

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

**C.A. Appeal No. 961/97(F)**

**D.C. Balapitiya No. 2094/P**

1. Ponnahandi Alpin Nona  
Lakshman Villa,  
Madampe, Kuleegoda  
Ambalangoda (Dead)
  - 1a. Ratgamage Luxman de Silva,  
39/4, Kottegewatte Road,  
Udumulla, Battaramulla.  
(1a Substituted Defendant-Appellant)
2. Ratgamage Dotty Wotmy De Silva  
C/O 65/B, E.H. de Soysa Abeysekara,  
Bandaragama Road, Waskaduwa
3. Ratgamage Luxman de Silva,  
39/4, Kottegewatte Road, Udumulla,  
Battaramulla
4. Ratgamage Molly de Silva,  
383, Galle Road,  
Kalutara North
5. Ratgamage Dudley de Silva,  
“Lakshman Villa”  
Madampe, Kuleegoda  
Ambalangoda

**1a - 5<sup>th</sup> Defendants-Appellants**

V

Ratgamage Rohana De Silva  
“Muditha”  
Chullapaduma Mawatha,  
Bategama, Dickwella.

By his Attorney,  
Ratgamage Dharmasena de silva,  
Wellaboda, Madampe,  
Ambalangoda

Plaintiff- Respondent

**BEFORE**

: **JANAK DE SILVA, J**  
**K.PRIYANTHA FERNANDO, J**

**COUNSEL**

: M.C. Jayaratne PC with T.C. Weerasinghe  
and M.D.J. Bandara for 1<sup>st</sup> to 5<sup>th</sup> Defendants  
Appellants.  
Nagitha Wijesekara with Ayesha Ginige for  
Plaintiff-Respondent.

**ARGUED ON**

: 19.03.2019

**WRITTEN SUBMISSIONS**

**FILED ON**

: 19.06.2015 & 11.10.2018 – by the Plaintiff-  
Respondent.  
06.08.2015 – by the Defendants Appellants

**JUDGMENT ON**

: 28.06.2019

**K. PRIYANTHA FERNANDO, J.**

01. Plaintiff Respondent (Respondent) filed the above action to partition the land called Udumullewatte more fully described in the schedule to the plaint. According to the plaint, Plaintiff is entitled to 8/16 (1/2) share of the land and 1<sup>st</sup> to 5<sup>th</sup> Defendants are entitled to balance 8/16 (1/2).
02. Although, Defendant Appellants (Appellants) did not challenge the plaintiff's pedigree, they disputed the rights of Ruwanpura Tharalis de Silva and Ruwanpura Walton de Silva by their statement of claim. The position taken by the Appellants was that said Tharalis de Silva and Walton de Silva did not have any rights to the land and therefore, Plaintiff could not have devolved any rights from them.
03. After trial, the learned District Judge delivered the judgment in favour of the Respondent. Being aggrieved by the said judgment, Appellants appealed against the same urging the following grounds.
  1. That the judgment is contrary to law and against the weight of evidence.
  2. That the learned District Judge has misdirected himself in holding that the said Tharalis de Silva had the title to the subject matter of this action though he had sold the same outside the statutory determination. (Vide V.1)
  3. That the learned District Judge has misdirected himself in holding that the said Walton de Silva had title to the subject matter of this action

though he had violated the section 18 of the Land Reform Law despite the fact that the operation of section 3(1) of the said Land Reform Law.

4. That the learned District Judge erred in law in failing to grant title to the Land Reform Commission on the ground that the Attorney General has not been made a party to this action.
04. We considered the evidence adduced at the trial including the documents filed, Judgment of the learned District Judge, and submissions made by the counsel for all parties at the argument.
05. Counsel for the Appellants submitted that the subject land had not been included in the statutory determination as per section 19 of the Land Reform Act marked as V.1, and therefore Tharalis de Silva could not have owned the land as mentioned in the plaint.
06. Counsel for the Respondents submitted that the title deeds are based on the last will of Ruwanpura Clement Singho and that the subject land was included in the last will. Counsel further submitted that no document was produced to show that the corpus was vested with the Land Reform Commission (LRC). As L.R.C was not made a party, Plaintiff did not have any knowledge of the land being vested with the L.R.C.
07. In terms of section 05 of the LRC Act after the date of commencement of the Land Reform Law, any person becomes the owner of agricultural land in excess of the ceiling shall as from the date be deemed to vest in the commission and deemed to be held by that person under a statutory lease from the commission.
08. After the statutory declaration is made under section 18 by the statutory lessee, commission would make and publish in the gazette the statutory

determination specifying the extent of the agricultural land permitted by the commission to be retained by the statutory lessee. These provisions were discussed at length By Her Ladyship Dr. Shirani Bandaranayake CJ in case of *Ananda Seneviratne and another V. Anthony Weerathunga and another SC Appeal 18/2010. 15.03.2012*. In that case Court went further into the question of the date of publishing the statutory determination in the gazette. It was made clear that until the statutory determination is published, the lessee in terms of section 05 of the Land Reform Act would not get title to the land included in the statutory determination.

09. The above statutory determination published in the gazette said to be relevant to the said Ruwanpura Tharalis de Silva in this case was marked as V 1 at the trial. It was also evident that Tharalis de Silva and Walton de Silva in the plaintiff's pedigree, each of them owned thousands of acres of land. (Vide evidence of the witness for plaintiff R. Dharmasena Silva at page 187). On the evidence adduced at the trial it is clear that Tharalis de Silva in V 1 is the same Tharalis Silva in the plaintiff's pedigree. In the statutory determination V 1, the subject land to this case Udumullewatta is not included. Therefore, it is clear that Ruwanpura Tharalis de Silva did not have any title to the subject land as mentioned in the plaint and hence, his heirs did not have any right to convey to the plaintiff by deeds No. 1965 and 1999 marked as P5 and P6 respectively.
10. The contention of the counsel for the Appellants is that the same position taken by the Appellants on the title of Tharalis de Silva in terms of ceiling under the Land Reform Law applies to Walton de Silva as well. It is further submitted that in terms of the inventory filed in the Testamentary case in respect of the estate of said Walton de Silva who died in 1988, the land in

this case was not included. Therefore, it is submitted that Walton de Silva did not have any right to this land for the plaintiff to derive title as per the plaint.

11. It is submitted by the counsel for the Respondent that the law relating to testamentary actions cannot be raised in favour of the Appellants as they were not parties to such actions and Appellants have not produced any material documents to establish that no probate or letter of administration was issued in the said testamentary action. Therefore, provisions of sections 545 and 547 of the Civil Procedure Code are in favour of the Plaintiff.
12. Point of contest No.7 was raised at the trial on the inventory filed in the testamentary case in respect of the estate of Walton de Silva. The above inventory was produced in evidence at the trial as V 2 and the learned District Judge has correctly answered point of contest No.07 in favour of the Defendants.
13. It was evident that the said Walton de Silva owned so many acres of agricultural land beyond the ceiling prescribed in terms of the Land Reform Act. Walton de Silva had died on 18.09.1988 and the testamentary action in respect of his estate had been filed on 29.04.1992 by his wife R. Elsi de Silva. There was no dispute that 'V 2' is a certified copy of the inventory filed in the District Court in the said testamentary case and that the land which is the subject matter in this case is not included in V 2 as a property owned by Walton de Silva at the time of his death. No statutory determination by the Land Reform Commission was filed by parties to show that the subject land to this case was allowed to be retained by Walton de Silva. Therefore, we find that Walton de Silva did not have title to the subject land for his heirs to inherit and that vendors in deed 1958 marked as

P7 did not have title to transfer by deed P7. Hence the learned District Judge has erred when he answered points of contest 01 and 10 in favour of the plaintiff. In the above premise, plaintiff has failed to prove his title to the land and he is not entitled to any share of the subject land sought to be partitioned. Appeal is allowed to that extent.

14. Defendants have claimed prescriptive title to the whole land. In his Judgment the learned District Judge has considered the evidence adduced at the trial and the law that applies with regard to the prescription the Appellants claimed, in pages 09, 10 and 11 of the judgement. (Pages 281,282 and 283 of the brief).
15. When the parties are co-owners, mere possession for 10 years would not suffice to gain prescriptive title to a land co-owned. Every co-owner is presumed to be in possession in his capacity as a co-owner. In case of *Maria Fernando V. Anthony Fernando [1997] 2 Sri L.R. page 356* Court of Appeal held that:

*“Long possession, payment of rates and taxes, enjoyment of produce, filing suit without making the adverse party, a party, preparing plan and building house on land and renting it are not enough to establish prescription among co-owners in the absence of an overt act of ouster. A secret intention to prescribe may not amount to an ouster”*

16. Also, in terms of section 07 of the Land Reform Law where any agricultural land is co-owned, each co-owner shall be deemed to own his share in such land as a distinct and separate entity.

17. As discussed by the learned District Judge in his judgment, although there is evidence to the effect that the Defendants have claimed possessing the land, there is no evidence of any act of ouster against the Plaintiff. Further, as mentioned before, when the share of the corpus owned by Tharalis de Silva and Walton de Silva are vested with the Land Reform Commission, Defendants could not have claimed prescriptive title for that share without making the Land Reform Commission a party.
18. Therefore, Defendants are not entitled to prescriptive title to the whole land sought to be partitioned. Defendants are entitled to the half share devolved from Kalugalage Andoris Pieris and finally from Rathgamage Senawasa de Silva as mentioned in the Plaintiffs pedigree.
19. For the aforementioned reasons following orders are made;

1/4 share of Ruwanpura Tharalis de Silva which is vested with L.R.C will be kept unallotted,

1/4 share of Ruwanpura Walton de Silva which is vested with L.R.C will be kept unallotted.

Balance half Share will be divided on the Defendants as follows;

1st Defendant Ponnahandi Algin Nona	1/4
2 <sup>nd</sup> Defendant Ratgamage Wotmin de Silva	1/16
3 <sup>rd</sup> Defendant Ratgamage Luxman de Silva	1/16
4 <sup>th</sup> Defendant Ratgamage Molee de Silva	1/16
5 <sup>th</sup> Defendant Ratgamage Dudley de Silva	1/16

Improvements in the lots to be divided proportionately among the allottees.



Costs to be born by the allottees proportionately.

District Judge Balapitiya is directed to enter the interlocutory decree accordingly.

Appeal is allowed to the above extent.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**