Rankeiyalage Pemanis alias Punchisingho Jayasinghe alias Pieter Jayasinghe,
2. ditto Kirisantha,
3. ditto Arnolis Fernando
4. ditto Carolis Fernando the 1st Defendant,

and accordingly each of them became entitled in the proportion of $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{4}$ and $\frac{1}{4}$ of the corpus respectively.

The $\frac{1}{4}$ share of said Pieter Jayasinghe had devolved on the 1st Plaintiff by deeds of gift bearing No 857 dated 06.03.1973 (P4) and No. 10416 dated 21.09.1984 (P 5) respectively and $\frac{1}{4}$ share of Kirisantha had devolved on the 2nd Plaintiff by deed of gift bearing No 13693 dated 28.12.1987 (P6). Since said Aranolis Fernando died intestate his $\frac{1}{4}$ share devolved on Wathukarage Robert, Wathukarage Seelawathie, Wathukarage Jayasinghe and Wathukarage Wimalasena the 2nd and 4th to 6th Defendants and Wathukarage Yasawathie in the proportion of undivided $\frac{1}{20}$, $\frac{1}{20}$, $\frac{1}{20}$, $\frac{1}{20}$ and $\frac{1}{20}$ of the corpus respectively. Said Wathukarage Yasawathie had died intestate and her $\frac{1}{20}$ share devolved on the 3rd Defendant Wathukarage Haramanis.

It is clear from the points of contest raised at the trial before the District Court that the pedigree and the devolution of title set out by the Respondents have not been set in question by the Appellant. The Appellants have admitted that Lot No 306 and 307 was belonged to said Raththarana.

The Respondents contended that the corpus of the action is comprised of Lots 1, 2, 3, 4 and 5 as depicted in Preliminary Plan bearing No 3303 dated 26.10.1995 (X) made by M.S. Diyagama, Licensed Surveyor. In the contrary the Appellant contended that Lot No 313 and 314 depicted in plan bearing No 3303 (superimposition) dated 11.02.1997 made by M.S. Diyagama Licensed Surveyor do not belong to the corpus and should be excluded from the partition. Plan No 3303 (superimposition) marked 'Y' has been prepared superimposing on preliminary plan No 3303 marked 'X' by M.S. Diyagama Licensed Surveyor. The Appellant's position was that Lot No 313 and 314 depicted in FVP No 461 was belonged to State and settled on Raththarana in 1934.

It is pertinent to note that at the trial, the Jamis Pillai Company had not set out a claim against Lot 317. Even the Surveyor M.S. Diyagama in his report of the said plan bearing No 3303 (superimposition) dated 11.02,1997 has not made any reference to the effect that Lot No. 317 was belonged to Jamis Pillai Company. Also, none of the documents produced by the Appellant marked V 1 to V 4, Y, Y 1, 1V 1A, or 1V 1A 1has established the fact that said Lot No. 317 was belonged to Jamis Pillai Company.

In connection with Lot No 313 and 314 the Appellant heavily relied upon the documents marked V 1, V 2 and V 2A. The Appellant has produced V 1 in order to prove that aforesaid Lot 314 was belonged to State and also to prove that the said Lot 314 was settled on Said Raththarana. V 1 is an extract from the “Ceylon Government Gazzette” No. 8517of September 29, 1939 which contained Settlement Order No 257 (Ratnapura) published under “Land Settlement Ordinance, 1931. Said gazette notification reveals that Lot No. 314 depicted in FVP No. 461 was settled on Wathukarage Raththarana of Wathukarakanda.

V 2 is a Crown Grant dated 19th of January 1934. Grantee of V 2 is Wathukarage Raththarana of Maddekanda. V 2A is a plan dated 19th of January 1934 made by R.W.E. Ruddock, Acting Surveyor General. Said plan V 2A has depicted an allotment of land called Gedarawattehena in maddekanda bounded on the north by Lots 309 and 312 on the east by T.P. 109316 on the south by T.Ps. 109316 and 45275 and on the west by Lots 314 and 307 containing in extent 02 Acres and 04 Perches. According to 2 VA said Gedarawattahena is Lot No 313 in FVP No 461.

On the other hand the 1st Plaintiff Respondent-Respondent in his evidence at pages 88 and 89 of the brief admitted that Lot No. 313 and 314 do not

form part of the corpus and expressed his willingness to exclude Lot 313 and 314 from the partition.

Further more the 1st Respondent in his evidence at page 70 and 71 of the brief has admitted that he has no any rights to “Gedarewaththahena” and Lots No 5A and 5B in said plan No 3303 (superimposition) form parts of ‘Gedarawaththahena’ and it has to be excluded from the partition. In the said superimposed plan Lots 5A and 5B has been identified as Gedarawaththahean and form parts of Lot 313 in FVP No 461. It is also important to note that at the trial, none of the parties to the present action has challenged the said superimposition plan No 3303.

In the circumstances it is my firm view that said evidence has clearly established the fact that Lot No 313 had been settled on Raththarana, the original owner, by a Crown Grant (V 2) in January, 1934, after said Raththarana exhausted his rights by executing the deed bearing No. 108 dated 18.09.1923 (P 3). It is apparent from the Preliminary Plan No 3303 that Lot 313 in Final Village Plan (FVP) bearing No. 461 dated 27.05.1939 has also been included in the corpus of the present action. Also V 1 has clearly established the fact that Lot 314 in FVP No 461 had been settled on Raththarana in September, 1938. Since the Appellant has based his title solely on the said deed P 3 and by that time said Raththarana had not acquired any title to Lot 313 and Lot 314 in Final Village Plan No. 461, Raththarana could not transfer lots 313 and 314 by deed P 3. Hence the corpus of the present action should be confined to the soil rights of Raththarana which could have been transferred by said deed No 108 (P 3).

In the aforesaid circumstances Lot No. 5 depicted in said Preliminary

Plan No 3303 has to be excluded from the partition. But the learned Judges of both Courts have failed to evaluate the said evidence of the case in a correct perspective.

Therefore I hold that Lot No. 5 depicted in said Preliminary Plan bearing No 3303 should be excluded from the partition and the corpus of the action should be comprised of Lots 1, 2, 3, and 4 of the said Preliminary Plan bearing No 3303 dated 26.10.1995. Learned District Judge is directed to amend the interlocutory decree accordingly. I answer the said questions of law set out in paragraph 21(a) and (b) in the negative and 21(c) in the affirmative. Subject to the above variations the appeal of the Appellant is dismissed without cost.

Appeal dismissed subject to variations.

Judge of the Supreme Court

CHANDRA EKANAYAKE, J.

I agree.

Judge of the Supreme Court

SISIRA J DE ABREW, J.

I agree.

Judge of the Supreme Court