

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

C. A. 1187/98 (F)
D. C., Galle Case No. 9224/P

Baranige Gnanawathie of
Maliyagoda,
Ahangama.

1st Defendant-Appellant

VS.

Udumalagala Gamage Pemasiri of
Kataluwegedera, Tellambura,
Nakiyadeniya.

Plaintiff-Respondent

Hewawasam Tuduwawattage
Dhanapala of Maliyagoda,
Ahangama

2nd Defendant-Respondent

Kamala Wijeweera *alias*
Kamalawathie of Maliyagoda,
kataluwa, Ahangama

3rd Defendant-Respondent

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

Counsel : Athula Perera for the 1st Defendant-Appellant
Palitha Bandaranayake with J.K.D. Dilani
Jayaneththi for the 3rd Defendant-Respondent

Written Submission filed on : 01.02.2019 (by both Parties)

Decided on : **04.04.2019**

M. M. A. Gaffoor, J.

The Plaintiff-Respondent instituted the above styled action in the District Court of Galle seeking to have the land called “Ambagahakoratuwewatta” *alias* “Ambagahawatta”, partitioned amongst the Plaintiff 1/24 shares, 1st Defendant-Appellant (hereinafter referred to as the Appellant) 23/24 shares on the pedigree pleaded in the plaint (vide page 54 of the appeal brief).

Licensed Surveyor G. N. Samarasingha prepared the Preliminary Plan No. 696 (available at page 85) and submitted same together with the report. In Plan No. 696, the Surveyor had shown the corpus in 2 lots namely Lot A and B. At the time of the Preliminary Survey of the land subjected to in this case, and new claimant, 3rd Defendant-Respondent claimed a part of the land before the Commissioner. Accordingly, the 3rd Defendant-Respondent made an application to intervene and then she was added as the 3rd Defendant to the action.

It’s further revealed that the Appellant had claimed plantation and building in Lot B, and the 3rd Defendant had claimed certain plantation and buildings in Lot A, however, the 2nd Defendant-Respondent had claimed rights against the

said 3rd Defendant-Respondent with regard to the said plantation and building.

It was in those circumstances, the 3rd Defendant-Respondent in her Statement of Claim, stated that lot A in preliminary plan not from part of the corpus and it is the land called “Para Rathmehera Delgahakoratuwa” *alias* “Rathmehera Delgahakoratuwa” belonging to the 3rd Defendant and also that the said land is the subject matter of an another action bearing No. 10423/L pending in the same District Court. Thereafter, the 3rd Defendant-Respondent had set out her pedigree in respect of her alleged land. She in her statement of claim sought a commission to be issued on to G.H.P.A.A. de Silva Licensed Surveyor to prepare a plan superimposing Plan 343 (prepared in Case No. 10423) on the preliminary plan filed of record in the present case. Accordingly, on a commission issued in the case, said Licensed Surveyor prepared the Plan No. 1028 dated 24.05.1988 and submitted same with the report.

Thereafter, the case was fixed for trial on 16 issues raised by parties. After conclusion of the trial, the learned District Judge on 16.10.1998 delivered the judgment excluding Lot A in the preliminary plan from the corpus and made order to partition the land restricting the corpus only to Lot B in preliminary plan.

Being aggrieved by the said judgment, this appeal preferred by the Appellant to set aside that part of the judgment which had excluded Lot A from the corpus and allow the appeal to include Lot A in preliminary plan in to the corpus.

In this case, the only dispute between parties was whether Lot A in preliminary plan is a part of the corpus or should it be excluded from the present partition action.

In the District Court, the 3rd Defendant-Respondent stated that the Appellant had transferred an undivided 10 Perches of land to the Plaintiff-Respondent by Deed No. 248 dated 22.07.1984 (P16); within 2 weeks of the aforementioned transfer, on 03.08.1984 the Plaintiff-Respondent instituted this action citing only the Appellant and the 2nd Defendant-Respondent as Defendants without naming the 3rd Defendant-Respondent.

It is seen from the said Plan No. 343 that the boundaries of the Lot A, are very clear. Whereas the southern boundary is a live wire fence, the 3rd Defendant had stated that the trees on the fence had been cut down by the Appellant, and the Police had inquired into the matter. She further stated that, there is no boundary within this allotment as claimed by the Appellant. Therefore, she has taken up a position that this property had been possessed as a single unit (vide pages 448 and 449).

Therefore, it's quite clear from the said judgment of the District Court, the learned District Judge carefully concentrated an important fact that said Lot A in preliminary plan is not a part of the corpus in the present case, by answering points of contest Nos. 6, 7, 8, 9 and 10 of the 3rd Defendant-Respondent, learned Trial Judge has declared that the said lot A in preliminary plan forms part of the land called "Para Rathmehera Delgahakoratuwa" *alias* "Rathmehera Delgahakoratuwa" as claimed by the 3rd Defendant-Respondent that said land consist of Lot A and C in plan 1028 prepared by G.H.G.A.A. de Silva Licensed Surveyor.

After careful perusal of the oral and documentary evidence of this case, this Court of the view that the learned District Judge correctly held with the 3rd Respondent and ordered to partitioned the land excluding Lot A from the corpus, for reaching this conclusion he correctly evaluate the relevant Survey Plans which were submitted by both parties.

In the circumstances, I see no reason to interfere with the findings of the Trial judge. Therefore, I proceed to dismiss the appeal without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL