

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

In the matter of an Appeal under and
in terms of Section 754(1) of the Civil
Procedure code.

Ambalanpitiyage Somasiri,
Kabulumulla, Karawanella.

Case No: Ca/712/1997/F

D.C. Avissawella: 644/P

Plaintiff

Vs.

01.Ambalanpitiyage Kusumalawani,
Kabulumulla, Karawanella.

02.Aluthgamaralalage Jayaweera,
Kabulumulla, Karawanella.

03.Ambalanpitiyage Wije Fernando,
Udagedara Kade, Uda Aparakka,
Palle Aparekka.

04.Pangukara Devage Karthelis,
Kabulumulla, Karawanella.

Defendants

AND NOW BETWEEN

Ambalanpitiyage Somasiri,
(Deceased)

Kabulumulla, Karawanella.

Ambalanpitiyage Saman Udaya
Kumara,

Kabulumulla, Karawanella.

**Substituted Plaintiff –
Appellant**

Vs.

01. Ambalanpitiyage Kusumalawani,
Kabulumulla, Karawanella.

02. Aluthgamaralalage Jayaweera,
Kabulumulla, Karawanella.

03. Ambalanpitiyage Wije Fernando,
Udagedara Kade, Uda Aparakka,
Palle Aparekka.

04. Pangukara Devage Karthelis,
(Deceased)
Kabulumulla, Karawanella.

4A. Ambalanpitiyage Kusumalawani
Kabulumulla, Karawanella.

- 4B. Pangukara Devage
Chandrawathi,
Kabulumulla, Karawanella.
- 4C. Pangukara Devage
Chandralatha,
Kabulumulla, Karawanella.
- 4D. Pangukara Devage Jayantha
Manel,
Kabulumulla, Karawanella.
- 4E. Pangukara Devage Chithra
Manel,
Kabulumulla, Karawanella.
- 4F. Ranasinghege Pradeepa
Sudarshanee,
Kabulumulla, Karawanella.
- 4G. Pangukara Devage Chinthaka
Sandaruwan,
Kabulumulla, Karawanella.
- 4H. Pangukara Devage Dhanushka
Nuwan Kumara,
Kabulumulla, Karawanella.

Defendant – Respondent
– Respondents

Before : P.R.Walgama, J

**Counsel : Thishaya Weragoda with Chinthaka Sugathapala
for Substituted – Plaintiff – Appellant.**

**: S.W. Premarathne for 1st Defendant –
Respondent – and 4A, 4D Substituted Defendant –
Respondents.**

Argued on : 28.01.2016

Decided on : 18.05.2016

CASE- NO- C.A. 712/97-(F)- JUDGMENT- 18.05.2016

The Plaintiff- Appellant has preferred the instant appeal against the judgment of the Learned District Judge, dated 27.05.1997, in the case bearing No. 644/P in the District Court of Avissawella, by which judgment the Learned High Court Judge has dismissed the plaint.

The Plaintiff- Appellant instituted the above style action to partition the co owned land more fully described in the schedule to the plaint.

It is the position of the Plaintiff- Appellant that the land sought to be partitioned is a portion of a larger land containing in extent one Amuna and eight lahas, known as ASSWEDDUMAPITA NADE HENYAYA.

It is the position of the Plaintiff- Appellant that the suit land is a portion of the said land which was

amicably demarcated by the co owners, containing in extent one and half acres from and out of the larger land as stated above. But it is salient to note that the land that was surveyed as the corpus is a land containing in extent only 2 roods and 16 perches. Therefore it is abundantly clear that there is no proper identification of the corpus, and on that account alone the Plaintiff's action should fail.

It was the contention of the Plaintiff - Appellant that the land sought to be partitioned is registered in Folio 34/94 at the Kegalle Land Registry. But it is to be noted that the land registered in the said folio contains a land in extent one and half acres of land and not the extent of land of two roods and 16 perches as depicted in the preliminary plan bearing No. 3755 marked as X. Therefore it is pertinent to note that there is no separate land possessed by the co owners to the extent stated in the afore said preliminary plan No.3755, being 1/42 share of the afore said larger land of one Amuna and eight lahas.

The Learned District Judge has dealt with this issue in a light manner and had discussed the devolution of title at length.

According to the pedigree of the Plaintiff - Appellant the said particular portion of land has been owned

and possessed by one Julius, and there by had acquired prescriptive title to the same.

The said Julius transferred his rights to one Ambalanpitiyage Wije Fernando (3rd Defendant - Respondent) by Deed of Transfer No. 16784 dated 13th June 1946).

The said Wije Fernando transferred his rights to his sister Ambalanpitiyage Kusumalawathi (1st Defendant - Respondent) and to Pangukara Devage Karthelis (4th Defendant - Respondent) by Deed of Transfer No. 25031 dated 13th December 1956 in equal share.

The said Kusumalawathie by Deed of Transfer No. 13532 dated 4th June 1966 transferred 60 sq.ft. area to the Plaintiff, and the said 4th Defendant transferred his $\frac{1}{2}$ to the Plaintiff by Deed No. 19668 dated of May 1981.

Therefore it was the position of the Substituted Plaintiff- Appellant that the corpus which is the subject matter of this action was possessed by the Plaintiff, 1st and the 2nd Defendants as a separate land and therefore the subject land could be partitioned accordingly.

But the 4b, 4c, 4d and 4e Defendants Respondents had contended that on a perusal of the relevant deeds tendered by the plaintiff is registered in a different folio D/128/112 and not the land sought to

be partitioned to the extent of which 1 ½ acres. It is also pertinent to note that there is no plan made to depict the 1 ½ acre land but the afore said plan marked as X only depicts 2 Roods and 16 Perches.

Further it is salient to note that there is no proof by cogent evidence to established the fact the corpus was possessed exclusively by the Plaintiff, 1st and 2nd Defendants.

Besides it is relevant to note that the 1st and the 2nd Defendants ^{have} ~~has~~ not appealed against the said impugned judgment of the Learned District Judge of Avssawella in the above case.

Hence in the said back drop this Court is of the view that the said impugned judgment is unattended in errors.

Accordingly I dismiss the appeal, without costs.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL