

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

In the matter of an application for leave to appeal in terms of the 1990 Supreme Court Rules and the relevant provisions pertaining to leave to appeal.

SC / Appeal / 95 / 2018

SC / HCCA / LA / 548 / 2017

Civil Appellate High Court:

SP / HCCA / GA / 87 / 2011(F)

DC Galle: P / 13899

Kibiya Ekanayakege Sentan (Deceased)
No. 1D, Dewasurendra Mawatha,
Galwadugoda, Galle.

PLAINTIFF

Kibiya Ekanayakage Kaanthilatha,
No. 1D, Dewasurendra Mawatha,
Galwadugoda, Galle.

SUBSTITUTED PLAINTIFF

-Vs-

1. Kibiya Ekanayakage Newton
No. 64/2, Temple Road,
Thenkallagoda, Galle.
2. Kibiya Ekanayakege Dikson
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.

3. Kibiya Ekanayakege Ranjini
Bope Avenue, Osanagoda, Galle.
4. Wimalawathie
Ruhunupura, Wellampitiya.
5. Kibiya Ekanayakege Vinitha
Ruhunupura, Wellampitiya.
6. Wewelwala Hewage Jayasinghe
No. 96/4, Humes Road, Galwadugoda,
Galle.
7. Wewelwala Hewage Shanthi
No. 96/4, Humes Road, Galwadugoda,
Galle.
8. Uduwaka Hewage Ranjani
9. Kibiya Ekanayakege Mala Tharangani
10. Kibiya Ekanayakege Shyamala
Priyadarshani
11. Kibiya Ekanayakege Neela Priyangani
12. Kibiya Ekanayakege Seetha Sadani

All are of

No. 18/6, Dewasurendra Mawatha,
Galwadugoda, Galle.

13. Mahamada Arachchige Ramya
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.

14. Wewella Hewage Priyanthi
No. 18, Dewasurendra Mawatha,
Galwadugoda, Galle.

15. Wewelawala Hewage Wijitha
No. 18C, Dewasurendra Mawatha,
Galwadugoda, Galle.

16. Kibiya Ekanayakege Gamini alias
Mahinda Ekanayake,
No. 231/24, C.P.R. Land,
Meethotamulla,
Kolonnawa.

DEFENDANTS

AND BETWEEN

1. Kibiya Ekanayakege Dikson
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.

2. Mahamada Arachchige Ramya
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.

**2ND AND 13TH DEFENDANTS –
APPELLANTS**

Kibiya Ekanayakage Kaanthilatha,
No. 1D, Dewasurendra Mawatha,

Galwadugoda, Galle.

**SUBSTITUTED PLAINTIFF –
RESPONDENT**

1. Kibiya Ekanayakege Newton
No. 64/2, Temple Road,
Thenkallagoda, Galle.
3. Kibiya Ekanayakege Ranjini
Bope Avenue, Osanagoda, Galle.
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Ruhunupura, Wellampitiya.
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10. Kibiya Ekanayakege Shyamala
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11. Kibiya Ekanayakege Neela Priyangani
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All are of

No. 18/6, Dewasurendra Mawatha,
Galwadugoda, Galle.

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No. 18C, Dewasurendra Mawatha,
Galwadugoda, Galle.

16. Kibiya Ekanayakege Gamini alias
Mahinda Ekanayake,
No. 231/24, C.P.R. Land,
Meethotamulla,
Kolonnawa.

DEFENDANTS – RESPONDENTS

AND NOW BETWEEN

Kibiya Ekanayakage Kaanthilatha,
No. 1D, Dewasurendra Mawatha,
Galwadugoda, Galle.

SUBSTITUTED PLAINTIFF –
RESPONDENT – PETITIONER –
APPELLANT

Vs.

1. Kibiya Ekanayakege Dikson
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.
2. Mahamada Arachchige Ramya
No. 01, Dewasurendra Mawatha,
Galwadugoda, Galle.

**2ND AND 13TH DEFENDANTS –
APPELLANTS - RESPONDENTS**

1. Kibiya Ekanayakage Newton
No. 64/2, Temple Road,
Thenkallagoda, Galle.
2. Kibiya Ekanayakege Dikson
No. 01, Dewasurendra Mawatha,
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9. Kibiya Ekanayakege Mala
Tharangani

10. Kibiya Ekanayakege Shyamala
Priyadarshani

11. Kibiya Ekanayakege Neela
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16. Kibiya Ekanayakege Gamini alias
Mahinda Ekanayake,
No. 231/24, C.P.R. Land,
Meethotamulla,
Kolonnawa.

DEFENDANTS –

RESPONDENTS –

RESPONDENTS

Before: A.H.M.D. Nawaz, J
Achala Wengappuli, J &
Sobhitha Rajakaruna, J

Counsel: Udaya Bandara instructed by Budhdhika De Silva for the
Substituted Plaintiff- Respondent-Appellant.

Sandamal Rajapakse with Induka Senanayake for the Defendants –
Appellants – Respondents.

Argued &

Decided on: 21.05.2025

A.H.M.D. NAWAZ, J.

We have heard the learned Counsel for the Substituted Plaintiff-Respondent-Appellant Mr. Udaya Bandara and we have also heard Mr. Sandamal Rajapakse who appears for the 2nd and 13th Defendants-Appellants-Respondents.

Leave has been granted on the following questions of law;

1. *Did the learned High Court Judge err in holding that the intention was to transfer Lot No. 08 referred to in Deed No.3548?*
2. *Did the learned High Court Judge err in holding that the ownership of the aforesaid Lot No. 08 was transferred to the 2nd Defendant by Deed No. 3548 (2D2)?*

We have examined the evidence recorded before the learned District Judge and the decision made thereon by the learned District Judge to partition the land as prayed for by the Plaintiff.

If one peruses the plaint, it is quite clear that the plaint recites the extent of the land as 1 acre and 18.8 perches. However, by evidence it has been established that the extent of the land was only 19 perches. Without paying due regard to such a wide discrepancy between the extent shown in the schedule to the plaint and the physical extent as proved at the trial, the learned District Judge proceeded to partition the land as prayed for by the Plaintiff as having comprised of 1 acre and 18.8 perches. This is a cardinal error we observe in regard to the assessment of evidence on the part of the learned District Judge.

An appeal was preferred to the Civil Appellate High Court sitting in Galle and the learned Judges of that Court delivered judgment in favour of the 2nd Defendant-Appellant dismissing the Plaintiff's case.

It was established at the trial that one Kibiya Ekanayakege Mendis had become the owner of Lot No. 08 by a Deed bearing No. 7827 and dated 22/03/1970 and it is clear that the said Kibiya Ekanayakege Mendis was the father of the Plaintiff and the 2nd Defendant-Appellant. It is patently clear through both oral and documentary evidence that the 2nd Defendant had become the owner of this land by a deed of transfer bearing No. 3548, wherein

it is denoted that the transfer had been for a consideration of a sum of Rupees One Hundred Thousand (Rs. 100, 000). In other words, the father of both the Plaintiff and the 2nd Defendant, the aforesaid Kibiya Ekanayakege Mendis had transferred the property by the Deed bearing No. 7827 to the 2nd Defendant-Appellant. He had transferred only Lot No. 08 as reflected in plan No. 927. This Lot No. 08 is also reflected and indicated in the Deed of transfer bearing No. 3548.

However, it appears that instead of Lot No. 08, Lot No. 05 had been erroneously stated to be the subject matter of the transfer in the deed. The fact that it is an error has been finally established through the following factors namely, that the transferor Kibiya Ekanayakege Mendis never had any right of title to the so-called Lot No. 05.

Another important factor to be borne in mind is that it is the 2nd Defendant who paid the assessment taxes prior to the transfer in respect of this land, after his father had paid such assessment taxes for the subject matter before the transfer. There is undisputed evidence in this case that the 2nd Defendant had been in *undisturbed and uninterrupted possession* of the land in question. There is no dispute about the identity of the *corpus* that was sought to be partitioned. When the 2nd Defendant offered his testimony to the effect that he obtained Lot No. 08 through his father and not Lot No. 05, he had been in undisturbed and uninterrupted possession of this land and the fact of his continuous payment of taxes together with other items of relevant evidence were never challenged by the Plaintiff in cross examination. This Court bears in mind the principle adumbrated in the case of ***Edrick De Silva Vs. Chandradasa De Silva***.¹ In this case, His Lordship Justice H.N.G. Fernando stated that if one person leads evidence and the opponent does not contradict that evidence, this is an additional “*matter*” before Court, which the definition

¹ 70 NLR 169 at p 174.

in Section 03 of the Evidence Ordinance requires the Court to take into account. In other words, uncontradicted evidence adduced by the 2nd Defendant in the trial is a fact in favour of the 2nd Defendant's case.

The Court also takes note of the case of *Samaranayake Vs. Ran Menika*² where Pathirana, J stated that upon examination of the evidence, it was clear that the assessment numbers supplied sufficient certainty as to the identity of the lands intended by the parties, overruling the contrary boundary descriptions. Subsequently, it was determined that the defendant and predecessors established prescriptive title, warranting reversal of the lower court's judgment. The opinion further emphasized rectification of deed boundaries for accuracy in future transactions.

In the present case, when considering the assessment numbers in the schedule of the deed bearing No. 7827 and No. 3548, it is crystal clear that Kibiya Ekanayakege Mendis intended to transfer the land bearing assessment No. 5/1 and 5/2 to the 2nd Defendant. Thus, the evidence presented at the trial clearly establishes and clarifies that the deed of transfer bearing No. 3548 transferred only Lot No. 08, as Kiriba Ekanayakege Mendis had derived his legal ownership to only Lot No. 08.

This oral evidence can certainly be used for the clarification of the Deed No. 3548, and interpretation of the deed can certainly take into account the oral evidence presented in the case - see the case of *Babasuriya Vs. Charles*³.

This Court once again re-iterates that the 2nd Defendant had possession of this land until the above case was filed, and even the Plaintiff had admitted that the 2nd Defendant was in possession of this land. As such, the learned District

² 80 NLR 256.

³ 1 NLR 348.

Judge could not have proceeded to partition a land which was in the exclusive possession of the 2nd Defendant and when there was no evidence of co-ownership among the parties.

In the circumstances, we set aside the judgment of the learned District Judge dated 4 August 2011 and affirm the judgment of the learned Civil Appellate High Court Judges dated 9 November 2017. Accordingly, the Court proceeds to answer the questions of law in the negative and dismiss the appeal of the Plaintiff-Respondent-Appellant.

Judge of the Supreme Court

Achala Wengappuli, J

I agree

Judge of the Supreme Court

Sobhitha Rajakaruna, J

I agree

Judge of the Supreme Court