

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

In the matter of an application for Leave to
Appeal against Judgment of the Provincial
High Court of Sabaragamuwa Province
Dated 09.02.2010 in Case No.
SP/HCCA/KAG/296/2007 F.

SC APPEAL 97/2010
SC/HCCA/LA NO. 68/2010
SP/HC/CALA/296/2007
D.C. KEGALLE. 23476/P

(Deceased) Wedalage Siyaneris of Balapaththawa
Ambanpitiya

Plaintiff

(Deceased) 1A. Arambayalage Saina of Balapaththawa.
Ambanpitiya.

1B. Wedalage Piyaseeli Karunathileke, of
Galagedara Mawatha, Polgahawela.

Substituted Plaintiffs

Vs.

- (Deceased)
1. Wedalage Jayasiri Dharmathileke, of
Balapaththawa, Ambanpitiya.
 2. Wedalage Siripala of Boyagama,
Ambanpitiya.
 3. Wedalage Rankira of Debatanpitiya,
Ambanpitiya.
 - 3A. Wedalage Gunapala of
Debatanpitiya, Ambanpitiya.
 4. Wedalage Gunapala of
Debatanpitiya, Ambanpitiya.
 5. Wedalage Amaris of Debatanpitiya,
Ambanpitiya.
 - 5A. Wanshapura Arachchige Magilin
Nona of “Siri Niwasa”
Debatanpitiya, Ambanpitiya.

6. Wedalage Jayasuriya of Debatanpitiya, Ambanpitiya.
7. Bisowela Gamaralalage PodiNilame of “Wimalasevana” Debatanpitiya, Ambanpitiya.
8. Leela Jayatissa of Hakahinna, Debatanpitiya.
9. Wedalage Jinadasa of Hakahinna, Debatanpitiya.
10. Wedalage Amarasinghe of Hakahinna, Debatanpitiya
11. Chandralatha of Hakahinna, Debatanpitiya.
12. Sumudu Kanthi Wijelatha of Hakahinna, Debatanpitiya
13. Wedalage Simon of Hakahinna, Debatanpitiya.
14. Wedalage Padmasiri of Hakahinna, Debatanpitiya.

Defendants

6. Wedalage Jayasuriya of Debatanpitiya, Ambanpitiya
9. Wedalage Jinadasa of Hakahinna, Debatanpitiya.

6th and 9th Defendant-Appellants

Vs

1B. Wedalage Piyaseeli Katunathileke, of Galagedara Mawatha, Polgahawela.

1B Substituted –Plaintiff-Respondent

And

1. Wedalage Jayasiri Dharmathileke, of Balapaththawa, Ambanpitiya.
2. Wedalage Siripala of Boyagama, Ambanpitiya.

- 3A. Wedalage Gunapala of Debatanpitiya, Ambanpitiya.

4. Wedalage Gunapala of Debatanpitiya, Ambanpitiya.
- 5A. Wanshapura Arachchige Magilin Nona of “Siri Niwasa” Debatanpitiya, Ambanpitiya.
7. Bisowela Gamaralalage PodiNilame of “Wimalasevana” Debatanpitiya, Ambanpitiya.
8. Leela Jayatissa of Hakahinna, Debatanpitiya.
10. Wedalage Amarasinghe of Hakahinna, Debatanpitiya
11. Chandralatha of Hakahinna, Debatanpitiya.
12. Sumudu Kanthi Wijelatha of Hakahinna, Debatanpitiya
13. Wedalage Simon of Hakahinna, Debatanpitiya.
14. Wedalage Padmasiri of Hakahinna, Debatanpitiya.

Defendant-Respondents

–

AND NOW BETWEEN

- 5A. Wanshapura Arachchige Magilin Nona of “Siri Niwasa” Debatanpitiya, Ambanpitiya.

5A Defendant –Respondent-Petitioner

Vs.

6. Wedalage Jayasuriya of Debatanpitiya, Ambanpitiya
9. Wedalage Jinadasa of Hakahinna, Debatanpitiya.

6th and 9th Defendant-Appellant-Respondents

1B. Wedalage Piyaseeli Katunathileke, of Galagedara Mawatha, Polgahawela.

1B Substituted Plaintiff-Respondent-Respondent

And

1. Wedalage Jayasiri Dharmathileke, of Balapaththawa, Ambanpitiya.
2. Wedalage Siripala of Boyagama, Ambanpitiya.
- 3A. Wedalage Gunapala of Debatanpitiya, Ambanpitiya.
4. Wedalage Gunapala of Debatanpitiya, Ambanpitiya.
7. Bisowela Gamaralalage PodiNilame of “Wimalasevana” Debatanpitiya, Ambanpitiya.
8. Leela Jayatissa of Hakahinna, Debatanpitiya.
10. Wedalage Amarasinghe of Hakahinna, Debatanpitiya
11. Chandralatha of Hakahinna, Debatanpitiya.
12. Sumudu Kanthi Wijelatha of Hakahinna, Debatanpitiya
13. Wedalage Simon of Hakahinna, Debatanpitiya.
14. Wedalage Padmasiri of Hakahinna, Debatanpitiya.

Defendant-Respondent-Respondents

Before : Marsoof, PC J
Suresh Chandra, J
Dep, PC J

Counsel : Dr. Sunil Cooray with Sudharshani Cooray for 5A
Defendant-Respondent-Appellant.
S.N. Vijithsing for 6th and 9th Defendant-Appellant-
Respondent.

Argued on : 08.03.2012

Decided on : 02.07.2012

PRIYASATH DEP PC. J

This is an appeal from the judgment dated 09-02 2010 of the Provincial High Court (Civil Appeal) of Sabaragamuwa holden at Kegalle by which the judgment of the District Court of Kegalle bearing No.23476/P was set aside. The Plaintiff in this case instituted a partition action on 22nd April 1982 to terminate the co-ownership and partition the land described in the second schedule to the Plaint. He had cited 6 Defendants. The preliminary plan bearing No K 1762 was drawn in accordance with the schedule to the plaint by M.B. Ranathunga, licensed Surveyor and Court Commissioner which was marked as 'X'. His report is annexed as X1. The extent of the land is given as 2 palas of paddy sowing.

The Defendants filed their statements of claim. In the course of the trial several other Defendants were added and altogether there were 14 Defendants. The 5th Defendant disputed the pedigree and the corpus. His position is that the corpus of this action included lots 1A,2A,2C and lot 3 which does not belong to the land sought to be partitioned and he prayed that those lots should be excluded from the corpus. However in the course of the trial, 5th Defendant did not dispute the pedigree as well as the corpus.

The original owner of this land was one Wedalage Undia. Undia had three heirs namely, Punchikira, Singho and Lapaya. Each inherited 1/3 of the land. Punchikira had two sons namely, Harmanis and Suwaris. Singho transferred his share to Harmanis and Suwaris thereby Harmanis and Suwaris got 1/3 each. Harmanis transferred his land to the 1st Defendant. Suwaris transferred his land to the Plaintiff.

There is no dispute regarding the devolution of rights in respect of the shares received by the Plaintiff and the 1st Defendant. The dispute arose regarding the devolution of the rights of Lapaya who received 1/3rd of the land as an original co-owner. Lapaya had four heirs, namely Babanis, Rankira, Siyadoris and Piyadasa. Each of them inherited 1/12th each of the land. Piyadasa's 1/12th share was inherited by his son Gunathileke alias Gunapala. There was no contest regarding this matter.

In the trial a dispute arose in respect of devolution of rights to the land belonging to Babanis, Rankira and Siyadoris. Each inherited 1/12th shares in the property. Babanis by deed No4499 dated 6-11-1939(5V1) transferred his rights to Wedalage Sidorisa. Due to the said transfer Babanis's three children the 2nd Defendant, 9th Defendant and 13th Defendant did not inherit any land.

Rankira by deed No4197 dated 7-9-1942. (5V2) transferred his rights to Wedalage Siyadorisa. As a result of these transfers Siyadoris became the owner of 3/12th of the land. Siyadoris had two sons namely, Amaris (5th Defendant) and Jamis. Siyadorisa by deed of gift No 31884 dated 4-6-1953 (5V3) gifted his property to his son Amaris who is

the 5th Defendant. As a result his other son Jamis did not receive any rights. As a consequence of the said transfer, Jamis's children 6th 7th 8th 10th 11th 12th and 14th Defendants did not inherit any rights.

The Plaintiff and the 5th Defendant died during the pendency of the action. Plaintiff's wife Saina was substituted and after her death daughter Piyaseeli Karunathileke was substituted. Substituted Plaintiff Saina, 1st Defendant, 4th Defendant, 5th substituted Defendant and 6th Defendant gave evidence. 5th Substituted defendant Magilin, wife of Amaris gave evidence and produced the transfer deeds marked 5V1 -5V2 and the deed of gift marked 5V3. By producing the said deeds the 5th Substituted Defendant tried to prove that Siyadoris transferred all his rights pertaining to this land to her late husband Amaris who was the 5th Defendant.

The 6th Defendant, a son of Jamis gave evidence on behalf of him and his brothers and sisters as well as on behalf of 2nd, 9th and 13th Defendant who are the sons of Babanis. His position is that what was transferred by Babanis to Siyadoris is a different land. Similarly it was alleged that what was transferred by Siyadoris to the 5th Defendant Amaris is also a land different from the land sought to be partitioned and the said transfers did not affect their rights. The contesting defendants did not challenge the execution and genuineness of the deeds marked 5V1 -5V3. Their contention was that the said deeds do not relate to the land which is the subject matter of this action.

When the learned District Judge examined the deeds he found that three boundaries other than the northern boundary tallies with the boundaries given in the schedule to the plaint. The Northern boundary refers to a fence instead of Daduwaldeniya Pillewa. The learned District Judge held that the deeds marked 5V1, 5V2 and 5V3 relates to the land sought to be partitioned. In his Judgment dated 15.07.2005 the learned District Judge having carefully examined the title concluded that the following persons are entitled to the shares indicated against their names.

Plaintiff	: 1/3 = 4/12
1 st defendant	: 1/3 = 4/12
4 th defendant	: 1/12 = 1/12 ,
5 th defendant	: 1/4 ^h = 3/12

Being aggrieved by the judgment, the 6th and 9th Defendants appealed to the Provincial High Court (Civil Appeal) of Sabaragamuwa. The High Court (Civil Appeal) of Sabaragamuwa by its judgment dated 9.2.2010 varied the judgment of the District Court. The Hon. Judges held that Babanis transferred his land to one Sidorisa and not to Siyadoris. As there was no evidence to establish that Siyadoris and Sidorisa is the same person, the heirs of Babanis did not lose their rights. Accordingly, the honorable High Court Judges allotted 1/36 shares each to the 2nd, 9th and 13th Defendants who are the heirs of Babanis. Accordingly, 5th Defendant's entitlement was reduced. The appeal was allowed subject to this variation.

Being aggrieved by the judgment of the Civil Appellate High Court, the 5th Defendant sought Leave to Appeal from the Supreme Court and obtained Leave on following questions of Law.

- 1) The learned Provincial High Court Judges have misdirected themselves in finding that Deed No. 4499 dated 06/11/1939 did not transfer rights to Siyadoris but to some unknown party Sidorisa.
- 2) The learned Provincial High Court Judges have misdirected themselves in deciding that the share of Babanis should be devolved on 2nd, 9th and 13th Defendants whereas accordingly the rights should devolve on the heirs of the unknown "Sidorisa".
- 3) The learned Provincial High Court Judges have misdirected themselves in deciding that the learned District Judge did not answer issue no. 25 erroneously and against section 187 of the Civil Procedure Code.
- 4) The learned Provincial High Court Judges have misdirected themselves in deciding that "Siyadoris" and "Sidorisa" are two different persons in total absence of evidence to that effect, and such a question not having been raised at the trial.
- 5) The learned Provincial High Court Judges have misdirected themselves in deciding that the substituted 5A Defendant-Respondent-Petitioner is only entitled to 2/12 whereas she is entitled to 3/12 share of the corpus.

The honorable High Court Judges held that there is no evidence to establish that Sidorisa and Siyadorisa refers to the same person. In the trial there was no dispute regarding the identity of Siyadoris. It was not challenged and the case proceeded on the basis that Sidorisa and Siyadorisa refers to one and the same person. What was disputed in the District Court was the identity of the land. It was alleged that the land referred to in 5V1, 5V2 and 5V3 is not the land sought to be partitioned. However the trial judge, having carefully examined the title correctly held that these three deeds refer to the land which is the subject matter of the partition case. Accordingly shares were allocated.

The honorable High Court Judges in varying the judgment of the District Court held that Babanis transferred his land to Sidorisa who is an unknown person. In such a situation the proper course of action is to leave the shares unallotted. The honorable High Court Judges erred when they proceeded to allocate shares to the heirs of Babanis.

The honorable High Court Judges held that the learned District Judge failed to answer issue No 25 and thereby failed to comply with section 187 of the Civil Procedure Code. Therefore the judgment is not in accordance with the law. I find that issues no 11 and 25 are identical and the learned District Judge had answered issue no 11. Therefore no prejudice was caused to the parties due to the omission.

For the reasons stated above I set aside the judgment of the Provincial High Court (Civil Appeal) of Sabaragamuwa dated 09-02-2010 and affirm the judgment of the District Court of Kegalle in Case No. 23476/P dated 15 -07- 2005.

Appeal allowed. No Costs.

Judge of the Supreme Court

Justice Saleem Marsoof PC
I agree

Judge of the Supreme Court

Justice S.R.K Suresh Chandra
I agree

Judge of the Supreme Court