

**IN THE COURT OF APPEAL OF THE DEMOCRATIS SOCIALIST
REPUBLIC OF SRI LANKA.**

C.A No: 1196/96A F
1196/96B F
D.C Horana 2779/P

K.L. Kusumsiri,
13th Defendant-Appellant.

Vs.

W. Nalani Ranaweera,
Plaintiff-Respondent.
Govinda Waduge Mendis,

1st Defendant-Respondent.

And other Defendants.

Respondents.

Before : A.W.A Salam, J
Counsel : Daya Guruge for the Plaintiff – Appellant
Ranjan Gunaratne for the 8A Defendant-Respondent.

Argued on : 24.10.2011.
Written Submissions
Tendered on : 14.02.2012.

Decided on : 28.01.2013.

A W A Salam, J.

This appeal arises from the judgement of the learned district judge directing that the corpus be partitioned among the parties, whom he declared as co-owners in

the proportion of the undivided share referred to in the judgement. Being aggrieved by the said judgement and interlocutory decree two appeals have been preferred by the plaintiff-appellant and 13th defendant appellant.

As far as the appeal preferred by the 13th defendant-appellant is concerned, it is admitted that Martin Silva was the co-owner of an undivided 10 perches of the corpus by virtue of deed marked as D22. The said Martin Silva died leaving as his heirs his widow Darlin Nona and two children by the name Kusumsiri and Sirima. The widow being entitled to undivided 5 perches of the corpus and Sirima to an undivided 2.5 perches have transferred their rights to Kusumsiri who is the 13th defendant-appellant. The learned district judge has allotted an undivided 7.5 perches to the 13th defendant-appellant while keeping the balance 2.5 perches belonged to Martin Silva unallotted. The learned district judge having come to the conclusion that the 13th defendant-appellant is a child of Martin Silva has clearly erred in not allotting

his inherited rights from the deceased father. To that extent the judgement and interlocutory decree need to be corrected and hence the schedule of shares given in the judgement should now stand corrected in the following manner...

13th defendant is entitled to an undivided 10 perches.

Accordingly, the judgment and interlocutory decree are to be read as if no shares have been unallotted.

As far as the appeal preferred by the plaintiff-appellant is concerned, he takes up the position that the rights of Dinorishamy (her father) had devolved on her without 8A defendant-respondent getting any rights. Admittedly, Dinorishamy has mortgaged an undivided 4/35 shares of the corpus to Anohamy by mortgage bond No 375 dated 20 December 1925. Anohamy had put the said mortgage bond in suit and obtained

judgement against Dinorishamy. The interest of Dinorishamy had been sold at a public auction in the year 1937. However, the sale by fiscal has been confirmed only on 7 October 1958 and the fiscal conveyance has been executed on 19 December 1958. The plaintiff-appellant claims that the 8th defendant-respondent had no preferential rights over Dinorishamy. The learned district judge held that Dinorishamy had not acquired a valid prescriptive title to the undivided share that was the subject of mortgage. Having perused the judgement of the learned district judge, I see no reason to disagree with him on that point.

Subject to the above variation made with regard to the entitlement of the 13th defendant, the impugned judgement and interlocutory decree are affirmed. There shall be no costs.

Judge of the Court of Appeal

Vkg/-