

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

1. Gannoruwe Kadegedara Aron
(Deceased)

Gannoruwe Kadegedara Nonis
(Deceased)

1a Gannoruwe Kadegedara Jayasinghe
No. 25, Siyabalapitiya Road,
Mulgampala, Kandy

1(b) Substituted - Plaintiff – Appellant

CA 287/99(F)

Vs.

D.C. Kegalle – 22625/P

1. Pillegedara Waththa Sirisoma
No. 400, Pulasthigama,
Polonnaruwa.
2. Wadagammana Pallehagedara Jamis
Rahala West
Hemmathagama.
3. Wadagammana Pallehagedara William
(Deceased)
- 3a Wadagammana Pallehagedara Karunaratna
Rahala East,
Hemmathagama.
4. Wadagammana Pallehagedara Somapala
Rahala East,
Hemmathagama.

5. Wadagammana Pallehagedara Jayasinghe
Rahala East,
Hemmathagama.
6. Yatipaana Idamawaththa Nandoris
(Deceased)

- 6a Wadagammana Pallehagedara Ango
Rahala East,
Hemmathagama.

7. Wadagammana Pallehagedara Ango
Rahala East,
Hemmathagama.

Defendant-Respondents

BEFORE: M.M.A. Gaffoor, J.

S. Devika De Livera Tennekoon, J.

COUNSEL: Arjuna Kulakulassoriya for the 1(b) Substituted –
Plaintiff – Appellant
Kaminda de Alwis for the 6th and 7th Defendant –
Respondents

ARGUED ON: 14.10.2016

WRITTEN SUBMISSIONS – 1(b) Substituted – Plaintiff – Appellant
- 30.09.2016
6th and 7th Defendant – Respondents –
17.01.2017

DECIDED ON: 03.04.2017

S. DEVIKA DE LIVERA TENNEKON, J.

The Plaintiff – Appellant abovenamed (hereinafter sometimes referred to as the Plaintiff) instituted action in the District Court of Kegalle seeking to partition the land as morefully described in the schedule to the Plaint dated 09.11.1979.

The Plaintiff took up the position that the original owner of the corpus was one Hindha and after his demise the land devolved on to one named Kirihamy. Thereafter by virtue of deed bearing No. 15324 dated 02.05.1903 marked as P1 the said land was allegedly transferred to one Balindha. After Balindha's demise the Plaintiff contends that his next of kin i.e. son Jothiya and daughter Rankiri became co – owners of the said land. Thereafter the said Rankiri alias Ukkuamma had transferred 1/4th share of the corpus to one Sirisoma by deed of transfer bearing No. 22563 marked as P2. Upon the demise of the said Ukkuamma, the said Sirisoma being her son became entitled to 1/2 share of the corpus. Consequently the said Sirisoma had transferred 1/3rd of his share i.e. 1/6th of the corpus to the aforementioned Jothiya by virtue of deed bearing No. 287 marked as P3. Thereafter the said Jothiya had allegedly transferred the said land to the Plaintiff by deed No. 860 marked as P4.

The 6th and 7th Defendant-Respondents (hereinafter collectively referred to as the 6th and 7th Defendants) filed their statement of claim dated 28.10.1982 and admitted the chain of tittle to the corpus only up to the devolution to the said Balindha but contended that the sole heir of the said Balindha was one named Wadagammana Pallehagedara Sirimala alia Kira who became entitled to the corpus upon the demise of the said Balindha after which the said Kira transferred the corpus to the 7th Defendant by deed bearing No. 4249 dated 18.11.1959 and thereafter transferred the remaining 1/2 share to the Plaintiff by deed No. 8416 dated 26.06.1976.

It was the position of the 6th and 7th Defendants that the 6th Defendant planted all the trees on the corpus and it was the 6th Defendant who constructed the buildings found therein and possessed the land for over 50 years.

The trial commenced on 17.08.1988 and two admissions were recorded by the parties and 6 issues were recorded by the Plaintiff and 5 issues were raised by the 6th and 7th Defendants. In support of the contention of the Plaintiff the Plaintiff and the 2nd Defendant gave evidence and marked documents P1 – P4. The 7th Defendant gave evidence in Court on his behalf and marked documents 7V1 – 7V4. The 6th Defendant passed away during pendency of the Defendants case.

Upon the conclusion of the trial the learned District Court Judge delivered judgment on 03.02.1999 in favour of the 6th and 7th Defendants and ruled that they were entitled to the corpus on the ground of prescription.

