

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

*In the matter of an Appeal under Section 5 (C)
of the High Court of the Provinces (Special
Provisions) (Amendment Act) No. 54 of 2006
read with Article 128 of the Constitution of the
Republic of Sri Lanka.*

SC/Appeal No. 78/2012

SC/HCCA/LA/No. 263/2011

WP/HCCA/KAL/57/2003(F)

D.C. Matugama Case No. 2270/P

1. A. K. D. Lionel
Dagiligoda,
Agalawatta.

2. A. K. D. Gunapala
Dagiligoda,
Agalawatta.

PLAINTIFFS

Vs.

1. A. K. D. Kusumawathi
Suriyagoda,
Polgampala.

2. A. K. D. Karunaratna
Dagiligoda,
Agalawatta

DEFENDANTS

And then between

1. A. K. D. Kusumawathi
Suriyagoda,
Polgampala.

DEFENDANT-APPELLANT

Vs.

1. A. K. D. Lionel
Dagiligoda,
Agalawatta.
2. A. K. D. Gunapala
Dagiligoda,
Agalawatta.

PLAINTIFF-RESPONDENTS

3. A. K. D. Karunaratna
Dagiligoda,
Agalawatta

DEFENDANT-RESPONDENT

And now between

1. A. K. D. Lionel
Dagiligoda,
Agalawatta.

2. A. K. D. Gunapala
Dagiligoda,
Agalawatta.

PLAINTIFF-RESPONDENT-
APPELLANTS

Vs.

1. A. K. D. Kusumawathi
Suriyagoda,
Polgampala.
(And now of,
Gurugoda, Dapiligoda, Agalawatta)

DEFENDANT-APPELLANT-
RESPONDENT

2. A. K. D. Karunaratna,
Dagiligoda,
Agalawatta
(And now of,
Angammulla Road, opposite
Akkarapaha, Kakulangala,
Agalawatta)

DEFENDANT-RESPONDENT-
RESPONDENT

BEFORE : **P. PADMAN SURASENA, J.**
JANAK DE SILVA, J. &
K. PRIYANTHA FERNANDO, J.

COUNSEL : Uditha Egalahewa, PC with Chathura Chamupathi for the Plaintiff-Respondent-Appellants.

K. V. Sirisena for the 1st Defendant-Appellant-Respondent.

ARGUED ON : 13-03-2024

DECIDED ON : 22-11-2024

P. PADMAN SURASENA, J

Plaintiff-Respondent-Appellants (hereinafter sometimes referred to as the 1st and 2nd Plaintiffs) instituted action in the District Court of Matugama against the Defendant-Appellant-Respondent and the Defendant-Respondent-Respondent (hereinafter sometimes referred to as the 1st and 2nd Defendants, respectively) seeking a partition decree in respect of the land more fully described in the Schedule to the Plaint. This is the land depicted as Lot 2 in Plan No. 2300 dated 14-10-1969, prepared by Peter G. Dias Licensed Surveyor.

Pursuant to the further steps being taken, the Court Commissioner Y. P. de Silva Licensed Surveyor has submitted to Court, the Preliminary Plan (Plan No. 444) prepared on 06th and 12th December 1992. This Plan has been produced, marked **X**.

At the inception, all parties have admitted that the corpus relevant to this action is the land depicted in Plan No. 444, prepared on the 06th and 12th December 1992, by Y. P. de Silva, Licensed Surveyor.

After conclusion of the trial, the learned District Judge of Matugama by his Judgment dated 07-02-2003, ordered the partition of the corpus relevant to the action allotting shares in the following way.

| | | |
|---------------------------|---|-----------------------------|
| 1 st Plaintiff | – | 1460/8498 |
| 2 nd Plaintiff | – | 5022/8498 (Less 20 Perches) |
| 1 st Defendant | – | 2016/8498 |
| 2 nd Defendant | – | 20 Perches |

Being aggrieved by the Judgment dated 07-02-2003, pronounced by the District Court, the 1st Defendant appealed to the Provincial High Court of Civil Appeals on the ground that the learned District Judge had erred in law as he had failed to consider the evidence led on behalf of the 1st Defendant in respect of certain improvements said to have been effected by the 1st Defendant to the building marked "A" in Plan No. 444. The 1st Defendant in the said appeal had claimed the premises of the building marked **A** in Plan No. 444.

