

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

**C. A. (Appeal) No. 343/95 (F)**

D. C., Tangalle Case No.  
2023/P

Wijekoon Arachchige Juwanis of  
Wepathaira,  
Hakmana. (*Deceased*)

**2<sup>nd</sup> Defendant-Appellant**

**AND NOW**

Wijekoon Arachchige Chaminda,  
No. 172, Wepathaira-West,  
Hakmana.

**Substituted 2A Defendant-  
Appellant**

**VS.**

1. Somawathie Liyanarachchi  
of Kongahawatta,  
Udupeellegoda,  
Hakmane
2. Ipitagama Liyanarachchi  
Jinadasa of Getamanne-  
North

**Plaintiff-Respondents**

- 1A. Jayathun Arachchige  
Sisiliyana,  
Ambegaskoratuwa,  
Owilana, Beliatte.
3. Kodikara Gallagodage Don  
Jemis  
Of tharaperiyagedara,  
Okewela, Modarawana.

4. Don Pedrisk Ratnavake of Konahawatta, Godawela, Beliatta.
5. Panamulla Arachchige Karunadasa of Godaela, Beliwatta.
6. Garusin Arachchige Piyadasa of Gadawela, Beliatta.
7. Hewapanwilage Sirisena of Gorokgahawatta, Nihiluwa.
- 8A. Athokorale Arachchige Sawderis alias Kiriappu of Pathamulla, Nihiluwa

**1A, 3-7, and 8A Defendant-  
Respondents**

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

**COUNSEL** : Sandeepani Weragoda with K. G. A. L. Rukshani for the 2<sup>nd</sup> Substituted Defendant-Appellant

Parakrama Agalawatte with Sunil Watagala for the Plaintiff-Respondents

**WRITTEN SUBMISSION**

**FILED ON** : 12.10.2018 (2<sup>nd</sup> Defendant-Appellant)

12.11.2018 (Plaintiff-Respondents)

**DECIDE ON** : **28.03.2019**

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**M. M. A. GAFFOOR, J.**

This is an appeal from the judgment of the District Court of Tangalle dated 19.07.1995, in respect of a partition action bearing case No. 2023/P.

When this matter was taken up for hearing, this Court observed that main averment of the 2<sup>nd</sup> Defendant-Appellant (Appellant) is that a share of the subject matter which he purchased by Deed No. 18656 dated 27.04.1976 marked as “2D1” has not been given to him by the learned Trial Judge, while the other deeds of the Appellant marked as “2D2” and “2D3” have been accepted by the Judge and the Appellant has obtained a share of 88/720 by these two deeds.

It is to be noted that, according to the judgment of the Trial Judge, the main reason for the decision to deprive the alleged share 22/720 of the Appellant is the failure, to register the deed 2D1 in the proper folio.

The Appellant stated that the above share of the land which belonged to a co-owner one Davith had been sold by him to the Appellant and several years after that again to the 2<sup>nd</sup> Plaintiff-Respondent. The said Davith’s name appears in the 2<sup>nd</sup> Plaintiff-Appellant’s deed bearing No. 10 dated 05.11.1979 (P7). He further stated that the said Davith who was entitled to 22/720 share had already sold his share by Deed 2D1 before executing the Deed P7, more than three years ago. Therefore, the Appellant is in position that the subsequent deed P7 has no validity as far as the share of the said Daavith is concerned.

It is also revealed from the case record that the previous owner who had a large share of the subject land has registered his deed No. 2814

(P4) in folio A12/308. Thereafter the deed P7 has been registered in folio F80/07. But the deed 2D1 has been registered in folio A32/10, therefore, it's quite clear that the deed 2D1 is not registered in continuation of the folio in which the first registered instrument in respect of the said land is registered. However, the Appellant stressed that this non-continuation (omission/defective) is only a technical consideration which would not be penalized the buyer of the property.

In contrast, it was a strong contention of the Plaintiff-Respondents that the competing Deed (2D1) of the Appellant is not registered in any of the said proper folios. Therefore, they had taken a position that the aforesaid non-continuation (omission/defective) of the Appellant should be regarded in favour of them.

I do not reluctant to subscribe to the above submission of the Respondents. It is settled law that the benefit of priority by registration accrues to a subsequent Deed for valuable consideration as against an earlier deed from the same source which is either not registered or not duly registered. (*Vide: Section 14 of the Registration of Documents Ordinance, No. 23 of 1927 as amended subsequently*) [Also See: **SILVA vs. SARAH HAMY** (1883) *Wendt's Reports* 383; **PERERA vs. PREMAWATHIE** 74 *NLR* 302 and **HEENAPPUHAMY vs. CHARLES** 77 *NLR* 169].

In the circumstances, I am of the view that, the learned Trial Judge carefully had considered the relevant evidence of the parties and correctly dismissed the Appellant's claim, especially, with regard to the deed 2D1, while allocating the substantiated shares (through the two other deeds 2D2 and 2D3).

Therefore, I see no reason to interfere with said judgment of the Trial Judge. Accordingly, I uphold the judgment of the learned District Judge of Tangalle and dismiss the appeal. I also award costs in a sum of Rs. 15,000/- payable to the Plaintiff-Respondents by the 2<sup>nd</sup> Defendant-Appellant.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**