

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

Juwan Hettige Sriyalatha Silva,
No.19/80, New Neegrodharama
Road, Kalutara North.

Plaintiff

SC APPEAL NO: SC/APPEAL/6/2021

SC LA NO: SC/HCCA/LA/133/2020

HCCA NO: WP/HCCA/KAL/179/2013/F

DC KALUTARA NO: 7890/P

Vs.

Meemanage Duneetha
Chandrankanthi Silva,
No. 19/80, New Neegrodharama
Road, Kalutara North.

Defendant

AND BETWEEN

Juwan Hettige Sriyalatha Silva,
No.19/80, New Neegrodharama
Road, Kalutara North.

Plaintiff-Appellant

Vs.

Meemanage Duneetha
Chandrakanthi Silva,
No. 19/80, New Neegrodharama
Road, Kalutara North.
Defendant-Respondent

AND NOW BETWEEN

Meemanage Duneetha
Chandrakanthi Silva,
No. 19/80, New Neegrodharama
Road, Kalutara North.
Defendant-Respondent-Appellant

Vs.

Juwan Hettige Sriyalatha Silva,
No.19/80, New Neegrodharama
Road, Kalutara North.
Plaintiff-Appellant-Respondent

Before: L.T.B. Dehideniya, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: Shyamal A. Collure with Prabath S. Amarasinghe,
A.P. Jayaweera and Raveendra Silva for the
Defendant-Respondent-Appellant.

Dr. Thashira Gunatilake for the Plaintiff-Appellant-
Respondent.

Argued on: 17.11.2021

Written submissions:

by the Defendant-Respondent-Appellant on
04.04.2021.

by the Plaintiff-Appellant-Respondent on
26.07.2021.

Decided on: 20.01.2022

Mahinda Samayawardhena, J.

There is no corpus or pedigree dispute in this partition action. The plaintiff in the plaint itself concedes that she and the defendant are entitled to equal shares in the corpus. In the prayer to the plaint the plaintiff sought the partition of the land and then stated that, if the court finds the partition inexpedient, an order can be made for the sale of the land in lots in terms of the Partition Law, No. 21 of 1977. According to the preliminary plan, the extent of the land to be partitioned is only 1.86 perches and the defendant is living in the house standing on the land. The plaintiff had made no claim to the house at the preliminary survey. There is no plantation on the land because the whole land is occupied by the house.

After trial the District Judge held that the plaintiff and the defendant are each entitled to a $\frac{1}{2}$ share in the corpus and the defendant is additionally entitled to the improvements, i.e. the house. It was further held that due to the trivialness of the extent of the land, it is inexpedient to allot divided portions as it would be less than the minimum extent required by law regulating the subdivision of land for development purposes. Hence, in terms of section 26(3) of the Partition Law, the District Judge instead of allotting divided portions of the land to the plaintiff and the defendant, ordered the sale of the plaintiff's $\frac{1}{2}$ share to the defendant, who is in possession of the house, upon a valuation by the court commissioner.

On appeal, the High Court set aside the part of the judgment whereby the District Judge ordered that the plaintiff's undivided $\frac{1}{2}$ share be sold to the defendant on the basis that "*the learned District Judge misdirected herself in ordering a sale of the plaintiff's share to the defendant despite that there was evidence to the effect that the plaintiff is also interested in soil rights as the owner of the adjacent land. And also, without considering the evidence adduced on behalf of the plaintiff to show her intention to expand her roadway with her due share.*"

It is from this judgment of the High Court that the plaintiff preferred the present appeal to this court.

There is no issue that the plaintiff is entitled to a $\frac{1}{2}$ share of the soil rights of the land. However, the fact that the plaintiff is the owner of the adjoining land is beside the point in order to determine the rights of the parties in respect of the land to be partitioned in this action. As I stated previously, the plaintiff

herself prayed in the prayer to the plaint that in the event partition is inexpedient, the court can order the sale of the land.

The orders the District Judge is empowered to make after trial in a partition action are listed in section 26(2) of the Partition Law. This section runs as follows:

The interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another:-

- (a) order for a partition of the land;*
- (b) order for a sale of the land in whole or in lots;*
- (c) order for a sale of a share or portion of the land and a partition of the remainder;*
- (d) order that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land;*
- (e) order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties;*
- (f) order that any specified portion of the land sought to be partitioned or surveyed be excluded from the scope of the action;*
- (g) order that any share remain unallotted.*

This list is not exhaustive: the words used in the section are “may include”, not “shall include”. (*Hewavitharana v. Themis Silva* (1961) 63 NLR 68)

It is clear from this section that after trial, the District Judge can order the sale of the land in whole instead of partitioning the land.

He can *inter alia* order the sale of part of the land and partition the remaining portion. It was held in *Ferdinands v. De Alwis (1957) 59 NLR 253* that “*paragraphs (c) and (e) of section 26 of the new Partition Act read together authorise the court to allot one portion of a land to a party or a set of parties and to order the sale of another portion and the division of the proceeds of the sale among other parties alone or among them and some or all of the parties to whom the former portion is allotted.*” In the Privy Council case of *Ceylon Theatres Ltd v. Cinemas Ltd (1968) 70 NLR 337*, the subject matter of partition was the land almost entirely occupied by the Tower Hall Theatre in Maradana. The District Court ordered the sale of the land, as no physical partition of the property was practicable, but subject to the life interest in favour of the 2nd defendant in respect of 1/3 share of the soil and buildings. This was held to be in consonance with the Partition Law.

Section 26(3), which the District Judge relied upon in the instant case to order the sale of the plaintiff's undivided ½ share (i.e. 0.93 perches) to the defendant, reads as follows:

Where by virtue of an order made under subsection (1), a person is entitled to an undivided extent of land which, by reason of its trivialness in extent or value or of it being less than the minimum extent required by any written law regulating the subdivision of land for development purposes, the court considers it inexpedient to allot to that person a divided portion, the court may, in lieu of ordering the allotment of a divided portion of the land to that person and on the payment to that person of such compensation as may be determined by court, allot that extent to any other person

who is entitled to an undivided extent of the land to which the action relates.

I might add that even if the District Judge does not order the sale of the land in the judgment, such a sale can still be ordered after the scheme inquiry which is held after the judgment but before the final decree of partition is entered. (*Leelawathie v. Abeykoon* [2005] 3 Sri LR 127) Section 36(1)(b) of the Partition Law states that after the scheme inquiry, the court may “*order the sale of any lot, in accordance with the provisions of this Law, at the appraised value of such lot given by the surveyor under section 32, where the commissioner has reported to court under section 32 that the extent of such lot is less than the minimum extent required by written law relating to the subdivision of land for development purposes and shall enter final decree of partition subject to such alterations as may be rendered necessary by reason of such order of sale.*”

It is clear that the District Judge’s order is in accordance with the Partition Law. The plaintiff does not complain of the procedure for sale. Her complaint is in respect of the order for sale.

At the argument, learned counsel for the plaintiff defended the judgment of the High Court stating that the plaintiff is entitled to one half of the house. This claim has been rejected by the District Judge in her judgment and the High Court in appeal has not reversed that finding. There is no appeal by the plaintiff against the judgment of the High Court. The submission of learned counsel is in any event unsupported by evidence and is therefore unsustainable.

This court granted leave to appeal against the judgment of the High Court on the following two questions of law:

- (a) Does the judgment of the High Court defeat the purpose of section 26(3) of the Partition Law?
- (b) Has the High Court erred in law by failing to appreciate that the District Judge has answered issue Nos. 9 and 10 correctly?

By the answers to issue Nos. 9 and 10, the District Judge came to the conclusion that an order for sale of the plaintiff's share to the defendant is the most practical way of terminating the co-ownership of this land.

I answer both questions in the affirmative and set aside the judgment of the High Court and restore the judgment of the District Court. The appeal is accordingly allowed but without costs.

Judge of the Supreme Court

L.T.B. Dehideniya, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court