

**CHANDRASENA**  
**v.**  
**PIYASENA AND OTHERS**

COURT OF APPEAL  
WIGNESWARAN, J.,  
JAYAWICKRAMA, J.  
C.A. NO. 547/87 (F).  
D.C. MATUGAMA NO. 966/P.  
DECEMBER 18, 1998.

*Partition Law – Civil Procedure Code – S. 114 (2) – Documents marked in evidence – Part of the record.*

The plaintiff-respondent instituted action to partition the land in dispute. District Court did not grant shares to the defendant-appellant on the basis that he had not tendered the deeds in proof of his title, though marked in evidence.

**Held:**

1. In a partition action it is incumbent on the Judge to investigate into title of each party.
2. According to s. 114 (2) CPC – every document so proved/admitted shall be endorsed with a number/letter, the Judge shall then make an entry on the record to the effect that such document is proved/admitted, the document should then be filed as part of the record; there is a duty cast on Court to take the documents tendered and marked to its custody and keep them filed of record – documents marked become part of the record.
3. It is the duty of a trial Judge to direct parties after the trial to tender all documents to Court with a list attached before writing the judgment ; he had failed to do so in this instance.
4. The original (marked) deeds tendered with the written submissions show that the defendant-appellant is entitled to certain shares of the corpus.

**APPEAL** from the judgment of the District Court of Matugama.

*Samantha Vithana* for the 1st defendant-appellant.

Respondent absent and unrepresented.

Case referred to :

*Podiralahamy v. Ran Banda* – [1993] 2 Sri L.R. 26.

*Cur. adv. vult.*

March 2, 1999.

**JAYAWICKRAMA, J.**

This is an appeal from a judgment dated 17. 11. 87 by the District Judge of Mathugama, wherein he has not granted shares to the 1st defendant-appellant on the basis that the 1st defendant-appellant had not tendered documents V1, V2 and V3 in proof of his title.

The plaintiff-respondent instituted this action to partition the land named Badahelawatta described in the schedule to the plaint.

At the trial there were no disputes as to the identity of the corpus, pedigree nor the shares each party was entitled to. At the trial the 1st defendant-appellant neither appeared in person nor was represented by a counsel as there was no contest. The plaintiff gave evidence which was unchallenged and he marked the necessary documents in proof of his title as well as the title of other defendants including the 1st defendant-appellant. According to the evidence of the plaintiff the 1st defendant-appellant was entitled to shares upon deeds marked as 1V1 (No. 154 dated 03. 06. 66), 1V2 (No. 5391 dated 25. 10. 80) and 1V3 (No. 253 dated 30. 09. 68). Even according to paragraph 24 of the plaint the 1st defendant-appellant was entitled to these shares.

The deeds marked as 1V1, 1V2 and 1V3 were not tendered to Court, although they were referred to and marked in evidence by the plaintiff. Although the 1st defendant-appellant was entitled to shares on the strength of the above-mentioned deeds, the learned District

Judge left these shares unallotted as the deeds were not tendered to Court for its perusal.

In a partition case, it is incumbent on the Judge to investigate into title of each party before he arrives at a determination. According to section 114 (2) of the Civil Procedure Code "Every document so proved or admitted shall be endorsed with some number or letter sufficient to identify it. The Judge shall then make an entry on the record to the effect that such document was proved against or admitted by (as the case may be) the person against whom it is used and shall in such entry refer to such document by such number or letter in such a way as to identify it with the document so proved or admitted. The document shall then be filed as part of the record".

It was held in *Podiralahamy v. Ranbanda*<sup>(1)</sup> that "there is a duty cast on Court to take the document tendered and marked at the trial to its custody and keep them filed of record. Documents marked in evidence become part of the record".

As observed by Justice Senanayake in the above case in the instant case too the learned District Judge had failed to give his judicial mind to the documents led at the trial. In the instant case, the only ground for not allotting the shares of the 1st defendant-appellant was that the documents were not tendered to Court. It is the duty of a trial Judge to direct parties after the trial to tender all documents to Court with a list attached before writing the judgment. The learned District Judge had failed to do so in this instance.

The learned counsel for the 1st defendant-appellant has tendered the original deeds marked as 1V1, 1V2, 1V3 with his written submissions. On a perusal of these deeds referred to in the evidence of the plaintiff, it is very clear that the 1st defendant-appellant is entitled to certain shares of the corpus. Hence, we hold that the 1st defendant-appellant should be allotted shares from the shares left unallotted in the judgment. The learned District Judge in allotting shares to the parties had left unallotted 258 1/2 /504 shares. We make order that

the 1st defendant-appellant be allotted  $1/24+1/16+1/16+3/48+1/16$ th shares, ie  $7/24$ th shares out of  $258 \frac{1}{2} / 504$  shares which were left unallotted. In view of this order the shares should be now allotted as follows:

Plaintiff	–	$163 \frac{1}{2} / 504$
1st defendant	–	$147/504$
3rd defendant	–	$42/504$
5th defendant	–	$14/504$
6th defendant	–	$14/504$
8th defendant	–	$12/504$
Unallotted shares	–	$111 \frac{1}{2} / 504$
		504/504

We make order that the interlocutory decree be amended accordingly. Subject to the above variation of the shares, we confirm the judgment. The appeal is allowed without costs.

**WIGNESWARAN, J.** – I agree.

*Interlocutory decree amended.*

*Appeal allowed.*