

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

Gotabhaya Upali Wickramasinghe
Ravindra Disna,
241, Hunupitiya, Wattala.
1st Defendant-Appellant-Appellant

SC/APPEAL/128/2012

WP/HCCA/COLOMBO/448/2007(F)

DC/COLOMBO/19084/P

Vs.

Werakkodi Arachchige Mary Nona,
761, Hunupitya, Wattala.
2nd Defendant Respondent-
Respondent (Deceased)
Roshan Pradeep Kannangara,
761, Hunupitiya, Wattala.
2A Defendant-Respondent-
Respondent

Mohamed Hanifa Ummu Raseena,
764, Kanthi Mawatha,
Hunupititya, Wattala.
Plaintiff-Respondent-Respondent

Before: Hon. Justice S. Thurairaja, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: M. Nizam Kariapper, P.C., with M.I.M. Iynullah for the 1st Defendant-Appellant-Appellant.

M.U.M. Ali Sabry, P.C., with Shamith Fernando for the 2A Defendant-Respondent-Respondent.

Argued on: 21.10.2024

Written Submissions:

By the 2A Defendant Respondent on 18.10.2012 and
21.11.2024

By the 1st Defendant Appellant on 13.12.2012 and
24.10.2024

Decided on: 05.03.2025

Samayawardhena, J.

The plaintiff filed this action in the District Court of Colombo seeking to partition the land described in the schedule to the plaint between the plaintiff and the 1st defendant in equal shares. The 2nd defendant was named as a party as she was in possession of the land. The position of the plaintiff was that she became entitled to a ½ share of the land by Deed marked P2 executed by the 1st defendant approximately six months prior to the institution of the partition action. The 2nd defendant claimed prescriptive title to the entire land. In two previous litigations (5048/ZL and 4917/RE), the 2nd defendant's rights had been affirmed. There is overwhelming evidence that the 2nd defendant has been in possession of the land for several decades without recognising the rights of any other person, thereby entitling her to successfully claim a prescriptive title to the land.

After trial, the District Judge, by judgment dated 26.11.2007, held that the 2nd defendant had acquired prescriptive title to the entire land, except for the building identified as No. 1 in the Preliminary Plan marked X at

the trial. The District Judge further held that the building marked No. 1 should be allotted to the plaintiff based on Deed P2 and prescription. (එකී කරුණ මත මෙම “පි” දරන ගොඩනැගිල්ල සම්බන්ධයෙන් දිරිග කාලීන භුක්තිමය අයිතිය මෙන්ම 1 වන විත්තිකරුගෙන් ඇය මිලදී ගැනීම තුළින්ද එහි අයිතිය පැමිණිලිකාරියට ලැබිය යුතු බවට තීරණය කරමි.)

The District Judge ordered partition of the land and directed that the interlocutory decree be entered accordingly. (ඉහත සඳහන් පරිදි ඉඩම මැන බෙදා වෙන් කිරීමට තීරණය කරමි. ඒ අනුව මුල් තීන්දු ප්‍රකාශය ඇතුළත් කරන්න.)

Only the 1st defendant preferred an appeal against this judgment to the High Court. The High Court, by judgment dated 11.11.2010, affirmed the judgment of the District Court and dismissed the appeal.

This appeal by the 1st defendant is against the said judgment of the High Court. This Court has granted leave to appeal on the following question of law proposed by the 1st defendant:

Did the Civil Appeal High Court fail to answer the question whether the interlocutory decree could be entered in a partition case between two persons who were supposed to have obtained prescriptive title to undivided shares?

In my view, this question is misconceived both in law and fact and cannot be answered, as the District Court judgment was not entered on the basis of “prescriptive title to undivided shares.” If I may repeat, what the District Judge states in the judgment is that the plaintiff, based on Deed P2 and prescriptive possession, is entitled to building No.1, and the remaining portion has been acquired by the 2nd defendant by prescriptive possession.

I accept that once that finding is made, the interlocutory decree can be entered, but partitioning the land between the plaintiff and the 2nd

defendant does not arise. I cannot accept the argument advanced on behalf of the 1st defendant that, when partitioning is not possible, the action must be dismissed.

Once the District Court decides that a party has acquired prescriptive title to an identifiable portion of the corpus, that portion needs to be excluded from the corpus. In this case, except for building No.1, the remaining portion of the corpus shall be excluded on the basis that it has been acquired by the 2nd defendant through prescriptive possession. What remains is building No.1 and the land connected thereto, which has been allotted to the plaintiff. One might wonder whether the Court can make such orders. It is possible under the partition law.

Section 26(2)(d) and (f) of the Partition Law read 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:-

- (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;*
- (f) order that any specified portion of the land sought to be partitioned or surveyed be excluded from the scope of the action;*

In terms of section 48(1) of the Partition Law, both the interlocutory decree and the final decree of partition are final and conclusive against all.

Save as provided in subsection (5) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal

which may be preferred therefrom, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of this section, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decree relates and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree.

For the foregoing reasons, except for building No.1 in the Preliminary Plan marked X, the remaining portion shall be excluded from the corpus on the basis that the 2nd defendant has acquired prescriptive title to it. Building No.1 and the portion of land on which it stands shall be allotted to the plaintiff. The interlocutory decree shall be entered accordingly. Upon the registration of the interlocutory decree, no further steps are required to partition the land.

Subject to the above variations and clarifications, I dismiss the appeal with costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court