

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

C. A. 1043/97 (F)

D. C. Tangalle, Case No. 1814/P

1. Ubesin Patabedige
Leelawathie
Polgahawelana,
Weeravila,
Tissamaharamaya.

1st Plaintiff-Appellant

VS

- 2a. Aluthgama Guruge Violet
Annapitiyagoda,
Tangalle.
- 2b. Ubesin Patabedige Gunasiri
Annapitiyagoda,
Tangalle.
- 2c. Ubesin Patabedige Sisira
Kumara Annapitiyagoda,
Tangalle.

2a to 3c Plaintiff-Respondents

1. Vidanelage Upali
Medaketiya,
Tangalle.
 2. Vidanelage Lusi Nona
Medaketiya,
Tangalle.
 3. Pathegamage
Kusumawathie Medaketiya,
Tangalle.
- 3a. Samatha Weeratissa
Jayasinghe
Annapitiyagoda,
Tangalle.

4. Karunasena Upathissa
Jayasinghe
Annapitiyagoda,
Tangalle

4a. Samatha Weeratissa
Jayasinghe
Annapitiyagoda,
Tangalle.

5. S.K.K. Mawlana,
No. 24, Siri Road,
Pallimulla, Panadura

6. Dayananda Siriwardena
Kiwila,
Hungama.

Defendant-Respondents

BEFORE : **M. M. A. GAFFOOR J**

COUNSEL : Rohan Sahabandu P.C. wuth Surehha Withanage for
the 1st Plaintiff-Appellant

Shantha Jayawardhena for the 3a and 4(a) to (j)
Defendant-Respondents

**WRITTEN
SUBMISSIONS
TENDERED ON** : 28.08.2018 by the 1st Plaintiff-Appellant

30.08.2018 by the 3, 4 (a) to 3, 4(j) Defendants-
Appellants

DECIDED ON : 25.01.2019

M. M. A. GAFFOOR, J.

The Plaintiffs had filed a Partition Action bearing Case No. 1814/P in the District Court of Tangalle for the land called 'Jayasinghe Manachchige watta' *alias* 'Arowatta' described in the schedule to the Plaint.

The Plaintiffs relied upon the pedigree which had set out in the Plaint and pleaded that the original owner of the land was Jayasinghe Manachchige Singho Baba. The corpus of the specified land depicted as Lot 1 in plan No 28 and the extent is 30.25 perches prepared by H. P. P. Jayawardena Licensed Surveyor.

According to the pedigree pleaded by the Plaintiffs, the shares should be divided as follows:

- 1st Plaintiff - 30/36
- 2nd Plaintiff - 1/36
- 1st Defendant - 1/36
- 2nd Defendant - 1/36
- 3rd Defendant - 3/36

The 3rd Defendant pleaded in her statement of claim denied the Plaintiff's pedigree and produced a different pedigree and prayed for the dismissal of the Plaintiff's action.

The 3rd Defendant in her Statement of Claim claimed shares as follows:

- 1st Plaintiff - 75/300
- A. S. S.H. K. Moulana - 25/300
- 2nd Plaintiff - 5/300
- 3rd Defendant - 120/300
- Dayananda Siriwarnasinghe - 75/300

There were seven issues raised at the trial before the learned District Judge of Tangalle. Upon conclusion of the trial, the learned District Judge has accepted the pedigree submitted by the 3rd Defendant and allocated the shares as follows:-

1st Plaintiff - 75/300

2nd Plaintiff - 5/300

3rd Defendant - 120/300

5th Defendant - 25/300

Balance shares un-allotted

being aggrieved by the judgment of the learned District Judge of Tangalle, the 1st Plaintiff-Appellant preferred this instant appeal and prayed to set aside the judgment of the learned District Judge on the ground stating that the learned District Judge of Tangalle had failed to give reasons and failed to evaluate the evidence correctly and as a result he has misdirected himself on the law and facts.

It is to be noted that the 3rd Defendant had submitted a different pedigree of title to the larger land and the 4th Defendant had given evidence on behalf of 3rd and 4th Defendants and one Muthumala Jayasuriya who is a Notary public and Attorney also had given evidence on behalf of the Defendants.

But the plaintiff did not appear and not give evidence, the only witness called on behalf of the Appellant namely, Mahamadakalapuge Peter. His evidence before the trial judge was only based on facts which he heard and he actually unaware of the real facts, corpus and pedigree about the land described to the plaintiff.

It is observed that Appellant pleaded that Singho Baba was the original owner and entire corpus vested on him. Even though, according to the 3rd Defendant's deeds marked as 3V3 and 3V5 that Singho Baba cannot be a sole owner and he only hold 1/4 share of the corpus.

It is a accustomed legal norm that, who desires any court to give a judgment as to any legal right or liability dependent on the existence of facts and reasons which he asserts; he must prove that those facts and reasons are exist (vide section 110 of the Evidence Ordinance).

The burden of seeking and getting evidence before court, in the course of investigation of title to the land sought to be partitioned by parties before Court, prior to deciding what share should go to which party is more the duty of the judge than the contesting parties. The authorities proclaim that it is the duty of the trial judge in a partition action to investigate title of the parties before he decides what share should be allocated to which party of the case before him.

In **Sopinona vs Cornelis and Others** 2010 B.L.R. 109, it was held that:

“It is necessary to conduct a thorough investigation in a partition action as it is instituted to determine the questions of title and investigation devolves on the Court. In a partition suit which is considered to be proceeding taken for prevention or redress of a wrong, it would be the prime duty of the judge to carefully examine and investigate the actual rights to the land sought to be partitioned.”

In the case of **Cynthia De Alwis vs. Marjorie De Alwis and two others**, (1997), 3 S.L.R. 113, it was held that:

“A District Judge trying a partition action is under a sacred duty to investigate into title on all material that is forthcoming at the commencement of the trial. In the exercise of this sacred duty to investigate title, a trial judge cannot be found fault with for being too careful in his investigation. He has every right even to call for evidence after the parties have closed their cases.”

In these circumstances, I am of the view that the Appellant had not been proved his stance and the learned District Judge had carefully examined the title and the evidence placed before the trial court and correctly delivered his judgment.

For the foregoing reasons, I hold and accept the pedigree of the 3rd Defendant and affirm the judgment delivered by the learned district Judge of Tangalle.

Therefore, I dismiss the appeal without cost.

Appeal dismissed

Judge of the Court of Appeal