

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

**C. A. APPEAL No. 1210/1996 (F)**  
D. C., Avissawella Case No.  
15440/P

1. K. D Richard Siemon Perera  
(*Deceased*) of Dechigahapitiya,  
Avissawella.
- 5A. Senerath Mudalige Agnes  
Jayathilaka of Dehigahapitiya,  
Avissawella.
13. K. D. Rita Sirimathie Nirmala Perera  
of Dehigahapitiya, Avissawella.
14. K. D. Sunil Patrick Richard Perera of  
Dehigahapitiya, Avissawella
15. K. D. Marie Noeline Sriyani  
(*Deceased*) of Dehogapitiya.  
Avissawella.
- 15A. Taiberacious Rufus Nihal  
Mapitigama Liyanaarachchi of  
Nadala, Wattala
16. Mercy Agnes Pushpa Perera of  
Dehigahapitiya, Avissawella.

**DEFENDANT-APPELLANTS**

**VS.**

1. Kande Kankanamalage Edward  
(*Deceased*) of Divurumpitiya,  
gatahetta.
- 1A. Kande Kankanamalage Leelasena  
(*Deceased*) of No. 86, Madola,  
Avissawella
- 1B. K. K. A. Deshaprita of Modola,  
Avissawella
2. Kande Kankanamalage Alice Mary  
(*Deceased*)
- 2A. Kankanige Dona Voilet Werasinghe  
(*Deceased*) of Weragahahena,  
Toranagoda, Ehaliyagoda.

- 2AA. Weerasinghe Mudiyansele  
Seneviratna Weerasinghe,  
No. 81A, Weragahahena Road,  
Thoranakada, Eheliyagoda
- 2BB. Weerasinghe Mudiyansele  
Anoma Weerasinghe,  
No. 81A, Weragahahena Road,  
Thoranakada, Eheliyagoda
- 2CC. Weerasinghe Mudiyansele  
Chandrani Weerasinghe,  
No. 81A, Weragahahena Road,  
Thoranakada, Eheliyagoda

**PLAINTIFF-RESPONDENTS**

1. W. D. Albi Singho (*Deceased*)  
of Jacoyn Seneviratne Mawatha,  
Seethawaka, Avissawella.
- 1A. Kudakumara Maddumage  
Somawathie (*Deceased*) of No. 4,  
Maligama Mawatha, Seethawake
- 1B. Bandula Wijeyawardene  
No. 3, Seethawaka, Avissawella
2. K. K. Leelasena (*Deceased*)  
of No. 86 Madola, Avissawella.
- 2A. K. K. A. Deshapriya of Modola,  
Avissawella.
3. K. D. Thilakaratne (*Deceased*) of  
Toranagoda, Eheliyagoda.
- 3A. Kodikarachchige Wimalawathi,  
14/43. Visal Sewana, Pananvila,  
Delgoda
4. D. T. Seneviratne (*Deceased*) of  
Dehigahapitiya, Avissawella.
- 4A. Seetha Ranjini, Dehigahapitiya,  
Avissawella
- 4B. Champika Nilminie,  
Dehigahapitiya, Avissawella

6. K. P. Samarasinghe of  
Dehigahapitiya, Avissawella  
(*Deceased*)
- 6A. Chandraratna Samarasinghe
  
7. Digowa Thalaththani Rallage  
Jayawardena of Dehigahapitiya,  
Avissawella.
8. D. T. R. Isara Nona of  
Dehigahapitiya, Avissawella
9. D. T. R. Gunaratne of  
Dehigahapitiya, Avissawella.
  
10. D. T. R. Booiratne (*Deceased*) of  
Dehigahapitiya, Avissawella
- 10A. Seetha Ranjani of Dehigahapitiya,  
Avissawella
- 10B. Champika Nilminie of  
Dehigahapitiya, Avissawella.
  
11. D. T. R. Wijerane of  
Dehigahapitiya, Avissawella
  
12. D. T. R. Ansinona of  
Dehigahapitiya, Avissawella
  
17. D. T. Wijeratne of Dehigahapitiya,  
Avissawella.
  
18. D. T. Ishan Nona of  
Dehigahapitiya, Avissawella.
  
19. D. T. Jayawardena of  
Dehigahapitiya, Avissawella.
  
20. Hon. Attorney General  
Attorney General's Department  
Colombo 13

**DEFENDANT-RESPONDENTS**

**Before** : **M. M. A. Gaffoor, J.**

**Counsel** : Harsha Soza P. C. with Athula Perera for the 5A, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Defendant-Appellants

Dr. Jayatissa de Costa P. C. with Chanuka Ekanayaka for the Substituted 1B Plaintiff-Respondent

**Written Submission tendered on** : 12.10.2018 – by the 5A, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Defendant-Appellants

20.08.2018 – by the Substituted 1B Plaintiff-Respondent

**Decided on** : **27.02.2019**

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**M. M. A. Gaffoor, J.**

The Plaintiff-Respondents above named instituted this action in the District Court of Avissawella to partition the land called 'Aliyamalahena' depicted in preliminary plan No. 220 dated 07.07.1980 by the plaint dated 09.05.1979 and subsequently by amended plaint dated 16.07.1986. The corpus is depicted in the preliminary plan No. 220 marked as 'X'. According to the plan, the extent of the land is 2 Acres 3 Roods and 18.8 Perches.

In the District Court, it was the position of the Original Plaintiffs that the initial owners of the land in dispute were K. K. Julius Appu, Ranethana, Podi Nona and James Appu. Both Ranethana and James Appu were unmarried and after the demise of both of them, K. K. Julius Appu possessed 3/4 shares and Podi Nona possessed 1/4 shares

respectively. After the demise of K. K. Julius Appu, one Bandulahami became entitled to the share of said Julius Appu and after the demise of said Bandulahami, 1<sup>st</sup> Plaintiff Edward, 2<sup>nd</sup> Plaintiff Alice Mary, Thomas Singho and Rosalin Nona became entitled to the said property in dispute by inheritance (it is further revealed by the Plaintiffs that, said Rosalin Nona had a *Diga* marriage, as a result of which she entitled to the 1/4 of the said property in dispute).

According to the Plaintiff, said Thomas Singho had died issueless. Therefore, the remaining 3/4 shares of said Thomas Singho were divided among the (1<sup>st</sup> and 2<sup>nd</sup>) Plaintiffs.

One Illukpitiyage Davith Appu became entitled to the 1/4 shares of the sad Podi Nona and the said Illukupitiyage Davith Appu by virtue of Deed of transfer bearing No. 1307 dated 28.05.1012, transferred the said shares to one John Alexander Marambe. After the demise of said John Alexander Marambe, his son Francis Marbe became entitled to the said ¼ share and said Francis Marambe by virtue of Deed No. 2479 dated 07.11.1913 had transferred an undivided half shares out of 1/4 to Noihami (1/8 shares). Further, the Plaintiffs stated that Said Noihami transferred a 1/3 shares out of 1/8 shares to the 1<sup>st</sup> Plaintiff and another 1/24 shares to the 2<sup>nd</sup> plaintiff.

Therefore, it was the position of the Plaintiff-Respondents that according to the pedigree, the 1A Plaintiff-Respondent entitled to 9/24 shares and the 2<sup>nd</sup> Plaintiff-Respondent is entitled to 3/24 shares of the said land in dispute.

The 5<sup>th</sup> Defendant-Appellant filed a statement of claim wherein it was contended that by virtue of an amicable partition entered into by and between the co-owners of the corpus in dispute long prior to the institution of this action, co-ownership had ceased and divided possession of the defined allotments had commenced (according to Survey Plan No. 99, marked as 5V6). His position was that, in any event, he had exclusively possessed certain divided allotments of land as owner to the exclusion of others and had thus acquired a prescriptive title thereto.

The learned District Judge by her judgment dated 02.10.1996 held that the 1A Plaintiff-Respondent had established the pedigree set out in the plaint and had ordered to partition the land in dispute **disallowing completely the prescriptive possession of the 5<sup>th</sup> Defendant.** The learned District Judge had allotted the shares as follows:

a. 1A Plaintiff-Respondent	: 189/504
b. 2A Plaintiff-Respondent	: 63/504
c. 1 <sup>st</sup> Defendant	: 126/504
d. 4 <sup>th</sup> Defendant	: 45/504
e. 6 <sup>th</sup> Defendant	: 21/504
f. 13 <sup>th</sup> Defendant	: 21/504
g. 16 <sup>th</sup> Defendant	: 14/504
Unallotted	: 25/504

Being aggrieved by the said judgment dated 02.10.1996, this appeal preferred by the 5A and 13<sup>th</sup>-16<sup>th</sup> Defendant-Appellants to set aside the judgment of the District Court.

It is seen from the case record that only the Plaintiff-Respondents have relied on a pedigree for the entire corpus and devolution therefrom on the basis of that pedigree, the 1A Plaintiff-Respondent had given evidence in support of his case.

It is to be noted in this case that the 5<sup>th</sup> Defendant-Appellant was made a party to the case on the basis that he, without any manner of right or title, was residing on the said disputed land and he claimed exclusive rights to the buildings and the plantations in lots 1 and 3 depicted in the preliminary plan X.

In this appeal, it was the conjoint position of the Appellants that the Plaintiffs-Respondents were duly not proved their title to the land. Whilst the 5<sup>th</sup> Defendant-Appellant has taken another position that, he came into the possession of the land in dispute in 1951 with the execution of Deed No. 168, dated 17.05.1951 by his parents and siblings. Therefore, it is clear that the 5<sup>th</sup> Defendant endeavoured to prove his prescriptive title which was disallowing by the learned District Judge.

It is an important fact that all the deeds and documents produced in this action support the pedigree of the plaintiffs and devolution therefrom, deeds marked as 5V8, 5V11 and 5V12 are in support of the Plaintiff-Respondents' title and pedigree in this case (*vide page 569, 582 and 586 of the appeal brief*).

Further, I observed that the 5<sup>th</sup> Defendant-Appellant whilst giving evidence on 21.11.1995 had stated in his examination-in-chief that Edward, the 1<sup>st</sup> Plaintiff-Respondent (now deceased) was a co-owner and another occasion he had further testified and admitted that he entered the

corpus on a deed bearing No. 168 and that transferors are not owners in terms of the pedigree of the Plaintiff-Respondents (*vide page 201-203 and 212-213 of the appeal brief*).

It was the contention of the 5<sup>th</sup> Defendant-Appellant that, by virtue of an amicable partition entered into by and between the co-owners of the corpus in dispute long prior to the institution of this action, co-ownership had ceased and divided possession of the defined allotments had commenced.

In contrast, it was the strong position of the 1B Plaintiff-Appellant that, prior to the institution of this partition action, the said land in dispute was not amicably divided among the parties. He revealed an important fact that the schedule of the deed marked as P7 (also marked as 6V2) does not comply with the schedule of the survey plan No. 99 (5V6). The Deed P7 was executed after the institution of this action. Therefore, he is in a position that the parties had considered the said land in dispute as a land which had not been amicably divided.

Counsel for the 1B Plaintiff-Respondent further stated that the Deed No. 1615 marked as 1V1 (*vide page 497 of the appeal brief*) was executed on 20.03.1979; but the schedule of the said deed reveals a fact that only undivided shares of the land sought to be partitioned had been transferred. In these circumstances, Counsel for the 1B Plaintiff-Respondent submitted that the contention of the 5<sup>th</sup> Defendant-Appellant that the co-ownership of the parties to the land in dispute ceased from 1956 is obviously false. I do not see any conundrums in these submissions.

It also seen from the entire proceedings that even though the 5<sup>th</sup> Defendant-Appellant relied on the partition plan No. 99, he has failed



to call a single witness who was an attentive party to the said plan, to strength his position.

It is in these circumstances, I am of the view that the Appellants do not show a proper reason or a grave legal discrepancy to interfere with the findings of the learned District Judge.

This Court being an Apex Court does not wish to interfere with several factual positions dealt with by a trail judge who is in a position to see and evaluate the entire evidence led before him. Unless perverse orders are made by the lower Courts it would not be in order for a Superior Court to interfere with the original factual matters.

Accordingly, I proceed to dismiss the appeal with costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**