

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

In the matter of an Appeal to the Supreme Court under and in terms of Section 5c (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) Act No.54 of 2006.

Somadasa Alahapperuma,
8th Milepost, Jandura
Panamura.

Plaintiff

S.C. Appeal No.126/2011
S.C.(HCCA)LA No. .30/2011
SP/HCCA/RAT/407/2007
D.C. Embilipitiya, Case No. 6002/P

Vs.

1. Kankanam Gamage
Kusumawathie,
No.84, Hospital Road,
Embilipitiya.
2. Seetha Wickramasinghe,
8th Milepost, Jandura
Panamura.

Defendants

And

Somadasa Alahapperuma,
8th Milepost, Jandura
Panamura.

Plaintiff-Appellant

Vs.

1. Kankanam Gamage
Kusumawathie,
No.84, Hospital Road,
Embilipitiya.
2. Seetha Wickramasinghe,
8th Milepost, Jandura
Panamura.
Defendant-Respondents

AND NOW BETWEEN

Somadasa Alahapperuma,
8th Milepost, Jandura
Panamura.
Plaintiff-Appellant-
Appellant [Now deceased]

Alawatta Gamage Dyawathie,
Kadjugaha Koratuwa,
Rannawala,
Urugamuwa.
Substituted-Plaintiff-
Appellant - Appellant

Vs.

1. Kankanam Gamage
Kusumawathie,
No.84, Hospital Road,
Embilipitiya.
2. Seetha Wickramasinghe,
8th Milepost, Jandura
Panamura.
Defendant-Respondent-
Respondents

BEFORE : **VIJITH K. MALALGODA, P.C., J.**
E.A.G.R. AMARASEKARA J.
ACHALA WENGAPPULI, J.

COUNSEL : Ranjan Suwandarathne PC with Anil Rajakaruna
& Ineka Hendavitharana for the Substituted-
Plaintiff-Appellant- Appellant.

Chathura Galhena with Namal Madushanka for
the 2nd Defendant-Respondent-Respondent.

ARGUED ON : 03rd December, 2021

DECIDED ON : 22nd August, 2024

ACHALA WENGAPPULI, J.

This is an appeal arising out of a judgment pronounced by the District Court of *Embilipitiya* in a partition action instituted by the Substituted-Plaintiff- Appellant-Appellant (hereinafter referred to as the Plaintiff) seeking to partition *Punchigoda Watta* between him and the 1st Defendant-Respondent-Respondent (hereinafter referred to as the 1st Defendant), as pleaded in his 2nd amended plaint, a land which is in an extent of 2 Acres 1 Rood and 27.5 Perches The Plaintiff specifically averred in the said amended Plaint that the 2nd Defendant- Respondent-Respondent (hereinafter referred to as the 2nd Defendant) has no rights whatsoever over the *corpus*. The 1st Defendant, in her Statement of Claim, admitted the pedigree pleaded by the plaintiff and his share allocation. The 2nd Defendant, on her part, claimed acquisition of prescriptive title over the *corpus* against the Plaintiff as well as the 1st Defendant.

At the conclusion of the trial, the District Court dismissed the Plaintiff's action and accepted the 2nd Defendant's claim of acquisition of title by prescription. Being aggrieved by the said judgment, the Plaintiff preferred an appeal to the High Court of Civil Appeal holden in *Ratnapura*. The High Court of Civil Appeal, by its judgment dated 14.12.2010, dismissed the Plaintiff's appeal, who then sought Leave to Appeal from this Court against that judgment.

This Court, after hearing the parties on 16.09.2011, granted Leave to Appeal against the judgment of the High Court of Civil Appeal on following questions of law:

- a. Have the learned Judges of the High Court of the *Sabaragamuwa* Province Holden at *Ratnapura* [exercising Civil Appellate Jurisdiction] erred in law by arriving at the finding that the Plaintiff did not want to set out a comprehensive pedigree and holding against him on that ground?
- b. Have the learned Judges of the High Court of the *Sabaragamuwa* Province Holden at *Ratnapura* [exercising Civil Appellate Jurisdiction] erred in law by arriving at the finding that the learned trial Judge was correct in dismissing the Plaintiff's action whilst holding that he 2nd Defendant has prescribed to the land?

