

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

In the matter of an application for Leave to Appeal
against Judgment dated 18/11/2009 delivered
by the High Court of the North Western Province
in NWP/ HCCA/ KUR/49/2003 (F) D.C.
Kuliyapitiya Case No. 7729/P.

SC/Appeal/113/2010

SC/HCCA/LA/345/09

NWP/HCCA/KUR/49/2003 (F)

D.C. Kuliyapitiya No. 7729/P

Asarappulige Solomon, of Bowatte, Yakwila

Plaintiff

-Vs.-

1. Herath Mudiyansele Senaratne,
 2. Herath Mudiyansele Wijetilleke,
 3. Herath Mudiyansele Ran Menika,
 4. Adhikari Mudiyansele Wijesena,
 5. Adhikari Mudiyansele Jayasekera,
 - 5a. Adhikari Mudiyansele Ananda Jayaratne
- All of Bowatte, Yakwila

Defendant

AND BETWEEN

Asarappulige Solomon, of Bowatte, Yakwila.

Plaintiff-Appellant

-Vs.-

1. Herath Mudiyansele Senaratne,
 2. Herath Mudiyansele Wijetilleke,
 3. Herath Mudiyansele Ran Menika,
 4. Adhikari Mudiyansele Wijesena,
 5. Adhikari Mudiyansele Jayasekera,
 - 5a. Adhikari Mudiyansele Ananda Jayaratne
- All of Bowatte, Yakwila.

Defendant-Respondents

AND NOW BETWEEN

Asarappulige Solomon (Deceased) of Bowatte,
Yakwila

Plaintiff-Appellant-Appellant

Asarappulige Sisira Priyantha of Bowatte, Yakwila

1a Plaintiff-Appellant-Appellant

-Vs.-

1. Herath Mudiyansele Senaratne,
2. Herath Mudiyansele Wijetilleke,
3. Herath Mudiyansele Ran Menika,
4. Adhikari Mudiyansele Wijesena, (Deceased)
- 4a. Suriya Pathirannahalage Karunawathie,
- 4b. Adhikari Mudiyansele Anusha Samanmalee,
- 4c. Adhikari Mudiyansele Kumaranayake,

4d.Adhikari Mudiyansele Punyawathie,
4e.Adhikari Mudiyansele Kirthi Ashoka,
5.Adhikari Mudiyansele Jayasekera,
5a.Adhikari Mudiyansele Ananda Jayaratne
All of Bowatte, Yakwila

Defendant-Respondent-Respondents

Before: Buwaneka Aluwihare PC, J.
P. Padman Surasena J.
E.A.G.R. Amarasekara J.

Counsel: Mudithavo Premachandra for the Plaintiff-Appellant-
Appellant.
W. Dayarathne PC with Ms. Ranjika Jayawardena for the
substituted 4th Defendant- Respondent-Respondent.

Argued on: 15th September 2020

Decided on: 30th November 2021

JUDGEMENT

Aluwihare PC J.,

The Plaintiff-Appellant-Appellant (hereinafter referred to as the ‘Plaintiff’) filed action against the 1st to 4th Defendants in the District Court of Kuliyaipitiya for the partition of a land called “Ihalawatte” which is in extent of about 2 Acres. The 5th Defendant was added as a party, subsequently.

By judgement dated 13th May 2003, the Learned District Judge dismissed the Plaint on the ground that the Plaintiff had failed to prove both his pedigree and his title to the land sought to be partitioned.

Aggrieved by the said judgement, the Plaintiff appealed to the Civil Appellate High Court of the North Western Province, which affirmed the judgement of the learned District Judge and dismissed the appeal.

Against the said judgement, the Plaintiff moved this court by way of Leave to Appeal and Leave was granted on the questions of law referred to in sub-paragraphs (a), (b), and (c) of paragraph 18 of the Petition of the Appellant (Plaintiff).

The questions of law in verbatim, are as follows;

- a) Has the District Court and the High Court erred in failing to hold that the chain of title relied on by the Plaintiff Appellant Petitioner had been proved in terms of deed P1, mortgage bond 4D1 and crown grant 4D4, in preference to the chain of title relied on by the 4th Defendant because the lands described in his deeds 4D2, 4D3, 4D5 clearly did not apply to the land sought to be partitioned.*
- b) Did the District Court and the High Court err in holding that the Plaintiff Appellant Petitioner had failed to prove title to the land sought to be partitioned in this action.*

c) Did the District Court and the High Court err in holding that the Plaintiff Appellant Petitioner had failed to prove the devolution of title to the corpus.

The Corpus

The Plaintiff, instituted this action against the 1st to 4th Defendants seeking the partition of a land called “Ihalawatte” more fully described in the schedule to the Plaint. The Plaintiff claimed that he was entitled to an undivided ½ share of Ihalawatte, and that the 1st, 2nd and 3rd Defendants were entitled to 1/6 shares each.

The 1st, 2nd and 3rd Defendants did not have any contest with the Plaintiff. The 4th Defendant, however, claimed title to the entire land based on title deeds and the 5th Defendant took up the position that the corpus was co-owned by him and the 4th Defendant in equal shares and prayed for the dismissal of the action.

