

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

**In the matter of an Appeal against a Judgement  
Of the Provincial High Court of Kegalle.**

T.Somaweera of Yatagama,  
Walgama, Rambukkana.

**Plaintiff**

**S. C. Appeal 180/2010  
SC (HC CALA)No. 288/09  
PHC Kegalle No. SP/HCCA/KEG/569/2008(F)  
D. C. Kegalle No. 25901/P**

**Vs**

1. G. Laisa
2. T. Jamis
3. K. P. Samarakoon

All of Yatagama, Walgama,  
Rambukkana.

**Defendants**

**AND**

T. Jamis of Yatagama, Walgama,  
Rambukkana.

**2<sup>nd</sup> Defendant Appellant**

**Vs**

1.G. Laisa and

3.K.P. Samarakoon

Both of Yatagama,Walgama,  
Rambukkana.

**Defendants Respondents**

**AND NOW BETWEEN**

T. Jamis of Yatagama,Walgama,  
Rambukkana

**2<sup>nd</sup> Defendant Appellant  
Petitioner**

**Vs**

T. Somaweera of Yatagama,  
Walgama, Rambukkana.

**Plaintiff Respondent**

1. G. Laisa and  
3.K. P. Samarakoon

Both of Yatagama, Walgama,  
Rambukkana

**1<sup>st</sup> and 3<sup>rd</sup> Defendants  
Respondents Respondents**

**BEFORE : S. EVA WANASUNDERA PCJ.  
PRIYANTHA JAYAWARDENA PCJ. &  
K. T. CHITRASIRI J.**

**COUNSEL :** Sunil Abeyratne for the 2<sup>nd</sup> Defendant Appellant Appellant  
Mahinda Nanayakkara for the Plaintiff Respondent Respondent  
D.M.G. Dissanayake with Ms. L.M.C.D. Bandara for the 3<sup>rd</sup>  
Defendant Respondent Respondent

**ARGUED ON:** 08.07.2016.

**DECIDED ON:** 09.09.2016.

**S. EVA WANASUNDERA PCJ.**

This Court has granted leave to appeal on the questions of law set out in paragraphs 17 (a), (b) and (c) of the Petition dated 8.11.2010. They are as follows:-

- (a) Whether the learned judges of the High Court of Provinces (Civil Appellate), Kegalle have failed to identify the corpus for partition properly?
- (b) Whether the said judges have failed to decide the case on a balance of probability of evidence in this case?
- (c) Whether the said judges and the District Court Judge of Kegalle have partitioned Bilinchagahamula watta including a portion of Hitinawatte, the land of the 2<sup>nd</sup> Defendant Appellant Petitioner and the 1<sup>st</sup> Defendant Appellant Petitioner?

I find that the 1<sup>st</sup> Defendant Appellant Petitioner even though referred to, in the aforementioned questions of law have not been represented before this Court. Further more the 1<sup>st</sup> Defendant Respondent Respondent is also not represented in this Court.

The questions of law in summary points to the land called Bilinchagahamulawatta having got partitioned, allegedly including a portion of Hitinawatta. The contention of the Appellant is that it was decided wrongly.

On the 29<sup>th</sup> January, 1993, the Plaintiff filed action to partition a land named Bilinchagahamula watta of an extent of 12 lahas of paddy sowing. The boundaries were, to the North Gammaddewatte Galweta, to the East Galketiye Hena and watta, to the South Pahala Arambe Agala, Galweta and Endaru weta and to the West, Bulugahalande watta. It was in the village of Walgama.

On the 10<sup>th</sup> of May, 1994, the Plaintiff made an application to the same court in the same action begging court to grant an interim injunction and an enjoining order to stop the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from felling the trees on the land sought to be partitioned in this case, alleging that they had cut down two coconut trees and some arecanut trees on the land which was the subject matter of the partition action. Court made order on the 28<sup>th</sup> of July to auction the trees which were felled by the Defendants and deposit the money into the case in court and got the parties to agree not to fell any trees until the case is concluded.

The District Court issued a commission on the surveyor, D.Ratnayake and he came up with the Plan No. 1696 where the boundaries are explained and demarcated as in the Schedule to the Plaint and had measured the land to be of an extent of A0 R3 P14. The Defendants were dissatisfied with this Court Commissioner's Plan and requested Court to direct another surveyor to survey the land again and superimpose the Plan done by surveyor D.Ratnayake.

Court directed Surveyor G.A.R.Perera to do the same and he came up with the Plan No. 1530. He had measured the land to be of an extent of A0 R3 P 2.7. He had demarcated in the plan, on paper, Lots 1,2,3,and 4 as shown by the Defendants but accepted in court while giving evidence when cross examined, that those markings were never on the ground. There were no demarcations on the ground.

The 2<sup>nd</sup> Defendant Jamis is a person who had taken on lease, the land which belonged to one Kiri who owned 3/4<sup>th</sup> portion of Bilinchagahamulawatta a long time ago. That lease had ended and because Jamis had been reluctant to hand over the land back to Kiri, there had been a court case between Kiri and Jamis. At the time that the said court case was going on, Kiri had sold the land to the Plaintiff, Somaweera. That is how Somaweera had become the owner of 3/4<sup>th</sup> portion of Bilinchagahamulawatta.

The 3<sup>rd</sup> Defendant is the son of Laisa, the 1<sup>st</sup> Defendant, and while he is occupying the 1/4<sup>th</sup> portion of the land named Bilinchagahamulawatta along with his mother, he claims for himself, more from the land named Bilinchagahamulawatta.

The 2<sup>nd</sup> Court Commissioner, surveyor G.A.R.Perera had demarcated the lines dividing specific lots on the land, on paper, on the plan, on instructions of the Defendants as they claimed to be possessing. He had done so with **no evidence** as to **any physical boundaries** on the land to any of those lots he had demarcated on the plan on paper, **but he had done so just because the Defendants wanted it demarcated in that way on the plan** which was produced to Court. He admitted this fact when he was cross examined by the lawyer of the Plaintiff at the trial.

There had been a partition case to partition a land called Hitinawatta in or around the year 1946. The partition plan in that case ,was produced in this case as P5. That plan had been marked as A/16 in D.C.Kegalle case No. 4628. It is clearly shown in that Plan, A/16, that the land called Hitinawatta was partitioned at that time and the land to the **North of Hitinawatta was Bilinchagahamulawatta**. The document marked P4 which was produced was the decree in that partition case No. 4628. P4 is evidence of the names of the parties to that action. The Plaintiff of that partition case was Kotambullalage Rankira. The ten defendants were Kotambullalage Pina, Jaya, Pincha, Balinda, Lapaya, Tikiri, Sella, Kirihonda, Sepia and Sethura. The decree is dated 07.06.1988.

**P5 proves the fact that the land which is the subject matter of this present case in hand , is not Hitinawatta but it is the land on the North of Hitinawatta , named and presented in that plan as Bilinchagahamulawatta.** Furthermore, the 2<sup>nd</sup> Defendant Appellant Appellant, K. Jamis claims his rights to **1/4<sup>th</sup> of Hitinawatta** from his predecessor in title, Kotambullalage Dingira by Deed No. 10163 dated 25.03.1991 which was registered in Volume /Folio, **B 364/134** at the Land Registry of Kegalle.The lispensens for the corpus to be partitioned in the case in hand was registered in Volume / Folio, **B 350/33** which was named Bilinchagahamulawatta. It is clear, that they are therefore two different lands with two different names and registered in two different folios in the land registry.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants claim under the Deeds relating to Hitinawatta and not Bilinchagahamulawatta. The land after two commissions were identified to be the land which all parties claim and which should be partitioned for peaceful occupation by the owners. The District Judge had identified the corpus to be partitioned to be of an extent of approximately 3 Roods and 14 Perches. After considering the boundaries mentioned in the title deeds of the Defendants and the boundaries mentioned in the title deeds of the Plaintiff separately along with the boundaries of the corpus to be partitioned according to the two surveys done by order of court, **the District judge had identified the land.**

**The District Judge explains** well as to how she came to the finding that the corpus to be partitioned is not Hitinawatta but it is Bilinchagahamulawatta in pages 6 and 7 of the judgment. She states thus:

“ It is apparent that according to documents P4 and P5 which were produced in Kegalle District Court Case No. 4628 / Partition, Hitinawatta is on the south of the corpus to be partitioned in this case. The Plaintiff does not propose to partition a land of which the Northern boundary is Hitinawatta. In Plan No. 1530 of surveyor G.A.R.Perera, there is a land called Hitinawatta on the South as well as a land called Hitinawatta on the North. The Plaintiff discloses that the land to be partitioned has, as the Northern boundary, a land called Gammaddewatta of which the boundary demarcation is a ‘Galweta’. In Plan 1530 marked Y, the Northern boundary is Hitinawatta. The Defendants have claimed that the Northern boundary of the land to be partitioned is ‘Galweta’ according to 2V1 and 3V1. The Eastern boundary is Galenda, Southern boundary is Galweta and the Western boundary is Kosgaswetiya. Plan Y shows a Galweta in Lots 1 and 2 and the Eastern boundary of Lot 3 is Galenda. Accordingly, 2V1 and 3V1 produced by the Defendants, do not show that the Western boundary and the Southern boundary are Kosgaswetiya and Mala Ela. Therefore it is abundantly clear that the Plan 1530 marked Y does not demonstrate the land described as the corpus in 2V1 and 3V1. There is no Mala Ela in Plan 1530 as any boundary but the Plan shows to the West the main Road and Bulugahalanda, to the South Hitinawatta and Pahala Aramba. Mala Ela is nowhere to be seen at all as a boundary. In the circumstances, I decide that the land to be partitioned is not what is in the Deeds 2V1 and 3V1. I take as the corpus to be partitioned to be what is in the Schedule to the Plaintiff. It is named as Bilinchagahamulawatta from around the year 1939 according to P1 and P2.”

The Defendants had not filed their statements of claim until after the second commission and the report was filed in court. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants had filed a **joint statement of claim**. It is surprising to see that **only the 2<sup>nd</sup> Defendant has appealed from the District Court to the Civil Appellate High Court and from there to the Supreme Court**. The 1<sup>st</sup> and the 3<sup>rd</sup> Defendants, being mother and son had not appealed. The 1<sup>st</sup> Defendant had received 1/4<sup>th</sup> share of the whole land according to the judgment of the District Judge. It can be concluded therefore **that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants were satisfied with 1/4<sup>th</sup> of Bilinchagahamula watta being granted to the 1<sup>st</sup> Defendant**.

**The 2<sup>nd</sup> Defendant** has got **no share** of Bilinchagahamulawatta according to the District Court judgment. He had moved for dismissal of the Plaint and/or for a granting of 1/4<sup>th</sup> share of the corpus. He is before this court as he did not get what he had prayed for.

In the case *of Jayasuriya Vs Ubeid, 61 NLR 352*, it was held that there is a duty cast on the trial judge **to satisfy himself as to the identity of the land sought to be partitioned**. In the case in hand I find that the evidence before court was good enough to identify the corpus properly and the trial judge need not have on her own called for any more evidence. The District Judge had good reasons to come to the finding that the land to be partitioned was not Hitinawatta but Bilinchagahamulawatta, specially when the decree and the plan of the earlier partition case of Hitinawatta clearly demonstrated that Hitinawatta was on the South of Bilinchagahamulawatta. The District Judge had also done an analysis as mentioned above which explains more as to why she identified the corpus to be Bilinchagahamula watta and not any part of Hitinawatta.

The parties to the case accepted that the land to be partitioned was **physically one block of land** which they agreed to be claimed by all the parties and it was the land which could not be possessed in peace as co- owners. The only contesting point was that the Plaintiff said it was Bilinchagahamulawatta but the Defendants said it was Hitinawatta. The Plaintiff's deeds were for the ownership of Bilinchagahamulawatta and the Defendants' deeds were for the ownership of Hitinawatta. The trial judge had to go through the evidence before court by way of documents and by way of oral evidence and decide on a balance of probability.

The District Judge had done it very carefully and come to the correct decision that the corpus is Bilinchagahamulawatta and not Hitinawatta.

I am of the view that the learned judges of the Civil Appellate High Court of Kegalle had agreed with the findings of the trial Judge of the District Court and correctly come to the conclusion that the corpus to be partitioned was identified properly by the learned District Judge. The Judges in both courts have taken up the evidence before them and analysed the same and decided the case on a balance of probability of the evidence. The trial judge has partitioned Bilinchagahamulawatta after concluding correctly that it does not include any portion of Hitinawatta.

I hold further that the trial judge has done the duty imposed on the judge by Sections 25 and 26 of the Partition Law No. 21 of 1977 as amended and correctly decided on the shares as well, in this case. The Appellant cannot complain on that aspect either. There is much case law in this regard pertinent to the investigation of title etc. which I do not wish to discuss as the main ground of appeal in this case is only the identity of the corpus to be partitioned.

Therefore I answer the questions of law enumerated above in favour of the Plaintiff Respondent Respondent and against the 2<sup>nd</sup> Defendant Appellant Appellant.

I affirm the judgment of the Civil Appellate High Court and the judgment of the District Court. This Appeal is dismissed. However I order no costs.

Judge of the Supreme Court

Justice Priyantha Jayawardena.

I agree.

Judge of the Supreme Court

Justice K.T.Chitrasiri

I agree.

Judge of the Supreme Court