At the hearing of the instant appeal, on behalf of the Plaintiff, the learned President's Counsel submitted that the finding of the High Court of

Civil Appeal that the Plaintiff “... *did not want to produce certified copies of the handful of deeds which he has referred to in the Plaint including the deed which he alleges to transfer ¼ shares of the land to the [1st] defendant*” is a factually erroneous one. This contention was advanced by the learned Counsel on the premise that the Deed No. 66, on which the Plaintiff relied on to establish a part of devolution of his title, was referred to in the recital of another Deed No. 2389, which in fact was tendered as P3. Learned President’s Counsel therefore submitted that the said reference in P3 should suffice to establish that specific part of devolution of title of the Plaintiff, although Deed No. 66 was not produced at the trial. He also contended that similarly the extracts from the Land Registry (P5) which contain a reference to Deed No. 5527 should suffice in establishing his devolution of title as pleaded, although that conveyance too was not proceeded. He therefore contended that the Plaintiff has established the chain of his title to the *corpus*, which commenced from its original owner *S.K. Appuhamy Gunaratne* as he had tendered all relevant deeds in order to establish that he is entitled to his share from the *corpus*.

The parties, after marked an admission regarding the identity of the corpus, proceeded to trial on a total of 15 points of contest. The 1st and 2nd points of contest were framed to the effect whether *S.K. Appuhamy Gunaratne* was the original owner of the *corpus* and if that point is answered in the affirmative, whether his rights are devolved as per the pedigree pleaded by the Plaintiff. The 2nd Defendant suggested a total of nine points of contests. The 10th point of contest, suggested by the 2nd Defendant, was to the effect that whether she and her predecessors have acquired prescriptive title to the

corpus upon being in its exclusive and uninterrupted possession, adverse to the interests of the Plaintiff and the 1st Defendant, since 1979.

The Plaintiff, in setting out his devolution of title, averred that the original owner of the *corpus* was one *S.K Appuhamy Gunaratne*, who, by execution of Deed No. 66, transferred his title in favour of *Wickramaratne Arachchige Podi Appuhamy* on 03.05.1957, who in turn re-transferred his rights back to *S.K Appuhamy Gunaratne* by Deed No. 2389 on 09.05.1960. Upon the death of *S.K. Appuhamy Gunaratne*, title to the *corpus* was passed onto his “only daughter” *Sumanawathie Palihakkara nee Gunaratne*, who thereafter transferred her rights over same to the Plaintiff by Deed of Transfer No. 781 (P4) on 20.04.1995. The Plaintiff too transferred an undivided $\frac{1}{4}$ share of the *corpus* to *Kankanam Gamage Kusumawathie*, the 1st Defendant, by execution of Deed No. 5527 on 14.05.1997.

The present action was instituted by the Plaintiff on 21.11.1997 after about six months since the execution of Deed No. 5527, naming the 1st Defendant and the 2nd Defendant as parties. The 1st Defendant did not contest the Plaintiff’s claim and only sought allocation of her $\frac{1}{4}$ share from the *corpus*. The 2nd Defendant totally denied paragraph 3 to 10 of the amended plaint of the Plaintiff, which sets out the devolution of title and his entitlement to share allocation. She averred that the said devolution of title and the pedigree on which he relies on, is totally a false and misleading statement.

After trial, the District Court answered the 1st point of contest suggested by the Plaintiff as not proved, while the 2nd point of contest was answered in the negative, before proceeding to dismiss his Plaint. The High

Court of Civil Appeal, in its impugned judgment, affirmed the dismissal of the Plaintiff's Plea as it held that the devolution of title pleaded by the Plaintiff is false and, more importantly, the Deed of Transfer No. 781 (P4), on which he relied on to establish devolution of his title, the transferor *Sumanawathie Palihakkara* stated, in describing the mode of her acquisition of title to the *corpus* in its recital, relied on a Grant made by the Land Reform Commission and thereby totally deviating from the claim of her paternal inheritance, as pleaded in the Plea.

In view of the first question of law on which this Court granted leave, it is helpful if a brief reference is made to the evidence presented before the trial Court by the Plaintiff, through which he tried to establish the devolution of title, which he had pleaded in the Plea. It is the evidence of the Plaintiff that *Sumanawathie Palihakkara nee Gunaratne*, being the eldest daughter of *S.K Appuhamy Gunaratne*, became entitled to the *corpus* in its entirety upon her father's death. Despite the assertion in the Plea that she was the only daughter of *S.K Appuhamy Gunaratne*, the Plaintiff, in his evidence, changed her status from the "only daughter" to the "eldest daughter" of the original owner. The 2nd Defendant, during her cross examination of the Plaintiff, marked a contradiction 2V1 on this evidence, as it is inconsistent with the devolution of title pleaded by the Plaintiff.

The Deed of Transfer No. 2389 (P3) was executed in favour of *Sidurupitiye Kapurallage Appuhamy Gunaratne* by *Wickramaratne Arachchige Podi Appuhamy*. Plaintiff claimed that *Sidurupitiye Kapurallage Appuhamy Gunaratne* is the original owner of the *corpus* and all of his rights over it, by paternal inheritance, were devolved on his only daughter *Sumanawathie*. The 2nd Defendant also marked Deed No. 696 of 26.02.1958 as 2V2. In the

said Deed 2V2, *Sidurupitiye Kapurallage Appuhamy Gunaratne* had gifted an undivided $\frac{1}{2}$ share of the land called *Punchigoda* to his daughter *Sidurupitiye Kapurallage Asilin Karunawathie a.k.a, Kamala Seneviratne*.

Thus, the Deed 2V2 indicated that the said original owner had another daughter by the name of *Sidurupitiye Kapurallage Asilin Karunawathie a.k.a, Kamala Seneviratne* and a $\frac{1}{2}$ share of *Punchigoda* land had been gifted to her. Interestingly in this Deed of Gift 2V2, the donor *Sidurupitiye Kapurallage Appuhamy Gunaratne* imposed a condition that the said donee could transfer title to the land gifted by him only among her brothers, namely, *Sidurupitiye Kapurallage Charles Gunaratne, Sidurupitiye Kapurallage Midudasa Gunaratne and Sidurupitiye Kapurallage Sumathipala Gunaratne*. In the circumstances, upon the death of *Sidurupitiye Kapurallage Appuhamy Gunaratne*, it is apparent that not only *Sumanawathie Palihakkara nee Gunaratne* became entitled to the *corpus* in its entirety, but she may have had to share her entitlement to the *corpus* with all her siblings, including *Sidurupitiye Kapurallage Asilin Karunawathie a.k.a, Kamala Seneviratne*, who too may have become co-owners to the same with her. The Plaintiff, in order to succeed in his devolution of title to the *corpus*, should have established that *Sumanawathie Palihakkara nee Gunaratne* is the only legitimate child of *Sidurupitiye Kapurallage Appuhamy Gunaratne*, enabling the trial Court to hold that only she is entitled to paternal inheritance, which fact he did not establish with positive evidence. In the absence of such evidence, the trial Court is unable to determine that *Sumanawathie Palihakkara nee Gunaratne* is the sole heir to *Sidurupitiye Kapurallage Appuhamy Gunaratne* or there was co-ownership after her father's demise.

In these circumstances, the contention of the Plaintiff that the trial Court should have left a certain portion of undivided shares unallotted cannot succeed. This is because, in the absence of any such evidence, the trial Court is unable to decide the extent of the land she might have inherited since her father's death or whether she is left with any residual entitlement over the said land, after she conveyed her purported entitlement with the execution of Deed of Transfer No. 781 (P4) to the Plaintiff.

The Plaintiff, in support of his claim, tendered an extract of a Folio No. G154/17 from the Land Registry (P5). The extract P5 refers to land called *Meddakande Liyedde Pallekella*, whereas the preliminary plan described the land to be partitioned as *Punchigoda Watta* and not *Meddakande Liyedde Pallekella*. The said extract also indicates *Sidurupitiye Kapurallage Appuhamy Gunaratne* had transferred $\frac{1}{2}$ share each of the said land to his two daughters *Sidurupitiye Kapurallage Asilin Karunawathie Gunaratne* and *Sidurupitiye Kapurallage Sumanawathie Gunaratne* by execution of Deeds of Gift Nos. 696 and 697 on 26.02.1958.