In the Petition dated 21st December 2009, the land is described as a single land consisting of an ‘old plantation’ and ‘new plantation’, which is in the extent of about 2 acres.

The land sought to be partitioned was surveyed by the Court Commissioner S.B. Abeykoon who submitted a preliminary plan bearing No. 626/85 along with a preliminary report to the Court. According to the said Court Commissioner, the land sought to be partitioned was shown to him by the Plaintiff and the 1st, 2nd and 4th Defendants. The Court Commissioner while giving evidence had stated that the preliminary plan depicts the land described in the schedule to the Plaint. He also had stated that it was a parcel of land. Further, he had added that no one produced any previous survey plans relating to the land and that he relied on the boundaries shown to him by the parties present on the land, for the purpose of carrying out the survey.

The Contention of the Plaintiff

The main argument on behalf of the Plaintiff was that the conclusion arrived at by the learned District Judge, as well as by the Judges of the High Court of Civil Appeal, to the effect that the Plaintiff failed to prove the devolution of title to the corpus, is erroneous.

The key point raised by the Plaintiff is that the Deed marked 'P1', mortgage bond marked '4D1' and crown grant marked '4D4' which the Plaintiff relied on, apply to the corpus for partition and show the devolution of title which is described in the Plaintiff. He argues that this is in stark contrast to the deeds produced by the 4th Defendant, marked '4D2', '4D3' and '4D5' which the Plaintiff claims have no application to the land sought to be partitioned.

The Questions of Law

I wish to consider the second and third questions of law [b & c], namely, whether the lower courts have misdirected themselves by holding that the Plaintiff has failed to establish, his title to the corpus [b] and the devolution of title to the corpus [c].

According to the pedigree relied on by the Plaintiff [annexed to the Plaintiff], in the year 1910, H.M. Davith Singho and H.M. Bandappu, had received a crown grant in equal shares to the land depicted in the survey plan No. 273672 which is in extent 3 Roods and 28 perches. After Bandappu's demise, Herath Singho, being the sole heir, had inherited the ½ share of the land owned by Bandappu. In the year 1984, Herath Singho by Deed No. 7260 [P1] sold his share to the Plaintiff, Solomon. According to the Plaintiff's pedigree, the Crown grant is 3 Roods and 28 perches in extent. The schedule to the Deed No. 7260, however, refers to, two allotments viz;

- (1) land depicted in plan No. 273672, in extent of 3 roods and 28 perches and
- (2) 1/3rd of another land, 1 and ¼ acre in extent, with distinct boundaries.

The Plaintiff has not produced a separate pedigree in relation to, either the 1st or the 2nd allotments of lands referred to above. Nor has he explained the basis of amalgamating the entitlement to an undivided land to another distinct separate land. The schedule to the Plaint, as stated earlier, refers only to a single parcel of land and nowhere in the Plaint is it said that the corpus is an amalgamated land. The Plaintiff, however, in the pedigree filed on his behalf, had made reference to a crown grant of 3 roods and 8 perches and possession for a long period of time and inheritance, vaguely giving the impression that the corpus contains in extent, more than what was given by the Crown grant. In his evidence, however, he has taken up the position that two parcels of land are involved. The Plaintiff had failed to explain as to how an undivided share in the second schedule of the Deed P1, became part of the ‘amalgamated’ land. Thus, the Plaintiff had presented a case that is materially different to what was pleaded, which is obnoxious to the provisions of the Civil Procedure Code [Section 150 explanation 2]. The Plaintiff had admitted that what he purchased was the land that was received by Herath Singho by way of a crown grant [page 126 of the District Court record].

The Plaintiff in an attempt to impress that the corpus consists of two amalgamated lands in extent of two acres, had executed a deed of mortgage, on March 1985, two months prior to filing the partition action in the District Court [Deed no. 346 marked and produced as 4V1]. Under cross examination, the Plaintiff admitted that he mortgaged the property as he was in need of money, to one Pausthina, as claimed by the Plaintiff, one of his neighbours. He also admitted that even by the date on which he testified he had not taken any steps to have the mortgage discharged. Probed further, the Plaintiff admitted that Pausthina is none other than his wife [pages 135 -137 of the District Court record].

Considering the above, both the learned District Judge as well as the High Court of Civil Appeal was correct in holding that the Plaintiff had failed to establish, both, the title to the land sought to be partitioned as well as the devolution of title to the same.

In the circumstances, I answer both the questions of law referred to in paragraphs (b) and (c) above in the negative. In view of these findings, I am of the view that it

would not be necessary to consider the question of law referred to in paragraph (a) above as the case for the Plaintiff is bound to fail.

Accordingly, the judgments of both the District Court as well as the High Court of Civil Appeal are affirmed and this appeal is dismissed subject to costs of Rs. 150,000/=.

Appeal dismissed

JUDGE OF THE SUPREME COURT

P. Padman Surasena J.

I agree.

JUDGE OF THE SUPREME COURT

E.A.G.R. Amarasekara J.

I agree.

JUDGE OF THE SUPREME COURT