

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

Liyana Arachchige Sujatha
Hatnapitiya Wijesundara,
“Sujeewa”, Watappitiya,
Parakaduwa.
Plaintiff

SC APPEAL NO: SC/APPEAL/81/2020

SC LA NO: SC/HCCA/LA/43/2020

HCCA AVISSAWELLA NO: WP/HCCA/AV/09/2019/RV

DC AVISSAWELLA NO: 19679/P

Vs.

1. Hatnapitiya Gamaethi Ralalage
Elisabeth Weerasinghe,
(Deceased)
“Sinha Niwasa”, Watappitiya,
Parakaduwa.
- 1A. Wijesinghe Arachchillage Pushpa
Ranjanie Dharmaratne
Wijesinghe,
“Siri Niwasa”, Parakaduwa.
2. J.M. Dayananda, (Deceased)
Pothgul Vihara Mawatha,
Muwagama, Ratnapura.

- 2A. Manori Samarakoon,
No.8, Pothgul Vihara Mawatha,
Muwagama, Ratnapura.
3. Weerasinghe Arachchillage
Pushpa Ranjanie Dharmaratne
Wijesinghe,
“Sisila Niwasa”, Parakaduwa.
4. Weerasinghe Arachchillage
Sujatha Nandanie Weerasinghe,
Pathberiya, Parakaduwa.
5. Kuruwita Gamalathge Priyanka
Gamlath,
Thalavitiya,
Parakaduwa.
- Defendants

AND BETWEEN

Liyana Arachchige Sujatha
Hatnapitiya Wijesundara,
“Sujeewa”, Watappitiya,
Parakaduwa.

Plaintiff-Appellant

Vs.

- 1A. Wijesinghe Arachchillage Pushpa
Ranjanie Dharmaratne
Wijesinghe,
“Siri Niwasa”,
Parakaduwa.

- 2A. Manori Samarakoon,
No.8, Pothgul Vihara Mawatha,
Muwagama, Ratnapura.
3. Weerasinghe Arachchillage
Pushpa Ranjanie Dharmaratne
Wijesinghe,
“Sisila Niwasa”, Parakaduwa.
4. Weerasinghe Arachchillage
Sujatha Nandanie Weerasinghe,
Pathberiya, Parakaduwa.
5. Kuruwita Gamalathge Priyanka
Gamlath,
Thalavitiya,
Parakaduwa.

Defendant-Respondents

AND BETWEEN

4. Weerasinghe Arachchillage
Sujatha Nandanie Weerasinghe,
Pathberiya, Parakaduwa.

4th Defendant-Respondent-
Appellant

Vs.

Liyana Arachchige Sujatha
Hatnapitiya Wijesundara,
“Sujeewa”, Watappitiya,
Parakaduwa.

Plaintiff-Appellant-Respondent

- 1A. Wijesinghe Arachchillage Pushpa
Ranjanie Dharmaratne
Wijesinghe,
“Siri Niwasa”,
Parakaduwa.
- 2A. Manori Samarakoon,
No.8, Pothgul Vihara Mawatha,
Muwagama,
Ratnapura.
3. Weerasinghe Arachchillage
Pushpa Ranjanie Dharmaratne
Wijesinghe,
“Sisila Niwasa”,
Parakaduwa.
5. Kuruwita Gamalathge Priyanka
Gamlath,
Thalavitiya,
Parakaduwa.

1st to 3rd and 5th Defendant-
Respondent-Respondents

AND NOW BETWEEN

4. Weerasinghe Arachchillage
Sujatha Nandanie Weerasinghe,
Pathberiya, Parakaduwa.
4th Defendant-Respondent-
Appellant-Appellant

Vs.

Liyana Arachchige Sujatha
Hatnapitiya Wijesundara,
“Sujeewa”, Watappitiya,
Parakaduwa.

Plaintiff-Appellant-Respondent-
Respondent

1A. Wijesinghe Arachchillage Pushpa
Ranjanie Dharmaratne
Wijesinghe,
“Siri Niwasa”, Parakaduwa.

2A. Manori Samarakoon,
No.8, Pothgul Vihara Mawatha,
Muwagama, Ratnapura.

3. Weerasinghe Arachchillage
Pushpa Ranjanie Dharmaratne
Wijesinghe,
“Sisila Niwasa”, Parakaduwa.

5. Kuruwita Gamalathge Priyanka
Gamlath,
Thalavitiya, Parakaduwa.

1st to 3rd and 5th Defendant-
Respondent-Respondent-
Respondents

Before: P. Padman Surasena, J.
Achala Wengappuli, J.
Mahinda Samayawardhena, J.

Counsel: Thishya Weragoda with Sewwandi Marambe, Sanjaya Marambe and Prathap Welikumbura for the 4th Defendant-Respondent-Appellant-Appellant.

Indika Jayaweera for the Plaintiff-Appellant-Respondent-Respondent.

Priyantha Alagiyawanna with Isuru Weerasooriya for the 5th Defendant-Respondent-Respondent-Respondent.

Argued on : 07.07.2021

Further written submissions:

by the 4th Defendant-Respondent-Appellant-Appellant on 27.01.2021.

by the 5th Defendant-Respondent-Respondent-Respondent on 02.02.2021.

Decided on: 15.10.2021

Mahinda Samayawardhena, J.

The plaintiff filed this action seeking to partition the land described in the schedule to the plaint between the plaintiff and the 1st defendant in equal shares. After trial, the District Judge dismissed the action. On appeal, the High Court of Civil Appeal set aside the Judgment of the District Court and directed the District Court to enter the Interlocutory Decree as prayed for by the plaintiff (½ share of the land to the plaintiff and ½ share to the 1st defendant).

The 1st plaintiff in her statement of claim *inter alia* stated that she transferred her undivided $\frac{1}{2}$ share to her two daughters (the 3rd and 4th defendants) by deed No. 8474. This was reiterated in the statement of claim of the 4th defendant. The deed was produced at the trial marked 4V1 through the evidence of the plaintiff.

Unfortunately, the existence of this deed escaped the attention of the High Court of Civil Appeal when it delivered the Judgment dated 29.06.2016.

Thereafter the 4th defendant filed a revision application in the High Court of Civil Appeal seeking to rectify this error. By Judgment dated 16.12.2019, the High Court of Civil Appeal dismissed this application on the basis that it is settled law that the rights of the parties shall be determined at the institution of the action and, as this deed had been executed after the institution of the partition action, the Court could not give effect to it.

The 4th defendant is before this Court against this Judgment of the High Court of Civil Appeal. This Court granted leave to appeal on the question whether the High Court of Civil Appeal erred in law when it dismissed the application of the 4th defendant on the basis that the rights of the parties in a partition action shall be determined at the institution of the action.

The High Court of Civil Appeal has clearly misdirected itself in law on this point. A partition action cannot be equated to an ordinary civil action.

Section 5 of the Civil Procedure Code defines “*action*” as “*a proceeding for the prevention or redress of a wrong*” and “*cause of action*” as “*the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfill an obligation, the neglect to perform a duty and the infliction of an affirmative injury*”. Partition actions are considered actions which fall not under section 5 of the Civil Procedure Code but under section 6 of the Civil Procedure Code which enacts “*Every application to a court for relief or remedy obtainable through the exercise of the court’s power or authority, or otherwise to invite its interference, constitutes an action.*”

Every action is based on a cause of action, but partition actions are not based on a cause of action as defined in section 5 of the Civil Procedure Code. If at all there is a cause of action in a partition action, it is based on the inherent right of every co-owner to have a divided portion of the land in lieu of common ownership, or to have his proportionate share in the proceeds of the sale of the land in the event a sale is ordered instead of partition. (*Abeyundara v. Babuna (1925) 26 NLR 459, Marshal Perera v. Elizabeth Fernando (1956) 60 NLR 229, Kiribanda v. Weerappu Chettiar (1948) 50 NLR 490*)

I must also add that although on the face of the record there are plaintiffs and defendants in a partition action, all parties in a partition action play the dual role of plaintiff and defendant. This is made clear, *inter alia*, by sections 19, 25 and 70 of the Partition Law, No. 21 of 1977. Partition actions are *sui generis* and unique.

According to section 66 of the Partition Law, voluntary alienations are void if they have been effected “*after a partition*

action is duly registered as a lis pendens under the Registration of Documents Ordinance”.

The registration of the *lis pendens* is a significant milestone in a partition action. It is after the registration of the *lis pendens* that the attorney-at-law for the plaintiff is required to file the section 12 declaration which ensures that all persons involved in transactions affecting the land to be partitioned up to the point of the registration of the *lis pendens* are made parties to the action. In terms of section 13, even summonses are issued to the defendants only after the *lis pendens* is registered.

The High Court of Civil Appeal admits that this deed was executed after the institution of the action but before the *lis pendens* was registered. Hence this is not an invalid deed in terms of the Partition Law. The deed 4V1 is not a disputed deed. Nor does any party object to the application of the 4th defendant.

I answer the question of law in the affirmative and set aside the Judgment of the High Court of Civil Appeal dated 16.12.2019 and direct the learned District Judge to amend the Interlocutory Decree giving effect to the deed 4V1. In the result, the plaintiff is entitled to $\frac{1}{2}$ share and the 3rd and 4th defendants are each entitled to $\frac{1}{4}$ share in the corpus. No costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court