

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

Jalathge Rathnawathy
of Alugolla, Hewadeewala.
Plaintiff

SC APPEAL NO: SC/APPEAL/202/2016

SC LA NO: SC/HCCA/LA/345/15

HCCA NO: SP/HCCA/KAG/976/2012(F)

DC KEGALLE NO: 27164/P

Vs.

1. Jayathge Leelawathy
 2. Jayathge Somawathy
 3. Jayathge Dharmasena
- All of Alugolla, Hewadeewala.
Defendants

AND

Jalathge Rathnawathy
of Alugolla, Hewadeewala.
Plaintiff-Appellant

Vs.

1. Jayathge Leelawathy
2. Jayathge Somawathy

3. Jayathge Dharmasena
All of Alugolla, Hewadeewala.
Defendant-Respondents

NOW BETWEEN

2. Jayathge Somawathy
3. Jayathge Dharmasena
Both of Alugolla, Hewadeewala
2nd and 3rd Defendant-Respondent-
Appellants

Vs.

1. Jalathge Rathnawathy
of Alugolla, Hewadeewala.
Plaintiff-Appellant-Respondent
2. Jayathge Leelawathy
of Alugolla, Hewadeewala.
1st Defendant-Respondent-
Respondent

Before: Hon. Justice Vijith K. Malalgoda, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: 2nd and 3rd Defendant-Respondent-Appellants are absent
and unrepresented.
Sanjaya Kodituwakku for the Plaintiff-Appellant-
Respondent.

Written Submissions:

By the 2nd and 3rd Defendant-Respondent-Appellants on
01.12.2016

By the 1st Defendant-Respondent-Respondents on
06.09.2018

By the Plaintiff-Appellant-Respondent on 06.09.2018

Argued on: 16.06.2023

Decided on: 01.02.2024

Samayawardhena, J.

The plaintiff filed this action in the District Court of Kegalle to partition the land now depicted in the preliminary plan among the plaintiff (7/10 share) and the 1st defendant (3/10 share). According to the plaintiff's pedigree, the 2nd and 3rd defendants have no rights in the corpus. The 2nd defendant is a sister of the plaintiff and the 1st defendant. The 3rd defendant is the husband of the 2nd defendant. The 2nd defendant claimed 1/3 share by inheritance, and the 3rd defendant claimed 2/15 share by deed No. 5395 dated 31.10.1998 marked 2D3.

After trial, the District Court dismissed the plaintiff's action on the basis that the plaintiff has not unfolded a full pedigree. On appeal, the High Court of Civil Appeal of Kegalle set aside the judgment of the District Court and directed the District Judge to enter the Interlocutory Decree in terms of the pedigree of the plaintiff.

The parties are governed by the Kandyan law. The High Court concluded that the 2nd defendant does not get rights from her father since she contracted a *diga* marriage. The High Court further concluded that the 3rd defendant does not get rights from deed No. 5395 because the

transferor of that deed, namely Premaratne, did not have remaining rights to alienate at that time.

Being dissatisfied with that judgment, the 2nd and 3rd defendants preferred this appeal with leave obtained from this Court on the following three questions of law:

- (a) Did Premaratne not transfer 1/5 share inherited from his father Jamis to the 1st defendant by deed No. 3167 dated 13.06.1997 (1D1)?
- (b) Did Premaratne transfer 1/5 share inherited from his father Jamis to the 3rd defendant by deed No. 5395 dated 31.10.1998 (2D3)?
- (c) Is the 3rd defendant entitled to 1/5 of the corpus by deed marked 2D3?

The original owner of the land was Jamis. According to the plaintiff's pedigree, upon the death of Jamis on 05.11.1970, his rights devolved 1/2 on the plaintiff and 1/2 on Premaratne. There is currently no dispute over this, and the 2nd defendant does not assert 1/3 share by inheritance.

Premaratne executed the following deeds after the death of his father, Jamis. Consequently, whatever he transferred has to be from his 1/2 share of the corpus, not from the entire corpus. He cannot transfer what he does not have.

By deed No. 5928 dated 16.06.1994 marked P5, Premaratne transferred 1/5 of his 1/2 share to the plaintiff. Accordingly, the plaintiff became entitled to $1/2 + 1/10 = 6/10$ share of the corpus.

By deed No. 3167 dated 13.06.1997 marked 1D1, Premaratne transferred 1/5 of his 1/2 share to the 1st defendant. Thereafter, by deed No. 3869 dated 06.06.1998 marked 1D2, Premaratne transferred another 1/5 of

his 1/2 share to the 1st defendant. Accordingly, the 1st defendant became entitled to 2/10 share.

By deed No. 5395 dated 31.10.1998 marked 2D3, Premaratne transferred all his remaining shares to the 3rd defendant. Accordingly, the 3rd defendant became entitled to 2/10 share of the corpus.

The share allocation calculated by the High Court is not correct. The mistake made by the learned High Court Judge was that, although he first stated that Premaratne had to transfer rights from his 1/2 share, he later calculated shares on the basis that Premaratne transferred those rights from the entire corpus.

The judgments of the District Court and the High Court are set aside and the appeal of the 3rd defendant is allowed.

The District Judge will amend the Interlocutory Decree accordingly and take follow up steps in accordance with the partition law.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court