

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

C.A. No.727/93(F)

D.c. Kurunegala No. 4352/P

4. Mohamed Lebbe Sithi Arifa Umma,

Akkara Panaha, Panagatuwa watta,

5.M.Lebbe Badur Niza,

Kurugodapitiya, Panagatuwa

19. Saleema Lebbe

Akkara Panaha, Panagatuwawatta,

Panagatuwa

Defendant-Appellants

Vs

P.L.Mohamed Husen

alias Meera Lebbe

Plaintiff-Respondent

AND

1. Uduma Lebbe Arachchilage Iburu Lebbe

Panagatuwwa and 21 others

Defendant-Respondents

BEFORE: Deepali Wijesundera J.,

M. M. A. Gaffoor J.,

COUNSEL Rohan Sahabandu P.C., with S.D.Withanage for the Defendant
Appellants

Luxman Perera P.C., for the Respondents

ARGUED ON : 23.03.2016

DECIDED ON: 17.06.2016

The Plaintiff filed this action by his Plaint dated 25th august 1970, seeking to partition the land called 'Modiakatuwa' alias 'Kandirikotuwa' which is morefully described in the schedule to the Plaint.

The said land was surveyed and the Plan No. 199 dated 10.06.1991 made by H.B. Abeyratne, Licensed Surveyor, is filed of record marked "X" and its report "X1". It is very unfortunate that though the case was filed on 25th August 1970, the trial had commenced on 15th June 1989, almost after 17 years.

At the trial, it was admitted by the parties that the land is correctly identified in Plan as 199. It was also agreed that the original owners AUSA Umma was entitled to $\frac{1}{4}$ share and that her husband Uduma Lebbe was entitled to $\frac{3}{4}$ th share.

The devolution of title to the parties in this case is bit complicated and confused. According to the evidence led in this case it was proved that the said Uduma Lebbe was married to AUSA Umma and by this marriage there were two children (1) Kathija Umma and (2) Pakeer Lebbe, who is the 9th Defendant. Uduma Lebbe also married to one Pathuma and by this marriage there were 3 children, namely: (1) Hamidu Lebbe (2) Mohamadu Lebbe and (3) Iburu Lebbe, who is the 1st Defendant. The above said Kathija Umma was the mother of the

Plaintiff, who became entitled to his mother's share of the land along with his brother Pakir Lebbe (9th Defendant).

According to the Plaintiff's pedigree, Ausa Umma died on 18.7.1916 leaving her husband Meera Lebbe Udumalebbe who by deed No. 3135 dated 25.2.1954(P4) sold and transferred 3/16th share to the Plaintiff and one Abdul Samad. The said Ausa Umma had begotten a child by the name of Navuran who was born on 14.7.1916 and died on 10.11.1916 and therefore he may have succeeded to some share of his mother Ausa Umma as her death had taken place after four days of the birth of the child. Hence, the said Uduma Lebbe, with his 3/4 share also inherited to the share of Navuran. According to Muslim Law, Uduma Lebbe who inherited to the Ausa Umma's and Navuran's shares sold his inheritance to the Plaintiff by Deed P4. Abdul Samidu, who sold his rights to the Plaintiff by Deed No. 8775 dated 20.1.63.

Thus the following persons became co-owners of the land which is the corpus in this case :

- i. Pathuma, widow of Uduma Lebbe
- ii. Plaintiff) both are children of Kadija Umma
- iii. 9th Defendant)
- iv. Hamidu Lebbe
- v. Mohamadu Lebbe
- vi. Ibura Lebbe

Subsequently, Pathuma who was entitled to 1/16 share had sold her rights by deed No. 3481 dated 10.03.1944 (P6) and consequently, the Plaintiff became entitled to $(3/16 + 1/16)$ 4/16 share by P4 and P6, and the remaining share 12/16 or 3/4th became the shares of the following persons:

- | | | |
|------|-------------------------------|------|
| i. | Pakir Lebbe(son of ausa Umma) | 2/12 |
| ii. | Hamidu Lebbe | 2/12 |
| iii. | Mohamadu Lebbe | 2/12 |
| iv. | Ibura Lebbe | 2/12 |

The above devolution of rights is disputed by the 2nd Defendant Appellant before this court. In his written submissions filed before this court he denies the marriage of Ausa Umma to Meeralebbe Uduma Lebbe which was according to religious rights. The said Ausa Umma had died on 18.7.1916 and therefore her marriage would have been before the year 1916. In those days the Muslim Law that was in existence was the Mohammadan Code of 1806, which was not the "Muslim Law proper" but only a codification of the customs and practices followed by the Muslims in the colony. According to this Mohammedan Code of 1806, registration of Muslim marriages were not in practice and the Muslim religious rights were followed, but, which were different from place to place, area to area. Hence, the argument of the 2nd Defendant that there was no marriage between Ausa Umma and Uduma Lebbe cannot be accepted. The Muslim Marriages and Divorce Registration Ordinance No. 27 of 1929 came into force in 1929 which was repealed by Act No. 13 of 1951 (which is the present law).

The trial had commenced in this case on 15.6.1989 and the Plaintiff had closed his case on 11.9.1990 and thereafter the 1st Defendant had given evidence and closed his case on 18.6.1991. Thereafter the 2nd Defendant had come out with his deeds 2D2 to 2D12, without being listed earlier. This procedure had been objected to by the Plaintiff and 4th, 5th- 7th, 19th & 20th Defendants. However, the 2nd Defendant had failed to prove his pedigree. At the commencement of the trial it was admitted that AUSA Umma was entitled to $\frac{1}{4}$ share and Uduma Lebbe was entitled to $\frac{3}{4}$ share of the corpus. But subsequently the 11th and 12th Defendants disputed this position and stated that one Neina Lebbe, who became entitled to an undivided $\frac{1}{4}$ share of Pathuma, transferred this $\frac{1}{4}$ th share to 2nd to 10th Defendants.

But in his evidence the 2nd Defendant has given his evidence in a different manner. His deed No. 1237 was also rejected by him and produced another deed. In his cross-examination by the Plaintiff's counsel the 2nd Defendant had agreed the devolution of title produced by the Plaintiff. In this regard, the learned District Judge says that the dispute is not between the Plaintiff and the 2nd Defendant but among the Defendants only (p. 360 of the brief).

It appears that the learned District Judge has correctly analysed the devolution of title of the Defendants and has come to a correct decision (see pages 360-361 of the brief.).

I, therefore do not want to interfere with those findings and affirm the judgment entered in this case by the learned District Judge.

As stated earlier, this action has been filed on 25th August 1970 and the judgment has been entered on 27.10.1993. This appeal has been filed in this court on 20.12.1993 by the 2nd Defendant-Appellant. On the question of the marriage of AUSA Umma to Uduma Lebbe "according to Muslim religious rights" and on the question of paternity of Navuran. The counsel for the 2nd Defendant Appellant suggests in his written submissions dated 31.08.2015 to "remit this case for trial de novo' or for the present District Judge to give judgment keeping in mind the applicable law."

I do not agree with this suggestion. After 46 years, to remit this case for trial de novo is an unpleasant task. The evidence led in this case sufficiently proves the devolution in the correct manner. I therefore dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL