

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

Tikkalage Babilis Silva (Deceased) of Moragalla,
Beruwala

Plaintiff

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff

Case No. C. A. 1145/2000(F)
D. C. Kalutara Case No. 4542/P

Vs.

1. Kekulahandi Edin Nona (Deceased)
2. Kekulahandi Susilin Nona (Deceased)
3. Kekulahandi Boilin Nona (Deceased)

Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

Substituted 1A, 2A and 3A Defendant

4. Kekulahandi Greman
5. Kekulahandi Simon
Both of Moragalla, Beruwala.
6. Kekulahandi Yivulin Nona of Nagoda, Kalutara.
7. Kekulahandi Sivilin Nona
8. Kekulahandi Betin
Both of Moragalla, Beruwala.
9. Kekulahandi Ebert (Deceased)
- 9A. Hapan Leelawathie of Moragalla, Beruwala.
10. Kekulahandi Jarvin of Kalamulla, Kalutara.
11. Kaluperuma Velin (Deceased)

11A. Gunetti Pemaseeli Silva

12. Pahalage Amarawathie De Silva Abeygunawardena
13. Pahalage Sheriet De Silva Abeygunawardena
14. Pahalage Nimalawathie De Silva Abeygunawardena All of Moragalla, Beruwala.
15. Pahalage Sumanawathie De Silva Abeygunawardena of Pohaddaramulla, Wadduwa.
16. Pahalage Thilakawathie De Silva Abeygunawardena
17. Henry De Silva Abeygunawardena Both of Moragalla, Beruwala.
18. Chert De Silva Abeygunawardena (Deceased)
- 18A. Pahalage Daisy Nasika De Silva of No. 262, Maradana, Beruwala.
19. Wilbert Rajapakse (Deceased)
- 19A. D. Rajapakse of Maha Waskaduwa, Waskaduwa.
20. Manatunga Baby Nona
21. Jamuni Lambert Silva
22. Tikkalage Mailawathie All of Moragalla, Beruwala.
23. Tikkalage Kusulinhamy alias Kulawathie of No. 100, Yalapitamada.
24. Tikkalage Pelawathie
25. Gunetti Somasiri Silva

26. Singhara Sisilin Nona
27. Tikkalage Thilakasiri Silva
28. Tikkalage Ratnasiri De Silva
29. Tikkalage Premawathie De Silva
30. Tikkalage Dayawathie De Silva
31. Tikkalage Siriyawathie De Silva
32. Tikkalage Dederishamy
33. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.
34. Anthonidura Dupasena Silva (Deceased)
- 34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.
35. Anthonidura Jinasena Silva
36. Anthonidura Susilawathie De Silva
37. Anthonidura Kamalawathie De Silva
38. Anthonidura Sisilawathie De Silva
39. Anthonidura Ratnawathie De Silva
40. Anthonidura Sumanawathie De Silva
41. Sandradura Bensilin De Silva
42. U. Seeman Silva
43. U. Charlotte Silva
44. G. Misilin Nona
All of Moragalla, Beruwala.

45. Tilda Nayanawathie Abeygunawardena
(Deceased)

45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.

46. Hathadura Misilin Nona

47. Kaluperuma Sisilin De Soysa

48. Sandradura Seelin Silva

49. Kaluperuma Sailin Soysa

50. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendants

AND NOW BETWEEN

Sandradura Bensilin De Silva

41st Defendant-Appellant

Vs.

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff-Respondent

1A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

2A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

3A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

4. Kekulahandi Greman

5. Kekulahandi Simon
Both of Moragalla, Beruwala.

6. Kekulahandi Yivulin Nona of Nagoda, Kalutara.
7. Kekulahandi Sivulin Nona
- 8A. Happen Baby Nona of Baberiyam Hotel Road,
Moragalla, Beruwala.
- 9A. Hapan Leelawathie of Moragalla, Beruwala.
10. Kekulahandi Jarvin of Kalamulla, Kalutara.
- 11A. Gunetti Pemaseeli Silva
12. Pahalage Amarawathie De Silva Abeygunawardena
13. Pahalage Sheriet De Silva Abeygunawardena
14. Pahalage Nimalawathie De Silva Abeygunawardena
All of Moragalla, Beruwala.
15. Pahalage Sumanawathie De Silva Abeygunawardena of Pohaddaramulla, Wadduwa.
16. Pahalage Thilakawathie De Silva Abeygunawardena
17. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.
- 18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.
- 19A. D. Rajapakse of Maha Waskaduwa, Waskaduwa.
20. Manatunga Baby Nona
21. Jamuni Lambert Silva
22. Tikkalage Mailawathie

All of Moragalla, Beruwala.

23. Tikkalage Kusulinhamy alias Kulawathie of No. 100, Yalapitamada.

24. Tikkalage Pelawathie

25. Gunetti Somasiri Silva

26. Singhara Sisilin Nona

27. Tikkalage Thilakasiri Silva

28. Tikkalage Ratnasiri De Silva

29. Tikkalage Premawathie De Silva

30. Tikkalage Dayawathie De Silva

31. Tikkalage Siriyawathie De Silva

32. Tikkalage Dederishamy

33. Anthonidura Piyasena Silva

All of Moragalla, Beruwala.

34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.

35. Anthonidura Jinasena Silva

36. Anthonidura Susilawathie De Silva

37. Anthonidura Kamalawathie De Silva

38. Anthonidura Sisilawathie De Silva

39. Anthonidura Ratnawathie De Silva

40. Anthonidura Sumanawathie De Silva

42. U. Seeman Silva

43. U. Charlotte Silva
44. G. Misilin Nona
All of Moragalla, Beruwala.
- 45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.
46. Hathadura Misilin Nona
47. Kaluperuma Sisilin De Soysa
48. Sandradura Seelin Silva
49. Kaluperuma Sailin Soysa
50. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendant-Respondents

Tikkalage Babilis Silva (Deceased) of Moragalla,
Beruwala

Plaintiff

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff

**Case No. C. A. 1146/2000(F)
D. C. Kalutara Case No. 4542/P**

Vs.

51. Kekulahandi Edin Nona (Deceased)
52. Kekulahandi Susilin Nona (Deceased)
53. Kekulahandi Boilin Nona (Deceased)

Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

Substituted 1A, 2A and 3A Defendant

54. Kekulahandi Greman

55. Kekulahandi Simon
Both of Moragalla, Beruwala.
56. Kekulahandi Yivulin Nona of Nagoda, Kalutara.
57. Kekulahandi Sivulin Nona
58. Kekulahandi Betin
Both of Moragalla, Beruwala.
59. Kekulahandi Ebert (Deceased)
- 9A. Hapan Leelawathie of Moragalla, Beruwala.
60. Kekulahandi Jarvin of Kalamulla, Kalutara.
61. Kaluperuma Velin (Deceased)
- 11A. Gunetti Pemaseeli Silva
62. Pahalage Amarawathie De Silva
Abeygunawardena
63. Pahalage Sheriet De Silva Abeygunawardena
64. Pahalage Nimalawathie De Silva
Abeygunawardena
All of Moragalla, Beruwala.
65. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.
66. Pahalage Thillakawathie De Silva
Abeygunawardena
67. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.
68. Chert De Silva Abeygunawardena (Deceased)

18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.

69. Wilbert Rajapakse (Deceased)

19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.

70. Manatunga Baby Nona

71. Jamuni Lambert Silva

72. Tikkalage Mailawathie
All of Moragalla, Beruwala.

73. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.

74. Tikkalage Pelawathie

75. Gunetti Somasiri Silva

76. Singhara Sisilin Nona

77. Tikkalage Thilakasiri Silva

78. Tikkalage Ratnasiri De Silva

79. Tikkalage Premawathie De Silva

80. Tikkalage Dayawathie De Silva

81. Tikkalage Siriyawathie De Silva

82. Tikkalage Dendirishamy

83. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.

84. Anthonidura Dupasena Silva (Deceased)

34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.

85. Anthonidura Jinasena Silva
86. Anthonidura Susilawathie De Silva
87. Anthonidura Kamalawathie De Silva
88. Anthonidura Sisilawathie De Silva
89. Anthonidura Ratnawathie De Silva
90. Anthonidura Sumanawathie De Silva
91. Sandradura Bensilin De Silva
92. U. Seeman Silva
93. U. Charlotte Silva
94. G. Misilin Nona
All of Moragalla, Beruwala.
95. Tilda Nayanawathie Abeygunawardena
(Deceased)
- 45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.
96. Hathadura Misilin Nona
97. Kaluperuma Sisilin De Soysa
98. Sandradura Seelin Silva
99. Kaluperuma Sailin Soysa
100. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendants

AND NOW BETWEEN

Sandradura Mallika Seneviratne of No. 101, Galle Road, Moragalla, Beruwala.

45A Defendant-Appellant

Vs.

Tikkalage Kumudu Sudharshani De Silva of 'Sisil', Moragalla, Beruwala.

Substituted Plaintiff-Respondent

- 1A. Gunetti Sairus Sandasara De Silva of 'Sasanka', Berberyn Road, Moragalla, Beruwala.
- 2A. Gunetti Sairus Sandasara De Silva of 'Sasanka', Berberyn Road, Moragalla, Beruwala.
- 3A. Gunetti Sairus Sandasara De Silva of 'Sasanka', Berberyn Road, Moragalla, Beruwala.
4. Kekulahandi Greman
5. Kekulahandi Simon
Both of Moragalla, Beruwala.
6. Kekulahandi Yivulin Nona of Nagoda, Kalutara.
7. Kekulahandi Sivulin Nona
8. Kekulahandi Betin (Deceased)
Both of Moragalla, Beruwala.
- 8A. Hapan Baby Nona of Berberyn Road,
Moragalla, Beruwala.
- 9A. Hapan Leelawathie of Moragalla, Beruwala.
10. Kekulahandi Jarvin of Kalamulla, Kalutara.
- 11A. Gunetti Pemaseeli Silva
12. Pahalage Amarawathie De Silva
Abeygunawardena

13. Pahalage Sheriet De Silva Abeygunawardena
14. Pahalage Nimalawathie De Silva
Abeygunawardena
All of Moragalla, Beruwala.
15. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.
16. Pahalage Thilakawathie De Silva
Abeygunawardena
17. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.
- 18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.
- 19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.
20. Manatunga Baby Nona
21. Jamuni Lambert Silva
22. Tikkalage Mailawathie
All of Moragalla, Beruwala.
23. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.
24. Tikkalage Pelawathie
25. Gunetti Somasiri Silva
26. Singhara Sisilin Nona
27. Tikkalage Thilakasiri Silva
28. Tikkalage Ratnasiri De Silva
29. Tikkalage Premawathie De Silva

30. Tikkalage Dayawathie De Silva
31. Tikkalage Siriyawathie De Silva
32. Tikkalage Dederishamy
33. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.
- 34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.
35. Anthonidura Jinasena Silva
36. Anthonidura Susilawathie De Silva
37. Anthonidura Kamalawathie De Silva
38. Anthonidura Sisilawathie De Silva
39. Anthonidura Ratnawathie De Silva
40. Anthonidura Sumanawathie De Silva
41. Sandradura Bensilin De Silva
42. U. Seeman Silva
43. U. Charlotte Silva
44. G. Misilin Nona
All of Moragalla, Beruwala.
46. Hathadura Misilin Nona
47. Kaluperuma Sisilin De Soysa
48. Sandradura Seelin Silva
49. Kaluperuma Sailin Soysa
50. Ungakammanthi Silman Silva

All of Moragalla, Beruwala.

Defendant-Respondents

Tikkalage Babilis Silva (Deceased) of Moragalla,
Beruwala

Plaintiff

Tikkalage Kumudu Sudharshani De Silva of 'Sisi',
Moragalla, Beruwala.

Substituted Plaintiff

**Case No. C. A. 1147/2000(F)
D. C. Kalutara Case No. 4542/P**

Vs.

101. Kekulahandi Edin Nona (Deceased)

102. Kekulahandi Susilin Nona (Deceased)

103. Kekulahandi Boilin Nona (Deceased)

Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

Substituted 1A, 2A and 3A Defendant

104. Kekulahandi Greman

105. Kekulahandi Simon

Both of Moragalla, Beruwala.

106. Kekulahandi Yivulin Nona of Nagoda, Kalutara.

107. Kekulahandi Sivilin Nona

108. Kekulahandi Betin

Both of Moragalla, Beruwala.

109. Kekulahandi Ebert (Deceased)

9A. Hapan Leelawathie of Moragalla, Beruwala.

110. Kekulahandi Jarvin of Kalamulla, Kalutara.

111. Kaluperuma Velin (Deceased)
- 11A. Gunetti Pemaseeli Silva
112. Pahalage Amarawathie De Silva
Abeygunawardena
113. Pahalage Sheriet De Silva Abeygunawardena
114. Pahalage Nimalawathie De Silva
Abeygunawardena
All of Moragalla, Beruwala.
115. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.
116. Pahalage Thilakawathie De Silva
Abeygunawardena
117. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.
118. Chert De Silva Abeygunawardena (Deceased)
- 18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.
119. Wilbert Rajapakse (Deceased)
- 19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.
120. Manatunga Baby Nona
121. Jamuni Lambert Silva
122. Tikkalage Mailawathie
All of Moragalla, Beruwala.
123. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.

124. Tikkalage Pelawathie

125. Gunetti Somasiri Silva

126. Singhara Sisilin Nona

127. Tikkalage Thilakasiri Silva

128. Tikkalage Ratnasiri De Silva

129. Tikkalage Premawathie De Silva

130. Tikkalage Dayawathie De Silva

131. Tikkalage Siriyawathie De Silva

132. Tikkalage Dederishamy

133. Anthonidura Piyasena Silva

All of Moragalla, Beruwala.

134. Anthonidura Dupasena Silva (Deceased)

34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.

135. Anthonidura Jinasena Silva

136. Anthonidura Susilawathie De Silva

137. Anthonidura Kamalawathie De Silva

138. Anthonidura Sisilawathie De Silva

139. Anthonidura Ratnawathie De Silva

140. Anthonidura Sumanawathie De Silva

141. Sandradura Bensilin De Silva

142. U. Seeman Silva

143. U. Charlotte Silva

144. G. Misilin Nona

All of Moragalla, Beruwala.

145. Tilda Nayanawathie Abeygunawardena
(Deceased)

45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.

146. Hathadura Misilin Nona

147. Kaluperuma Sisilin De Soysa

148. Sandradura Seelin Silva

149. Kaluperuma Sailin Soysa

150. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendants

AND NOW BETWEEN

Gunetti Somasiri Silva of Moragalla, Beruwala.

25th Defendant-Appellant

Vs.

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff-Respondent

1A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

2A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

3A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

4. Kekulahandi Greman
5. Kekulahandi Simon
Both of Moragalla, Beruwala.
9. Kekulahandi Yivulin Nona of Nagoda, Kalutara.
10. Kekulahandi Sivulin Nona
11. Kekulahandi Betin (Deceased)
Both of Moragalla, Beruwala.
- 8A. Hapan Baby Nona of Berberyn Road,
Moragalla, Beruwala.
- 9A. Hapan Leelawathie of Moragalla, Beruwala.
11. Kekulahandi Jarvin of Kalamulla, Kalutara.
- 11A. Gunetti Pemaseeli Silva
18. Pahalage Amarawathie De Silva
Abeygunawardena
19. Pahalage Sheriet De Silva Abeygunawardena
20. Pahalage Nimalawathie De Silva
Abeygunawardena
All of Moragalla, Beruwala.
21. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.
22. Pahalage Thilakawathie De Silva
Abeygunawardena
23. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.
- 18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.

19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.

34. Manatunga Baby Nona

35. Jamuni Lambert Silva

36. Tikkalage Mailawathie
All of Moragalla, Beruwala.

37. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.

38. Tikkalage Pelawathie

26. Singhara Sisilin Nona

27. Tikkalage Thilakasiri Silva

28. Tikkalage Ratnasiri De Silva

29. Tikkalage Premawathie De Silva

30. Tikkalage Dayawathie De Silva

31. Tikkalage Siriyawathie De Silva

32. Tikkalage Dederishamy

33. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.

34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.

45. Anthonidura Jinasena Silva

46. Anthonidura Susilawathie De Silva

47. Anthonidura Kamalawathie De Silva

48. Anthonidura Sisilawathie De Silva

49. Anthonidura Ratnawathie De Silva

50. Anthonidura Sumanawathie De Silva

51. Sandradura Bensilin De Silva

52. U. Seeman Silva

53. U. Charlotte Silva

54. G. Misilin Nona

All of Moragalla, Beruwala.

45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.

51. Hathadura Misilin Nona

52. Kaluperuma Sisilin De Soysa

53. Sandradura Seelin Silva

54. Kaluperuma Sailin Soysa

55. Ungakammanthi Silman Silva

All of Moragalla, Beruwala.

Defendant-Respondents

Tikkalage Babilis Silva (Deceased) of Moragalla,
Beruwala

Plaintiff

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff

Case No. C. A. 1148/2000(F)

D. C. Kalutara Case No. 4542/P

Vs.

151. Kekulahandi Edin Nona (Deceased)

152. Kekulahandi Susilin Nona (Deceased)

153. Kekulahandi Boilin Nona (Deceased)

Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

Substituted 1A, 2A and 3A Defendant

154. Kekulahandi Greman

155. Kekulahandi Simon
Both of Moragalla, Beruwala.

156. Kekulahandi Yivulin Nona of Nagoda, Kalutara.

157. Kekulahandi Sivulin Nona

158. Kekulahandi Betin
Both of Moragalla, Beruwala.

159. Kekulahandi Ebert (Deceased)

9A. Hapan Leelawathie of Moragalla, Beruwala.

