

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

In the matter of an Application for Leave to Appeal against the Judgment of the Provincial High Court of the Western Province dated 17.09.2013 in Case No. WP/HCCA/Gph/30/2011 Rev; D.C. Gampaha Case No. 544/P

1. Jayasuriya Arachchige Leelawathie,
2. Nanayakkara Mahanama Gamage Somapala,

Both of,
No. 200 B, Horape Thuduwa,
Ragama.

S.C. Appeal No. 98/2014
S.C. (H.C.C.A) L.A. No. 438/2013
WP/HCCA/Gph 30/2011 (Rev)
D.C. Gampaha Case No. 544/P

Plaintiffs

Vs.

1. Jayasinghe Arachchige Nimal Athula
2. Jayasinghe Arachchige Sunil Jayalath
3. Jayasinghe Arachchige Nihal Udaya
4. Jayasinghe Arachchige Kamal Nanda

All of,
No.202 A, Horape Thuduwa,
Ragama.

5. Pandithagedara Rangaethana Jayawardena,
6. Shantha Sisira Kumara Jayawardena,

7. Chandrani Mangalika Jayawardena,
8. Nuwan Sudesh Kumara Jayawardena,

All of,
No. 200, Horape Thuduwa,
Ragama.

9. Anoma Jayawardena,
No. 202 B, Horape Thuduwa,
Ragama.

Defendants

AND BETWEEN

1. Jayasuriya Arachchige Leelawathie,
2. Nanayakkara Mahanama Gamage Somapala,

Both of,
No. 200 B, Horape Thuduwa,
Ragama.

Plaintiff – Petitioners

Vs.

1. Jayasinghe Arachchige Nimal Athula
2. Jayasinghe Arachchige Sunil Jayalath
3. Jayasinghe Arachchige Nihal Udaya

4. Jayasinghe Arachchige Kamal Nanda

All of,
No.202 A, Horape Thuduwa,
Ragama.

5. Pandithagedara Rangaethana Jayawardena,

6. Shantha Sisira Kumara Jayawardena,

7. Chandrani Mangalika Jayawardena,

8. Nuwan Sudesh Kumara Jayawardena,

All of,
No. 200, Horape Thuduwa,
Ragama.

9. Anoma Jayawardena,
No. 202 B, Horape Thuduwa,
Ragama.

Defendant – Respondents

AND NOW BETWEEN

1. Jayasuriya Arachchige Leelawathie,
No. 200 B, Horape Thuduwa,
Ragama.

1st Plaintiff – Petitioner – Appellant

2. Nanayakkara Mahanama Gamage Somapala,
No. 200 B, Horape Thuduwa,
Ragama.
(Deceased)

2nd Plaintiff – Petitioner – Appellant

- 2A. Mahanama Gamage Athula Nanayakkara,
- 2B. Mahanama Gamage Rohitha Nanayakkara,
- 2C. Mahanama Gamage Shyamali Nanayakkara,

All of,
No. 200 B, Horape Thudawa,
Ragama.

Substituted 2A, 2B, 2C, Plaintiff – Petitioner
– Appellants

Vs.

1. Jayasinghe Arachchige Nimal Athula
2. Jayasinghe Arachchige Sunil Jayalath
3. Jayasinghe Arachchige Nihal Udaya
4. Jayasinghe Arachchige Kamal Nanda

All of,
No.202 A, Horape Thuduwa,
Ragama.

5. Pandithagedara Rangaethana Jayawardena,
6. Shantha Sisira Kumara Jayawardena,
7. Chandrani Mangalika Jayawardena,
8. Nuwan Sudesh Kumara Jayawardena,

All of,
No. 200, Horape Thuduwa,
Ragama.

9. Anoma Jayawardena,
No. 202 B, Horape Thuduwa,
Ragama.

Defendant – Respondent – Respondents

Before: Hon. S. Thuraiaraja, P.C., J.
Hon. Janak De Silva, J.
Hon. K. Priyantha Fernando, J.

Counsels: Sudarshani Cooray for the 1st Plaintiff – Petitioner – Appellant and
Substituted 2A – 2C Plaintiff – Petitioner – Appellants

S. A. D. S. Suraweera for the 1st and 3rd – 9th Defendant – Respondent –
Respondents

Written Submissions: 15.02.2017 and 20.05.2024 by the Defendants – Respondents
– Respondents

15.02.2017 by the 1st, 3rd and 9th Defendants – Respondents –
Respondents

01.08.2014 for the Plaintiff – Petitioner – Appellants

Argued on: 07.05.2024

Decided on: 04.09.2025

Janak De Silva, J.

The Plaintiff-Appellant-Appellant (Appellant) instituted this action to partition the corpus described in the schedule to the plaint. There was no dispute as to the identity of the corpus.

