

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

In the matter of an Appeal to the
Supreme Court of the Democratic
Socialist Republic of Sri Lanka.

SC. Appeal No. 153/2010

SC(Spl) LA. No. 64A/10

CA. No. 932/95(F)

DC. Kegalle No. 19859/P

Paradeniyalage Andirisa,
Kudapallegama,
Mahapallegama.

Plaintiff (Deceased)

Paradeniyalage Gunapala,
Kudapallegama,
Mahapallegama.

Substituted Plaintiff

Vs.

- 1A. Paradeniyalage Jayaneri,
- 2A. Paradeniyalage Somapala,
- 3A. Paradeniyalage Sumanawathie
- 4A. Paradeniyalage Anulawathie
- 5A. Hewayalage Jayantha Wimalasiri,

All of
Kudapallegama,
Mahapallegama

Substituted-Defendants

And Between

Paradeniyalage Gunapala,
Kudapallegama,
Mahapallegama.

**Substituted Plaintiff-
Appellant**

Vs.

- 1A. Paradeniyalage Jayaneris,
- 2A. Paradeniyalage Somapala,
- 3A. Paradeniyalage Sumanawathie
- 4A Paradeniyalage Anulawathie
- 5A. Hewayalage Jayantha Wimalasiri,

All of
Kudapallegama,
Mahapallegama

**Substituted-Defendant-
Respondents**

And Now Between

Paradeniyalage Gunapala,
Kudapallegama,
Mahapallegama.

**Substituted Plaintiff-
Appellant-Appellant**

Vs.

- 1A. Paradeniyalage Jayaneris,
- 2A. Paradeniyalage Somapala,
- 3A. Paradeniyalage Sumanawathie
- 4A Paradeniyalage Anulawathie
- 5A. Hewayalage Jayantha Wimalasiri,

All of Kudapallegama, Mahapallegama

**Substituted Defendant
Respondent-Respondents**

* * *

SC. Appeal No. 153/2010

BEFORE : **Eva Wanasundera, PC.J.**
Buwaneka Aluwihare, PC. J. &
Priyantha Jayawardane, PC.J.

COUNSEL : W. Dayaratne, PC. with Ms. R. Jayawardane and Ms. D.W. Dayaratne for Substituted Plaintiff-Appellant-Appellant.

Erusha Kalidasa with Ms. Narmada Samarasinghe for 5A Substituted Defendant-Respondent-Respondent.

ARGUED ON : **23.07.2014**

DECIDED ON : **18.11.2014**

* * * * *

Eva Wanasundera, PC.J.

On 28.10.2010 this Court granted Special Leave to Appeal against the judgment of the Court of Appeal dated 26.02.2010 on the following two questions of law set out in paragraph 15 of the Amended Petition of the Substituted – Plaintiff – Appellant -Petitioner dated 19.10. 2010. .

(1) Did their Lordships of the Court of Appeal err in law when they failed to consider that there were no reasons given by the Learned District Court Judge in his judgment dated 23.11.1995 in case No. 19859/P in rejecting the deeds which represented the pedigree of the Plaintiff?

(2) Did he err in law in his consideration of prescriptive rights that had devolved?

The Court of Appeal affirmed the judgment of the District Court holding that there was no reason to interfere with the findings of the learned District Judge and dismissed the appeal.

Facts in this case in summary are as follows:

Paradeniyalage Gunapala is the Substituted Plaintiff-Appellant-Appellant (hereinafter referred to as the 'Plaintiff-Appellant') in this case. Hewayalage Jayantha Wimalasri is the 5A Substituted Defendant-Respondent-Respondent (hereinafter referred to as the '5A Defendant-Respondent'). The contesting parties have been the Appellant and the 5A Defendant - Respondent, right along. The Plaintiff in the District Court case was Paradeniyalage Andirisa and the 5th Defendant was Hewayalage Adonisa.

The Plaintiff - Appellant filed action on 23.1.1973 praying that the land mentioned in the Schedule to the plaint, of an extent of " twelve lahas of paddy" be partitioned according to the pedigree given in the plaint since co-ownership with the other parties was difficult and partition was a necessity for the settlement of soil rights. He claimed inter alia that he be given 41/120th share and the 5th Defendant – Respondent be given 60/120th share from and out of the land called " Weliyaddehena now Watta" which is of an extent of 1A 0R 9P according to the Survey Plan done on 07.08.1973 by an order of Court marked 'X'. The Surveyor's report is marked 'X1'.

In the pleadings of the District Court, all other Defendant – Respondents except the 5th Defendant - Respondent sailed with the Plaintiff - Appellant. There was no dispute about the identity of the corpus. The dispute was only on the pedigree. The Plaintiff - Appellant claimed that the initial owners were four in number, namely Kirihonda, Davitha, Allisa and Jayathuwa. The 5th Defendant - Respondent claimed that the initial owners were two in number, namely Jayathuwa and Pinsethuwa.

The land surveyed by order of Court is depicted as Lot 1 of Plan 261 marked as 'X' and was accepted by all parties. Dwellings therein were marked as A and B and lavatory as C, one well as E and the other well as D. All the parties accepted that A, B, C and E were built by the 5th Defendant – Respondent. According to the Surveyor's report X1, the Plaintiff – Appellant contended that

the well marked as D was co-owned. The 5th Defendant - Respondent claimed the whole plantation on the entire land. The Plaintiff – Appellant claimed that only the plantation done in one half of the land belonging to the 5th Defendant – Respondent should be granted to the 5th Defendant – Respondent.

