

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

**C.A.474/2000 (F)  
Kuliyapitiya  
No.10342/P**

An application for the Substitution of the 1<sup>st</sup> DC  
Defendant-Substituted-Appellant for the 1<sup>st</sup> Case  
Defendant-Appellant (Deceased).

Hettiarachchige Sarath  
Ihala Narangamuwa  
Giriulla.

**PLAINTIFF**

1. Hapuachchillage Punchibanda alias Ukkurala  
Ihala Narangamuwa  
Giriulla.
2. Hapuachchillage Martinsingno  
Ihala Narangamuwa  
Giriulla.
3. Hapuachchillage Amarasena  
Ihala Narangamuwa  
Giriulla.
4. Hapuachchillage Podimenike  
Ihala Galayaya  
Pannala.

**DEFENDANTS**

AND NOW

Hapuachchillage Punchibanda alias Ukkurala  
(Deceased)  
Ihala Narangamuwa  
Giriulla.

**DEFENDANT-APPELLANT**

Hapuachchillage Amarasekera  
Ihala Narangamuwa  
Giriulla.

**1<sup>st</sup> DEFENDANT-SUBSTITUTED-APPELLANT**

Hapuachchillage Amarasena  
Ihala Narangamuwa  
Giriulla.

**3<sup>rd</sup> DEFENDANT-APPELLANT**

Vs

Sarath Hettiarachchige  
Ihala Narangamuwa  
Giriulla.

**PLAINTIFF-RESPONDENT**

Hapuachchillage Martinsingno  
Ihala Narangamuwa  
Giriulla.

**2<sup>ND</sup> DEFENDANT-RESPONDENT**

Hapuachchillage Podimenike  
Ihala Galayaya  
Pannala.

**4<sup>TH</sup> DEFENDANT-RESPONDENT**

**Before:**

**Janak de Silva J**

**&**

**N. Bandula Karunarathna J.**

**Counsel:**

Kaminda De Alwis with Wasantha Herath for the 1<sup>st</sup> and 3<sup>rd</sup>  
Defendant - Appellants

W. Dayarathna, PC with Hirantha Namal Perera for the Plaintiff-  
Respondent.

**Written Submissions:**

Filed on 01.07.2019 and 23.03.2016 on behalf of the 1<sup>st</sup>  
Defendant Substituted Appellant and 3<sup>rd</sup> Defendant –  
Appellant.

Filed on 20.08.2018 and 02.06.2016 of the Plaintiff/Respondent

**Argued on:**

**21/05/2019**

**Judgment on:**

**16/11/2020**

**N. Bandula Karunarathna J.**

The 1<sup>st</sup> and 3<sup>rd</sup> Defendant—Appellants (hereinafter called and referred to as the “Appellants”) preferred this appeal against the judgment dated 15.08.2000 of the learned District Judge of Kuliyaipitiya in case No. P/10342. The Plaintiff-Respondent (hereinafter called and referred to as the ‘Plaintiff’) instituted this action against the Defendants to partition the land called “Lindagawawatta” described in the schedule to the Plaint. All parties agreed that the corpus sought to be partitioned is Lot 1 to 5 of Preliminary Plan No.2416 dated 22.06.1992 prepared by Court Commissioner R. B. Navaratne.

This Partition action was filed in the DC, on the 28.01.1992 and proceeded for trial. Judgment was delivered on the 14.08.1996. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants, appealed against the said Judgment and the Court of Appeal after arguments, dismissed the Plaintiff’s action on the 25.01.1999. Special leave to Appeal application was filed by the Plaintiff, against the said dismissal and on the 04.06.1999, Supreme Court directed for *trial de novo* with the consent of both parties.

The re-trial was started on 13.03.2000. Only the Plaintiff and the 1<sup>st</sup> Defendant had given evidence. The learned District Judge delivered the judgment on the 15.08.2000, in favor of the Plaintiff. The present Appeal was filed by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants against the said Judgment.

The corpus was admitted by all parties and therefore, there was no dispute with regard to the identity of the corpus.

The main issue in this case is whether the aforesaid land should be partitioned by relying on the pedigree shown by the Plaintiff Respondent or the pedigree of the 1<sup>st</sup> and 3<sup>rd</sup> Defendant Appellants. The Plaintiff Respondent has discharged his burden by submitting title deeds produced and marked as P1 to P4 to prove that he is entitled to undivided 126/168 share.

The Appellants challenged the aforesaid pedigree of the Plaintiff by pleading that the original owner of the property was one Dingirala, who was governed by the Kandyan Law. He died leaving 4 children namely Kiribanda, Ungurala, Uppuhamy and Singngappu and according to the statement of claim of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, they have referred to several title deeds and pleaded that the 1<sup>st</sup> Defendant is entitled to undivided 16/42 share and the 3<sup>rd</sup> Defendant is entitled to undivided 5/42 share, subject to the life interest of the 1<sup>st</sup> Defendant.

The Plaintiff Respondent further states that the deeds produced and marked as 1D4 and 1D6 dated 28.04.1954, Abraham and Lewis who are children of Ungurala and Lokuhamy have transferred their rights as inherited from their parents to Punchibanda, whereas their father Lokohamy by deed produced and marked as 1D1 dated 29.12.1954 transferred undivided 1/4<sup>th</sup> of his rights to Punchibanda, Martin Singho and Themanis.

In view of the above Deed, produced and marked as 1D1, Lokuhamy was live on 29.12.1954, at least 8 months after Deeds No.1D3 and 1D6 were executed on 28.04.1954, on the ground that they inherited parental rights when their father Lokuhamy was living.

Therefore, it was argued that Abraham and Lewis cannot transfer paternal inheritance by the said deeds, as their father was living.

The Defendant Appellants challenged the above view by claiming that although in the schedule to the deed No.38160 (1D4), there are three lands which had been mentioned under No.1, 2 and 3 but under No.1 only parental inheritance was referred. Also, the Appellants claim that the schedule to the deed No.38159 (1D6), there are five lands, that had been mentioned under five numbers 1 to 5 but under number 2 and 3 only maternal inheritances were transferred.

The Defendant Appellants stated that the Learned Trial Judge's view that the land in dispute called "Lidagawawatta" and the deeds marked 1D1 to 1D8 do not refer Lidagawawatta and they refer some other land called Lidawatta is baseless. That conclusion is incorrect, as the schedule to the deeds marked 1D3 and 1D8 specifically says that land referred to Lidagawawatta alias Lidawatta. It shows that, both names were used for the same land.

However, it is my view that the Learned District Judge has critically and thoroughly analyzed the title deeds submitted by the Appellants and compared with the title deeds submitted on behalf of the Plaintiff Respondent.

It was held in Thilagaratnam Vs Appunathan And Others 1996 (2) SLR 66 that "although there is a duty cast on Court to investigate title in a Partition action, the Court can do so only within the limits of pleadings, admissions, points of contest, evidence both documentary and oral."

"Court cannot go on a voyage of discovery tracing the title and finding the shares of the corpus for them. Otherwise parties will tender their pleadings and expect the Court to do their work and their Attorneys-at-Law's work, for them to get title to those shares in the corpus."

According to the evidence of the Plaintiff-Respondent, the initial owners of the said land were Podinona, Punchirala, Mudalihamy, Podiappuhamy, Dingiri Banda and Ukkubanda. Each of them was entitled to an undivided  $1/8^{\text{th}}$  share and all of them together owned  $6/8^{\text{th}}$  share of the entire land. The remaining  $2/8^{\text{th}}$  share was owned by Lokuhamy.

It is evident that the said Podinona transferred her undivided  $1/8^{\text{th}}$  share by deed No.29378 (P1) dated 09.05.1945 to Ukkubanda. The remaining co-owners (Punchirala, Mudalihamy, Podiappuhamy and Dingiri Banda) transferred their undivided  $4/8^{\text{th}}$  share ( $= 1/2$ ) to the same Ukkubanda by deed No.27234 dated 20.01.1943 (P2) and thereby Ukkubanda became entitled to an undivided  $6/8^{\text{th}}$  share ( $= 3/4$ ). Said Ukkubanda died leaving Themanis Singho, Davith Singho, Simon Singho, Dingiri Menika and Ran Menika who have become entitled to the said  $6/8^{\text{th}}$  share ( $= 3/4$ ) and they by deed No.649 dated 25.05.1974 (P3) transferred the said  $6/8^{\text{th}}$  share ( $= 3/4$ ) to Punchibanda who transferred the same to the Plaintiff Respondents by deed No.3554 (P4) dated 23.10.1991.

Therefore, the Plaintiff-Respondent claims that he would be entitled to an undivided  $3/4^{\text{th}}$  share of the corpus.

According to the Plaintiff, the said Lokuhamy transferred her undivided  $1/4^{\text{th}}$  share by deed No.38826 dated 29.12.1954 (1D1) to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant-Appellants and to one

Themanis Singho. The said Themanis Singho transferred his undivided 1/12<sup>th</sup> share by deed No.254 dated 24.06.1967 (1D2) to the 1<sup>st</sup> Defendant. According to the Plaintiff-Respondent, the 1<sup>st</sup> Defendant became entitled to an undivided 2/12<sup>th</sup> or 1/6<sup>th</sup> share. 1<sup>st</sup> Defendant thereafter by deed No.5928 (1D3) dated 20.10.1983 conveyed an undivided 5/42<sup>th</sup> share to the 3<sup>rd</sup> Defendant Appellant.

The Plaintiff Respondent therefore claims that, 1<sup>st</sup> Defendant-Appellant would be entitled to an undivided 2/42 (= 1/21) of the corpus and 2nd Defendant is entitled to 1/12 and 3<sup>rd</sup> Defendant-Appellant is entitled to 5/42.

It is my standpoint that by deed marked 1D1 Lokuhamy transferred her undivided 1/4 share (according to Plaintiff's pedigree) on 29-12-1954 and there was no dispute about the date or the validity of this deed. Lokuhamy would have been living on 29<sup>th</sup> December 1954, but the deeds produced and marked as 1D4 and 1D6 by which Abraham and Lewis have transferred the rights which they got from Ungurala and Lokuhamy (parents) has been written on 28.4.1954. If Lokuhamy was living in December to sign deed marked 1D1, it looks like that there is no doubt those two children could write two deeds at least 8 months prior to December 1954 on the basis that they are transferring the rights devolved on them from Lokuhamy who is their mother. Therefore, the validity of the two deeds marked 1D4 and 1D6 cannot be disputed.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendant-Appellants' pedigree is entirely different from Plaintiff-Defendant's pedigree. According to 1<sup>st</sup> and 3<sup>rd</sup> Defendants, the Original Owner of the Land was one Dingirala. Dingirala died leaving Kiribanda, Ungurala, Appuhamy and Singhappu. Therefore, each of them entitled to an undivided 1/4. The said Kiribanda by a deed (the number of that deed was not known to the Appellants) conveyed his 1/4<sup>th</sup> share to Lokuhamy and by deed No.38826 (1D1) she transferred the same to the 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant and Themanis Singho.

The said Ungurala died leaving 7 children, namely; Abaran Singho, Thomas Singho, Luwis Singho, Punchibanda, Punci Menika alias Podinona, Kiri Menika and Podi Singho.

Then Abaran Singho transferred his undivided 1/14<sup>th</sup> share by deed No.38160 (1D4) to the 1<sup>st</sup> Defendant Appellant. Thomas Singho transferred his undivided 1/28<sup>th</sup> share to 1<sup>st</sup> Defendant-Appellant by deed No.39945 (1D5). The said Luwis Singho by deed No.38759 (1D6) transferred his undivided 1/14<sup>th</sup> share to 1<sup>st</sup> Defendant-Appellant. Kiri Menika by deed No.255 (1D8) transferred her undivided 1/28 to the 1<sup>st</sup> Defendant-Appellant.

The said Punci Menika alias Podinona died leaving Maginona, Babyhamy, Sobinahamy, Ranhamy and Siyathu Banda (5 children) and all of them by deed No.1097 (1D7) transferred their undivided 1/28 share to 1<sup>st</sup> Defendant-Appellant. The said Podi Singho's rights were to be left unallotted as devolution of those rights, were not known to the Appellant.

According to the Appellants pedigree, above said Singhappu (Dingirala's son, out of four) had passed away leaving Podinona, Punchirala, Mudalihamy, Podiappuhamy, Dingiribanda, Ukkubanda, Siyathuhamy and Ran Menika and each of them got  $\frac{1}{8}$ <sup>th</sup> share out of  $\frac{1}{4}$ <sup>th</sup> share of Singhappu. Podinona by deed No.29378 transferred her  $\frac{1}{8}$ <sup>th</sup> share (according to the 1<sup>st</sup> Defendant-Appellant's evidence this  $\frac{1}{8}$ <sup>th</sup> share must be out of  $\frac{1}{4}$ <sup>th</sup> share of the land) to Ukkubanda.

The Said Punchirala, Mudalihamy, Podiappuhamy and Dingiribanda by deed No.27234 (1P2) transferred their  $\frac{4}{8}$  (according to the 1<sup>st</sup> Defendant-Appellant's evidence this  $\frac{4}{8}$ <sup>th</sup> share must be out of  $\frac{1}{4}$ <sup>th</sup> share of the Land) to Ukkubanda.

Therefore, 1<sup>st</sup> and 3<sup>rd</sup> Defendant-Appellants argued that the Plaintiff is entitled for only  $\frac{6}{8} \times \frac{1}{4}$  share of the Land, that is  $\frac{6}{32}$ <sup>th</sup> share of the Land. 1<sup>st</sup> and 3<sup>rd</sup> Defendants claim that, 1<sup>st</sup> Defendant-Appellant would be entitled to  $\frac{11}{42}$ <sup>th</sup> share and 3<sup>rd</sup> Defendant-Appellant is entitled to  $\frac{5}{42}$ <sup>th</sup> share.

The Learned District Judge has failed to consider and analyze the evidence led and more importantly has failed to examine the title of parties and thereby erred in law. It looks like that the Learned District Judge has considered only two points, to come to the above conclusion. They are as follows;

(1) He has noted that deed No.38160 (1D4) and No.38159 (1D6) are written on material inheritance on the same day 28.04.1954. However, few months later Lokuhamy transferred deed No.38826 (1D1) on 29.12.1954. The Learned District Judge questioned as to how Lokuhamy transferred her share in deed 1D1. Therefore, Learned Trial Judge doesn't accept the Defendant's Pedigree.

This conclusion is entirely incorrect since in the schedule to the deed No.38160 (1D4), three lands had been mentioned under No.1, 2 and 3 but maternal inheritance was referred under No.1 only. Also, in the schedule to the deed No.38159 (1D6), there are five lands that had been mentioned under five numbers 1 to 5 but under number 2 and 3 only maternal inheritances were transferred.

(2) The Learned Trial Judge stated that the land in dispute called "Lidagawawatta" and the deeds marked 1D1 to 1D8 do not refer Lidahawawatta but they refer some other land called Lidawatta.

This conclusion is also incorrect as the schedule to the deeds marked 1D3 and 1D8 specially says that land referred to "Lidagawawatta alias Lidawatta". It could be considered as one and the same land.

Thus, it reflects that the Learned Judge had not carefully examined and analyzed the evidence and had not investigated the title of parties under section 25 of the Partition Act. The need for a careful investigation of all titles has been emphatically reiterated by our Courts in many decisions. (Ferreira Vs Haniffa 15 NLR 445 and Fernando Vs Mohamadu Saibo 3 NLR 321)

In the above said circumstances, we set aside the judgment dated 15.08.2000 and recalculate the shares of the land in accordance with the pedigree of the 1<sup>st</sup> and 3<sup>rd</sup> Defendant-Appellants.

The new shares are as follows:

For the Plaintiff	84/168
For 1 <sup>st</sup> Defendant	40/168
For 2 <sup>nd</sup> Defendant	14/168
For 3 <sup>rd</sup> Defendant	18/168
Unallotted	12/168

Interlocutory Decree be entered accordingly.  
Appeal allowed.

**Judge of the Court of Appeal**

**Janak De Silva , J**

**I agree.**

**Judge of the Court of Appeal**