According to the Appellant, Davith Pinto was at one time the owner of the corpus. He was married to Nonchi Hamy and had five children named Marthelis, Abilinu Pinto, Juliana, Mango and Engo.

The dispute between the Appellant and the Defendant-Respondent-Respondents (Respondents) is on whether Juliana had four or six children. According to the Appellant, she had six namely Agonis, Julius, Peso Hamy, Issan Appu, Elo Hamy and Agostinu. The Respondents claim that Julina had only four children namely Julius, Peso Hamy, Agostinu and Elo Hamy.

The learned trial judge concluded that Juliana had only four children, namely Julius, Peso Hamy, Agostinu and Elo Hamy and entered judgment accordingly.

The Appellant failed to appeal against this judgment. Instead they filed a revision application in the Provincial High Court of the Western Province (Civil Appellate) holden at Gampaha (High Court). The Appellants contended that the discrepancy in the shares allotted to the Respondents has caused grave prejudice to them.

The Respondents countered that having failed to file an appeal against the judgment of the District Court, the Appellants are not entitled to invoke the revisionary jurisdiction of the High Court.

The High Court concluded that there were no exceptional circumstances which requires the Court to exercise its powers of revision and dismissed the application.

Leave to appeal has been granted on the following questions of law:

- (1) Did the learned High Court Judges err in not appreciating that exceptional circumstances do exist in the revision application where the learned Additional District Judge has failed to investigate into title and arrive at a correct finding in respect of the 1st Plaintiff's share and thereby satisfy the duty cast on the Court in terms of Section 25(1) of the Partition Law?
- (2) Did the learned High Court Judges err in not appreciating that when the learned Additional District Judge has left a substantial share un-allotted to any party, when in fact the 1st Plaintiff is entitled to the said un-allotted in view of the rights emanating from the maternal inheritance of Juliana, that itself is a serious miscarriage of justice?
- (3) Did the learned High Court Judges err in not appreciating that when the learned Additional District Judge has erred in allocating only 692/1600 shares to the 1st Plaintiff when in fact she should have been allocated a much larger share, that itself is a serious miscarriage of justice?

Only the 1st Appellant testified at the trial. She testified that Juliana had six children namely Agonis, Julius, Peso Hamy, Issan Appu, Elo Hamy and Agostinu.

However, the learned trial judge considered the contents of deed No. 1337 which was executed by Agostinu in 1957. According to this deed, Agostinu transferred the balance 1/8 share he had subsequent to the execution of deed No. 366 and his maternal inheritance of 1/16th share from Juliana to Nelo Nona who then became entitled to a total of 3/16 shares of the corpus. Earlier, Agostinu had by deed No. 366, transferred ½ share of ¼ share (1/8 share) to Piyadasa, who is the predecessor in title of the Respondents. It is on this basis that the learned trial judge concluded that Julina had only four children by the names Julius, Peso Hamy, Agostinu and Elo Hamy.

The Respondents submitted that the share of 3/16 mentioned in deed No. 1337 can be arrived at only if Julina had four children.

In ***P.M. Cooray v. M. A. P. Wijesuriya*** (62 NLR 158 at 161) Sinnetamby, J. held that other than proof by the production of birth, death and marriage certificates, the relevant provisions of the Evidence Ordinance in regard to proof of a pedigree are to be found in Sections 32(5), 32(6) and 50(2). He went on to point out that what practitioners and the Court sometimes lose sight of is the fact that before such evidence can be led there must be proof that the hearsay evidence sought to be given is in respect of a statement made by a person having special means of knowledge and that it must have been made *ante litem motam*. Where the statement is made by a member of the family, such knowledge may be inferred or even presumed, but where it is a statement made by an outsider, proof of special means of knowledge must first be established.

The 1st Appellant testified that Issan Appu is her father. If so, she is a family member of Juliana and can be presumed to have special means of knowledge of the number of children Juliana had.

Nevertheless, deed No. 1337 executed by Agostinu, son of Juliana, has more probative value to inferring the number of children Julina had as it had been executed *ante litem motam* by a person who presumably had better knowledge than the 1st Appellant of the number of his siblings. In these circumstances, the learned trial judge was correct in placing more probative value on the content of deed No. 1337 and the inferences it created.

Hence, I agree with the contention of the Respondents that the share of 3/16 mentioned in deed No. 1337 can be arrived at only if Julina had four children.

Accordingly, I am of the view that the learned trial judge has properly investigated the title to the corpus as required by Section 25 of the Partition Law.

For the foregoing reasons, I answer questions of law Nos. 1, 2 and 3 in the negative.

The appeal is dismissed with costs.

JUDGE OF THE SUPREME COURT

S. Thuraiaraja, P.C., J.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

JUDGE OF THE SUPREME COURT