

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

CA.986/99(F)
DC Kalutara
Case No.P/6228

01. Rupa Kannangara (1st Plaintiff
and the guardian of the 2nd
Plaintiff Minor)

02. Anura Lasantha Kannangara
(2nd Plaintiff Minor)
Both of No.347, Galle Road,
Kalutara South

Plaintiffs

Vs.

01. Lilan Kannangara

02. SayanaChandrika Kannangara

03. Amila Suranjith Kannangara
All of No.156/6,Makola Road
Kiribathgoda, Kelaniya

04. Asanthi Kamani Kannangara
of No.157/1,Makola Road,
Kiribathgoda, Kelaniya.

05. Padmaperuma Kuruppu of
No.145/1, Fife Road, Colombo
05

06. Winfred Kuruppu

07. Sarathchandra Sarathkumara
Kuruppu

08. Yuwraj Yasalal Kuruppu

09. Moharika Kautilya Kuruppu

10. Pushpadari Chamini Kuruppu

11. Udaya Kuruppu

12. Udeni Indumathie Kuruppu

13. Hunda Mandalige Handi
Somapala of No.345/1, Galle
Road, Kalutara North

14. Mangappuli Disanayake
Chandrasiri
Of 347, Galle Road, Kalutara
South

Defendants

AND NOW

Hunda Mandalige Handy
Somapala of No.345/1, Galle
Road, Kalutara North

13th Defendant- Appellant

Vs.

01. Rupa Kannangara (1st Plaintiff
and the guardian of the 2nd
Plaintiff Minor)

02. Anura Lasantha Kannangara
(2nd Plaintiff Minor)
Both of No.347, Galle Road,
Kalutara South

**1st and 2nd Plaintiff
Respondent**

AND

01. Lilan Kannangara

02. Sayana Chandrika
Kannangara

03. Amila Suranjith Kannangara
All of No.156/6, Makola Road
Kiribathgoda, Kelaniya

04. Asanthi Kamani Kannangara
of No.157/1, Makola Road,
Kiribathgoda, Kelaniya.

05. Padmaperuma Kuruppu of
No.145/1, Fife Road,Colombo
05

06. Winfred Kuruppu

07. Sarathchandra Sarathkumara
Kuruppu

08. Yuwraj Yasalal Kuruppu

8(a) Winfred Kuruppu

8(b) Sarathchandra

Sarathkumara Kuruppu

8(c) Moharika Kautilya Kuruppu

9(d) Pushpadari Chamini

Kuruppu

8(e) Udaya Kuruppu

All of "Suranie" No.203,

Anguruwatota Road, Wewala,

Horana.

09. Moharika Kautilya Kuruppu

10. Pushpadari Chamini Kuruppu

11. Udaya Kuruppu

12. Udeni Indumathie Kuruppu

"Suranie" No.203,

Anguruwatota Road,

Wewala, Horana.

13. Mangappuli Disanayake

Chandrasiri

Of 347, Galle Road, Kalutara

South.

Defendants - Respondents

Before:

Janak De Silva J.

&

N. Bandula Karunaratna J.

Counsel: Sanjeewa Dasanayake for the 13th Defendant-Appellant
Rashmi Vimansa Perera for the 5th , 6th ,7th & 10th Defendant
Respondent

Written Submissions: By the 13th Defendant-Appellant on the 17.09.2019
By the 5th ,6th ,7th & 10th Defendant - Respondent on
02.11.2019

Argued on: 07/06/2019

Judgment on: 16/11/2020

N. Bandula Karunarathna J.

The 13th Defendant –Appellant (hereinafter called and referred to as the “Appellant”) preferred the present appeal against the judgment dated 15.11.1999 of the Learned Additional District Judge of Kalutara in case bearing No. P/6228.

The 1st and 2nd Plaintiffs (hereinafter called and referred to as the ‘Plaintiffs’) instituted this action against the Defendants to partition the land called “BOTHUPARANGIYAWATTA” described in the schedule to the Plaint which is in extent of Twenty Seven decimal Five One Perches (A:0,R:0,P:27.51)

When this Appeal was taken up for argument on 07.06.2019, parties agreed to dispose the argument by way of Written Submissions. Accordingly, the 13th Defendant- Appellant tendered submissions seeking relief as prayed for in the Appeal. All parties agreed (except the Appellant) the corpus to be partitioned is depicted as Lot Nos. 2A and 2B of the Preliminary Plan prepared by P.H.M.J. Silva Licensed Surveyor bearing No 634 dated 13.02.1994, which has shown a land in extent of Twenty Seven decimal Five One Perches (A:0,R:0,P:27.51)

At the trial Plaintiffs, 2nd, 7th and 10th Defendants recorded an admission that there is no dispute regarding the corpus or pedigree and that the corpus is depicted in Preliminary Plan bearing No.634 made by P.H.M.J. Silva Licensed Surveyor. Thereafter the 1st Plaintiff testified before court and gave evidence, marking documents P1- P4 and 5V1. The Defendants have recorded that they are not cross examining the Plaintiff.

