

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

1. Agampodige Matin , (Deceased)  
Getambahena, Galagama,  
Nakulugamuwa.

**Plaintiff**

- 1a. Agampodige Dammika ,  
Getambahena, Galagama,  
Nakulugamuwa.
- 1b. Agampodige Seelawathie  
No.31, Hospital Road, New Town,  
Embilipitiya.
- 1c. Agampodige Mala Mallika,  
Getaambahena, Galagama,  
Nakulugamuwa.
- 1d. Agampodige Mahinda Rohitha,  
Getaambahena, Galagama,  
Nakulugamuwa.

**Substituted-Plaintiffs**

CA No.436/97 (F)  
DC Tangalle Case No.1751/P

1. Dalawellahewa Hakuruge Avuneris  
"Ariyagiri" Sirimawatha, Navimana.  
Matara
2. Nawalagoda Hewage Nikulas,  
Welimeeyanhena, Galagama,
3. Nawalagoda Hewage Alpin,  
Gallidahena, Galagama.
4. Rajapakshage Kusuma  
Eta Ambahena, Galagama,
5. Agampodige Yasawathi,  
Eta Ambahena, Galagama.
6. Agampodige Somalatha,  
Eta Ambahena, Galagama.
7. Agampodige Saman,  
Eta Ambahena, Galagama.

8. Nawalagoda Hewage Gimarahamy  
Welimeeyanhena, Galagama.
9. Nawalagoda Hewage Seetha,  
Welimeeyanhena, Galagama.
10. Nawalagoda Hewage Munidasa,  
Welimeeyanhena, Galagama.
11. Nawalagoda Hewage Kumaradasa,  
Welimeeyanhena, Galagama.
12. Nawalagoda Hewage Chandradasa  
Welimeeyanhena, Galagama.
13. Manamperige Gardiyas  
Gegawa, Halagama.
14. Don Simon Weerathunga  
Abeysekara  
Midulegahakoratuwa, Galagama.
15. Dapanadurage John,  
"Sandamali", Galagama –East,  
Nakulugamuwa.
16. Dapanadurage Leelawathi,  
"Deniyawatte", Navimana –North,  
Matara.
17. Dapanadurage Somawathi,  
"Dapanawatte", Navimana –North,  
Matara.
18. Dapanadurage Jasalin,  
"Udayasiri", Navimana –North,  
Matara.
18. Dapanadurage Maginona,  
"Udayasiri", Navimana –North,  
Matara.
20. Menikpurage Dayawathie  
Malgashena, Galagama-South  
Nakulugamuwa.

**Defendants**

## **And Now**

15. Dapanadurage John, (deceased)  
"Sandamali", Galagama –East,  
Nakulugamuwa.

## **15<sup>th</sup> Defendants Appellant**

- 15a Dapanadurage Kularatne  
"Sansamali" Galagama-East  
Nakulugamuwa.

## **Substituted 15<sup>th</sup> Defendant/Appellant**

**Vs**

- 1a. Agampodige Dammika ,  
Getammbahena, Galagama,  
Nakulugamuwa.
- 1b. Agampodige Seelawathie  
No.31, Hospital Road, New Town,  
Embilipitiya.
- 1c. Agampodige Mala Mallika,  
Getaambahena, Galagama,  
Nakulugamuwa.
- 1d. Agampodige Mahinda Rohitha,  
Getaambahena, Galagama,  
Nakulugamuwa.

## **Substituted-Plaintiff-Respondents**

1. Dalawellahewa Hakuruge Avuneris  
(deceased)  
"Ariyagiri" Sirimawatha, Navimana.  
Matara
2. Nawalagoda Hewage Nikulas,  
(deceased)  
Welimeeyanhena, Galagama,
3. Nawalagoda Hewage Alpin,  
Gallidahena, Galagama.

4. Rajapakshage Kusuma ,  
Eta Ambahena, Galagama,
5. Agampodige Yasawathi,  
(deceased)  
Eta Ambahena, Galagama.
6. Agampodige Somalatha,  
Eta Ambahena, Galagama.
7. Agampodige Saman,  
Eta Ambahena, Galagama.
8. Nawalagoda Hewage Gimarahamy  
(deceased)  
Welimeeyanhena, Galagama.
9. Nawalagoda Hewage Seetha,  
Welimeeyanhena, Galagama.
10. Nawalagoda Hewage Munidasa,  
Welimeeyanhena, Galagama.
11. Nawalagoda Hewage Kumaradasa,  
Welimeeyanhena, Galagama.
12. Nawalagoda Hewage Chandradasa  
Welimeeyanhena, Galagama.
13. Manamperige Gardiyas  
Gegawa, Halagama.
14. Don Simon Weerathunga  
Abeysekara  
Midulegahakoratuwa, Galagama.
16. Dapanadurage Leelawathi,  
"Deniyawatte", Navimana –North,  
Matara.
17. Dapanadurage Somawathi,  
(deceased)  
"Dapanawatte", Navimana –North,  
Matara.

18. Dapanadurage Jasalin, \*  
"Udayasiri", Navimana –North,  
Matara.
18. Dapanadurage Maginona,  
(deceased)  
"Udayasiri", Navimana –North,  
Matara.
20. Menikpurage Dayawathie  
Malgashena, Galagama-South  
Nakulugamuwa.

**Defendants-Respondents**

**Before:** Janak De Silva J.

&

N. Bandula Karunarathna J.

**Counsel:** Dinuka Coorey for the Substituted 15A Defendant-Appellant.

Nimal Muthukumarana for the Substituted-Plaintiff-Respondent.

**Written Submissions:** Substituted 15<sup>th</sup> Defendant/Appellant filed on 31<sup>st</sup> October 2019.

**Argued on:** 23/07/2019

**Judgment on:** 16/11/2020

**N. Bandula Karunarathna J.**

The original Plaintiff-Respondent (hereinafter called and referred to as the Plaintiff) instituted the above styled partition action in the District Court of Tangalle seeking *inter alia* to have partitioned the land called 'Geta Ambehenawatte alias Geta Ambehena, more fully described in the Plaint as per the pedigree set out in that Plaint. Thereafter, the commission was issued to Mr.U.S. Attapattu, Licensed Surveyor to prepare the Preliminary Plan and accordingly the Plan bearing No.778 was tendered to Court.

After the completion of the pleadings, the matter was fixed for trial. On 11<sup>th</sup> May 1977 admissions and issues were recorded. All the parties admitted the land depicted in the Preliminary Plan bearing No.778 as the subject matter of the action. Thereafter, 1<sup>st</sup> to 4<sup>th</sup> issues were raised.

At the trial only the Plaintiff had given evidence and produced the documents marked as X, XI, P1 to P23. The 3<sup>rd</sup> Defendant gave evidence on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The 15<sup>th</sup> Defendant-Appellant and one Albert Bogahawatte gave evidence on behalf of the Appellant and produced the documents marked as 15 V 1 to 15 V 4. Thereafter the Judgment was delivered on 01-07-1997 by which shares were allotted to the Plaintiff and to the 1<sup>st</sup> to 14<sup>th</sup> Defendants while the 15<sup>th</sup> Defendant-Appellant was not allocated any share.

Being aggrieved by the said Judgment the 15<sup>th</sup> Defendant-Appellant preferred this appeal to this Court. After this appeal was preferred the 15<sup>th</sup> Defendant-Appellant was deceased and the son was substituted in the room of the deceased. The 15<sup>th</sup> Defendant-Appellant (hereinafter referred to as Appellant) has stated that the original owners for an undivided 9/80<sup>th</sup> share were (1) Wijesinghe Suchchohamine and (2) Kariyapperuma Kulatunga Janoris Appuhami.

The Appellant states that both of them transferred their rights to one Kahagalahewa Gamage Punchi Naide under and by virtue of the Deed bearing No.23799 dated 18-01-1992. The said deed was marked at the trial as 15 V 1. The said Kahagalahewa Gamage Punchi Naide died leaving his wife namely Peduru Arachchige Sochcho and 8 children respectively named as (1) Karonchina (2) Sandoris (3) Soina (4) Pantheris (5) Bilinda (6) Digena (7) Kota and (8) Heena. Therefore, the rights of the said Kahagalahewa Gamage Punchi Naide was devolved on the heirs.

The widow Peduru Arachchige Sochcho was entitled for an undivided 9/160 while the children entitled for an undivided 9/1280<sup>th</sup> share. Peduru Arachchige Sochcho transferred her rights to her daughter Karonchi above named under and by the Deed bearing No.1838 dated 15-12-1943 which is marked as 15 V 4.

