

1972 Present : H. N. G. Fernando, C.J., and Walgampaya, J.

M. M. BELIN NONA, Appellant, and H. K. PETARA and others, Respondents

S. C. 23/69—D. C. Gampaha, 11922/P

Co-owners of two lands—Averment that both lands were amalgamated and divided among the co-owners—Prescriptive possession thereafter of the parts severally allotted—Proof.

It is only rarely possible for a party successfully to maintain that there had been an actual division of a land among co-owners and prescriptive possession thereafter of the parts severally allotted. The difficulty of proving separate title is all the more difficult when two lands are said to have been amalgamated and the same persons are not shown to have owned the same shares in the two lands.

A PPEAL from a judgment of the District Court, Gampaha.

H. W. Jayewardene, with N. R. M. Daluwatte and Miss Ivy, Marasinghe, for the plaintiff-appellant.

J. W. Subasinghe, for the 9th to the 12th defendants-respondents.

July 14, 1972. H. N. G. FERNANDO, C.J.—

The only issues which were framed in this action related to a position taken up by the 9th to the 12th defendants, that the land depicted in the plan filed of record in this case had been previously amalgamated with the land depicted in plan No. 776 filed of record in case No. 11923/P, and that the land so amalgamated had been divided among the co-owners of both lands. The learned District Judge answered these issues in favour of the 9th to the 12th defendants, and therefore dismissed this action. Counsel for the 9th to the 12th defendants has now to concede that the former co-owners of this land and the former co-owners of the other land are not the same persons, although some of them may have been co-owners of both lands.

It is only rarely possible for a party successfully to maintain that there had been an actual division of a land among the co-owners and prescriptive possession thereafter of the parts severally allotted. In the circumstances of this case, the difficulty of proving separate title in that way is all the more difficult because the same persons are not shown to have owned the same shares in both the lands. In our opinion, the evidence upon

which the trial Judge acted fell far short of establishing the complicated division which is alleged to have been made. Accordingly we hold that the answers to the issues should be as follows:—

Issue No. 1	..	No.
Issue No. 2	..	No.
Issue No. 3	..	No.
Issue No. 4	..	Yes. The plaintiff can maintain this action because it has not been proved that this land was amalgamated and divided together with the land shown in plan No. 776.
Issue No. 5	..	Yes.
Issue No. 6	..	Yes.

The decree dismissing the plaintiff's action with costs is set aside and the case is sent back to the District Court, where it will be open to any party to raise any issue which properly arises on the pleadings, but of course not to raise again any of the issues which have been decided in this judgment. The costs of the former proceedings in the District Court will abide the final result of the action. The plaintiff-appellant will be entitled to the costs of this appeal to be paid by the 9th to the 12th defendants-respondents.

WALGAMPAYA, J.—I agree.

Case sent back for further proceedings.

