

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

C. A. Appeal No: 200 /2000(F)
D.C. Kuliyapitiya Case No.7444/P

Kangane Arachchilage Bandappuhay

Plaintiff (Deceased)

Kangane Arachchilage Gunawathie,
Siyambalagaharuppa, Dummalasooriya.

Substituted-Plaintiff-Appellant – Petitioner

Vs.

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| (Deceased) | 1. | Madurasinghe Mudiyansele Ranhamy. |
| (Deceased) | 1A. | Arawgoda Mudiyansele Jane Nona,
Siyambalagaharuppa, Dummalasooriya. |
| | 1B. | Madurasinghe Mudiyansele
Kamalawathie, Siyambalagaharuppa,
Dummalasooriya. |
| (Deceased) | 2. | Arawgoda Mudiyansele Allisingho,
Siyambalagaharuppa, Dummalasooriya. |
| | 2A. | Arawgoda Mudiyansele Allisingho,
Siyambalagaharuppa, Dummalasooriya. |
| (Deceased) | 3. | Madurasinghe Mudiyansele Babynona,
Siyambalagaharuppa, Dummalasooriya. |
| | 3A. | Manchnayaka Arachchilage Premasiri
Manchanayaka
Siyambalagaharuppa, Dummalasooriya. |
| (Deceased) | 4. | Madurasinghe Mudiyansele Mankhamy,
Ammanamulla, Udubaddawa. |
| | 4A. | Wijesinghe Archchige Kamala Jayasinghe,
Ammanamulla Udubaddawa. |
| | 5. | Meththasinghe Arachchilage Vinifreeda ,
Fernando,
Wagamwela, Watuwatte. |
| (Deceased) | 6. | Kangane Arachchilage Kiribanda Appuhamy |
| | 6A. | Kulasinghe Arachchige Jayantha Kulasinghe |

(Deceased)

- Siyabalagaharuppa, Dummalasooriya.
- 6B. Kulasinghe Arachchige Sunil Kulasinghe
Siyabalagaharuppa, Dummalasooriya.
7. Kangane Arachchilage Randohamy,
Arachchikatuwa, Arachchikattuwa Post.
- 7A. Kangane Arachchiage Malani Menike
Welipelessa, Adippala.
- 7B. Kangane Arachchiage Indrani Menike
Welipelessa, Adippala.
8. Kulasinghe Arachchige Manikhamy
Udadeniya, Welipennagahamulla.
9. Kulasinghe Arachchilage Leelawathie
Udadeniya, Welipennagahamulla.
10. Ranatunge Arachchilage Somapala
Siyabalagaharuppa, Dummalasooriya.
11. Ranaweera Arachchilage Podiappuhamy
12. Ranaweera Arachchilage Chuttappuhamy
13. Ranatunge Arachchilage Manelhamy
14. Ranatunge Arachchilage Somawathi
15. Ranatunge Arachchilage Karunawathie
16. Kandekoralalage Leelawathie
All of Kithalawa, Koswatte
Halmillawa.

Defendant-Respondents-Respondents

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Jacob Joseph with Sandamali Maduruwewa for the substituted Plaintiff-Appellant

Written Submissions: 31/01/2019

Argued on: 10/05/2019

Judgment on: 16/11/2020

N. Bandula Karunarathna J.

This is an appeal referred by the Plaintiff Appellant (hereinafter referred to as the Plaintiff) against the judgment dated 3rd May 2000 by the District Judge of Kuliapitiya.

The Plaintiff by his Plaintiff instituted an action seeking to partition a land called Pahalawelawatte in Siyabalagasruppe. At the commencement of the trial, two admissions were recorded. For the Plaintiff, first and second issues of contest were raised and for the third Defendant issue No. 3 -15 were raised. For the 5th Defendant issue no. 14-17 were raised. Considering the Defendant's issues, the Plaintiff decided to raise consequential issues from 18- 21.

At the end of the trial the Learned District Judge pronounced the judgement dismissing the action mainly on the ground that the Plaintiff hasn't possessed the land in dispute. Being aggrieved by that judgment the Plaintiff filed this appeal.

In the Preliminary Plan which was marked as X prepared by Licensed Surveyor S.B Abeykoon on 20th August 1985 bearing No. 522/85, there were 5 Lots and Lot 1 was possessed by the Plaintiff. Lot 3 was possessed by the second Defendant. It was erroneous for the Learned District Judge to declare that the Plaintiff never possessed the disputed land.

Considering the District Court Case No. 3358/P marked as P3, during the trial, explained that Bandihamy was a child of Jothihamy who was entitled to undivided $\frac{1}{2}$ share of that Partition Action which was concluded some time back. Another child namely Kirimenika also received shares from the same land from Herathsingho, who is a son of Bandihamy and the Plaintiff is also considered to be another beneficiary who received shares from the same land in that previous partition action.

The Plaintiff has obtained title by deeds marked P1 and P2 by Deed No. 3980, which was marked as P1, the original Plaintiff has purchased undivided $\frac{1}{8}$ th share of the disputed land called Pahalawelawatte. It is evident that by Deed bearing No. 4396, which was marked as P2, the original Plaintiff has obtained another $\frac{1}{8}$ th share from the disputed property. The Learned Trial Judge erroneously answered the issue No. 2. When we consider the evidence, it is crystal clear that the long and continued possession of the disputed land to obtain prescriptive title was established by evidence.

Witness Wijepala who gave evidence on behalf of the Plaintiff confirms the proper pedigree and the devolution of title on the parties relevant to this Partition action. It is important to note that the witness

Wijepala produced Deed No. 1900 marked as P4 to prove that Ranmenika has transferred a share of the disputed land to Martheewan Fernando.

According to the evidence, the Deed No. 50 was marked as P4. The Defendants did not cross examine the witness who were to be added as P4 and P4 (a).

In the end of the Plaintiff's case, the Defendant did not give or lead any evidence. It is my view that the Learned Trial Judge erred in law stating that the Plaintiff has not proved the inheritance and the devolution of the title under the Kandyan Law. It is the duty of the Defendant to prove the Deega marriage on the Defendants, but they failed to do so. The Defendants who should prove the Deega marriage and it is their duty to produce the marriage certificates under the Kandyan Law.

In those circumstances it is clear that although the Learned Trial judge has dismissed the action on a wrongful footing, I am of the opinion that the land sought to be partitioned should not have been dismissed. Therefore, the impugned judgment of the Learned District Judge is erroneous. We set aside the judgment dated 3rd May 2000 by the District Judge of Awissawella and the judgment should be entered in favor of the Plaintiff as follows.

Substituted Plaintiff Appellant	undivided 1/4 th
First Defendant	undivided 1/4 th
Second Defendant	undivided 1/4 th
Third Defendant	undivided 1/16 th
Fourth Defendant	undivided 1/16 th
Fifth defendant	undivided 1/8 th (minus block of land for 10 coconut trees)

Enter interlocutory decree accordingly;

Appeal allowed.

The Plaintiff is entitled for costs in the District Court as well as in the appeal and the surveyor fees

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal