

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

C.A.566/97 (F)

D.C.Kalutara Case No.5258/P

Anthonidure Hemadasa de Silva (Died).
Kaluwamodera, Aluthgamwela,
Aluthgama.

Plaintiff

VS.

1. Liyanage Pemasiri Silva.
2. Pipiyandara Somilan Silva both
Kaluwamodara.
Authgamwela, Aluthgama.
3. Sudasinghe Garvin Silva (Dead).
Sri Lananda Road,
Kaluwamodara, Alutgama.
- 3A. Minningala Somawathie de Silva (Dead)
Sri Lananda Road,
Aluthgamwela, Alutgama.
4. Ainel Sunethra de Silva.
82 Davalasingharama Mawatha,
Modera, Colombo 15.
5. Pipiyandara Peter Silva (Dead)
6. Pipiyandara Simelhamy (Dead)
7. Pipiyandara Ancy Nona (Dead)
All of Aluthgamwela, Kaluwamodera,
Alutgama.
8. Anvil Vinitha de Silva (Dead)
Averiwatta Moragolla, Beruwela.
9. Marukku Fernando alias Sunanda de
Silva (Dead)
Kaluwamodera, Alutgama.

Defendants

And Now Between

Pipiyandara Somilan Silva (Died)
Kaluwamodera, Aluthgamwela,
Aluthgama.

- 2a. Chandaradura Dayawathei.
- 2b. Raveendra Prasanna Silva.
- 2c. Sujeewa Chandani Silva.
- 2d. Janaka Chaminda Silva.
- 2e. Chanaka Sanjeewa Silva.
Aluthgamwela,
Kaluwamodara,
Aluthgama.

2nd Defendant –Appellants

VS.

1. Anthonidure Hemadasa de Silva (Dead)

- 1A. Liyanage Kusumawathi Silva
- 1B. Anthonidura Vidura Pushpakumara
- 1C. Anthonidura Nayani Priyanga All of
Seelananda Road,
Kaluwamodera, Aluthgamwela,
Aluthgama.
- 1D. Rev. Kaluwamodera
Seelathilake before getting the robe
Anthonidura Viraj Rajitha Kumara.
Kshethrasanna Mala
Viharaya Kaluwamodera.
- 1E. Anthonidura Jeewani Prasanga.
- 1F. Anthonidura Chirani Hemanthi.
- 1G. Anthonidura Ruwan Athula.
- 1H. Anthonidura Thejani Neelakanthi All of
Seelananda Road, Kaluwamodera,
Aluthgamwela, Aluthgama.
- 1I. Paththinigre Nandana Darmapriya
Priyangana, Simon Silva Mawatha,
Aluthgama.

Plaintiff- Respondents

- 3. Liyanage Pemasiri Silva (Died)
Kaluwamodera, Aluthgamwela,
Aluthgama.

3A. Pipyandara Somilan Silva (Dead)
Kaluwamodera, Aluthgamwela,
Alutgama.

3A1. Chandaradura Dayawathei.

3A2. Raveendra Prasanna Silva.

3A3. Sujeewa Chandani Silva.

3A4. Janaka Chaminda Silva.

3A5. Chanaka Sanjeewa Silva.
Aluthgamwela, Kaluwamodera,
Alutgama.

4. Aniel Sunethra De Silva.
82, Davaasingharama Mawatha,
Modera, Colombo 15.

5. Pipyandara Peter De Silva (Died)

5A. Pipyandara Somilan Silva (Died)
Kaluwamodera, Aluthgamwela,
Alutgama.

5A1. Chandaradura Dayawathei

5A2. Raveendra Prasanna Silva

5A3. Sujeewa Chandani Silva

5A4. Janaka Chaminda Silva

5A5. Chanaka Sanjeewa Silva.
Aluthgamwela, Kaluwamodera,
Alutgama.

6. Pipyandara Simelhami (Died)

6A. Pipyandara Somilan Silva (Died)
Kaluwamodera, Aluthgamwela,
Alutgama.

6A1. Chandaradura Dayawathei

6A2. Raveendra Prasanna Silva

6A3. Sujeewa Chandani Silva

6A4. Janaka Chaminda Silva

6A5. Chanaka Sanjeewa Silva.
Aluthgamwela, Kaluwamodera,
Alutgama.

7. Pipyandara Ansy Nona (Dead)

7A. Pipyandara Somilan Silva (Died)
Kaluwamodera, Aluthgamwela,
Alutgama.

7A1. Chandaradura Dayawathei

7A2. Raveendra Prasanna Silva

7A3. Sujeewa Chandani Silva

7A4. Janaka Chaminda Silva
7A5. Chanaka Sanjeewa Silva.
Aluthgamwela, Kaluwamodera,
Alutgama.

8. Anvil Vinitha De Silva (Dead)
8A. Pipyandara Somilan Silva (Died)
8A1. Chandaradura Dayawathei
8A2. Raveendra Prasanna Silva
8A3. Sujeewa Chandani Silva
8A4. Janaka Chaminda Silva
8A5. Chanaka Sanjeewa Silva.
Aluthgamwela, Kaluwamodera,
Alutgama.

9. Marukku Fernando Alias
Susil Sunanda De Silva (Dead)
Kaluwamodera, Aluthgamwela,
Alutgama.
9A. Pathinige Nandana Darmapriya
Priyanaga.
Simon Silva Mawatha, Alutgama.

Defendant Respondents

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Dhanuka Lakmal AAL for 2nd Defendant-Appellant
H. Withanachchi with Shantha Karunadhara for the Substituted
Plaintiff – Respondent

Argued on: 19.09.2019

Written Submissions: By the 2nd Defendant-Appellant on the 23.11.2018
By the Plaintiff - Respondent on 11.03.2019

Judgment on: 16/11/2020

N. Bandula Karunaratna J.

The Plaintiff – Respondent (hereinafter sometimes called and referred to as the Plaintiff) instituted the action bearing No:5258/P in the District Court of Kalutara against the 1st, 3rd to 9th Defendant Respondents (hereinafter called and referred as 2nd Defendant) seeking *inter alia* that, to partition the Corpus of the matter among the plaintiff and the 1st Defendant according to the shares which are mentioned in paragraph 10 of the Plaint.

In response the 2nd Defendant aforementioned filled his statement of claim and stated *inter alia* that,

1. The land which is depicted in the preliminary plan is the land called Makulugahawatta Alis Makku Marikkar Thottam which is situated in Kaluwamodera, not the land called Thangagewatta Alias Dangahawatta
2. The land which is sought to be partitioned is not identified and that was not situated in village called Kaluwamodera.

In the trial, 34 points of contests had been discussed and on behalf of the Plaintiff, document marked P-1 to P-14 and on behalf of the Defendant marked documents from V-1 to V-11 had been introduced. The Licensed Surveyor, Don Hendry Amerasinghe had given evidence on behalf of the 2nd Defendant and the Plaintiff had given evidence on behalf of the Plaintiff. After the trial all the parties have filled their Written Submission. Thereafter on 24.6.1997 Learned District Judge delivered his Judgement granting the relief sought by the Plaintiff and did not consider the Defendant's position, that corpus has not been identified.

Being aggrieved by the said Judgement of the District Court of Kalutara, the 2nd Defendant lodged this appeal before the Court of Appeal.

The 2nd Defendant states that the land which is depicted in the Preliminary Plan marked as "x" is a land situated in Kaluwamodera. But Kaluwamodera and Seenawatta are two different villages situated adjoining each other, in Kalutara Area.

In order to substantiate the 2nd Defendant's point hereinabove mentioned, the 2nd Defendant quotes that the Plaintiff has admitted the following in his plaint.

“මෙම නඩුවේ පාර්ශවකරුවන් ඉහත සඳහන් ස්ථානවල පදිංචි කරුවන් වන අතර පැමිණිල්ලෙන් බෙදා වෙන් කිරීමට යෝජිත “තංගගේ වත්ත නොහොත් දන්ගහවත්ත” නැමති ඉඩම පිහිටා ඇත්තේ අලුත්ගම් බැද්දේ, සීනවත්තේ මෙම අධිකරණ බල සීමාව තුළ වන අතර එම ඉඩම මෙහි පහත උපලේඛණයේ වැඩි දුරටත් විස්තර කර ඇත.”

Therefore the 2nd Defendant states that the Plaintiff has failed to prove that village of Kaluwamodera, was previously called as Seenawatta.

Moreover, according to 2nd Defendant the Plaintiff did not possess the corpus as illustrated hereinbelow;

- ප්‍ර : ?වනතුරු ඒ අය කවුරුත් පදිංචි වෙලා සිටියද 1982
උ : පදිංචි වෙලා හිටියද දන්නේ නැහැ
ප්‍ර : ?.ඉඩමට කිසිම ඔප්පුවක් ලියා නැත .ඔප්පුව ලියුවාට පසුව තමා නඩු දමා තිබේ 3 පැ 1943
උ : මම දන්නේ නැහැ.
ප්‍ර : තමාගේ පෙලපත අනුව දී තමා සහ මස්සිනාගේ නමට ඔප්පුව ලියා ගන්නා 1983තුරු ඔප්පු ලියා තිබුණේ නැහැ?
උ : ඔව්.

However, the 2nd Defendant states that 2nd Defendant has possessed the entire land and also earned the prescriptive title to the entire corpus.

- ප්‍ර : කේ?ප්‍රනාන්දු මහතාගේ පිඹුරේ තියෙනවා ගොඩනැගිල්ලක් .ඒ.
උ : ඔව් මම දැනට පදිංචි .ඒ දරන ගොඩනැගිල්ල 344
ප්‍ර : වගාව මොකදද?
උ : පැල පොල් ගස් .මම ඒවා සම්පූර්ණයෙන්ම දැන්මේ .75ක් තියෙනවා
ප්‍ර : තමා කොයි කාලෙද දැන්මේ?
උ : 1971ට පස්සේ
ප්‍ර : පැලයක් ඉන්දන්න ආදාර ලබා ගත්තාද?
උ : පොල් වගා කිරීමේ මණ්ඩලයෙන් ගත්තා.
ප්‍ර : පොල්ගස් කප්පේ විතර තියෙනවාද?
උ : .75ක් විතර විතර තියෙනවා ටිකක් මැරී ගොස් .100ක් විතර තියෙනවා
ප්‍ර : මේ පිඹුරේ කොයි කැල්ලේද තමා තමා හිටවූ ගස් තියෙන්නේ?
උ : අංක .පිඹුරේ 3 වි 2 වශයෙන් පෙන්වපු කැබැල්ලේ 1
ප්‍ර : ඒ කැබැල්ලේ තමයි මිනින්දෝරු කේපිඹුර 442 ප්‍රනාන්දු මහතා .ඒ.ටේ පෙන්වන කැබැල්ල.
උ : ඔව්.
ප්‍ර : ජලිල්?ආනිමා අදුනනවද ,මුත්සින් සහ මවුප්පුඩ ,
උ : නැහැ.
ප්‍ර : තමා දැක තිබෙනවාද?
උ : නැහැ.
ප්‍ර : ඔවුන් මේ ඉඩම භුක්ති විදින්න ඇවිත් තිබෙනවාද?
උ : නැහැ.
ප්‍ර : ඔවුන් හැර වෙන මුස්ලිම් මිනිස්සු ඇවිත් තිබෙනවාද?
උ : නැහැ කිසි කෙනෙක් ඇවිත් නැහැ.

The other standpoint of the 2nd Defendant is that the land sought to be partitioned by the Plaintiff is called "Thangagewatta" alias "Dangahawatta" and that the fiscal notice and all the deeds nevertheless mentioned about Thanigahawatta"

Therefore the 2nd Defendant submits that Thangagewatta and Thanigahawatta are two different lands and further states that the deeds or documents produced by the Plaintiff did not prove that the land called Thanigahawatta is also called as Thangagewatta or Dangahawatta.

The other argument of the 2nd Defendant is that the Learned District Judge has come to the conclusion that Northern boundary of the corpus of this case is Makulugaha Watta alias Makku Marikka Thottam. On the other hand, Southern boundary of the said Makulugaha Watta alias Makku Marikka Thottam is Thangagewatta. The Learned District Judge has come to that conclusion based on deeds marked as P9, P10, P11, and P12.

The 2nd Defendant further states that when the aforementioned deeds are analyzed it is very clear that the Southern Boundary of the Makulugahawatta alias MakkuMarika Thottam is Thanigahawatta and not Thangagewatta or Dangahawatta. Boundaries of the corpus do not tally with the actual boundaries of the area.

The 2nd Defendant further states that he has possessed the entire land and also earned the prescriptive title to the entire corpus. 2nd Defendant has produced the electoral registrar of year 1971 to prove his long-term possession to the corpus as 2 V 5.

On the perusal of "2V5", the 2nd Defendant states that he was in the possession of bearing assessment No.344/A which was situated in the lot No 1 of the Preliminary Surveyor Plan bearing No-442 of K.P. Fernando Licensed Surveyor and it is Clear that the 2nd Defendant has earned the prescriptive title to the subject matter.

The 2nd Defendant states that according, to the report of the preliminary plan, it is crystal clear that the Commissioner has not correctly identified the Corpus of the case.

“(vi) මනින ලද ඉඩම පැමිණිල්ලේ
උපලේඛනයේ විස්තර කර ඇති
පරිදි බෙදීමට අපේක්ෂිත
ඉඩමද නැද්ද යන වග

} ඔව්.
නමුත් යාබද ඉඩම්වල වෙනස්කම් ඇත.

“(xi) බෙදුම් නඩුවට විනිශ්චය කිරීම
සඳහා අවශ්‍ය විය හැකි මැනීමට අදාළ
මනින ලද ඉඩමට අදාළ කරුණු
දේවල් සහ පරිච්ඡේදයන්

} පැමිණිලිකරු මෙම නඩුවේ විෂය වස්තුවට කැබලි 1
සමන්විත විය යුතු බව පැවසුවේය. 1 වන විත්තිකරු
මෙම ඉඩම කළුතරාමෝදර පිහිටි බවත් පැමිණිලිකරු
පවසන තන්ගගේවත්ත නොහොත් දන්ගහවත්ත
නොවන බවත් එය මකුවගහවත්ත නොහොත් මක්කු
මරික්කර් තෝට්ටම් බවත් ඔහු ඉඩමේ පදිංචි වී සිටින
බවත් පැවසුවේය. පැමිණිලිකරු සහ විත්තිකරු යාබද
ඉඩම්වල නම් පරස් පර බැවින් ඔවුන් කියන නම් වෙන්
වශයෙන් පිළිබරේ පෙන්වන ලදී.

The 2nd Defendant states that according to the schedule of the fiscal sale notice (පැ7), the North boundary of the Naripitiyewatta is Thangagewatta (තන්ගගේවත්ත) (the Learned District Judge has come to the conclusion that Southern boundary of the corpus is

Naripitiyewatta. However, said Naripitiyewatta is situated in Seenawatta area and not in Kaluwamodera.

ප්‍ර : 1945 වන විට මොකද්ද තිබුණේ?

උ : අළුත්ගම සුළු නගර සභාව

ප්‍ර : ?භාවිත කළාද 1945 සිනවත්තට කළුවාමෝදර කියා

උ : නැහැ

ප්‍ර : තමා දන්න කාලයේ සිනවත්තට කළුවාමෝදර කියාභාවිත කළේ නැහැ ?

උ : කියන්න දන්නේ නැහැ

ප්‍ර : ?සිනවත්තට මායිම් කළුවාමෝදර

උ : උන්නර නැහැ

කදියාවත්ත කළුවාමෝදර වෙනවා. සිනවත්තට මායිම් වෙනවා.

The 2nd, 5th, 6th and 7th Defendants in their Amended Statement of claims had stated inter alia as follows.

The land sought to be partitioned was "Makkumarikkar" alias "Makulugahawatta" which was depicted as Lots 1 to 4 in Plan No.201.

i) a) that the rights of the original owners of the said land were as follows:

a) M.L. Usubu Lebbe
M. L. Bawa Lebbe
I.L. Omaru Lebbe

b) L.K. Ahamadu Lebbe Marikar – 1/3

c) Sinna Lebber Amina Umma – 1/6 + 1/12

d) M.L.N. Rahinathumma – 1/12

iii) that the rights devolved on the 2nd and 5th to 7th Defendants on the chain of title set out therein and the plantation and the improvements in Lot 1 in Plan No.442 belonged to the said Defendants only.

The 3rd and 4th Defendants in the Statement of Claim had averred inter alia that, what was depicted in Plan No.442 was a portion of "Makkumarikkar Thotam" alias "Makulugahawatta" at Kaluwamodera and "Thangahawatta" alias "Dangahawatta"

The 3rd and 4th Defendants also state that the land shown in Plan No.201 devolved on the 2nd to 7th Defendants in the manner set out therein and the action was liable to be dismissed as a different land had been surveyed, whereas the 9th Defendant filed a Statement, claiming that the corpus should be confined to the land in Plan No.442.

It's the standpoint of the Plaintiff that the Original Owner of the said land, Mohideen Lebbe Abdul, by Deed No.9863 dated 03.02.1916 transferred his rights to A.L.M. Uduma Lebbe Marikar which on the chain of title set out in the Plaint devolved on Uduma Lebbe Marikar and Cassim Lebbe Marikar.

The Plaintiff further states that the said Casim Lebbe Marikar died unmarried and issueless leaving behind the brother, U.L.M. Ismail Lebbe Marikar who died leaving the following children, I.L.M. Jaleel, I.L.M. Mushin, I.L.M. Mowjeed, I.L.M. Fathima.

Jaleel, Mushin and Mowjood herein above mentioned by Deed No.2449 dated 24.08.1982 conveyed their 3/4th share to the Plaintiff and the said Fathima by Deed No.2450 dated 24.08.1982 transferred her 1/4th share to the 1st Defendant.

The Plaintiff states that the 2nd Defendant without any right title or interests in the property had entered the land on 02.09.1985 and after cutting down some coconut trees, was making preparations to construct a building on it.

The standpoint taken by the District Court Judge is as mentioned in the paragraphs hereinbelow contained;

The Fiscal's Conveyance 'P7' executed in 1896 in respect of 'Naripitiyawatte' has on the North, a land called "Thangewatta" and according to Mortgage Bond No.4451 (P8) in respect of "Thangewatta" alia "Dangahawatta" is bounded on the North by "Makulugahawatta". Thus the Learned District Court Judge held that "Makulugahawatta" and "Thangewatta" are two different lands.

The Deeds No.967 (P9) No.566 (P10), No.31260 (P11) and No.3117 (P12) relating to "Makulugahawatta" portray the Southern boundary as "Thanigahawatta" and not Monikkawatta". Thus the "Makulugahawatta" and "Thanigahawatta" are two lands.

The Learned District Court Judge claimed that although the contesting Defendants attempted to show that the corpus was "Makulugahawatta" alias "Makkumarika Thottam", Deed '2D9' also described Southern boundary as "Thanigahawatta", and "Monikkawatta" and "Makkumarikar Thottam" and "Thanigahawatta" are two distinctive lands.

Based on the aforesaid judgment of the Learned District Court Judge, it is my view that the Deeds No.10133 dated 06.05.1916 described the land "Makulugahawatta" as follows;

North -	Tikkawatta
East -	Pelawatte and another land

South	Minna Marikkar Mesthriyata owned Iddagahawatta or Thanigahawatta and Munasena owned Dangahawatta or Thangahawatta
West	Monikawatta .

The Plaintiff's claim for "Thangage watta" alias "Dangahawatta" is founded on the Deed No.9863 dated 03.02.1916 in which the said land of about half Acre had been described as follows;

North -	Makkunmarikar Thottam
East -	Thanigahawatta
South	Naripitiyada
West	Monikkawatta

The Deeds "P2, P3, P4, P5 and P6" which flow from Deed "P1" of 1916 carry the same description.

In the circumstances aforesaid, a perusal of the Deed "2D18" and Deed "P1", both executed in 1916, point out that "Makulugahawatta" alias "Makkumarikar Thottam" and Thangage Watta" alias "Dangahawatte" existed side by side as two distinct and separate lands at least from 1916.

There is no ambiguity that in the Southern Boundary of "Makulugahawatta" alias "Makkumarikar Thottam" there are two lands according to the Deed '2D18' namely; "Indigahawatte" alias "Thanigahwatte" and "Dangahawatte" alias "Thangagewatta".

The Plaintiff in his evidence had explained that he was residing in "Kombannage Watta" which was standing in the East of the corpus in this Case "Thangagewatte" alias "Thangahawatte".

The Northern Boundary of Thangagewatta is admittedly, Makkun marikar thottam alias Makulugahawatta and the Southern Boundary of Makkun marikar thottam alias Makulugahawatta is admittedly Thangagewatta, according to the deeds produced by the Plaintiff and the Defendants. This shows that these two lands adjoin each other.

It is clear that even surveyor Amarasinghe's plans shows that the Eastern and Western Boundaries as Thanigahawatta and Monikkagewatta, respectively as in the schedule to the Plaintiff.

It is pertinent to note that P7A is a copy of a Fiscal Conveyance for the land called Naripitiya, which is the Southern Boundary of the corpus. The Northern boundary of Naripitiya is Thangagewatta, according to this deed. This position is further fortified by a deed produced by the contesting defendants themselves marked 2V9. The 5th land in this deed is Naripitiya which gives the Northern Boundary as Thangagewatta.

There was a boundary fence separating Thangagewatta and Makkunmarikarthottam which was admitted even by Mr. Amarasinghe. But the complaints made by the Plaintiff to the Police marked P13, P14 And P16 and the two plans made by the Defendant clearly demonstrate the attempts made by him to erase the boundary between the two Lands.

In the circumstances aforesaid, it is a wrong proposition by the 2nd Defendant and the other contestants to state that the land shown in Plan No.442 is a part of their land "Makulugaha Watte" alias "Makku Marikkar Thottam".

Therefore, owing to the aforementioned reasons, it is my standpoint that the appeal needs to be dismissed and the decision of the Learned District Court Judge must be upheld. Considering the above reasons, the Judgment of the learned District Judge, dated 24/06/1997 is affirmed.

This appeal is dismissed with cost.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal