

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

Wickramarachchige

Sumanawathie,

Palugasthenna,

Matale.

3<sup>rd</sup> Defendant-Appellant

**CASE NO: CA/DCF/699/1998**

**DC MATALE CASE NO: 1920/P**

Vs.

Ranathun Arachchilage Gedara

Ukku Menika,

of Maradurawala, Kaikawala,

Matale.

Plaintiff-Respondent

1(a) Diganawala Gedara Appuhamy,

1(b) Diganawala Gedara Nandawathie,

1(c) Diganawala Gedara Jayarathne,

1(d) Diganawala Gedara Jayanthie  
Kumari,

1(e) Diganawala Gedara Biso Menika,  
All of Maradurawala, Kaikawala,  
Matale.

Substituted Plaintiff-Respondents

1. Ranathun Arachchilage Gedara  
Dingiri Banda,  
Palugastenna, Kaikawela,  
Matale.
  2. Ranathun Arachchilage  
Gnanawathie,  
Dikkumbura.
  3. Aluth Gedara Punchi Menika,  
Palugastenna, Kaikawela,  
Matale.
- 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> Defendant-  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Chandana Botheju with Jagath Nanayakkara  
for the 3<sup>rd</sup> Defendant-Appellant.  
Ashan Navaratna Bandara for the Plaintiff-  
Respondents.

Argued on: 24.06.2020

Decided on: 20.07.2020

Mahinda Samayawardhena, J.

The Plaintiff filed this action in the District Court of Matale to partition the land described in the schedule to the plaint among the Plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. At the preliminary survey, the 3<sup>rd</sup> Defendant had come forward as a claimant. Later, the 4<sup>th</sup> Defendant intervened as a party Defendant. At the

trial, only the Plaintiff's husband and the 3<sup>rd</sup> Defendant gave evidence. The only contest at the trial was whether or not the 3<sup>rd</sup> Defendant had acquired prescriptive title to Lot 1 of the Preliminary Plan. The learned District Judge has answered it in the negative and entered Judgment partitioning the land, including Lot 1, among the Plaintiff, the 2<sup>nd</sup> and 4<sup>th</sup> Defendants. The rights of the 1<sup>st</sup> Defendant have been left unallotted. The 3<sup>rd</sup> Defendant, who admittedly constructed the buildings on Lot 1, has not even been awarded compensation on the basis that the said buildings are not *bona fide* improvements. However, the 3<sup>rd</sup> Defendant has been allowed to remove the improvements, if she so desires. Aggrieved of this Judgment, the 3<sup>rd</sup> Defendant has preferred this appeal.

The 3<sup>rd</sup> Defendant is not a co-owner of this land. She is a stranger to it. She came to the land in 1966 upon her marriage to the son of Dingiri Manika, who was in possession of Lot 1 in the Preliminary Plan. This is acknowledged by the District Judge in his Judgment.

The Plaintiff's husband admitted in his evidence that it is the 3<sup>rd</sup> Defendant who constructed the buildings in Lot 1 marked A-D about 20 years prior to the trial, and none of the other parties have built houses on the land.<sup>1</sup> According to the Preliminary Plan, there are no other buildings on the land except those marked A-D. It appears the house marked A was constructed by Dingiri Manika. The witness further stated that their attempts to build houses on Lot 1 was foiled by the 3<sup>rd</sup> Defendant. The

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<sup>1</sup> *Vide* pages 93, 94 of the Brief.

3<sup>rd</sup> Defendant's possession of the land has also been affirmed in the Magistrate's Court proceedings.<sup>2</sup>

The Report to the Preliminary Plan marked Y makes it clear that Lot 1 is in possession of the 3<sup>rd</sup> Defendant, to the exclusion of all other co-owners. At the survey, according to the said Report, the Plaintiff had informed the surveyor that the 3<sup>rd</sup> Defendant is in forceful possession of Lot 1, and that Lot 1 should also form part of the land to be partitioned.<sup>3</sup> This means, the 3<sup>rd</sup> Defendant has been in possession of Lot 1 as a separate Lot.

Against this overwhelming evidence, which in my view proves prescriptive possession of the 3<sup>rd</sup> Defendant, why did the learned District Judge hold against the 3<sup>rd</sup> Defendant?

As I stated earlier, the learned District Judge admits in the Judgment that the 3<sup>rd</sup> Defendant has come into possession of the land in 1966 upon her marriage to the son of Dingiri Manika. Who is Dingiri Manika? Dingiri Manika is also not a co-owner of this land. According to the learned District Judge, Dingiri Manika came to the land on the leave and license of the 2<sup>nd</sup> Defendant. I cannot understand on what basis the District Judge has come to the said finding. There is no mention of it in the plaint. In my view, it is not clear from the evidence of the Plaintiff's husband that Dingiri Manika came into possession of the land as a licensee of the 2<sup>nd</sup> Defendant. The portion of evidence the District Judge appears to have relied on in this regard is the following: “ඥානවතීට අයිති කොටස දැන් බුක්ති විඳින්නේ ඩිංගිරි මැනිකා. ඩිංගිරි මැනිකාට දුටුක් නැහැ. ඉන්නේ ලේලි. ඩිංගිරි මැනිකා

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<sup>2</sup> *Vide* page 104 of the Brief.

<sup>3</sup> *Vide* page 106 of the Brief.

ඥානවතීගේ කොටසට පදිංචියට ඇවිත් අවුරුදු 30 ක් වෙනවා. අක්ක ඥානවතී. ඩිංගිරි මැනිකා ලඟට ආවා බලා ගන්න. ඒ ඩිංගිරි මැනිකාගේ ලේලි තමා සුමනාවතී. 3 වෙනි විත්තිකාරිය. ඒ තැනැත්තිය ඉඩමේ පදිංචි වී ඉන්නවා. නමුත් ඒ ඉඩම අයිති ඥානවතීට.”<sup>4</sup> It is not clear from the above piece of evidence whether Dingiri Manika came to look after the 2<sup>nd</sup> Defendant. If Dingiri Manika had come to look after the 2<sup>nd</sup> Defendant, how and why she commenced possession of the 2<sup>nd</sup> Defendant’s portion is still a mystery. If Dingiri Manika came to possess the 2<sup>nd</sup> Defendant’s portion as a licensee, as the learned District Judge says in his Judgment, the 2<sup>nd</sup> Defendant could have given evidence on that important point. She did not do so. In fact, according to the proceedings, although all the other parties had come to Court on the trial days, the 2<sup>nd</sup> Defendant did not and no issues were raised on her behalf at the trial.

The District Judge says the 3<sup>rd</sup> Defendant cannot claim independent rights to the land, as the 3<sup>rd</sup> Defendant came to the land upon the rights of Dingiri Manika. I cannot agree. Dingiri Manika was not a co-owner of the land. Nor has it been proven to the satisfaction of the Court that she was a licensee under the 2<sup>nd</sup> Defendant. Therefore, the fact that the 3<sup>rd</sup> Defendant came to the land under Dingiri Manika does not disqualify the 3<sup>rd</sup> Defendant from claiming prescriptive title against the co-owners of the land.

The District Judge, in my view, erred on both fact and law by rejecting the prescriptive claim of the 3<sup>rd</sup> Defendant.

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<sup>4</sup> *Vide* Page 84 of the Brief.

I answer issue nos. 5-7 in the affirmative and direct the learned District Judge to exclude Lot 1 in the Preliminary Plan from the land to be partitioned. Subject to the foregoing, I affirm the Judgment of the District Court.

The appeal of the 3<sup>rd</sup> Defendant is allowed but without costs.

Judge of the Court of Appeal