

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

1. Weerawarnakurukulasooriya  
Boosabaduge Daisy Matilda Fernando,  
No. 8, Polkotuwa,  
Beruwala.
  2. Weerawarnakurukulasooriya  
Boosabaduge Reeni Prasida Fernando,  
No. 8, Polkotuwa,  
Beruwala.
- Plaintiffs

**SC APPEAL NO: SC/APPEAL/81/2013**

**SC LA NO: SC/SPL/LA/29/2011**

**CA NO: CA/819/96 (F)**

**DC KALUTARA NO: 6217/P**

Vs.

1. Jusecooray Mohotti Gurunnanselage  
Veronica Josephine Fernando,  
Galle Road, Polkotuwa,  
Beruwala.
  2. Mahabaduge Francis Fernando,  
Galle Road, Polkotuwa,  
Beruwala.
- 2A. Mahabaduge Katherine Fernando,  
Galle Road, Dhiyalagoda,  
Maggonna.

3. Mahabaduge Clara Fernando,  
Galle Road, Polkotuwa,  
Beruwala.

Defendants

AND BETWEEN

Mahabaduge Clara Fernando,  
Galle Road,  
Polkotuwa,  
Beruwala. (Deceased)

Pestheruwe Liyanararalage Robert  
Chrisanthus Cooray Wijewarnasooriya,  
No. 18/23,  
Walawwatte Road,  
Gangodawila,  
Nugegoda.

Substituted 3<sup>rd</sup> Defendant-Appellant

Vs.

1. Weerawarnakurukulasooriya  
Boosabaduge Reeni Prasida Fernando,  
No. 8, Polkotuwa,  
Beruwala.
2. Weerawarnakurukulasooriya  
Boosabaduge Reeni Prasida Fernando,  
No. 8, Polkotuwa,  
Beruwala.

Plaintiff-Respondents

1. Jusecooray Mohotti Gurunnanselage  
Veronica Josephine Fernando,  
Galle Road, Polkotuwa,  
Beruwala.
  2. Mahabaduge Francis Fernando,  
Galle Road, Polkotuwa,  
Beruwala. (Deceased)
  - 2A. Mahabaduge Katherine Fernando,  
Galle Road,  
Dhiyalagoda,  
Maggona.
- Defendant-Respondents

AND NOW BETWEEN

Pestheruwe Liyanararalage Robert  
Chrisanthus Cooray Wijewarnasooriya,  
No. 18/23,  
Walawwatte Road,  
Gangodawila,  
Nugegoda.  
Substituted 3<sup>rd</sup> Defendant-Appellant-  
Appellant

Vs.

1. Weerawarnakurukulasooriya  
Boosabaduge Reeni Prasida Fernando,  
No.8, Polkotuwa,  
Beruwala.

2. Weerawarnakurukulasooriya  
Boosabaduge Reeni Prasida Fernando,  
No.8, Polkotuwa,  
Beruwala.

Plaintiff-Respondents-Respondents

1. Jusecooray Mohotti Gurunnanselage  
Veronica Josephine Fernando,  
Galle Road, Polkotuwa,  
Beruwala.
2. Mahabaduge Francis Fernando,  
Galle Road, Polkotuwa,  
Beruwala.
- 2A. Mahabaduge Katherine Fernando,  
Galle Road, Dhiyalagoda,  
Maggona. (Deceased)
- 2B. Loyala Anton Sebastian,  
Ocean Lodge, Galle Road,  
Diyalagoda, Maggona.
- 2C. Mary Nishani Orilia,  
No.60, Kudawa Road,  
Kudawa, Maggona.

Defendant-Respondents-Respondents

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

Counsel: Saliya Peiris, P.C., with Anjana Ratnasiri for the 3<sup>rd</sup>  
Defendant-Appellant-Appellant.

Upul Kumarapperuma with Radha Kuruwita Bandara and Duvini Godagama for the 2B and 2C Defendant-Respondent-Respondents.

Ranjan Suwandarathne, P.C., with Anil Rajakaruna and Dulna de Alwis for the Plaintiff-Respondent-Respondent

Argued on: 29.05.2023

Written submissions:

by the Substituted 3<sup>rd</sup> Defendant-Appellant-Appellant on 24.07.2013.

by the 2B and 2C Defendant-Respondent-Respondents on 11.10.2013.

by the Plaintiff-Respondent-Respondent on 26.02.2014.

Decided on: 19.07.2023

Samayawardhena, J.

The two Plaintiffs filed this action in District Court to partition the land described in the schedule to the plaint among two of them and the 1<sup>st</sup>-3<sup>rd</sup> Defendants. The contesting 3<sup>rd</sup> Defendant who is also a co-owner claimed prescriptive title to the entire land. After trial, the District Court dismissed the 3<sup>rd</sup> Defendant's prescriptive claim and proceeded to partition the land according to the pedigree set out in the plaint. According to the plaint, the allocation of shares shall be as follows:

|                           |       |
|---------------------------|-------|
| 1 <sup>st</sup> Plaintiff | 8/24  |
| 2 <sup>nd</sup> Plaintiff | 8/24  |
| 1 <sup>st</sup> Defendant | 2/24  |
| 2 <sup>nd</sup> Defendant | 3/24  |
| 3 <sup>rd</sup> Defendant | 3/24  |
| Total                     | 24/24 |

The Court of Appeal dismissed the appeal filed by the 3<sup>rd</sup> Defendant. This Court granted leave to appeal to the 3<sup>rd</sup> Defendant against the Judgment of the Court of Appeal on several questions of law. However, at the argument, learned President's Counsel for the 3<sup>rd</sup> Defendant confined his argument to one question of law: whether the Court of Appeal erred in law when it held that there is no basis to interfere with the Judgment of the District Court in respect of the devolution of title.

According to the pedigree of the Plaintiffs, there were four original owners, namely, Marcelina, Pelis, Lusia and Andiris. The Plaintiffs state that Marcelina transferred her  $\frac{1}{4}$  share by Deed P1 to Philip, who is the father of the plaintiffs, and thereby they became entitled to that  $\frac{1}{4}$  share by inheritance.

The Plaintiffs also state that Lusia's  $\frac{1}{4}$  share devolved on her widower and three children, and they transferred that  $\frac{1}{4}$  share to Philip and Lawrence by Deed P2 and thereafter Lawrence transferred his rights also to Philip by Deed P3 making Philip entitled to the entire  $\frac{1}{4}$  share of Lusia. The Plaintiffs claim Lusia's  $\frac{1}{4}$  share also through their father, Philip.

The contention of the learned President's Counsel for the 3<sup>rd</sup> Defendant is that the Plaintiffs are not entitled to a  $\frac{1}{2}$  share of the land by Deeds P1-P3, and they are only entitled to  $\frac{7}{288}$  shares from Deed P1 and another  $\frac{7}{288}$  shares from Deeds P2 and P3.

The 1<sup>st</sup> Plaintiff who gave evidence at the trial for the Plaintiffs has been cross-examined on this point but the learned District Judge has not paid attention to it in the Judgment, probably because in the Judgment he mainly focused on the prescriptive claim of the 3<sup>rd</sup> Defendant.

However, by closer scrutiny of those Deeds, it is now clear that the Plaintiffs are only entitled to  $\frac{7}{288}$  shares from Deed P1 and another  $\frac{7}{288}$  shares from Deeds P2 and P3, and not the entire  $\frac{1}{4}$  share of

Marcelina by P1 or the entire  $\frac{1}{4}$  share of Lusia by P2 and P3. That is what is stated in those Deeds. The plaintiffs claimed title to a  $\frac{1}{2}$  share of the land solely based on those deeds, and not on any other basis.

The Court of Appeal is not correct when it held that there is no necessity to interfere with the devolution of title as accepted by the learned District Judge.

The correct shares should be as follows:

|                           |         |
|---------------------------|---------|
| 1 <sup>st</sup> Plaintiff | 7/288   |
| 2 <sup>nd</sup> Plaintiff | 7/288   |
| 1 <sup>st</sup> Defendant | 24/288  |
| 2 <sup>nd</sup> Defendant | 36/288  |
| 3 <sup>rd</sup> Defendant | 36/288  |
| Unallotted                | 178/288 |
| Total                     | 288/288 |

The question of law upon which leave to appeal was granted is answered in the affirmative. The learned District Judge will enter Interlocutory Decree according to the share allocation set out above. The other findings of the learned District Judge will stand. The appeal is allowed. No costs.

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