

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

In the matter of an Appeal with Special Leave to Appeal granted by the Supreme Court against the Judgment dated 27.03.2012 in Appeal No. CP/HCCA/KAN/162/2010(F) and CP/HCCA/KAN/163/2010(F) in terms of Section 5C (1) of Act No. 54/2006.

**S.C. Appeal No. 66/2015**

SC.HC. (CA) LA. No. 176/2012  
CP/HCCA/KAN/162/2010(F)  
DC. Kandy No. 13842/P

1. Galange Kade Chandrawathie  
Nilagaratne  
Hawendeniyagama, Pussellewa.
2. Galange Gedera Swarnathilaka  
Nilagaratne  
390, Siyambalagoda, Danthure.

**Plaintiffs**

**VS.**

- (deceased) 1. Kularatne Wijetileka  
Galanga, Siyambalagoda,  
Danthure.
- 1a. Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)
- 1b. Pradeep Lakmal Wijetileka
- 1c. Wasana Wijetileka  
(appearing by her Guardian  
Haddage Prema Wijetileka)
- (deceased) 2. Suraweera Sumanasinghe
- 2a. Nishantha Kumarage  
Galanga, Siyambalagoda,  
Danthure.

- (deceased)
3. Galange Kade Sumanasingha
  - 3a. Y.G. Thilakawathie  
388, Siyabalagoda, Danthure.
  4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.
  5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.
  6. Bandula Nishantha Kumarage,  
Siyambalagoda,  
Danthure.

**Defendants**

**AND**

Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)  
Galanga, Siyambalagoda,  
Danthure.

**1a Defendant-Appellant**

**VS.**

1. Galange Kade Chandrawathie  
Nilagaratne  
Hawendeniyagama, Pussellewa.
2. Galange Gedera Swarnathilaka  
Nilagaratne  
390, Siyambalagoda, Danthure.

**Plaintiff-Respondents**

- 1b. Pradeep Lakmal Wijetileka
- 1c. Wasana Wijetileka  
(appearing by her Guardian Y.B.

Haddage Prema Wijetileka)

- 2a. Bandula Nishantha Kumarage  
392, Siyambalagoda,  
Danthure.
- (deceased) 3. Galange Kade Sumanasingha  
388, Siyambalagoda,  
Danthure.
- 3a. Y.G. Thilakawathie
4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.
5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.
6. Bandula Nishantha Kumarage,  
392, Siyambalagoda,  
Danthure.

**Defendant-Respondents**

**AND NOW BETWEEN**

Galange Gedera Swarnathilaka  
Nilagaratne  
390, Siyambalagoda, Danthure.

**2<sup>nd</sup> Plaintiff-Respondent-  
Appellant**

**VS.**

Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)  
Galanga, Siyambalagoda,  
Danthure.

**1a Defendant-Appellant-  
Respondent**

- 1b. Pradeep Lakmal Wijetileka
- 1c. Wasana Wijetileka  
(appearing by her Guardian Y.B.  
Haddage Prema Wijetileka)
- 2a. Bandula Nishantha Kumarage  
392, Siyambalagoda,  
Danthure.
- (deceased) 3. Galange Kade Sumanasingha  
388, Siyambalagoda,  
Danthure.
- 3a. Y.G. Thilakawathie
- 4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.
- 5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.
- 6. Bandula Nishantha Kumarage,  
392, Siyambalagoda,  
Danthure.

**Defendant-Respondent-  
Respondents**

Galange Kade Chandrawathie  
Nilagaratne  
Havendeniyagama, Pussellewa.

**1<sup>st</sup> Plaintiff-Respondent-  
Respondent**

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**S.C. Appeal No. 64/2015**

SC.HC. (CA) LA. No. 179/2012

CP/HCCA/KAN/163/2010(F)

DC. Kandy No. 13842/P

1. Galange Kade Chandrawathie  
Nilagaratne  
Hawendeniyagama, Pussellewa.

2. Galange Gedera Swarnathilaka  
Nilagaratne  
390, Siyambalagoda, Danthure.

**Plaintiffs**

**VS.**

- (deceased) 1. Kularatne Wijetileka  
Galanga, Siyambalagoda,  
Danthure.
- 1a. Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)
- 1b. Pradeep Lakmal Wijetileka
- 1c. Wasana Wijetileka  
(appearing by her Guardian  
Haddage Prema Wijetileka)
- (deceased) 2. Suraweera Sumanasinghe
- 2a. Nishantha Kumarage  
Galanga, Siyambalagoda,  
Danthure.
- (deceased) 3. Galange Kade Sumanasingha
- 3a. Y.G. Thilakawathie  
388, Siyambalagoda,  
Danthure.
4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.

5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.
6. Bandula Nishantha Kumarage,  
Siyambalagoda,  
Danthure.

**Defendants**

**AND**

Bandula Nishantha Kumarage,  
392, Siyambalagoda,  
Danthure.

**2a and 6<sup>th</sup> Defendant-Appellant**

**VS.**

1. Galange Kade Chandrawathie  
Nilagaratne  
Hawendeniyagama, Pussellewa.
2. Galange Gedera Swarnathilaka  
Nilagaratne  
390, Siyambalagoda, Danthure.

**Plaintiff-Respondents**

- 1a. Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)  
Galanga, Siyambalagoda,  
Danthure.
- 1b. Pradeep Lakmal Wijetileka
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(appearing by her Guardian Y.B.  
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- (deceased) 3. Galange Kade Sumanasingha  
388, Siyambalagoda,  
Danthure.
- 3a. Y.G. Thilakawathie
4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.
5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.

**Defendant-Respondents**

**AND NOW BETWEEN**

Galange Gedera Swarnathilaka  
Nilagaratne, 390, Siyabalagoda,  
Danthure.

**2<sup>nd</sup> Plaintiff-Respondent-  
Appellant**

**VS.**

Bandula Nishantha Kumarage,  
392, Siyambalagoda,  
Danthure.

**2a and 6<sup>th</sup> Defendant-  
Appellant-Respondent**

- 1a. Haddage Prema Wijetileka  
(correctly read as Haddawage Prema  
Wijetileka)  
Galanga, Siyambalagoda,  
Danthure.
- 1b. Pradeep Lakmal Wijetileka
- 1c. Wasana Wijetileka  
(appearing by her Guardian Y.B.  
Haddage Prema Wijetileka)

- (deceased) 3. Galange Kade Sumanasingha  
388, Siyambalagoda,  
Danthure.
- 3a. Y.G. Thilakawathie  
C/O. Dhanapala Kade, Ihalagama,  
Atabage, Gampola.
4. Padma Kumari Nilagaratne  
Shantha Niwasa, Pussellawa.
5. Rupassarage Rohitha Wickramaratne  
Siyambalagoda,  
Danthure.

**Defendant-Respondent-  
Respondents**

Galange Gedera Chandrawathie  
Nilagaratne,  
Hawendeniyagama, Pussellawa.

**1<sup>st</sup> Plaintiff-Respondent-  
Respondent**

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**BEFORE** : **Eva Wanasundera, PC. J**  
**Buwaneka Aluwihare, PC.J. &**  
**Anil Gooneratne, J.**

**COUNSEL** : **Asthika Devendra with L. Warusawithana and M.**  
**Sarathchandra for the 1<sup>st</sup> Plaintiff-Respondent-Appellant**  
**and 2<sup>nd</sup> Plaintiff-Respondent-Appellant**  
**Harsha Soza PC. With Anuruddha Dharmaratne for 1A and**  
**2A Defendant-Respondent- Respondents.**

**ARGUED ON** : **22.09.2015 & 29.09.2015**

**DECIDED ON** : **29.01.2016**



**SC. Appeal 66/2015 & SC. Appeal 64/2015**

**EVA WANASUNDERA, PC.J.**

At the hearing of the aforementioned cases on 22.09.2015 and on 29.09.2015, both parties agreed that the two appeals (SC. Appeal 66/2015 & SC. Appeal 64/2015) be consolidated and a single judgment be written on SC. Appeal 66/2015. The parties in both cases agreed to abide by one judgment.

In SC. Appeal 66/2015, Leave to Appeal was granted on 27.03.2015 on the questions of law set out in paragraph 21(i), (iii) and (vi) of the Petition dated 03.05.2012. They are as follows:-

- 21(i) Did the Learned High Court Judges err in law by holding that the Decree marked P4 could not be considered as evidence of the title of Bilindu when there was no point of contest raised by the contesting Defendants as to the validity of the said Decree marked P4?
  
- (iii) Have the Learned High Court Judges misdirected themselves when they held that Bilindu the vendor had only kept for herself the dwelling house by not evaluating the evidence given by the 2<sup>nd</sup> Plaintiff, establishing the fact that the surrounding land of the said house was also left to the said Bilindu at the execution of Deed No. 6062?
  
- (vi) Was the High Court in error by holding that the Decree entered in Case No. 3476/L could not be considered as the best evidence placed before the District Court to establish the title of the Petitioner to the land sought to be partitioned?

The subject matter of the case in hand is the District Court of Kandy Partition case No. 13842/P. The Schedule to the Plaint gives the extent as 27.9 perches. The Plaintiffs were 2 in number and the Defendants were 6 in number. The 1<sup>st</sup> Defendant had died and three persons claimed under him as heirs. The 2<sup>nd</sup> Defendant also had died and one person claimed under him as an heir. The District Judge heard the case on 3 admissions

and 66 issues. The admissions are set down here since they are pertinent to the question in hand to be decided. They are:

- (1) The parties admit that the subject matter of the case, the land to be partitioned was at one time owned by Sinhala Pedi Gedera Bilindu.
- (2) The parties admit that the land to be partitioned was depicted as Lot 1 and Lot 2 together in Plan No. 614 dated 14.7.1998 made by licensed Surveyor R.B. Wijekoon ( Plan was marked as X)
- (3) The parties agree that 2a Defendant and 6<sup>th</sup> Defendant were one and the same person, namely Bandula Nishantha Kumarage.

The task for the District Judge was to decide the extent of the land which remained with Bilindu after the execution of the Deed No. 6062 dated 15.11.1928.

Delivering judgment on 23.06.2010, the District Judge granted certain portions of the land, mentioning the shares to the parties of the case and referring to the Plan X. At the end the District Judge left 2/30<sup>th</sup> share not allotted to an heir who failed to prove the ownership to that share and further directed that the parties should be allotted the said shares with the buildings as that they are possessed with and with rights of way to each party. The District Judge has also stated in the judgment, if allotting becomes practically very difficult, parties to the case can sell and/or buy the allotted portions from each other.

The District Judge had mentioned in pg. 24 of the judgment that the Plaintiffs had proved that Bilindu was the owner of the 27.9 perches with the house on it and therefore she is taking the pedigree from that base. The District Judge arrived at that finding on the strength of the Decree entered in case No. 3476/L declaring that Bilindu was entitled to Lots 4 and 5 of Plan No. 4319A; Lot 5 being the extent on which the house was standing on and Lot 4 being the surrounding land of the house. Lot 4 was 20.7 perches and Lot 5 was 7.2 perches.

The Plaintiff-Respondent-Appellant's claim before the District Court also was the same. In the amended plaint dated 16.02.2005, paragraph 2 (a), (b), (c) and (d), it is specifically averred that Bilindu sold the larger land and kept for herself a portion of land of an extent

of 27.9 perches which is her dwelling house and the land surrounding it, as mentioned in the schedule. The schedule referred to plan 4319A dated 23.11.1955 and 14.1.1957. The District Judge accepted this position. He affirmed the decree in the District Court case No. 3476/L to which Bilindu and one Deen were the only parties. In deed 6062 dated 15.11.1926 Bilindu was the seller and Deen was the purchaser of the property.

The substituted 1a Defendant-Appellant by herself and the substituted "2a and 6th" Defendant-Appellant by himself (one person) appealed to the Civil Appellate High Court against the judgment of the District Court, separately, in two applications namely CP/HCCA/KAN/162/2010(F) and CP/HCCA/KAN/163/2010 (F). The Learned Civil Appellate High Court Judge consolidated the two appeals with the consent of parties and delivered the judgment on 27.3.2012 reversing the District Court judgment and dismissed the action of the Plaintiffs in the District Court. The 2<sup>nd</sup> Plaintiff-Respondent-Appellant is now before this Court challenging the judgment of the Civil Appellate High Court.

**The basis** of the said Civil Appellate High Court judgment can be summarized as follows:-

- (a) P4, which is the **Decree** in case No. 3476/L is not in accordance with **the judgment**, which is a settlement between parties and therefore P4 cannot be considered as evidence of title of Bilindu.
- (b) The only available evidence of title of Bilindu is the deed marked P1 which states in the schedule that "all that western portion in extent one amunum paddy sowing (together with all the buildings and plantations thereon save and **except the tiled dwelling house alone**) out of the field called Galange Kumbura" and therefore what the vendor Bilindu had only kept for herself **is only the dwelling house** since no boundaries of a specific portion of appurtenant land is mentioned in the deed, and
- (c) The trial Judge should have been careful to compare the decree relied on by the Plaintiffs with the findings of the Court.

Having gone through the brief thoroughly, I observe the following. By deed 6062 dated 15.11.1926 (P1) Bilindu sold one amunum of the land called Galange Kumbura to Deen keeping for herself the "tiled dwelling house alone". In this Deed P1, in the clauses thereof, it is mentioned that she got title to this land by way of a deed number 3677 dated 07.09.1926 attested by R.E. Seneviratne Notary Public. In the same year by deed No. 6062(P1) dated 15.11.1926 she sold the same land to Deen except the house. The case record of L 3476 case which is part of this brief shows that, thereafter, Deen leased the land back to Bilindu for 10 years by deed of lease number 12318 dated 10.07.1941. The ten years was over by 10.07.1951. Bilindu did not give back the possession of the leased land. Then Deen filed case No. L3476 to evict him from Deen's land. Case was settled on 11.05.1953. It was settled thus: "The Defendant admits that she entered the land as a tenant of the Plaintiffs. Of consent judgment to be entered for the Plaintiffs as prayed for with damages at Rs.200/- up to date and further damages at Rs.66/- per month until Plaintiffs are restored to possession and costs. I enter judgment accordingly. Parties sign the record".

I observe that Bilindu, accepted that she was a lease holder and/or tenant on the land that belonged to Deen. Deen was the purchaser of the land from Bilindu in 1926. Bilindu was already in her dwelling house. It was an accepted fact by both parties. When decree was entered on 03.04.1957, i.e. almost 3 years later, even then, Deen agreed not to issue writ until 30.4.1957. It is mentioned so, at the end of the decree.

The decree in any District Court case is always filed in compliance with the provisions of the Civil Procedure Code. In practice the decree is usually drafted and filed by the Plaintiff's instructing Attorney. The Court Officers go through it carefully and the other side can point out if there is something wrong in the decree and get it corrected. It is under all these circumstances that this decree dated 03.04.1957 was filed. It is an accepted document by parties to that action, namely Bilindu and Deen.

It is observed that Plan 4319A referred to in the decree of 3476/L, marked as P5 is dated 24.01.1957. It is mentioned that it was surveyed on 28.11.1955 and the parties present were a representative of Deen named Tikiri Duraya for Plaintiff-Petitioner and 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, meaning Sirisoma, Bilindu and Sirisena. This plan, I observe, has been

done between the date of settlement in case L 3476, ie. 11.05.1953 and the date of the decree, ie. 03.04.1957 which is quite credible and wisely done for everything to be crystal clear. The decree has clearly done justice by the parties by declaring the entitlement of parties and clearly mentioning the lots each party is entitled to. It is mentioned in the decree that the Plan P5 is part and parcel of this decree and filed of record in L3476. It gives the 2<sup>nd</sup> Plaintiff namely, W. Rankiri Danture, Lots 1, 2, 3 and 4A together of an extent of A1 R3 P23.7 and Lot 4B and Lot 5, to the 3<sup>rd</sup> Respondent who is Bilindu, Lot 4 and Lot 5 together is of an extent of 27.9 perches.

So I observe that there is **no good reason** for the Civil Appellate High Court Judges to go on the basis that the **decree is not in conformity with the settlement entered in Court. The decree is in fact inconformity with the settlement arrived at in open Court.** The settlement was pursued with a survey and making a plan and specifically allotting the portions of land to Bilindu and Deen. The Civil Appellate has gone quite wrong on this point.

I observe, incidentally that there was no issue before the District Court and even in the High Court with regard to the validity of this decree in L 3476, namely P4. There was no challenge on P4. Therefore, I am of the opinion that the High Court has gone at a tangent by trying to determine the validity of P4 even though the High Court was never even invited to do so by any party before Court and by doing so Court finally arrived at a wrong finding.

Furthermore the evidence in Court given by the 2<sup>nd</sup> Plaintiff before the trial Judge amply proves that the house and the land around it was given to Bilindu. The evidence nicely puts it down as, “since the house was owned by a female ( i.e. Bilindu) and she should be allowed to go out when necessary, I allowed the land around the house for her use”-

(එ ගෙදර අයිතිවෙලා තිබුනේ ගැහැණු කෙනකුට. එලියට පහලියට යන්න ඕන කියලා එ කොටස අත හැරීය) It is in the colloquial village language and therefore well said. Anyway no person woman or man selling his or her own land keeping the house to live in, would never sell every inch of the land not preserving a road way and a little land around it. The whole land Bilindu sold to Deen was almost 2 acres in extent and out of that Bilindu had kept for herself the land of 27.9 perches with the consent of the purchaser Deen, which seems to

be quite sensible and reasonable. In practice no block of land can exist without a road way.

I have also considered all the arguments brought up by the Counsel for the Respondents by way of written submissions as well as oral submissions. I am of the opinion that the judgment of the Civil Appellate High Court cannot be allowed to stand. I answer all the questions of law aforementioned in the affirmative in favour of the Appellant.

I set aside the judgment of the Civil Appellate High Court of Kandy dated 27.3.2012 and affirm the judgment of the District Court of Kandy dated 23.06.2010. The appeal is allowed with costs.

**Judge of the Supreme Court**

**Buwaneka Aluwihare, PC.J.**

I agree.

**Judge of the Supreme Court**

**Anil Gooneratne, J.**

I agree.

**Judge of the Supreme Court**