

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

LANKA

Karunakeerthi Abesundara of
Danduwanovita, Nagoda (Dead)

Plaintiff-Appellant

Hikkaduwa Palliya Guruge Leelawathie of
Danduwanovita Watta, Nagoda.

Substituted Plaintiff-Appellant

**Case No. C. A. 1232/2000(F)
D. C. Galle Case No. 6947/P**

Vs.

1. Hikkaduwa Palliya Guruge Leelawathie
of Danduwanovita Watta, Nagoda.
2. Sirisena Abesundara of Rottiya Watta,
Nagoda (Dead)
3. Siripala Abesundara of Kalugal Ara,
Katuwana Wadiya, Amunukula Pelessa,
Hungama.
4. Kusumawathie Abesundara of
Gankandawaththa, Udawelivitiya,
Nagoda (Dead)
5. Liyanage Bempi of Mulana,
Gammeddagoda, Nagoda (Dead)
6. Liyanage Saraneliya of
Gammeddagoda, Danduwanovita
Watta, Nagoda (Dead)

7. Bandari Godage Gunawathie of Danduwanovita Watta, Nagoda.
8. Bandari Godage Gnanawathie of Danduwanovita Watta, Nagoda.
9. Liyanage Premawathie of Gammeddagoda, Nagoda.
10. Manage P. Deran of Mapalagama, Nagoda.
11. Lila Liyanage of No. 90, Near the Bank, Galle Road, Dehiwala.
12. P. L. Karunawathie of Galla Gedara, Nagoda (Dead)
13. P. L. Bebi Nona of Puwak Gaha Hena, Nagoda (Dead)
14. P. L. Manimel of Dikdola, Nakiya Deniya (Dead)
15. P. L. Piyasena of Kuruwita, Rathnapura.
16. Kankanamge Mendiyes of Pothupitiya, Nagoda Upper (Deceased)
- 16A. Pothupitiya Kankanamge Gunapala of Danduwanovita Watta, Nagoda.
17. Pothupitiya Kankanamge Rosalin of Parana Thanayamgoda, Mapalagama.

18. Pothupitiya Kankanamge Banda of
Parana Thanayamgoda, Mapalagama
(Deceased)

18A. Mapalagama Manage Magilin of
Karahinnawatta, Athumale, Nagoda.

19. Pothupitiya Kankanamge Magilin of
Aluth Thanayamgoda, Lower
Mapalagama (Dead)

19A. Korale Kankanamge Dami Jayasundara
of No. 48, Model Village, Mapalagama.

20. A. A. Jinadasa of Nagoda Upper,
Nagoda (Dead)

21. B. L. Mansina Nagoda (Dead)

22. K. A. Hinni Hamy of Parana
Thanayamgoda, Nagoda.

10A. Manage Birty of Mapalagama, Nagoda
(Dead)

23. Gunawathie Senevirathne

24. S. Abesundara Nagoda

5A. G. L. Symon Perera of Ihala Mulaka,
Nagoda.

Defendant-Respondents

Before: Janak De Silva, J.

Counsel:

Rohan Sahabandu P.C. with Chathurika Elvitigala for the Substituted Plaintiff-Appellant

Sumathi Gamage for 7th, 8th and 9th Defendants-Respondents

Nandana Gamage with Buddhini Hettiarachchi for 16th, 19th and 21st defendants-Respondents

Written Submissions tendered on:

Plaintiff-Respondent on 20.11.2019

Substituted 20A Defendant-Respondent on 28.05.2019

Argued on: 06.03.2019

Decided on: 23.01.2020

Janak De Silva, J.

This is an appeal against the judgment of the learned Additional District Judge of Galle dated 29.03.2000.

The Plaintiff-Appellant (Plaintiff), by filing the plaint dated 25.06.1976 [Page 103 of the Appeal Brief], instituted the abovestyled action in the District Court of Galle seeking inter alia to partition the land called 'Danduwanowita Watta' and 'Gankanda Watta' containing about two pelas of paddy sowing extent (වි දෙපැලක පමණ වපසරිය) situated at Nagoda. According to the plaint, the said land is bounded on the North by Pelesse Watta, on the East by Hitiyange Ela, on the South by Mahadanduwatte Owita and on the West by Main Road.

A commission was executed to survey the land to be partitioned. Lots අ and ආ in Plan No. 2651 dated 23.11.1976 made by A. R. Dias Abeygunawardena, Licensed Surveyor [Page 150 of the Appeal Brief] containing in extent A.0-R.3-P.4.8 were identified as the land to be partitioned. However, the Licensed Surveyor observed that even though the boundaries of the said Lots අ and ආ tally with the boundaries

of the land described in the plaint, there is a reduction in extent [Page 152 of the Appeal Brief].

Initially, the action was against the 1st – 5th Defendants, who did not dispute the pedigree produced by the Plaintiff. Pending trial, the 6th – 24th Defendants were added. The 7th – 9th Defendants filed their Statement of Claim on 10.03.1978 [Page 109 of the Appeal Brief] but later amended it on 19.02.1982 [Page 123 of the Appeal Brief] and disputed the extent of the land to be partitioned. The 10th Defendant filed his Statement of Claim on 10.03.1978 [Page 116 of the Appeal Brief] and produced an alternative pedigree.

The 7th – 9th Defendants executed another commission to identify and survey the land to be partitioned. Accordingly, plan No. 1118 dated 07.09.1983 comprising of Lots ௫, ௫௦, ௫௧ and ௫௨ (containing in extent A.2-R.3-P.31) was prepared by T. D. Ramachandra, Licensed Surveyor [Page 156 of the Appeal Brief]. The 7th – 9th Defendants filed their amended Statement of Claim dated 27.02.1991 [Page 134 of the Appeal Brief] and sought to partition the entire land depicted in the said plan No. 1118.

The 16th – 19th Defendants filed their Statement of Claim on 19.09.1984 and sought to exclude Lot ௫௦ in the said plan No. 1118 from the land to be partitioned on the ground that it is a portion of a different land.

The 22nd Defendant filed her Statement of Claim on 08.02.1987 and accepted that land to be partitioned is depicted as Lots ௫, ௫௦, ௫௧ and ௫௨ in the said plan No. 1118. However, she produced an alternative pedigree and claimed an undivided $\frac{1}{4}$ share of the entire land.

After a lengthy trial, the learned Additional District Judge dismissed the Plaint of the Plaintiff for the reason that the land sought to be partitioned is not properly identified. Being aggrieved, the Plaintiff appealed.

In a partition action, there is a duty cast on the Judge to satisfy him as to the identity of the land sought to be partitioned [*Jayasuriya v. Ubaid* (61 N.L.R. 352)]. There are certain duties cast on the Court quite apart from objections that may or may not be taken by the parties. In addition to the duty that is cast on the Court to resolve the disputes that are set out by the parties in their issues, the Court has a supervening duty to satisfy itself as to the identity of the corpus and also as to the title of each and every party who claims title to it [*Wickremaratne and Another v. Alpenis Perera* (1986) 1 Sri.L.R. 190]. Without proper identification of the corpus it would be impossible to conduct a proper investigation of title [*Sopinona V. Pitipanaarachchi* (2010) 1 Sri.L.R. 87].

In *Sopinona V. Pitipanaarachchi* (Supra at 107) Saleem Marsoof, J. further observed as follows -

“The identity of the corpus is also a matter of fundamental importance in ensuring that all persons who have any claim to it to participate in the partition action, which ultimately confers title in rem.”

According to the plaint, the Plaintiff sought to partition a land called ‘Danduwanowita Watta’ and ‘Gankanda Watta’ containing about two pelas of paddy sowing extent (වි දෙපැලක පමණ වපසරිය), the boundaries of which are as follows –

NORTH	by Pelesse Watta
EAST	by Hitiyange Ela
SOUTH	by Mahadanduwatte Owita
WEST	by Main Road

Two pelas of paddy sowing extent is roughly equivalent to about 1 1/4 acre.

According to the said Plan No. 2651, the land to be partitioned is A.0-R.3-P.4.8 in extent and is bounded as follows –

NORTHEAST	by Pelesse Watta
SOUTHEAST	by Hitiyange Ela
SOUTHWEST	by Mahadanduwatte Owita
NORTHWEST	by Main Road (from Nagoda to Ethumale)

As per the said Plan No. 1118, the land to be partitioned is A.2-R.3-P.31 in extent and is bounded as follows –

NORTHEAST	by Pelesse Watta and Mahadanduwatte Owita
SOUTHEAST	by Hitiyange Ela
SOUTH	by Hitiyange Ela
SOUTHWEST	by Hitiyange Ela
NORTHWEST	by Gin Ganga

In the case of *Ratnayake and Others v. Kumarihamy and Others* [(2002) 1 Sri.L.R. 65] Weerasuriya, J. (P/CA) observed –

“The system of land measure computed according to the extent of land required to sow with paddy or kurakkan vary due to the interaction of several factors. The amount of seed required could vary according to the varying degrees of the soil, the size and quality of the grain, and the peculiar qualities of the sower. In the circumstances, it is difficult to correlate sowing extent accurately by reference to surface areas.” [emphasis added]

In view of the above, I am of the opinion that it is unwise to try to ascertain the identity of the land to be partitioned depending merely on the extent of the land where the extent is computed according to the extent of land required to sow with paddy or kurakkan. Therefore, in this context it is essential to look into the evidence and tally the boundaries in order to properly identify the land to be partitioned.

If the land to be partitioned is clearly described and can be precisely ascertained in the said manner, then the inconsistency in extent will not affect the question of

identity [*Gabriel Perera v. Agnes Perera* (43 C.L.W. 82), *Yapa v. Dissanayake Sedara* (1989) 1 Sri.L.R. 361].

To establish his title, the Plaintiff produced Deed of Transfer No. 2687 dated 22.01.1961 attested by H. G. Hewavithana, Notary Public (පැ1), Deed of Transfer No. 2901 dated 23.12.1920 attested by B. K. M. R. W. Gunawardena, Notary Public (පැ2) and Deed of Transfer No. 2502 dated 06.10.1943 attested by W. M. D. A. Wanigasooriya, Notary Public (පැ3). In all three deeds, the land to be partitioned is bounded as follows –

NORTH	by Pelesse Watta
EAST	by Hitiyange Ela
SOUTH	by Mahadanduwan Owita
WEST	by Gin Ganga

Here, it must be noted that the west boundary of 'පැ1', 'පැ2' and 'පැ3' and the west boundary of the land described in the plaint differ.

According to the Schedule of the Deed of Transfer No. 5426 dated 10.11.1963 attested by H. G. Hewavithana, Notary Public (පැ1), the boundaries of the land to be partitioned are described as follows –

NORTH	by Pelesse Watta
EAST	by Hitiyange Ela and Ganegodawatte Kanda
SOUTH	by Hitiyange Ela and Dikirawalla
WEST	by Gin Ganga

It can be observed that the south and west boundaries of 'පැ1' are different than what is stated in the plaint.

To establish her title, the 19th Defendant produced Deed of Transfer No. 3065 dated 27.11.1923 attested by D. A. Gunasekera, Notary Public (පැ1), Deed of Transfer No. 2416 dated 21.06.1922 attested by D. A. Gunasekera, Notary Public (පැ2) and Deed of Transfer No. 2390 dated 23.03.1922 attested by D. A. Gunasekera, Notary Public (පැ3).

In all three deeds, the land to be partitioned is bounded as follows –

NORTH	by Kuda Danduwanowita and Watta
EAST	by Hitiyange Ela
SOUTH	by Hitiyange Ela
WEST	by Gin Ganga

In Deed of Transfer No. 3864 dated 25.12.1960 attested by A. V. D. A. Ranaweera, Notary Public (2081), Deeds of Transfer Nos. 388 (782), 389 (783) and 390 (784) dated 23.09.1973 attested by C. K. W. Seneviratne, Notary Public, Deed of Transfer No. 836 dated 12.04.1976 attested by C. K. W. Seneviratne, Notary Public (785) and Deed of Transfer No. 21223 dated 7.10.1909 attested by D. L. De Silva Wickramanayake, Notary Public (786), the land to be partitioned is described in the aforesaid manner.

According to Deed of Transfer No. 4895 dated 17.03.1963 attested by H. G. Hewavithana, Notary Public (2181) and Deed of Transfer No. 4910 dated 24.03.1963 attested by H. G. Hewavithana, Notary Public (2182), the boundaries of the land to be partitioned are as follows –

NORTH	by Gin Ganga
EAST	by Pelessewatta and Main Road
SOUTH	by Punchi Danduwanowite Watta
WEST	by Gin Ganga and Punchi Danduwanowite Watta

As the learned Additional Judge very correctly observed, all the aforementioned deeds recognize 'Gin Ganga' as the west boundary of the land called 'Danduwanowita Watta' and 'Gankanda Watta'. However, neither the plaint or plan No. 2651 [Page 150 of the Appeal Brief] recognizes 'Gin Ganga' as any one of the boundaries of the land to be partitioned. Even it is certain that the west boundary of the land described in the aforementioned deeds is indeed 'Gin Ganga', a careful perusal of the said deeds reveals the other boundaries vary from deed to deed.

In these circumstances, I see no reason to interfere with the judgment of learned Additional District Judge of Galle dated 29.03.2000. Appeal is dismissed with costs.



Judge of the Court of Appeal