The Appellant states that the said Digena and Kota also transferred their undivided shares to Karonchina under and by virtue of the Deed bearing No.18507 dated 09-03-1926 which was marked at the trial as 15 V 5. The aforesaid Karonchi effected a conditional transfer to Rajapurage Jinadasa under the Deed bearing No.9461 dated 09-09-1984. Which was marked as 15 V 2. The aforesaid Sandoris, Soina, Heena, Pantheris and Bilinda transferred their undivided shares to Karonchina above named under the Deed bearing No.3531 dated 09-03-1926 which was marked as 15 V 6.

The Appellant states that thereafter the said share was transferred to Karonchi above named under and by virtue of the Deed bearing No.1476 dated 28-02-1952 which was marked as 15 V 3. Accordingly, the said Karonchi has become the owner of the entire 9/80<sup>th</sup> share. The said Karonchi died leaving the 15<sup>th</sup> Defendant-Appellant and Dapamadurage Leelawathi the 16<sup>th</sup> Defendant. Accordingly, 15<sup>th</sup> Defendant-Appellant and Dapanadurage Leelawathi became owners for undivided 9/160<sup>th</sup> share each.

The Appellant argues that all the said Deeds marked as 15 V 1 to 15 V 6 were produced through the Plaintiff while he was under cross examination and none of the said Deeds put

subject to proof. It was further argued that therefore, execution and existence of such deed should be admitted.

The Appellant states that even though the Deeds were found at the search done in the Land Registry before filing the partition action, the Plaintiff having very well known to the fact that the 15<sup>th</sup> Defendant-Appellant has undivided shares had deliberately and intentionally filed action without making the 15<sup>th</sup> Defendant-Appellant a party.

In his evidence the plaintiff, has stated that he had searched for the original owners of the land called "Getaambe Hena Watta or Getaambe Hena" shown in plan x but could not find the original owner and that he had made his pedigree after inspecting the land registry. The lands related to this case have been registered on page 229 of the Land Registration Office. The Plaintiff argued that the land relevant to this case should be divided between the plaintiff and the defendants 1-14. It is also stated that the buildings and cultivations should be owned by the parties according to the surveyor's report.

The plaintiff was cross-examined at length and he further stated that the 15th defendant in this case had no ownership of the land. He had never occupied the land and that no building belonging to him situated on the land in dispute. Deeds from '15 V 1' to '15 V 6' have been marked on behalf of the 15th Defendant in this case and the plaintiff has stated that the deeds do not belong to the land in question. The testimony of the plaintiff is corroborated by the testimony of the 3rd defendant.

The testimony of the 15th Defendant stated that the land belonged to him and the persons mentioned in his statement of claim on the basis of the deeds marked '15V1' to '15V6'. His testimony stated that no cultivation had been done on the land in question, that no building had been erected on it, and that neither he nor his descendants had any ownership of the disputed land. At the time of testifying, he had stated his rights to certain cultivations on the land subject to this case, but at the hearing of this case he had not raised any issue to be resolved on his behalf and had admitted that the cultivation should be owned by the parties according to the surveyor's report. Further, at the time the surveyor came to this land, neither the 15th Defendant nor any of the persons mentioned in his claim had shown any claim to the cultivations or buildings before the Surveyor. This 15th defendant's claim shows that his rights are 9/80 and he has not produced a pedigree regarding the remainder. According to his testimony, his father, Baboon, had been living on the land adjacent to the land in dispute in this case and the two lands were separated by a village road.

Considering all the documents submitted by the plaintiff in this case, it has been very clearly proved that the land described by the heirs mentioned in those documents is not the same as the land surveyed in this case and marked '15V1' to '15V6'. The lands described by the heir in the deeds appear to be quite different from the boundaries of the land measured in this case. Therefore, the deeds presented with marks '15 V 1' to '15 V 6' cannot be accepted as evidence relevant to the subject matter of this case. Accordingly, I am of the view that the pedigree mentioned in the statement of claim of the 15th Defendant in this case or the evidence presented marked '15V1' to '15V6' is not relevant to this case.

Although the Appellant states that it is crystal clear that he has acquired undivided title to the land sought to be partitioned and also, he has possessed lot 02 of the Preliminary Plan marked X, it is my view that the said claim was not proved before the Learned Trial Judge.

Due to the aforesaid reasons I verily believe that appeal should be dismissed and the judgement of the Learned District Judge should be affirmed.

Appeal dismissed with cost.

**Judge of the Court of Appeal**

**Janak De Silva , J**

**I agree.**

**Judge of the Court of Appeal**