Being aggrieved by the said Judgment the Plaintiff preferred the instant appeal *inter alia* on the following grounds;

- a) As per deeds marked P2 & P4 the said Balindha had two children named Jothiya and Ukkuamma,
- b) According to the evidence of one William in case bearing No. 21428/P marked as P5 the said Balinda had two children.
- c) According to the evidence of one Allisa in case bearing No. 3588/P marked as P6 the said Balinda had two children,
- d) The birth certificate of the said Wadagammana Pallehagedara Sirimala marked as 7V3 is a forged document,
- e) No evidence of prescription in favour of the 6th and 7th Defendants.

This Court must first consider whether the evidence presented during trial establishes that the aforementioned Jothiya and Ukkuamma were children of the said Balindha or if Baidha's sole heir was the said Kira.

The Plaintiff relies on cases bearing No. 21428/P and No. 3588/P in which allegedly Balindha's rights and entitlements over the corpus in the said cases were devolved on to Jothiya and Ukkuamma as next of kin. Having perused documents marked P5, P8, P6 and P7 relating to the above cases this Court agrees with the findings of the learned District Court Judge that the said evidence is not sufficient to establish that the said Jothiya and Ukkuamma as the next of kin of Balindha. It is prudent to point out that the Plaintiff has even failed to produce the caption in case bearing No. 21428/P to correctly evaluate its evidential value. The burden of proving the paternity is on the Plaintiff and where the Plaintiff has failed to produce sufficient evidence in support of his contention, this Court is unable to decide in his favour. It is clear that the Gannoruwe Kadededara Nonis, the son of the original Plaintiff, is not aware of his lineage, which matter is in dispute in the instant case. When questioned on his ancestry the said Nonis had answered that he came to know that Jothiya and Ukkuamma were the children of Balindha after having discovered the aforementioned case records P5, P8, P6 and P7. It is clear that even the 2nd Defendant who gave evidence on behalf of the Plaintiff is not aware of the descent and as such the contention of the Plaintiff is uncorroborated with cogent evidence.

The position that the birth certificate marked as 7V3 is a forged document is first been suggested at this stage in appeal. Attention is drawn to page 162 of the Appeal brief which notes that the documents marked as 7V1 – 7V4 were duly proved and marked as evidence at trial.

In the case of Sri Lanka Ports Authority and another V. Jugolinija-Boal East 1981(1) SLR 18 in which it was decreed that;

"if no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the *curies curiae* of the original civil courts."

Similarly in the recent case of Samarakoon V. Gunasekera and another 2011 (1) SLR 149 in which Amaratunga, J. held *inter alia* that;

"When a document is admitted subject to proof, the party tendering it in evidence is obliged to formally prove it by calling the evidence necessary to prove the document according to law. If such evidence is not called and if no objection is taken to the document it is read in evidence at the time of closing the case of the party who tendered the document it becomes evidence in the case.

On the other hand if the document is objected to at the time when it is read in evidence before closing the case of the party who tendered the document in evidence, the document cannot be used as evidence for the party tendering it."

Considering the above findings this Court finds that the document marked as "7V3" has been duly proved at the trial since no objection was raised as to its admissibility at the closing of the Defendant's case.

This Court is therefore of the view that the Plaintiff has failed to establish with certainty the parentage of the said Jothiya and Ukkuamma and as such this Court holds with the Defendant that the said Kira was the sole heir of the one named Balindha aforementioned, especially in light of deeds marked as 7V1 and 7V2 dated 1959.11.18 and 1976.06.26. As far back as 1959 the 7th

Defendant, and her predecessor in title, the said Kira, was seized and possessed of the corpus.

I shall now consider if the Defendants are entitled to the corpus on the basis of prescription. The Plaintiff admits that the 6th Defendant and the 6a Defendant were resident on the corpus for 28 years from around 1969/1970. The Plaintiff however, alleges that this was under the leave and licence of the aforementioned Jothiya.

The Plaintiff further admits that the 6th Defendant and the 6a Defendants were present on the land when the same was being surveyed in 1981. The surveyors report marked as X has noted that the buildings marked as a, b, c, & d on the corpus belonged to the 6th Defendant. It is evident that the Plaintiff has not produced any evidence of an adverse claim against the rights of the 6th and 7th Defendants. As correctly evaluated by the learned District Court Judge the witnesses who gave evidence on behalf of the Plaintiff seem to not have much knowledge relating to the corpus.

Therefore this Court is of the view that the learned District Court Judge has arrived at the correct findings by judgment dated 03.02.1999.

For the reasons morefully described above the Appeal is dismissed without costs.

Appeal dismissed.

Judge of the Court of Appeal

M.M.A. Gaffoor J

I Agree.

Judge of the Court of Appeal