160. Kekulahandi Jarvin of Kalamulla, Kalutara.

161. Kaluperuma Velin (Deceased)

11A. Gunetti Pemaseeli Silva

162. Pahalage Amarawathie De Silva
Abeygunawardena

163. Pahalage Sheriet De Silva Abeygunawardena

164. Pahalage Nimalawathie De Silva
Abeygunawardena
All of Moragalla, Beruwala.

165. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.

166. Pahalage Thilakawathie De Silva
Abeygunawardena

167. Henry De Silva Abeygunawardena
Both of Moragalla, Beruwala.

168. Chert De Silva Abeygunawardena (Deceased)

18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.

169. Wilbert Rajapakse (Deceased)

19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.

170. Manatunga Baby Nona

171. Jamuni Lambert Silva

172. Tikkalage Mailawathie
All of Moragalla, Beruwala.

173. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.

174. Tikkalage Pelawathie

175. Gunetti Somasiri Silva

176. Singhara Sisilin Nona

177. Tikkalage Thilakasiri Silva

178. Tikkalage Ratnasiri De Silva

179. Tikkalage Premawathie De Silva

180. Tikkalage Dayawathie De Silva

181. Tikkalage Siriyawathie De Silva

182. Tikkalage Dederishamy

183. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.

184. Anthonidura Dupasena Silva (Deceased)

34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.

185. Anthonidura Jinasena Silva

186. Anthonidura Susilawathie De Silva

187. Anthonidura Kamalawathie De Silva

188. Anthonidura Sisilawathie De Silva

189. Anthonidura Ratnawathie De Silva

190. Anthonidura Sumanawathie De Silva

191. Sandradura Bensilin De Silva

192. U. Seeman Silva

193. U. Charlotte Silva

194. G. Misilin Nona
All of Moragalla, Beruwala.

195. Tilda Nayanawathie Abeygunawardena
(Deceased)

45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.

196. Hathadura Misilin Nona

197. Kaluperuma Sisilin De Soysa

198. Sandradura Seelin Silva

199. Kaluperuma Sailin Soysa

200. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendants

AND NOW BETWEEN

14. Pahalage Nimalawathie De Silva
Abeygunawardena of Moragalla, Beruwala.

15. Pahalage Sumanawathie De Silva
Abeygunawardena of Pohaddaramulla,
Wadduwa.

16. Pahalage Thilakawathie De Silva
Abeygunawardena of Moragalla, Beruwala.

14th, 15th and 16th Defendant-Appellants

Vs.

Tikkalage Kumudu Sudharshani De Silva of 'Sisil',
Moragalla, Beruwala.

Substituted Plaintiff-Respondent

1A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

2A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

3A. Gunetti Sairus Sandasara De Silva of 'Sasanka',
Berberyn Road, Moragalla, Beruwala.

4. Kekulahandi Greman

5. Kekulahandi Simon
Both of Moragalla, Beruwala.

12. Kekulahandi Yivulin Nona of Nagoda, Kalutara.

13. Kekulahandi Sivilin Nona

14. Kekulahandi Betin (Deceased)
Both of Moragalla, Beruwala.

8A. Hapan Baby Nona of Berberyn Road,
Moragalla, Beruwala.

9A. Hapan Leelawathie of Moragalla, Beruwala.

12. Kekulahandi Jarvin of Kalamulla, Kalutara.

11A. Gunetti Pemaseeli Silva

24. Pahalage Amarawathie De Silva
Abeygunawardena

25. Pahalage Sheriet De Silva Abeygunawardena

17. Henry De Silva Abeygunawardena
All of Moragalla, Beruwala.

18A. Pahalage Daisy Nasika De Silva of No. 262,
Maradana, Beruwala.

19A. D. Rajapakse of Maha Waskaduwa,
Waskaduwa.

39. Manatunga Baby Nona

40. Jamuni Lambert Silva

41. Tikkalage Mailawathie
All of Moragalla, Beruwala.

42. Tikkalage Kusulinhamy alias Kulawathie of No.
100, Yalapitamada.

43. Tikkalage Pelawathie

44. Gunetti Somasiri Silva

34. Singhara Sisilin Nona

35. Tikkalage Thilakasiri Silva

36. Tikkalage Ratnasiri De Silva
37. Tikkalage Premawathie De Silva
38. Tikkalage Dayawathie De Silva
39. Tikkalage Siriyawathie De Silva
40. Tikkalage Dendirishamy
41. Anthonidura Piyasena Silva
All of Moragalla, Beruwala.
- 34A. Laddu Sirimathie De Silva of No. 596/1,
Maradana Road, Colombo 10.
55. Anthonidura Jinasena Silva
56. Anthonidura Susilawathie De Silva
57. Anthonidura Kamalawathie De Silva
58. Anthonidura Sisilawathie De Silva
59. Anthonidura Ratnawathie De Silva
60. Anthonidura Sumanawathie De Silva
61. Sandradura Bensilin De Silva
62. U. Seeman Silva
63. U. Charlotte Silva
64. G. Misilin Nona
All of Moragalla, Beruwala.
- 45A. Sandradura Mallika Seneviratne of No. 101,
Galle Road, Moragalla, Beruwala.
56. Hathadura Misilin Nona

57. Kaluperuma Sisilin De Soysa

58. Sandradura Seelin Silva

59. Kaluperuma Sailin Soysa

60. Ungakammanthi Silman Silva
All of Moragalla, Beruwala.

Defendant-Respondents

Before: Janak De Silva, J.

Counsel:

Srihan Samaranayake for Substituted Defendant-Appellant in CA 1145/2000(F)

Jacob Joseph with Nimal Ranamukhaarachchi for 45A Defendant-Appellant in CA 1146/2000(F)

M.S.A. Wadood with H. Manawarachchi for 25th Defendant-Appellant in CA 1147/2000

Athula Perera with Vindya Divulwewa for Substituted Plaintiff-Respondent

Argued on: 21.05.2019

Written Submissions tendered on:

Substituted Defendant-Appellant in CA 1145/2000(F) on 29.04.2019

45A Defendant-Appellant in CA 1146/2000(F) on 28.05.2019 and 13.06.2019

25th Defendant-Appellant in CA 1147/2000 on 22.05.2019

Substituted Plaintiff-Respondent on 27.05.2019 and 0.06.2019

Decided on: 20.01.2020

Janak De Silva J.

These are four appeals against the judgment of the learned Additional District Judge of Kalutara dated 14.11.2000.

The Plaintiff instituted the above styled action in the District Court of Kalutara seeking inter alia to partition the land called 'Elabodamahawatta' situated in Moragalla containing in extent A.3-R.2-P.0 morefully described in the Schedule to the Plaintiff dated 19.09.1980.

A commission was executed and the land sought to be partitioned is depicted in Preliminary Plan No. 2523 dated 25.08.1981 made by U. M. De Silva, Licensed Surveyor as Lots A – F containing in extent A.3-R.2-P.22.2. The Licensed Surveyor, in the Surveyor's Report dated 18.09.1981, has identified the said Lots A – F of the said Preliminary Plan No. 2523 as the land to be partitioned. The 22nd Defendant filed her Statement of Claim on 02.10.1981 and sought to exclude Lots E and F of the said Preliminary Plan No. 2523 from the land to be partitioned. Her contention was that

Lots E and F are formed by accretion from the sea. She accepted the pedigree of the Plaintiff with regard to Lots A – D.

The 42nd – 44th Defendants filed their Statement of Claim on 17.05.1982 and disputed the pedigree produced by the Plaintiff.

The 45th Defendant also, by her Statement of Claim dated 30.03.1983, disputed the pedigree produced by the Plaintiff.

Another commission was executed to survey and properly identify the land to be partitioned. Accordingly, E. D. G. K. Premaratne, Licensed Surveyor prepared Preliminary Plan No. 2368 dated 18.12.1984, superimposing the said Preliminary Plan No. 2523, which depicts Lots A – F containing in extent A.3-R.2-P.22.2. It is stated in the Surveyor's Report dated 18.11.1985 that the Plaintiff seeks to partition Lots A – E whereas the 22nd and 25th Defendants seek to exclude Lots E and F from the land to be partitioned. As per the said Surveyor's Report, the said Lots E and F are claimed by the 25th Defendant having being in possession for a period of twenty-seven (27) years. The 22nd, 33rd – 40th Defendants filed their Statement of Claim on 23.06.1986 and sought to exclude Lots E and F of the said Preliminary Plan No. 2523 and the said Preliminary Plan No. 2368 from the land to be partitioned. Under and by virtue of several deeds executed by the 22nd Defendant, the 33rd – 40th Defendants claimed title to the said Lot F which is formed by accretion from the sea and developed by the 22nd Defendant.

The 24th, 25th and 32nd Defendants filed their Statement of Claim on 23.06.1986 and disputed the pedigree of the Plaintiff. They sought to exclude Lots E and F of the said Preliminary Plan No. 2523 and the said Preliminary Plan No. 2368 from the land to be partitioned. They further sought to add one Hathadura Misilin Nona (later added as the 44th Defendant), who is the owner of the said Lot E by prescription.

The 45th Defendant, by her Amended Statement of Claim dated 15.06.1988, disputed the pedigree produced by the Plaintiff.

The 22nd, 33rd – 40th Defendants amended their Statement of Claim on 28.06.1988 and sought a commission to superimpose Fiscal Plan No. 29 dated 17.12.1884 made by C. I. De Zoysa, Licensed Surveyor made for sale held under Writ No. 35960 in District Court of Kalutara.

As a result, a Plan bearing No. 2791 dated 27.08.1990 was prepared by E. D. G. K. Premaratne, Licensed Surveyor which depicts Lots A, B, C1, C2, D1, D2, E and F containing in extent A.3-R.2-P.22.2. It is stated in the Surveyor's Report dated 27.08.1990 that a tracing of Fiscal Plan No. 29 dated 17.12.1884 made by C. I. De Zoysa, Licensed Surveyor made for sale held under Writ No. 35960 was superimposed and the fixation is precise.

The 12th and 13th Defendants filed their Statement of Claim on 10.01.1990. The 14th – 16th and 47th – 50th Defendants filed their Statement of Claim on 28.08.1991. The 4th and 41st Defendants filed their Statement of Claim on 30.09.1991. The 5th Defendant filed his Statement of Claim on 06.02.1992. The 2nd, 43rd and 44th Defendants filed their Statement of Claim on 20.07.1992. All the aforementioned Defendants disputed the pedigree produced by the Plaintiff.

After a lengthy trial, the learned Additional District Judge entered judgment in favour of the Plaintiff and decided that the said land should be partitioned in the manner laid down in the Plaintiff. Being aggrieved, the 41st, 45A, 25th and 14th – 16th Defendants appealed.

In a partition case, it is incumbent on the Judge to investigate into title of each party before he arrives at a determination [*Chandrasena v. Piyasena and Others* (1999) 3 Sri.L.R. 201] and it is the prime duty of the trial judge to carefully examine and investigate the actual rights and titles to the land sought to be partitioned [*Sopinona v. Pitipanaarachchi and Two Others* (2010) 1 Sri.L.R. 87]. Although there is a duty cast on the 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. The Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them [*Thilagaratnam v. Athpunathan and Others* (1996) 2 Sri.L.R. 66]. According to the Plaintiff, the original owner of the land called 'Elabodamahawatta' was Bodhi Seeman Silva. It is said that after the demise of Bodhi Seeman Silva, the land devolved to his four (04) children namely Menohamy, Dinoris, Myappu and Mendohamy. Menohamy's undivided 1/4 share later devolved to her two (02) children namely David and Guneris (who got an undivided 1/8 share each). Their entitlements were sold to Pahalage Sadiris De Silva Abeygunawardena and Singhara Pieris Silva at the sale held under Writ No. 35968 dated 25.02.1882.

By Deed of Transfer No. 3206 dated 06.05.1902 [Page 13 of the Appeal Brief (Vol.2)], the said Pahalage Sadiris De Silva Abeygunawardena sold the undivided share he purchased at the sale held under Writ No. 35968 dated 25.02.1882 to Tikkalage Myneris Silva, Tikkalage Barnis Silva, Tikkalage Ideris Silva and Kekulahandi Eranorishamy. The Schedule of the said Deed of Transfer No. 3206 describes the share entitlement of the said Pahalage Sadiris De Silva Abeygunawardena as "... බිමෙනුත් අවෙන් එක පංතුව (1/8) ක් සහ හැටහනරෙන් පංතුව (1/64) ක් සමග ..."

By Deed of Transfer No. 3326 dated 22.09.1902 [Page 166 of the Appeal Brief (Vol.2)], the said Singhara Pieris Silva sold the undivided share he purchased at the sale held under Writ No. 35968 dated 25.02.1882 to Kerekola Arnolis De Silva. The Schedule of the said Deed of Transfer No. 3326 describes the share entitlement of the said Singhara Pieris Silva as "... බිමෙනුත් පොදුවේ අවෙන්

පංගුව (1/8) ක් සහ මා විසින් මුදලට ගත් මේ මායිම තුළ බිමෙන් සහ බිම් පංගුවේ ගහකාලවලිනුත් හතුලිගෙන් පංගුව (1/40) ක් සමග ...”

If what was sold at the sale held under Writ No. 35968 dated 25.02.1882 was the entitlement of the said David and Guneris (i.e. an undivided 1/8 share each), a question arises as to how the said Pahalage Sadiris De Silva Abeygunawardena and the said Singhara Pieris Silva became entitled to an additional undivided 1/64 share and an additional undivided 1/40 share respectively which were transferred by the said Deed of Transfer No. 3206 and the said Deed of Transfer No. 3326. It is possible that the share entitlement of another co-owner was also sold at the sale held under Writ No. 35968 dated 25.02.1882. However, it was never established by the evidence led. Anyhow, under and by virtue of the said Deed of Transfer No. 3206, the said Tikkalage Myneris Silva, Tikkalage Barnis Silva, Tikkalage Ideris Silva and Kekulahandi Eranorishamy became entitled to an undivided 9/256 share each [(1/8+1/64)×1/4]. The said Kerekola Arnolis De Silva became entitled to an undivided 3/20 share (1/8+1/40) under and by virtue of the said Deed of Transfer No. 3326.

The undivided 3/20 share of Kerekola Arnolis De Silva was transferred to Sandradura Simonis de Silva by Deed of Transfer No. 4363 dated 31.03.1909 [Page 170 of the Appeal Brief (Vol.2)]. Thereafter, the said Sandradura Simonis de Silva gifted it to Sandradura Carlina De Silva and Anther De Zoysa Gunatilake by Deed bearing No. 5 dated 22.01.1923 [Page 174 of the Appeal Brief (Vol.2)]. By Deed of Transfer No. 1238 dated 13.02.1949 [Page 180 of the Appeal Brief (Vol.2)], it was sold to Thenkutti Pabilis Silva. After his demise, the said undivided 3/20 share devolved to his three (03) children namely Thenkutti Herbert Silva, Thenkutti Lissie Nona Silva and Thenkutti Jayawathie Silva. They transferred it to the Original Plaintiff by Deed of Transfer No. 8910 dated 20.05.1975 [Page 141 of the Appeal Brief (Vol.2)] and Deed of Transfer No. 8792 dated 12.03.1975 [Page 146 of the Appeal Brief (Vol.2)].

The contents of the said Deeds of Transfer reveal that not only the entitlement Thenkutti Pabilis Silva got from the Deed of Transfer No. 1238 dated 13.02.1949 but also the entitlements he got from Deed bearing No. 40790 dated 30.05.1953 and Deed bearing No. 2154 dated 13.01.2154 together with his inheritance were transferred to the Original Plaintiff. The Deed bearing No. 40790 dated 30.05.1953 is not marked in evidence. However, a Deed of Transfer bearing No. 40792 dated 30.05.1953 was marked as ‘අශ්‍රී’ [Page 274 of the Appeal Brief (Vol.2)] by which Thenkutti Pabilis Silva became entitled to an undivided 1/32 share. There is a possibility that it was mistakenly mentioned as “Deed No. 40790” in Deed of Transfer No. 8910 dated 20.05.1975 and Deed of Transfer No. 8792 dated 12.03.1975. However, it was not clarified during the trial.

By Deed bearing No. 2154 dated 13.01.2154 [Page 235 of the Appeal Brief (Vol.2)], Thenkutti Pabilis Silva became entitled to an undivided 1/32 share. If all the aforementioned undivided shares were transferred to the Original Plaintiff by the heirs of Thenkutti Pabilis Silva, the share entitlement of the Original Plaintiff would be an undivided 17/80 share [3/20+1/32+1/32]. However, this doesn't include the inheritance of Thenkutti Pabilis Silva which was not properly established by the evidence led.

The 14th Defendant marked the Deed of Transfer No. 1336 dated 20.06.1867 as '14&1' [Page 115 of the Appeal Brief (Vol.2)] to establish the title of the 14th – 16th Defendants. The said Deed of Transfer No. 1336 was executed by Unga Kammanthi Andiris Slva and Athadura Salonchihamy. They have transferred an undivided 1/8 share of 'Mahawatta' [the boundaries and the extent tally with 'Elabodamahawatta'] to Unga Kammanthi Thomis Silva and Unga Kammanthi Simanis Silva. The contents of the said Deed of Transfer No. 1336 reveal that the Transferors got their title by inheritance. If so, the position taken up by the Plaintiff that the original owner of the entire land was Bodhi Seeman Silva is incorrect.

The 4th, 14th – 16th and 41st – 44th Defendants accepted the entitlement of Unga Kammanthi Andiris Slva and Athadura Salonchihamy in their Statements of Claim. The Substituted Plaintiff also accepted the same during the trial [Page 442 of the Appeal Brief (Vol.1)]. Therefore, it is safe to conclude that Unga Kammanthi Andiris Slva and Athadura Salonchihamy were the owners of an undivided 1/8 share. In that event, the entitlement of Bodhi Seeman Silva is limited to an undivided 7/8 share.

As mentioned earlier, Unga Kammanthi Thomis Silva and Unga Kammanthi Simanis Silva became entitled to an undivided 1/8 share under and by virtue of the said Deed of Transfer No. 1336 (i.e. an undivided 1/16 share each). According to the 14th – 16th Defendants, the undivided 1/16 share of the said Unga Kammanthi Thomis Silva was sold to Pahalage Sadiris De Silva Abeygunawardena by Deed of Transfer No. 9560 executed in 1877 [Page 260 of the Appeal Brief (Vol.1)]. And the said entitlement of Pahalage Sadiris De Silva Abeygunawardena was sold at a Fiscal's sale (Writ of Execution in Case No. 10371 in District Court of Kalutara) by Fiscal's Conveyance No. 10923 dated 05.01.1934 [Page 120 of the Appeal Brief (Vol.2)] to Anthonydura Suwanelhamy De Silva Abeygunawardena.

The said Deed of Transfer No. 9560 was not marked in evidence. Also, a careful perusal of the Fiscal's Conveyance No. 10923 dated 05.01.1934 reveals that Anthonydura Suwanelhamy De Silva Abeygunawardena only became entitled to an undivided 1/20 share. In such circumstances, a question arises as to what happened to the balance portion of the entitlement of Pahalage Sadiris

De Silva Abeygunawardena, if Unga Kammanthi Thomis Silva conveyed his undivided 1/16 share to him by the said Deed of Transfer No. 9560.

According to the 42nd – 44th Defendants, the undivided 1/16 share of Unga Kammanthi Simanis Silva devolved to Unga Kammanthi Thomis Silva as the former died intestate and issueless. If that is true, then Unga Kammanthi Thomis Silva was entitled to an undivided 1/8 share. The 42nd – 44th Defendants claim that the said undivided 1/8 share devolved to the heirs of Unga Kammanthi Thomis Silva (i.e. his two (02) children namely Abraham and Sinchappu).

However, according to the 14th – 16th Defendants, the undivided 1/16 share of Unga Kammanthi Simanis Silva devolved to his three (03) children namely Samaris, Karolishamy and Amaris. If that is the correct version, then Unga Kammanthi Thomis Silva was only entitled to an undivided 1/16 share. Since the devolution of the entitlements of Unga Kammanthi Thomis Silva and Unga Kammanthi Simanis Silva are not properly established by evidence, their undivided 1/8 share should be kept unallotted.

Even though how Pahalage Sadiris De Silva Abeygunawardena became entitled to an undivided 1/20 share remains a mystery, it is established that the said undivided 1/20 share was transferred to Anthonydura Suwanelhamy De Silva Abeygunawardena by Fiscal's Conveyance No. 10923 dated 05.01.1934. And the 14th – 16th Defendants claim her entitlement as her heirs.

The contention of the Plaintiff regarding the entitlement of Anthonydura Suwanelhamy De Silva Abeygunawardena is that the Fiscal's Conveyance No. 10923 dated 05.01.1934 (14&2) was executed after the confirmation of sale in the Partition Case bearing No. 4814/P where the right of Pahalage Sadiris De Silva Abeygunawardena was sold [Page 4 of the Written Submissions of the Plaintiff-Respondent dated 27.05.2019] and that the 14th – 16th Defendants cannot rely on '14&2' as they have not led evidence to establish the nexus between Pahalage Sadiris De Silva Abeygunawardena and the other parties to the said Partition Action. However, the endorsement of the Registrar of District of Kalutara at the end of '14&2' states that it is a true copy of the document marked '14&4' in Case No. 4814/P [Page 125 of the Appeal Brief (Vol.2)]. Therefore, it is impossible that '14&2' is a document executed after the confirmation of sale in the Partition Case bearing No. 4814/P as urged by the Plaintiff.

In such circumstances, it is safe to conclude that under and by virtue of '14&2', Anthonydura Suwanelhamy De Silva Abeygunawardena became entitled to an undivided 1/20 share. The fact that the 14th – 16th Defendants are the only heirs of her is not disputed. Therefore, the 14th – 16th Defendants are entitled to an undivided 1/60 share each. However, the learned Additional District

Judge has only allotted 0.06944444% share each to the 14th – 16th Defendants whereas they are actually entitled to an undivided 1.6666666% share each.

By Deed of Dowry No. 2872 dated 24.01.1881, the widow (namely Edonishamy) and the son (namely Sandradurage Nandappu Silva) of Sandradurage Dines Silva conveyed an undivided 1/16 share and an undivided 1/48 share to Sandradurage Saraneris Silva and Sandradurage Pensohamy. However, according to the Plaintiff, Dines Silva was entitled to an undivided 1/8 share by inheritance and that is what was later transferred to Sandradurage Saraneris Silva and Sandradurage Pensohamy. The contents of the Deed of Dowry No. 2872 dated 24.01.1881 is contradictory to what is stated in the Plaintiff.

Sandradurage Saraneris Silva and Sandradurage Pensohamy transferred the entitlement they got from the Deed of Dowry No. 2872 and another undivided 1/20 share Sandradurage Pensohamy got as maternal inheritance to Pohaddara Jayaneris by Deed of Transfer No. 6417 dated 24.10.1907. It is clear by the contents of the said Deed of Transfer No. 6417 that the additional undivided 1/20 share originally belonged to Edonishamy. Also, if Sandradurage Pensohamy got as maternal inheritance an undivided 1/20 share, there is a possibility that the son of Edonishamy (i.e. Sandradurage Nandappu Silva) also got an equal share. In such circumstances, at the time of Edonishamy's death, her entitlement was an undivided 1/10 share. She might have got entitled to such share through her deceased husband (i.e. Sandradurage Dines Silva) or through someone else. However, there is no evidence at all to come to a conclusion. If her share entitlement came through Sandradurage Dines Silva, there is a possibility that he was entitled to a much larger share than an undivided 1/8 share as stated in the Plaintiff.

Anyhow, by Deed of Transfer No. 6417 dated 24.10.1907, Pohaddara Jayaneris became entitled to an undivided 2/15 share [1/16+1/48+1/20]. He also became entitled to another undivided 1/20 share under and by virtue of Deed of Transfer No. 504 dated 08.11.1913. Accordingly, Pohaddara Jayaneris was entitled to an undivided 11/60 share.

According to the evidence of the 41st Defendant, the share entitlement of Pohaddara Jayaneris was conveyed to Pohaddara Sathinhamy De Silva by Deed of Transfer No. 1109 dated 27.07.1925. The said Deed of Transfer was not produced. However, the document marked 'v.15' states that the duplicate kept at the Land Registry is decayed. Pohaddara Sathinhamy De Silva transferred the entitlement she got from the said Deed of Transfer No. 1109 to Muthuwahandi Similiya De Silva by the Conditional Transfer No. 3135 dated 12.02.1959 [Page 194 of the Appeal Brief (Vol.2)]. According to the Schedule of the said Conditional Transfer No. 3135, what is transferred is an undivided 71/205 share. A question arises as to how Pohaddara Sathinhamy De Silva became

entitled to a larger portion than what Pohaddara Jayaneris had. Anyhow, the title deeds show that the said undivided 71/205 share devolved to the 41st Defendant along with another undivided 1/32 share.

By virtue of a Writ issued from the District Court of Kalutara Case No. 12211 dated 01.09.1926, an undivided 1/16 share belonging to Sandradura Fredrick De Silva was sold to Elaris De Silva Abeygunawardena and Muthwahandi Kuin Nona De Silva Abeygunawardena by After their demise, the Fiscal's Conveyance No. 11244 dated 28.09.1935 was executed and their four (04) heirs namely Nayanawathie, Amarawathie, Allen Ferry and Ramyawathie became entitled to the said undivided 1/16 share [Page 35 of the Appeal Brief (Vol.2)]. They executed the Deed of Exchange No. 3478 dated 23.08.1959 by which the said Nayanawathie De Silva Abeygunawardena (who is the 45th Defendant in the instant action) became entitled to the said undivided 1/16 share. The contention of the Plaintiff in this regard is that what was sold at the Fiscal's sale held by virtue of the Writ of Execution in Case No. 12211 is a different land called "Mahawatta alias Wellawatta" and that the boundaries do not tally. However, as I observed earlier, in the Deed of Transfer No. 1336 dated 20.06.1867, the land was referred to as "Mahawatta".

It must be noted that in the Fiscal's Conveyance No. 11244 dated 28.09.1935 the north boundary is described as "Pelawatta alias the land wherein Kiriappu resided". The said discrepancy is explained in the said the Deed of Exchange No. 3478 dated 23.08.1959 in which the north boundary is described as "පැලවත්ත හෙවත් කිරීඅප්ප පදිංචි ව සිටි ඉඩම (දුනුගා වත්ත)".

In view of the above, it is clear that the 45th Defendant became entitled to an undivided 1/16 share. However, the learned Additional District Judge has failed to allot any shares to the 45th Defendant.

Kekulahandi Koleris Silva became entitled to an undivided 1/96 share by Deed of No. 7555 dated 15.05.1913 [Page 241 of the Appeal Brief (Vol.2)].

Tikkalage Ornis Silva transferred the undivided 1/16 share belonged to him by virtue of the Writ of Execution No. 34386 to Tikkalage Myneris Silva, Tikkalage Barnis Silva, Tikkalage Ideris Silva, Tikkalage Coranerishamy, Tikkalage Guneris and Kekulahandi Eranorishamy by Deed of Transfer No. 3824 dated 09.11.1904 [Page 10 of the Appeal Brief (Vol.2)].

However, there is no cogent evidence as to how the said share entitlements devolved.

In *Maddumaralalage Dona Mary Nona v. Maddumaralalage Don Justin and Others* (2016 BLR 130), Eva Wanasundera, P. C., J. held as follows –

"In a partition action, the Judge has to decide what share of the land should be allotted to which party. It is different from answering issues in a money recovery case, a divorce case, a rent and ejectment case, a land dispute case, a debt recovery case, a case based on contract or a case based on delict etc. In those cases, the answers could be in the affirmative or in the negative, may be with some comment or a remark which would show the inclination to the final decision. But in a partition action, each party claims different portions of one big land and the Judge is expected to sort out what share of the land should be granted to which plaintiff and/or defendant. For this reason, I find that the onus of the Judge in a partition case is somewhat more difficult than in any other kind of case, since the Judge has to specifically calculate the share of entitlement." [emphasis added].

As I observed earlier, the Plaintiff has failed to properly establish his entitlement to the land to be partitioned and that the chain of title laid down in the Plaintiff of the Plaintiff is broken. In such circumstances, I hold that the learned Additional District Judge has erred in entering a judgment in favour of the Plaintiff and accepting the pedigree of the Plaintiff without calculating the share entitlement of each party.

In an appeal in a partition action, if it appears to the Court of Appeal that the investigation of title has been defective, it should set aside the decree and make an order for proper investigation [*Mohamedaly Adamjee and Others v. Hadad Sadeen and Others* (58 N.L.R. 217)].

For all the foregoing reasons, I set aside the judgment of the learned Additional District Judge of Kalutara dated 14.11.2000. I make further order that a trial de novo be held expeditiously and the learned Additional District Judge is directed to take all reasonable steps to conclude the trial early.

Appeals are allowed to the extent specified above. Parties shall bear their costs.


Judge of the Court of Appeal