

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

**In the matter of an Appeal from  
the Civil Appellate High Court of  
Ratnapura.**

BogahawattaDurageChandana  
Pushpakumara, No. 36/14, Ratnapura  
Road, Pelmadulla.

**SC APPEAL No .202 / 2012  
SC ( HCCA ) LA No. 160/2012  
SP/HCCA/RAT/40/2010 LA  
D. C. PELMADULLA , No. 125/ P**

**Plaintiff**

**Vs**

1.KottewattaArachchilageYasawathie  
Nanda Gunawardena, No. 98/5  
DharmapalaMawathaPannipitiya.

2.NalinGankanda, UdahaWalawwa,  
Gallpoththawala, Pelmadulla.

3.Dinesh Rajiv Gankanda,  
UdahaWalawwa, Galpottawala,  
Pelmadulla.

4.VijithaGunatileka, No. 105,  
DharmapalaMawatha, Pelmadulla.

5. IduranPitiyaKankanamalage  
Ratnaseeli, DharmapalaMawatha,  
Pelmadulla.

6. IduranPitiyaKankanamalageMangalasiri, DharmapalaMawatha, Pelmadulla.
7. IduranPitiyaKankanamalageThusithanan da,DharmapalaMawatha, Pelmadulla.
8. KottawattaArachchilageGunawardena,D harmapalaMawathaPedesa,Pelmadulla.
9. BeligaswattaAkkaranKuruppuMudiyanse lageSirinilame, Mudduwa ,Ratnapura.
10. BeligaswattaAkkaranKuruppuMudiya nselageSugathapala, Mudduwa , Ratnapura.
11. LindawatteNandawathie, VidyalayaMawatha, Pelmadulla.
12. G. L. Jinadasa, PahalaBempitiya, Medawatta, Pelmadulla.
13. A.M.M. Kularatne, No. 13, Medawatta,Bopitiya, Pelmadulla.
14. A. M. Dharmawardena, Kutwapitiya, Pelmadulla.
15. G. G. Dharmadasa, VidyalaMawatha, Pelmadulla.
16. S. A. Keerthihilaka, 1/101, Ratnapura Road, Pelmadulla.
17. W. A. AnandaWickremasinghe, 99, Ratnapura Road, Pelmadulla.
18. B. A. M. Abeyratne, 171/3, Pahalawatta,Mudduwa, Ratnapura.

19. W. M. Asitha Wijesundera, Ratnapura Road, Pelmadulla.

20. Welwita Liyana Arachchilage Sunderawathie Menike, c/o Ananda Hewawasam, Bulugahapitiya, Ehaliyagoda.

21. Beligaswatta Akkaran Kuruppu Mudiyan selage Gamini Kamalaratne Sirinilame, 171/3, Pahalawatta, Mudduwa, Ratnapura.

22. Beligaswatta Akkaran Kuruppu Mudiyan selage Dushmantha Dharmakeerthi Sirinilame, Dadadeniya, Ehaliyagoda.

23. Beligaswatta Akkaran Kuruppu Mudiyan selage Dhammika Sirikumari Sirinilame, c/o Ananda Hewawasam, Bulugahapitiya, Ehaliyagoda.

24. Beligaswatta Akkaran Kuruppu Mudiyan selage Gnanathilaka Thamarakumari Sirinilame,

25. Beligaswatta Akkaran Kuruppu Mudiyan selage Gnanathilaka Navaratne Sirinilame,

26. Beligaswatta Akkaran Kuruppu Mudiyan selage Gnanathilaka Upul Anuradha Sirinilame,

The 24<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup> Defendants above are all of 171/3, Pahala Watta, Mudduwa, Ratnapura.

**Defendants**

**AND**

BogahawattaDurageChandana  
Pushpakumara, No. 36/14,  
Ratnapura Road, Pelmadulla.

**Plaintiff Petitioner**

Vs

G. G. Dharmadasa, No. 1,  
VidyalaMawatha, Pelmadulla.

**15<sup>th</sup> Defendant Respondent**

**AND BETWEEN**

G. G. Dharmadasa, No. 1,  
VidyalaMawatha, Pelmadulla.

**15<sup>th</sup> Defendant Respondent  
Petitioner**

Vs

BogahawattaDurageChandana  
Pushpakumara, No. 36/14,  
Ratnapura Road, Pelmadulla.

**Plaintiff Petitioner Respondent**

**AND NOW BETWEEN**

BogahawattaDurageChandana  
Pushpakumara, No. 36/14,  
Ratnapura Road, Pelmadulla.

**Plaintiff Petitioner Respondent  
Appellant**

Vs

G. G. Dharmadasa, No. 1,  
VidyalaMawatha, Pelmadulla.

**15<sup>th</sup> Defendant Respondent  
Petitioner Respondent**

**BEFORE: S. EVA WANASUNDERA PCJ.  
UPALY ABEYRATNE J.  
NALIN PERERA J.**

**COUNSEL:** HarshaSoza PC with AnuruddhaDharmaratne for the Plaintiff  
Petitioner Respondent Appellant.  
Ms. SudarshaniCooray for the 15<sup>th</sup> Defendant Respondent Petitioner  
Respondent.

**ARGUED ON:** 13. 06. 2016.

**DECIDED ON:** 21.07.2016.

## **S. EVA WANASUNDERA PCJ.**

In this matter leave to appeal was granted on 19.11.2012 on the questions of law set out in paragraph 17 (a) to (f) of the Petition dated 27.04.2012. At the same time this Court had also granted an interim order as prayed for in prayer (e) of the Petition, restraining the 15<sup>th</sup> Defendant Respondent Petitioner Respondent from carrying out any construction work on the corpus described in the schedule to the Petition, until the disposal of this Appeal.

The said questions of law are as follows:-

- 17(a) Have the learned judges of the Civil Appellate High Court erred in law in holding that the learned Trial Judge has reached an erroneous finding that the Petitioner ( 15<sup>th</sup> Defendant ) has built on Lot 4 in Plan No. 843?
- (b) Have the learned judges of the Civil Appellate High Court erred in law and prematurely decided the boundaries of the corpus?
- (c) Have the learned Judges of the Civil Appellate High Court erred in law in holding that the Petitioner ( 15<sup>th</sup> Defendant ) has failed to make out a prima facie case ?
- (d) Have the learned judges of the Civil Appellate High Court erred in law in setting aside the interim injunction issued by the learned District Judge?
- (e) Before deciding to set aside the said interim injunction were the High Court Judges obliged in law to specifically consider the nature of the construction and the location of the construction and whether in the circumstances the said construction would place the co-owners of the subject matter of this action at a disadvantage?
- (f) Have the learned Judges of the Civil Appellate High Court erred in law that even where the boundaries of the corpus sought to be partitioned are in dispute, construction ought not to be permitted , if such construction would prevent an equitable division of the corpus?

The facts pertinent to this matter can be summarized as follows. The Plaintiff Petitioner Respondent Appellant (hereinafter referred to as the Plaintiff) filed action to partition the land called PelmadulleKumbura in the District Court of Pelmadulla on 20.09.2007. He filed amended Plaint on 08.01.2008. adding some more defendants making the number of defendants as 26 and sought to give shares to only the 1<sup>st</sup> to 11<sup>th</sup> and from 20<sup>th</sup> to 26<sup>th</sup> Defendants. A

preliminary Plan was drawn by Licensed Surveyor, P.S.G. Karunathileke on 20.06.2008 namely, Plan No. 843.

This Preliminary Plan No. 843 has described 17 lots of land which the surveyor had to survey, some of which are very small in extent, namely Lots 1,2,3,5,6,7,8,9,10,11,12,13 and 14 all of which are less than 4.5 perches each. They are the small boutiques and business premises which have some building or other on them. Only Lots 4, 15, 16 and 17 are the bigger portions which are empty blocks of land. All these Lots were claimed by the Defendants and the Plaintiff in the District Court case.

I observe that the report of the surveyor, has 8 pages describing who claims and what buildings are on each lot etc. He further mentions the names of persons who are occupying and claiming the small lots as well as the big lots but it is noted by me that the Plaintiff is not occupying any building. No block is occupied by the Plaintiff either even though he claims all the Lots, according to the surveyor. The Surveyor further states that the Plaintiff had shown the boundaries and the survey was done accordingly. The 3<sup>rd</sup> Defendant had mentioned that Lots 1,2,3 and 4 are from and out of a land called Mahakumbura, and that the 6<sup>th</sup> to 14<sup>th</sup> Lots are said to be from and out of a land called Kottayadiwela. He further says that according to the commission, the area is named as Pelmadulla but he finds that according to a final village plan the place where the land is situated is named as Bopitiya village. The Plaintiff had however claimed that all this land is PelmadullaKumbura. The whole area of the big land to be partitioned is of an extent of one Acre and 38.43 Perches.

*Before any statement of claim could be filed by any of the Respondents, the Plaintiff Petitioner filed a Petition and Affidavit on 21.09.2011 and prayed for an **interim injunction preventing the 15<sup>th</sup> Defendant Respondent (hereinafter referred to as the 15<sup>th</sup> Defendant)** from constructing and altering the status quo of the subject matter of this partition action, among other reliefs such as to grant the Plaintiff ½ share of the whole land consisting of paddy land and the high land **with road frontage.***

The 15<sup>th</sup> Defendant filed a statement of objections with an affidavit stating that he and one GeeganageUpali, ( his son ) were the lawful owners of Lots 1

and 2 of Plan No. 843 (which lots of land together is of an extent of 6.96 perches) and that possession of the said lots had been handed over to them in the District Court of Balangoda case No. 1051/L . He further mentioned that his lots are from the land called as “ MahaKumbura and PelmadulleKumbura” and not the land which the Plaintiff has sought to partition in the present District Court case, namely “ PelmadulleKumbura”.Further it was alleged by the 15<sup>th</sup> Defendant that the LisPendence was not registered by the Plaintiff properly in the relevant folio where his land , namely Lots 1 and 2 are registered.

The 15<sup>th</sup> Defendant sought an exclusion of his lots from the corpus of the partition action and alleges that the Plaintiff has not made GeeganageUpali a party to the present action, even though the Plaintiff knows that in the District Court case No. 1051/L , the 15<sup>th</sup> Defendant and GeeganageUpali were decreed to be the lawful owners of the said lands. *It is to be noted that the Plaintiff never sought to intervene in that action and claim that the said lots of land were co-owned or that the Plaintiff has a claim on the said lots of land.*

The District Judge delivered order granting interim relief preventing the 15<sup>th</sup> Defendant from constructing any building on Lot 4 which is one of the lots of land among other lots which comprise the corpus of the land sought to be partitioned. The 15<sup>th</sup> Defendant filed an appeal to the Provincial High Court challenging the District Court order. The High Court made order dissolving the interim injunction which was operative against him. Thereafter, when leave was granted by this court, once again a stay order was issued against the 15<sup>th</sup> Defendant till the final disposal of this matter.

I observe that Lots 1 and 2 have buildings on it, namely dwelling houses according to the surveyor’s report. The ‘red line’ as it is referred to by the High Court which the surveyor has demarcated on the preliminary plan, cuts across the buildings in Lots 1 and 2. The surveyor states that the boundaries were shown by the Plaintiff. Looking at the preliminary plan 843, it surprises me to see that the boundaries are not marked physically on the ground but on paper, on one side, cutting across the buildings on lots 1 and 2 and also partly protruding on to the main PelmadullaRatnapura road and on the other side, cutting across lots 6,7,8,9,10,11,12,13, and 14 where there are buildings

occupied by other claimants but not bordering the road frontage. I also observe that , the way that the surveyor has demarcated the boundaries the corpus to be partitioned includes the road frontage of almost all the lots marked on the land. It is a peculiar relief , I observe, that the Plaintiff has prayed for ½ share of the whole land with road frontage.

The demarcation of boundaries near the main road, seems to be quite awkward on paper. One cannot even imagine why and how that kind of surveying could have been done physically and for what purpose it was done so. It is rather obvious that the Plaintiff had got the surveyor to demarcate the lots leaving some road frontage right along the whole big land as he had in his plaint claimed ½ share of the land *with road frontage*.

I am of the opinion that this preliminary plan No. 843 has created trouble in this partition action. It may be due to this reason that a commission had been issued by the District Court to the Surveyor General after the said preliminary plan was filed of record. The Surveyor General's plan is marked and filed of record dated December 2010. This Surveyor General's plan is numbered as R/PLM/2009/175. It was not made use of by the District Court as parties had disagreed to go by that plan, the reason for which I fail to understand. This plan shows the buildings as "permanent buildings" and specifically shows the boundary line that *the Plaintiff claims to be the boundries of the big land*.

However, I observe that Lots 1 and 2 are clearly the subject matter of a decided District Court of Balangoda action No. 1051/L. The title is clear in Deed No. 3816 dated 11.12.1997. The Plaintiff has failed to file LisPendence in the volume / folio in which this deed is registered. The northern boundary of both these lots are mentioned in the deed as the main road. The 15<sup>th</sup> Defendant has denied that he had tried to build on any other part of the land than in his own land which is Lots 1 and 2 which is owned by him and his son Upali Geeganage who is not made a party to this case by the Plaintiff. The District Judge had come to a wrong finding that the 15<sup>th</sup> Defendant had tried to build on Lot 4 in plan 843 without any evidence to that effect before court. The High Court judges have correctly remedied the situation by dissolving the interim injunction.

I am of the opinion that the Plaintiff had obtained an interim injunction from the District Court, against the 15<sup>th</sup> Defendant to stop construction of business premises at the road frontage, without any lawful reason to do so. For any court to issue an interim injunction, it should use its discretion conferred upon the court by law in terms of Sec. 662 of the Civil Procedure Code which requires that the Plaintiff should reflect that the party seeking an injunction is entitled to judgment in his favour. If there is no prima facie case in favour of the party seeking the interim injunction, it should not be granted.

In ***Felix Dias Bandaranayake Vs State Film Corporation*** (1981) 2 SLR 287, it was held that a party applying for an interim injunction has to satisfy three sequential questions, i.e.

1. Has the party seeking an interim injunction established a strong prima facie case?
2. In whose favour is the balance of convenience?
3. Does the dealings of the parties justify the grant of an interim injunction or in other words do equitable considerations warrant the granting of an interim injunction?

In the case of ***Gulam Hussain Vs Cohen*** (1995) 2 SLR 365, it was held that “ a party seeking an injunction shall establish a prima facie case in which it is seen that there is a serious matter in relation to their legal rights to be tried at the hearing of the action and that they have a good chance of winning “.

I am of the view that before the trial judge granted an interim injunction, he should have verified the place on which the 15<sup>th</sup> Defendant was allegedly trying to construct a building to clearly find out whether it is adjacent to the house which he is occupying or whether he is trying to build on a totally different area of the land which is to be partitioned. The District Judge had failed to identify the area or whereabouts on the land to be partitioned, had the 15<sup>th</sup> Defendant tried to build. It was alleged and complained by the Plaintiff that the 15<sup>th</sup> Defendant had a religious ceremony as the first step in commencing the construction but was there any evidence to show that it was done on Lot 4?

There is no oral evidence or documentary evidence to be seen on record to show that the construction alleged was to get done on Lot 4. The inquiry regarding this interim injunction had been done only by way of written submissions. Somehow the District Judge has written on the order that the construction alleged was on Lot 4 in the preliminary plan No. 843. When going through the documentary evidence placed before the District Judge, I observe that document P5 which is the complaint by the Plaintiff, Pushpakumara to the Police on 12.09.2010 speaks of ' a construction which is going to be done is right behind the boutique building of G.G.Dharmadasa', ( the 15<sup>th</sup> Defendant ), which he is occupying. The 15<sup>th</sup> Defendant lives on Lots 1 and 2 of P.P.843 which is of a small extent such as 6.96 Perches with his son UpaliGeeganage. He apparently had tried to draw the lines with rope on the ground for a small foundation as an extension of his boutique behind his already existing boutique after performing the usual religious chantings according to Sri Lankan culture. The Plaintiff has got an interim injunction submitting to court that the 15<sup>th</sup> Defendant was trying to build on Lot 4 which is a bigger portion of land of an extent of 20.88 Perches.

There seems to be some misunderstanding by the District Judge and/or misrepresentation made before him by the Plaintiff who had complained to the Police that another construction is about to get done right behind the 15<sup>th</sup> Defendant's boutique. The whole land the Plaintiff has filed action to be partitioned is of an extent of one Acre and 38.43 Perches. By getting an interim injunction to stop the 15<sup>th</sup> Defendant who was trying to improve his business , by building at the back space left on his own small piece of land, the Plaintiff seems to have already caused losses to the 15<sup>th</sup> Defendant. Anyway the District Judge had no evidence whatsoever before Court to establish that the proposed construction was on Lot 4.

I also observe that the Preliminary Plan 843 describes many boundaries as 'uncertain' and an interim injunction should not have been issued on land which is 'uncertain' admittedly marked as uncertain by the surveyor when the surveyor had done the survey.

By having done what the District Judge had done, he had gone against the principles laid down in the very old case of *Jinadasa Vs. Weerasinghe (1929)* **31 NLR 33** where Dalton J. held that:

“ Of course in order to entitle the Plaintiffs to an interlocutory injunction, though the Court is not called upon to decide finally on the rights of parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it, there is a probability that the Plaintiffs are entitled to relief”.

In the case in hand the question arises whether there were any facts before court to show that there was a serious question or whether there was a probability that the Plaintiff was entitled to relief prayed for in the interim? The case being one of ‘partitioning a big land’ , how could the Court have come to even think that the Plaintiff was probably entitled to relief as he had prayed for at the end of the proper trial. There were many other parties who claimed the land and in such a situation how could the Judge decide that the Plaintiff was probably entitled to the relief that he had prayed for. It is obvious that the District Judge was wrong in law when he granted an interim injunction.

I find that the learned District Court Judge had reached an erroneous finding that the 15<sup>th</sup> Defendant had tried to build on Lot 4 in Plan No. 843. The Plaintiff had failed to make out a prima facie case against the 15<sup>th</sup> Defendant before the trial judge. The Plaintiff had not shown any evidence to specifically demonstrate the location of the alleged construction or how such a construction would place the co-owners of the land at a disadvantage. Even before any party filed any statement of claim, with a preliminary plan of uncertain boundaries before the District Court, it is quite surprising how the District Judge had acted in granting interim relief as prayed for by the Plaintiff.

I answer all the questions of law enumerated at the beginning in the negative and infavour of the 15<sup>th</sup> Defendant Respondent Petitioner Respondent. I am of the view that the learned Judges of the Civil Appellate High Court had quite correctly reversed the decision of the District Court and dissolved the interim injunction.

I dismiss the Appeal with costs to be paid to the 15<sup>th</sup> Defendant by the Plaintiff. I direct that the case record of the High Court be sent back to the High Court of Ratnapura. The Registrar is directed to send forthwith, the District Court case record to the Registrar of the District Court of Pelmadulla for the Partition action to proceed before the District Judge.

Appeal is dismissed with costs.

Judge of the Supreme Court

Justice UpalyAbeyrathne  
I agree.

Judge of the Supreme Court

Justice NalinPerera  
I agree.

Judge of the Supreme Court