

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

1. Wewegedarage Lilli
2. Wewegedarage Hemapala
3. Wewegedarage Seetha Ranjanee
All of Kandangoda, Pugoda.
4. Wewegedarage Neil Chandana,
Thunnana, Hanwella.

Plaintiffs

SC APPEAL NO: SC/APPEAL/132/2015

SC HCCA LA NO: SC/HCCA/LA/122/2014

HCCA NO: WP/HCCA/AV/785/2008(F)

DC PUGODA NO: 108/P

Vs.

1. Paseema Durage Saviya
2. Paseema Durage Gunathilaka
3. Paseema Durage Agee (Deceased)
- 3A. Wedikkarage Anoma Chithralatha
4. Paseema Durage Meri (Deceased)
- 4A. Wedikkarage Kusuma
5. Wedikkarage Podi
6. Wedikkarage Vaijiya
- 6A. Hapan Pedige Piyaseeli
7. Wasthuwa Durage Meri

8. Kuda Kompayalage Simo

(Deceased)

8A. Kuda Kompayalage Simon

Wickramarathna

9. Mannalage Rosana

10. Weerappulige Simiyon Singho

11. Wedikkarage Simon (Deceased)

11A. Wedikkarage Podi

All of Kandangoda, Pugoda.

Defendants

AND BETWEEN

8. Kuda Kompayalage Simo

(Deceased)

8A. Kuda Kompayalage Simon

Wickramarathna

9. Mannalage Rosana

Both of Kandangoda, Pugoda.

8th and 9th Defendant-Appellants

Vs.

1. Wewegedarage Lilli

2. Wewegedarage Hemapala

3. Wewegedarage Seetha Ranjanee

All of Kandangoda, Pugoda.

4. Wewegedarage Neil Chandana,
Thunnana, Hanwella.

Plaintiff-Respondents

1. Paseema Durage Saviya
2. Paseema Durage Gunathilaka
3. Paseema Durage Agee (Deceased)
- 3A. Wedikkarage Anoma Chithralatha
4. Paseema Durage Meri (Deceased)
- 4A. Weddikkarage Kusuma
5. Weddikkarage Podi
6. Weddikkarage Vaijiya
- 6A. Hapan Pedige Piyaseeli
7. Wasthuwa Durage Meri
10. Weerappulige Simiyon Singho
11. Weddikkarage Simon (Deceased)
- 11A. Weddikkarage Podi

All of Kandangoda, Pugoda.

Defendant-Respondents

AND NOW BETWEEN

9. Mannalage Rosana (Deceased)
Kandangoda, Pugoda.
- 9A. Pasimahaduragesede
Chandrawathie
- 9B. Jayakody Premasinghe

9C. Sunethra Premasinghe

All of Kandangoda, Pugoda.

Substituted 9th Defendant-

Appellant-Appellants

Vs.

8. Kuda Kompayalage Simo

(Deceased)

8A. Kuda Kompayalage Simon

Wickramarathna,

Kandangoda, Pugoda.

8th Defendant-Appellant-

Respondent

1. Wewegedarage Lilli

2. Wewegedarage Hemapala

3. Wewegedarage Seetha Ranjanee

All of Kandangoda, Pugoda.

4. Wewegedarage Neil Chandana,

Thunnana, Hanwella.

Plaintiff-Respondent-Respondents

1. Paseema Durage Saviya

2. Paseema Durage Gunathilaka

3. Paseema Durage Agee (Deceased)

3A. Wedikkarage Anoma Chithralatha

4. Paseema Durage Meri (Deceased)
- 4A. Wedikkarage Kusuma
5. Wedikkarage Podi
6. Wedikkarage Vajiiya
- 6A. Hapan Pedige Piyaseeli
7. Wasthuwa Durage Meri
10. Weerappulige Simiyon Singho
11. Wedikkarage Simon (Deceased)
- 11A. Wedikkarage Podi

All of Kandangoda, Pugoda.

Defendant-Respondent-
Respondents

Before: Hon. Justice A.H.M.D. Nawaz
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: S.N. Vijithsingh for the Substituted 9th Defendant-Appellant-Appellants.
Romesh Samarakkody for the Plaintiff-Respondent-Respondents and 3rd-7th Defendant-Respondent-Respondents.

Argued on: 05.12.2023

Written Submissions:

By the Substituted 9th Defendant-Appellant-Appellants on
09.10.2015 and 31.01.2024

Decided on: 07.03.2024

Samayawardhena, J.

The four plaintiffs filed this action on 15.06.1990 in the District Court of Pugoda seeking partition of the land known as Ketakelagahawatta in extent of one rood among the plaintiffs and the four defendants. The 5th-11th defendants later intervened. After trial, the District Court delivered judgment on 07.02.2006 declaring undivided shares of the land to all the parties except the 8th and 9th defendants.

The appeal filed by the 8th and 9th defendants against the said judgment was dismissed by the High Court of Civil Appeal of Avissawella by judgment dated 22.01.2014.

Being dissatisfied with the judgment of the High Court, only the 9th defendant appealed to this court.

The 9th defendant sought exclusion of Lot 3 of the Preliminary Plan No. 4686 contending that it is part of Delgahawatta, not Ketakelagahawatta.

The 9th defendant categorically admitted that she has no rights to Ketakelagahawatta, for the partition of which this action was filed.

Even a cursory look at the Preliminary Plan makes it evident that Lot 3 cannot be part of a different land, as that Lot sits in the middle of the land to be partitioned.

On what basis does the 9th defendant seek exclusion of Lot 3? The 9th defendant says she is entitled to Lot 3 by maternal inheritance and by deed marked 9D1. It is not clear how her mother, Laisa, got rights to Delgahawatta. In any event, it is not necessary to understand the devolution of title to Delgahawatta, as it is not the land sought to be partitioned.

Deed 9D1 was executed on 16.05.1985 – only five years before the institution of the partition action. By this deed the 9th defendant has purchased about 10 perches from Delgahawatta bounded on the North and West by Ketakelagahawatte agala and live fence, East by Gamsabha road and South by the live fence separating a portion of this land owned by Paseemadurage Seety. None of these boundaries tally with Lot 3 of the Preliminary Plan. Notably, Lot 3 is not bounded on the East by Gamsabha road.

The 9th defendant in her evidence admitted that, despite objections, she put up the building in Lot 3 about three years before her giving evidence (page 273 of the brief). That means, she constructed the building pending partition under protest. According to the surveyor's report it is a wattle and daub house.

It was elicited during cross-examination that the 9th defendant's husband transferred his rights on Ketakelagahawatta by deed marked 10D2.

It is clear that the land described in deed 9D1 is not included in Lot 3 of the Preliminary Plan.

The 9th defendant, by way of issues or in evidence, did not claim Lot 3 by prescription.

This court has granted leave on the following questions of law:

- (a) Did the High Court of Civil Appeal err in law by not excluding Lot 3 from the corpus?
- (b) Did the High Court of Civil Appeal err in law by not excluding Lot 3 from the corpus when two boundaries of the Preliminary Plan do not tally with the schedule to the plaint?
- (c) Did the High Court of Civil Appeal err in law by not considering the prescriptive title of the 9th defendant?

I answer the said questions in the negative.

I affirm the judgment of the High Court of Civil Appeal and dismiss the appeal with costs.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court