The Provincial High Court of Civil Appeals holden in Kalutara, after conclusion of the argument of the said appeal, by its Judgment dated 24-03-2011, had decided the said appeal in favour of the 1st Defendant.

Being aggrieved by the Judgment dated 24-03-2011 pronounced by the Provincial High Court of Civil Appeals, the Plaintiff has filed the Leave to Appeal Petition relevant to this Appeal. Upon the said Leave to Appeal Petition being supported, this Court by its order, dated 29-03-2012, had granted Leave to Appeal in respect of the questions of law set out in paragraphs 24(a), 24(b), 24(c) , 24(d), 24(e) and 24(f) of the Petition, dated 13-07-2011.

However, in the course of the hearing, the learned Counsel for both parties agreed that the primary issue to be decided in this Appeal by this Court is only the issue set out in question of law set out in paragraph 23(b) of the Petition and therefore, it would not be necessary for the Court to consider the other questions of law. Let me therefore at the outset, reproduce the question of law set out in paragraph 23(b) which is as follows:

23. (b). Did the Hon. Judges of the Provincial High Court of Civil Appeals err in law by holding that the 1st Defendant was entitled to the building marked "A" in the plan marked "X".

There is no dispute that in a previous Partition Action bearing No. P 2507 in the District Court of Kalutara, the Plaintiffs' father, A. K. Peter Singho, 1st Defendant Amugoda Kankanamge Kusumawathi were parties who had been allotted shares from the Judgment of the said Partition Action. The 1st Plaintiff, the 2nd Plaintiff and the 2nd Defendant are sons of said A. K. Peter Singho, while the 1st Defendant is a daughter of said A. K. Peter Singho.

The plan bearing No. 2300 filed in the case No. P/2507 in the District Court of Kalutara has been produced, marked **P 1**, in the trial in the instant case. The Final Decree in Kalutara District Court case No. P/2507 has been produced, marked **P 2**, in the trial. It could be seen accordingly that Lot No. 2 in the Plan No. 2300 (**P 1**) by virtue of the Final Decree in Kalutara District Court Case No. P/2507 has been allotted to the father of the 1st and 2nd Plaintiff, 1st and 2nd Defendants, namely A. K. Peter Singho.

Although there are many other parties to whom shares have been allotted by virtue of the Judgment of the District Court Kalutara Case No. P/2507, the father of the Plaintiff has acquired the Prescriptive Title by long term adverse and uninterrupted possession of those several lots.

In keeping with the title that the father, A. K. Peter Singho, had acquired, said Peter Singho, by Deed of Gift No. 861 produced in the trial, marked **P 4**, attested on 26-06-1990 by Somasiri Iddagoda, Notary Public, had gifted to the 2nd Plaintiff an undivided portion of 80 perches from this land. Said Peter Singho, by Deed of Gift No. 395 produced in the trial, marked **P 5**, attested by Don David Munasinghe, Notary Public, had gifted to the 1st Plaintiff an undivided portion of 06 perches from this land on which the house is situated.

Thus, A. K. Peter Singho had transferred his interest in the land both to the 1st Plaintiff and the 2nd Plaintiff by the deeds produced, marked **P5** and **P4** in the trial. Therefore, the 2nd Plaintiff is entitled to 80 perches and the 1st Plaintiff is entitled to 06 perches with the house, by virtue of these deeds. The learned District Judge having considered that A. K. Peter Singho could only have lawfully transferred the shares he had been allotted by the Judgment of the previous Partition Action, had nevertheless proceeded to hold that A. K. Peter Singho was entitled to transfer the above extents of land on the basis that he had acquired Prescriptive Title to the excess part of the land.

The 1st Defendant, after her marriage in 1991, had left the house to live with her husband elsewhere. However, she appears to have returned to this house in 1993 or 1994. The 1st Defendant claims that she made certain improvements thereafter to the part of the house that she had occupied since the time of her return.

The 1st Defendant in her evidence had taken up the position that she had spent about 25,000 Rupees at that time to make the improvements she claims to have made to the part of the house she claims. However, admittedly in her evidence she has disclosed that she was one time employed as a mid-wife who was only paid 62 Rupees and 50 Cents at the beginning and thereafter worked under a doctor for a salary of Rupees 135. She had worked as a mid-wife from 1969 to 1970 although she has stated that she resigned from that job in the year 1969. Having considered the evidence adduced by the 1st Defendant, the learned District Judge had rightly come to the conclusion that she is not a truthful witness. It was on that basis that the learned District Judge had opted not to act on the evidence of the 1st Defendant with regard to her claim for a part of the house depicted in the plan.

Let me next refer to the evidence of the Court Commissioner, Y. P. De Silva Licensed surveyor. The Court Commissioner has clearly stated in his evidence that the building depicted in Plan **P 1**, which is the plan produced in the previous Partition Action (Kalutara District Court Case No. P/2507), is the same building depicted in the Plan No. 444 prepared by him, produced, marked **X**, in this case.

The confusion appears to have arisen because the Court Commissioner had given two markings 'A' and 'B' to the respective portions, the 1st Plaintiff and the 1st Defendant have claimed. Although the 1st Defendant had attempted to show that the respective portions marked 'A' and 'B' are two distinct portions, the learned District Judge, had rightly concluded that it is one house with a common roof and a common front entrance. Although the 1st Defendant had stated in her evidence that she spent 25,000 Rupees to make improvements to the part she was living in, she has failed to produce any document in that regard to substantiate that position. Even the Court Commissioner does not support the claim by the 1st Defendant that she made a roof with zinc sheets as the Court Commissioner had not observed such a change in the roof.

Although the 1st Defendant had claimed the portion of the building marked 'A' in the Plan **X**, I see no basis to allow such a claim. While the 1st Plaintiff had claimed the whole building (both portions marked A and B), there is no basis to reject that claim as the 1st Plaintiff has been successful in establishing his title to that portion of the land including the whole building.

The 1st Defendant had relied on Deed No. 513, attested on 08-02-1993 by Nithya Kumari Goonetilleke, Notary Public. The 1st Defendant had marked this Deed as **1 8 1**. This is a deed which had only transferred contingent rights after the institution of the instant Partition Action. The learned District Judge had rightly concluded that said Amugoda Kankanamlage Don Gunasena is not entitled to any claim in the corpus. Since said Amugoda Kankanamlage Don Gunasena is not entitled to any interest in the corpus, it necessarily follows that the 1st Defendant also does not get any entitlement through Deed No. 513 (**1 8 1**).

Furthermore, the Court commissioner in his evidence has categorically stated that the building containing the portions marked 'A' and 'B' is just one building; there is no separation between the portion marked 'A' and the portion marked 'B' and it is the same building depicted in the plan **P 1**, prepared on 14-10-1969.

The evidence of the Court Commissioner particularly relating to the answers he had provided in the course of the Cross examination is worth being reproduced here. It would be self-explanatory and resolve the issue whether the portions marked 'A' and 'B' are two distinct portions or one and the same building.