It was agreed by all parties on 13.09.1976 in Court, according to the journal entry of that date, that all the listed documents would be admitted without calling any witnesses. Therefore it was a matter of analysing the documents along with the evidence given by both contesting parties, meaning the Plaintiff – Appellant and the 5th Defendant – Respondent, that the District Judge was burdened with.

The Plaintiff-Appellant produced documents P1 to P4 all of which were deeds and document P5, which was a judgment in case No. 11012/ P. The 5A Defendant-Respondent produced documents 5D1 to 5D12, all of which were deeds.

In the deeds P1 and P2 marked in evidence in this case, the transferors state that **“the share that belongs to us/ me is hereby transferred”**. The deeds do not mention the exact share and that is acquired by the Plaintiff – Appellant. P1 and P2 are transfers in favour of the Plaintiff, Andirisa in 1958 and in 1969. The 5th Defendant-Respondent has bought **specific shares** and become the owner of the said undivided portions of the said land.

The documents P1 and P2 have been mentioned by the District Judge at the beginning of the judgment. The said deed Nos. 2397 and 1133 dated 06.05.1969 and 17.12.1958 have been mentioned. So, the pedigree commences in 1958 and 1969. The District Judge in the 2nd paragraph of the judgment analyses P1 and P2. She further states that P3 = 5D2, P4 = 5D3, P5 = 5D4 and P6 = 5D5. The Plaintiff admitted 5D2, 5D3, 5D4 and 5D5 as these deeds were the same as P3, P4, P5 and P6. All the deeds **5D2, 5D3, 5D4 and 5D5 are dated before the year 1956. P1 and P2 deeds are dated 1969 and 1958.** If as agreed in the proceedings, 5D2 to 5D5 are admitted as correct by the Plaintiff - Appellant, there is no way that the Plaintiff can commence a new pedigree in the year 1958, which year is later than 1956 with the base as 4 persons owning the

same land as co-owners namely Kirihonda, Davitha, Allisa and Jayatuwa. 5D1, the 1st deed on behalf of the 5th Defendant – Respondent in the year 1891 specifically says “**undivided ½ share of Weliyaddehena of 12 lahas**” with the boundaries uncontested, is transferred by Pinsetuwa to Allisa. By 5D2 in 1929, Allisa’s children **transfers 3/4th of the same land** to W.A. Appuhamy and K.P. Appuhamy. It goes down properly according to the 5th Defendant’s pedigree down the line upto the 5th Defendant, each deed giving **a specific portion from and out of** the land named Weliyaddehena, all adding up to a one full land at the end, belonging to the 5th Defendant- Respondent.

If I may compare and contrast the pedigree of the Plaintiff - Appellant, with that of the 5th Defendant - Respondent, I observe that, the pedigree of the Plaintiff Appellant starting with a basis of Jayatuwa, Allisa, Kirihonda and Davitha , each owning 1/4th share of Weliyaddehena in the year 1958 or before that, has not been proven at all. In contrast, I observe that the 5th Defendant- Respondent has the commencement of his pedigree in 1891 and proven how he has got full and complete title to the whole land named Weliyaddehena at the end.

Within the judgment, in pg. 166 of the original Court record, the learned District Judge refers to the Plaintiff’s stance taken up in the proceedings as well as the documents marked in the case and compares and contrasts the contents of the deeds and comments that “it is not possible”, “ it cannot be” etc. Just the mere fact that, on the face of the record, that P1 and P2 have not been rejected per se or have not been accepted per se, **does not mean that the Judge has not considered the same.** Having gone through the deeds myself and having gone through the judgment, I am of the view that the learned District Judge has gone through the deeds and the contents very carefully before arriving at the decision. Finally, the learned District Judge says that she is not satisfied with the pedigree of the Plaintiff and rejects the apportionment suggested and pleaded in the plaint by the Plaintiff. Therefore, I hold that the judge has mentioned the deeds P1 and P2, considered the said deeds and then come to the conclusion that the Plaintiff had not proven his entitlement to the share that he had claimed in his Plaint. It is **only in addition to that**, that she says that the 5th Defendant had possessed it right along and had created a **prescriptive right as well.**

It is trite law that a co-owner in a partition case cannot claim prescriptive rights against another co-owner. The situation in this case is otherwise. The Plaintiff has failed to prove his entitlement to any part of the corpus with all his documents placed before Court and hence he cannot in anyway be considered a co-owner.

The Surveyor's report says that the 5th Defendant claims all the buildings and plantations. The Plaintiff admits that all the buildings and one out of two wells belongs to the 5th Defendant **because it is the 5th Defendant who built them all**. The Plaintiff's position was that the 5th Defendant owned only ½ of the full land of Weliyaddehena and that the Plaintiff owned 41/120th share of the said land but he has not been able to prove the same. The Plaintiff has failed to prove his case either through his evidence or through his documents. After all the Plaintiff has claimed a little bit more than 1/3rd of the land, i.e. 41/120th share as his share. Yet he has failed even to prove his entitlement through title deeds or evidence.

The Court of Appeal has also considered the District Court judgment and quite correctly found that there was no merit in the Appeal of the Plaintiff Appellant.

For the reasons set out above I answer the questions of law aforementioned in the negative, and hold in favour of the 5th Defendant - Respondent. I affirm the Judgment of the Court of Appeal dated 26.02.2010 and the judgment of the District Court dated 23.11.1995. I dismiss the appeal. I order no costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC. J

I agree.

Judge of the Supreme Court

Priyantha Jayawardane, PC.J.

I agree.

Judge of the Supreme Court