Despite the fact of claiming paternal inheritance to a sole heir in the Plaintiff, the Plaintiff relied on P4, to establish his devolution of title from *Sidurupitiye Kapurallage Sumanawathie Gunaratne*. Perusal of the recital of the Deed P4, reveals that the transferor, *Sidurupitiye Kapurallage Sumanawathie Gunaratne*, said to have derived title from a Grant made by the Land Reform Commission. There is no mention of any paternal inheritance, which the Plaintiff pleaded in the devolution of his title in the said Deed P4. Even with regard to the declaration by *Sidurupitiye Kapurallage Sumanawathie Gunaratne* that she derived her title to the land by virtue of a Grant by Land Reform Commission, not a single document was tendered by the Plaintiff before the

trial Court in that regard. He conceded during cross examination by the 2nd Defendant that no copy of the Gazette notification of the Grant was tendered to Court or at least he requested one from his predecessor in title, *Sidurupitiye Kapurallage Sumanawathie Gunaratne*.

Compounding the multitude of serious discrepancies that already exists in the Plaintiff's case, he used several names in reference to the land to be partitioned without satisfying the Court that they all referred to one and the same land. The name of the land stated in the preliminary plan is different to the name of the land described in the title deed P3 relied upon by the Plaintiff. The preliminary plan and the schedule to the Plaint referred to a land called "*Punchigoda Watta*". In the Deed No. 2389 (P3), the land was referred to as "*Punchigoda*" whereas Deed No. 781 refers to a land called "*Punchigoda Watta*". The copy of the Land Registry Folio (P5) he had tendered to Court refers to a land called *Meddakande Liyedde Pallekella*.

The boundaries to the land, described in P3, had a public road to its north, a stream called *Phimbiyagaha Ara* to its east, another stream called *Hulanda Oya* to the south and the Village Council Road to the west. Importantly, the Deed No. 781 (P4), on which the Plaintiff claimed he acquired title to the *corpus*, depicts public roads to its northern and western boundaries as in P3, but instead of the two streams that formed the eastern and southern boundaries of the land described in P3, the description of P4 indicates that these two sides share common boundaries with State lands. These boundaries did not correspond to boundaries as shown in the Preliminary Plan either. Furthermore, the land described in Folio (P5), where the Plaintiff's title Deed, the 1st Defendant's Deed and *Lis Pendense* were registered, does not indicate it had *Ara* and *Oya* to any of its

boundaries. The said Folio also does not show any link to the Folio in which Deed No. 2389 (P3) is registered and the Plaintiff failed to tender any such document. Even if the Plaintiff's purported title Deed No. 781 (P4) does not refer to the vendee of Deed No. 2389, *S.K. Appuhamy Gunaratne* as the source from whom the vendor in P4 had derived her title, in fact the said Folio refers to a Grant of Land Reform Commission. Thus, P4 contradicts the chain of title as pleaded by the Plaintiff in his evidence. If the fact that such a Grant was made by the said Commission is the source of title relied on by *Sidurupitiye Kapurallage Sumanawathie Gunaratne* to confer title on the Plaintiff, he alone cannot deny the truth of that claim made by his own predecessor in title, without calling her to give evidence. She, undoubtedly is the most suitable witness who could provide best evidence on that particular fact. In addition, when the Plaintiff tendered Deeds marked as P3 and P4, the 2nd Defendant objected and were marked subject to proof. The 2nd Defendant reiterated her objection at the close of the Plaintiff's case. Thus, the Deeds marked P3 and P4 had not been proved before the trial Court.

It is noted that the Plaintiff had tendered several other Folios, along with P5, but in considering the description of the lands, it appears that these extracts were not relevant for the instant matter as they related to different lands, and they contain no cross reference to the *corpus*. However, one of them relates to a land called "*Lekam Panguwe Punchigoda*" and shows *Sidurupitiye Kapurallage Appuhamy Gunaratne* had transferred ½ share of a 314-acre land to the predecessor in title referred to in the Plaintiff's Deed (P4), namely *Sidurupitiye Kapurallage Sumanawathie Gunaratne*. This fact indicates the possibility of Land Reform Commission releasing some extent

of land back to the predecessor in title of the Plaintiff, *Sidurupitiye Kapurallage Sumanawathie Gunaratne*. Thus, there could be some truth in the claim of said *Sidurupitiye Kapurallage Sumanawathie Gunaratne* in her recitation to Deed of Transfer in favour of the Plaintiff. In the circumstances, even if it is considered that the original ownership commenced from a settlement or a Grant made by the Land Reform Commission, the Plaintiff failed to prove that the land sought to be partitioned had the said Commission as one of its previous owners, either through Folio (P5) or by means of any other reliable evidence.

Thus, the trial Court should not have considered P3 and P4. Even if one considered them to be proved, there was no evidence placed before the trial Court that the land surveyed in the preliminary plan is the land belong to the so-called original owner in the Deed No. 2389 (P3), and it is the same land the title of which had been transferred through the Deed No. 781 (P4) to the Plaintiff. Mere fact that the parties admitted the identity of the *corpus* at the commencement of the trial makes no difference to the Plaintiff's case, for it is for him to establish before Court that he had an entitlement to a share of that land derived upon the devolution of title he had pleaded before that Court. What was admitted by the parties is the identity of the land under dispute and not the Plaintiff's entitlement to any title or a share of that land.

Hence, the Plaintiff's devolution of title is not established and for that reason his action must fail.

In view of the above considerations, reference to Deed No. 66 in the Deed 2389 does not take the Plaintiff's case any further as he contended before this Court. The Plaintiff failed to offer any clarification in respect of

any of the serious discrepancies that had the potential of defeating his devolution of title presented before the District Court in the instant partition action, where the Court is imposed a statutory duty to undertake an investigation of title of each party, before arriving at a conclusion.

In view of these glaring defects in the Plaintiff's case, the dismissal of his Plaint by the District Court is amply justified and accordingly the affirmation of that conclusion by the High Court of Civil Appeal could not be faulted. Thus, the alternative contention advanced by the learned President's Counsel, that the trial Court could have retained a portion of the land unallotted if it found that certain parts of the devolution of title pleaded by the Plaintiff is not proved, without dismissing the Plaint is also rejected.

Turning to consider the 2nd Defendant's claim of acquisition of prescriptive title, the trial Court, answered the point of contest No. 15, suggested by her on acquisition of a prescriptive title, in the affirmative and held that she established her claim to the *corpus* in its entirety. The High Court of Civil Appeal, having observed that neither the Plaintiff nor the 1st Defendant ever possessed the *corpus*, and that the 2nd Defendant had been in its possession for a long time adverse to the title of its owner, affirmed the conclusion reached by the lower Court on point of contest No. 15.

The learned President's Counsel for the Plaintiff, as another alternative to his contention presented on the dismissal of the Plaint, submitted that the evidence only points to a part of the *corpus* being possessed by the 2nd Defendant and, both Courts erred in holding with her that she had established her adverse possession over the entirety of the *corpus*.

The preliminary plan No. 1277 and its report, P4(a) and P4(b), indicate that the land that lies to the east of the *corpus* belongs to the 2nd Defendant. On the *corpus* there were 40 old coconut trees, as observed by the surveyor, who also observed 3 old jack trees. Both the Plaintiff and the 2nd Defendant claimed them. The surveyor also observed a pepper plantation of about 2- 3 years old and 10 banana clusters, all of which were claimed by the 2nd Defendant, along with a hut standing on that land. The portion of the land covered by pepper plantation was depicted as Lot No. 2 of the plan, whereas the remaining portion was depicted as Lot No. 1. The 2nd Defendant claimed her rights to the plantation as well as to the old trees and to the entirety of the *corpus*. The surveyor conceded that no physical boundaries were in existence separating the two lots, as shown in the preliminary plan.

In her evidence, the 2nd Defendant claimed that her husband cleared the land, which was lying adjoining to their land in 1969 and planted coconut and jack trees. She claimed that for the past 18 years a *Dansela* was conducted during Wesak season on that land with her blessings, and she enjoyed produce of the land without any interruption from any party. During her cross examination, the 2nd Defendant said after her husband developed the land, a gentleman from *Attanagalla* called *Seneviratne*, said that it is their land but gave his blessing for them to continue with their occupation. She also admitted that she operated a hopper boutique for some time on that land. When suggested, the 2nd Defendant said *Sumanawathie Gunaratne* may have been in possession before 1969, as there was a papaya plantation, but not after.

She also conceded that *Appuhamy Gunaratne* had two daughters and they had several lands in the area but insisted that none of them ever

possessed the *corpus*, and she never asked for permission to possess the land from *Kamala Seneviratne*.

The Complaint is dated 21.09.1997 and Deed No. 781 (P4) was executed in 1995. Deed No. 2389 (P3) was executed in 1960 and there is a remarkable paucity of evidence as to the status of the *corpus* between 1969 and 1995 on behalf of the Plaintiff. Strangely, the Plaintiff, despite the 2nd Defendant's point of contest on prescription, did not even refer to the fact as to who possessed the *corpus* and in what manner. Apparently, it was the Plaintiff who disputed her possession of the *corpus* for the first time on 20.04.1995, and that too after the execution of Deed No. No. 781 (P4). The parties admitted that a complaint was made to the police by the Plaintiff over an incident of felling of trees. This is the only challenge to the 2nd Defendant's claim of adverse possession since 1969 and prompted the Plaintiff to institute the instant partition.

The explanatory clause in Section 3 of the Prescription Ordinance speaks of acknowledgement of a right existing 'another person'. There is clear and cogent evidence that she was in uninterrupted possession of the *corpus* since 1969. There was no evidence that *Sumanawathie Gunaratnes* was ever in possession of the same at any point of time since 1969. In view of the 2nd Defendant's evidence that she was aware *Appuhamy Gunaratne's* daughters had several lands in the area and none of them ever made any claim to the *corpus* by disputing her continued possession at any point of time and she was not a co-owner with *Gunaratnes*, as pleaded by the Plaintiff in his pedigree are factors that could be considered indicative of adverse possession. The 2nd Defendant did not commence her possession in 1969, in a subordinate character as an agent, lessee, or a licensee of

Plaintiff or of any of his predecessors in title. During cross examination, the 2nd Defendant admitted that a gentleman from *Attanagalla* called *Seneviratne*, and his wife had 'permitted' her occupation of the *corpus* at a subsequent point of time . This incident taken place long after her husband had cleared the land and cultivated it for years. In view of the evidence regarding *Kamala Seneviratne's* act of granting 'permission', the Plaintiff had taken up the position that the 2nd Defendant could not succeed in her claim of prescription, in her failure to establish she possessed the *corpus ut dominus* after she was allowed to be in possession by *Seneviratne*. Neither *Seneviratne* nor his wife had intervened in the instant partition action. It is clear that the 2nd Defendant's claim of prescription was made against the Plaintiff and the 1st Defendant, as she had tacked on her husband's adverse possession, in support of her position that she had continued uninterrupted possession adverse against their interests.

Clearly the evidence adduced by the 2nd Defendant points to a reasonable inference that she possessed the *corpus* in a character incompatible with the Plaintiff's title *per Tillekeratne v Bastian* (1918) 21 NLR 12 (at p.18).

In view of the said position taken up by the Plaintiff on the evidence of the 2nd Defendant regarding *Seneviratne's* permission, it is relevant to insert a quotation from Professor G.L. Peiris, *Law of Property* (Vol. 1, at p.110) where it was stated that " [A]dverse possession was held at one time to entail possession 'ut dominis', but this view has not found favour in several opinions by the Privy Council, and it may now be taken for granted that possession 'ut dominus' is not necessarily required in Sri Lanka for purposes of prescriptive possession."

In view of the considerations referred to in the preceding paragraphs, I am more inclined to hold with the submissions of the learned Counsel for the 2nd Defendant that his client had presented cogent and uncontradicted evidence on a balance of probability that she and her predecessors possessed the *corpus* uninterruptedly and adverse to the Plaintiff, the 1st Defendant for well over 30 years.

In view of the said finding, I proceed to answer both questions of law in the negative. The judgments of the District Court as well as the High Court of Civil Appeal are accordingly affirmed.

The appeal of the Plaintiff is dismissed, and the 2nd Defendant is entitled to cost of this appeal.

JUDGE OF THE SUPREME COURT

VIJITH K. MALALGODA, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA J.

I agree.

JUDGE OF THE SUPREME COURT