- ප්‍ර: තමා කොමිෂමක් ලබා ඉඩමට මනින්න ගියා?
- උ: ඔව්.
- ප්‍ර: එම කොමිෂම අනුව මැනීම් කටයුතු කර අංක 444 දරන පිඹුර ඉදිරිපත් කලා?
- උ: ඔව්.
- ප්‍ර: එම මැනීමේදී 'ඒ,බී' වශයෙන් පෙන්වා තිබෙනවා ගෙයි කොටස් දෙකක්?
- උ: ඔව්.
- ප්‍ර: 'ඒ, බී' කොටස් දෙක වෙන්කරලද කොයි ආකාරයට ද එකට අයිති වුණේ ?
- උ: වෙන්කරල නැහැ.
- ප්‍ර: 'ඒ' කියලා කොටස හැදී තිබෙන්නේ කොහොමද?
- උ: 'ඒ' කොටස කාමර 3 කින්.
- ප්‍ර: 'බී' කොටස කොහොමද?
- උ: කාමර දෙකකින් 'බී' කොටස හැදී තිබුණා.
- ප්‍ර: 'ඒ' සහ 'බී' කොටස් දෙකයි මේ ආකාරයට හැදී තිබෙන්නේ. මේක පැහැදිලිව වෙන් වන්න වෙනත් ලකුණු තිබෙනවාද බැලුවාද?
- උ: බිත්ති වලින් වෙන් වී තිබෙනවා. එහා මෙහා යන්න දොරවල් තිබෙනවා.
- ප්‍ර: වෙන වෙනම දොරවල් තිබෙනවා පිටවීම සඳහා?
- උ: පිටවීමට දොරවල් වෙන වෙනම නැහැ. කාමරයෙන් කාමරයට යන්න දොරවල් තිබෙනවා. පිටවීමට එක දොරක් තිබෙනවා.
- ප්‍ර: වහලය මොන ආකාරයටද තිබුණේ ?
- උ: වහල එකට තිබුණේ.
- ප්‍ර: මොනවාද සෙවිලි කර තිබුණේ?
- උ: උළු විතරයි.
- ප්‍ර: වෙන මොකවත් තිබුණේ නැහැ?
- උ: නැහැ.
- ප්‍ර: මිනින්දෝරු මහතා කියලා තිබෙනවා නම් එය විතරක්. ටකරන් යොදා තිබුණේ?
- උ: මම මනින අවස්ථාවේ එහෙම තිබුණේ නැහැ.
- ප්‍ර: කළුතර දිසා අධිකරණය තිබෙන පිඹුරක් පැ.1 වශයෙන් තමාට ඉදිරිපත් කලා. පැ. 1 වශයෙන් පෙන්වූ පිඹුරෙන් මෙම ගෙය ලකුණු වී තිබෙන්නේ කොහොමද?
- උ: ටයිටල් හවුස් කියලා.

- ප්‍ර: එම 'X' වාර්තාවේ තමා ඉදිරිපත් කලා. එම වාර්තාවේ තිබෙන ගෙයි ආකාරයත් පැ. 1 හි පෙන්වුම් කරන ගෙයි ආකාරයත් එක හා සමානද?
- උ: ඉතාමත් සුළු වෙනසක් තිබෙනවා.

On perusal of the Judgment pronounced by the Provincial High Court of Civil Appeals, Judgment dated 24-03-2011, reveals clearly that the learned Judges of the Provincial High Court of Civil Appeals had opted to ignore the material that the learned District Judge had taken into consideration in order to come to the conclusion that the 1st Defendant is not a truthful witness. The learned Judges of the Provincial High Courts of Civil Appeals in their Judgment had barely placed full reliance on some parts of the oral evidence of the 1st Defendant without considering the aspect of the credibility of her evidence. In my view, the learned Judges of the Provincial High Court of Civil Appeals had erred in that regard.

Having regard to the evidence led in this case I decide to answer the question of law set out in paragraph 23(b) of the Petition, dated 13-07-2011, in the affirmative. For the foregoing reasons I set aside the Judgment, dated 24-03-2011, pronounced by the Provincial High Court of Civil Appeals. I restore the Judgment dated 07-02-2003 pronounced by the learned District Judge.

Appeal is allowed. I order no costs.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J

I agree.

JUDGE OF THE SUPREME COURT