The said case was taken up for trial on 21st Nov. 1996 and on that date the Plaintiff Respondent, 5th ,6th ,7th and 10th Defendant Respondents and 2nd , 3rd ,4th Defendant Respondents were duly represented by their lawyers and the 13th Defendant Appellant was not present in court nor there was any representation on his behalf and on that date the parties admitted the corpus as depicted in Preliminary Plan No.634 and also recorded that there is no dispute with regard to the devolution of title. On that date the Plaintiff Respondent testified and produced the Preliminary Plan as X and its report as X1 and went into produce

documents relating to the devolution of title as P1,P2,P3 and also mentioned that the 5th Defendant Respondent should get 16/72 shares and 6th to 12th Defendant should get jointly 16/72 shares and also given the improvements as per the report of the Preliminary Plan marked X1.

It is evident that the 13th Defendant Appellant had filed a statement of claim on 13th January 1996, alleging that he was in the property for a period of over 40 years as a Tenant and also, he claimed the improvements in the property concerned. The District Court action was taken up for trial and concluded without his participation as he was abroad and, on that basis, moved by way of a motion, dated 9th Dec. 1996 to set aside the proceedings dated 21.11.1996. Then he sought permission from Court, to lead evidence and simultaneously moved not to accept the statement of claim filed by the 7th and 10th Defendant Respondents.

It is admitted that the Appellant's mother entered into possession as a tenant under Premasiri, who is the father of the 1st Defendant. She was occupying the house from year 1960 and further made applications to the Rent Board seeking permission to repair the said house.

The Rent Board thereafter permitted the erection of a wall at tenant's expense.

“ප්‍ර: 1035 නිවසේ 13 වන විත්තිකරු අයිතිවාසිකම් ඉල්ලා සිටිනවාද?

උ: ඔව්

ප්‍ර: 13 වන විත්තිකරු තමන් හඳුනානවාද?

උ: ඔව්

ප්‍ර: කොහොමද?

උ: ඒ ගෙයි අපි දන්නා දවසේ සිට කුලියට ඉන්නවා”

(Vide page 131 of the brief)

“ප්‍ර: 13 වන විත්තිකරු මේ නිවසට කිසි අළුත්වැඩියාවක් කලා ද?

උ: ඔව්

ප්‍ර: ඒ කොයි කාලේ ද?

උ: 1970 ගණන්වල”

(Vide page 132 of the brief)

“ප්‍ර: 13 වන විත්තිකරු මේ ගෙයි පදිංචිව ඉන්නේ අංක 345/1 දරණ ගෙයි?

උ: ඔව්

ප්‍ර: එක අතින් ගෙවල්වලින් වෙන් වූණ ගෙයක්?

උ: ඔව්

ප්‍ර: ඒ ගේ අවුරුදු කීයක් පරණද?

උ: අවුරුදු 60 කටත් වඩා පරණයි

ප්‍ර : තමන් කිව්වා ගෙවල් කුලී සම්බන්ධව ගියා කියා ගෙවල් කුලී මණ්ඩලයට රාජකාරි කරන්න?

උ : ඔව්

ප්‍ර : කවුද ඉල්ලුම්කරු ගෙවල් කුලී මණ්ඩලයෙන්?

උ : සෝමපාල”

(Vide page 136 of the brief)

Accordingly, it is crystal clear that parties have vehemently admitted that Appellant entered into possession as a Lessee.

In the case of Mohamedaly Adamjee V Hadad Sadeert 58 NLR 217 it was held that:

“If it appears to the Apex Court when hearing an appeal in a partition case, the investigation of title has been inadequate it should, even though no party before had raised that point, set aside the decree.”

It is very clear that the Learned Trial Judge has investigated the title before he came to the conclusion to partition the disputed land and the Appellant’s stand is not correct.

Another argument of the Appellant was that, he was occupying the disputed house from year 1960, as a Tenant and further made applications to Rent Board seeking permission to repair the said house. Therefore, the Appellants state that the Learned District Judge has failed to give any weight to the evidence he placed before the Court and the impugned judgment is entirely on assumptions and presumptions and thus the judgment is bad in law.

On the contrary, 5th, 6th, 7th and 10th Defendant Respondents state that the Plaintiff in terms of the devolution of title set out in the Plaint, suggested to be given the 5th Defendant Respondent undivided 16/72 and 6th to 12th Defendant Respondents were suggested to be given 16/72.

Thereafter the 5th and 6th Defendant Respondents, filed their statement of claim on 30th March, 1994 setting out their devolution and inter alia admitted the Preliminary Plan No.634 dated 25.10.1993 made by H.H. Michael J. Silva Licensed Surveyor and also conceded that the corpus consists of lot 2a, 2b, and 2c of the said Preliminary Plan. The 7th and 10th Defendant Respondents also filed their statement of claim on or around 18th October, 1996 and claimed the undivided rights set out in their statement of claim and also admitted the said Preliminary Plan No. 634.

The 13th Defendant Appellant had filed a statement of claim on 13th January 1996 alleging that he was in the property for a period of over 40 years as a Tenant.

It is my view that on account of the totality of evidence the finding of the Learned Trial Judge is the only finding any judge could have arrived at, in considering the evidence given by the parties.

There is no basis whatsoever for the Appellant to prefer this appeal except with the ulterior motive of prolonging the finalization of this litigation which in fact commenced on or around 21st of April, 1993 and at present it has taken almost 27 years.

Therefore, the judgment of the Learned District Judge dated 15.11.1999, is affirmed. There is no merit in this Appeal.

Thus, this Appeal is dismissed with cost.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal