

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

C. A. Appeal No. 776/99 (F)
D. C., Avissawella Case No. 133/P

H. G. Greta Piyawathi,
Ratnapura Road,
Parakaduwa

3rd Defendant-Appellant

VS.

Anil Gunasena Moley,
Meneripitiya,
Parakaduwa

Plaintiff-Respondent

1. Uduwa na Arachchige
Sirimawathi,
Meneripitiya,
Parakaduwa

And 9 others

Defendant-Respondents

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

COUNSEL : H. Withanarachchi for the 3rd Defendant-Appellant
N. Muthukumarana for the Plaintiff-Respondent

**WRITTEN SUBMISSION
TENDERED ON** : 21.11.2018 (by both Parties)

DECIDED ON : **29.03.2019**

M. M. A. GAFFOOR, J.

The Plaintiff-Respondent (hereinafter referred to as the Plaintiff) instituted the above styled action in the District Court of Avissawella seeking to partition the land called "*Lindathiyana Watta*" depicted in Plan No. 32 A/30 dated 11.04.1930 in Maneripitiya, in the District of Kegalla.

The Plaintiff in his Complaint had pleaded inter alia as follows:

- a. that the original owner of the said allotment namely Hettiarachchige Thenthohamy by virtue of Deed No. 3748 dated 13.02.1923 (2D1) had conveyed 1/3 share to Uduwana Arachchige Rosalyn on Deed No. 2008 dated 06.01.1939;
- b. that the said Rosalyn by Deed No. 2200 dated 01.02.1978 (P4) had gifted the said 1/3 share together with the house standing on the land to Uduwana Arachchige Leelawathi who in turn had transferred her rights to the Plaintiff by Deed No. 120 dated 18.04.1986 (P5);
- c. that the balance 2/3 share of the said land was being possessed by the 1st and 2nd Defendants and that the 3rd Defendant was in occupation of the boutique room on the land with leave and license of the said Leelawathi.

On a commission issued by the Court, the Preliminary Plan No. 3371 dated 08.05.1987 was prepared by S. Ramakrishnan, Licensed Surveyor and the same was furnished to the District Court together with the Report thereon. Later the said plan and report were marked in evidence in the action as "X" and "X1" respectively.

The 2nd Defendant-Respondent in his statement of claim (at page 47 of the appeal brief) set out rights from one Thenthohamy on chain of

title in which Deed Nos. 2007 (2D2), 660 (P8), and 2323 (P7) eventually conveyed alleged rights to the Appellant.

Whereas, the 3rd Defendant-Appellant (Appellant) in her statement of claim had averred *inter alia* that the parties to the case were governed by the Kandyan Law and the Deed of Gift No. 2200 had been invalidated by Deed No. 2764 dated 21.09.1978 (3D1) and the said Uduwana Archchige Rosalyn had transferred 1/6 share of the land sought to be partitioned and 1/2 of the tiled house to the Appellant and remaining rights of Rosalyn, was possessed by the 5th Defendant, who together with the Appellant became entitled to the house and the well in lot No. 02 in the Preliminary Plan. It's clear from the trial proceedings, in addition to these claims, the Appellant also claimed for prescription on the said premises (vide: page 106 & 107 of the brief).

The case was taken up on 19.05.1998 for trial and the parties admitted that the corpus had been depicted as Lots 1 and 2 in Plan No. 3371 dated 08.05.1987. Accordingly, the case proceeded to trial on 17 points of contest raised by the Plaintiff, 3rd and 4th Defendants (vide page 89-92 of the appeal brief).

After conclusion of the trial, the learned District Judge delivered the judgment on 17.09.1999 allocating 1/3 share to the Plaintiff and the balance 2/3 share to the 2nd Defendant-Respondent

In this appeal, the Appellant's main argument was that the said Deed of Gift No. 2200 was cancelled by another Deed No. 2764 (3D1) on 21.09.1978. However, counsel for the Plaintiff correctly brought an important fact that there are no legal arrangements to cancel a Deed of Gift like this manner according to the provisions of Revocation of Irrevocable Deed of Gift on the ground of Gross Ingratitude Act, No. 5 of 2017.

Further, a careful perusal of the plaint and the proceedings suggested that, the learned District Judge had promptly analysed the same and correctly allocated the shares among the parties, while, the Appellant had just stressed on numerous factual enigmas among the parties.

In this regard, it is to be stressed that the observation of the Hon. G. P. S. De Silva, C. J. in **ALWIS VS. PIYASENA FERNANDO** [(1993) 1 SLR 119] when he emphasized that:

"..it is well established that findings of primary facts by a trial Judge who hears and sees witnesses are not to be lightly disturbed on appeal."

In **ARIYADASA VS. ATTORNEY GENERAL** [(2012) 1 SLR 84] the Court observed as follows:

"Court of Appeal will not lightly disturb a finding of a Judge with regard to the acceptance or rejection of a testimony of a witness, unless it is manifestly wrong, when the trial Judge has taken such a decision after observing the demeanor and the deportment of a witness..."

Therefore, in the light of the above backdrop, I see no reason to interfere with findings of the learned District Judge.

Accordingly, I dismiss the appeal without Costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL