

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

In the matter of an application for leave to Appeal under and in terms of Article 127(2) of the Constitution read with Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

**SC/Appeal/150/2015**

**SC HCCA/LA /653/2014**

**UVA/HCCA/BDL/30/2011(F)**

**D.C. Badulla Case No.**

**P/281/4**

Budagoda Arachchige Don Chandrawansha,  
Wijewardhana, No. 50, Maha Vihara Road,  
Ambalangoda.

**PLAINTIFF**

vs

Budagoda Arachchige Don Cyril Wijewardhana,  
No. 7, Bandarawela Road, Hali Ela,

Budagoda Arachchige Don Alfred Wijewardhana,  
No. 98/6, Ketawala Road, Hali Ela.

Themmadura Lalani Shanthi De Silva,  
Bandarawela Road, Hali Ela,

Thilini Sachira Wijewardhana,  
Bandarawela Road, Hali Ela,

Budagoda Arachchige Don Piyadasa alias  
Premawansha, **(Deceased)**  
‘Shamila Stores’, Bandarawela Road, Hali Ela.

**DEFENDANTS**

6.(sic) Budagoda Arachchige Don Sri Lal  
Wijewardhana,  
‘Shamila Stores’, Bandarawela Road, Hali Ela.

**SUBSTITUTED 5<sup>th</sup> DEFENDANT**

**AND BETWEEN**

Budagoda Arachchige Don Chandrawansha,  
Wijewardhana, **(Deceased)**  
No. 50, Maha Vihara Road,  
Ambalangoda.

**PLAINTIFF - APPELLANT**

Budagoda Arachchige Don Deepthi,  
Chandrawansha Wijewardhana,  
No. 98/6, Lake Road, Wickramasinghepura,  
Battaramulla.

Budagoda Arachchige Dona Yamuna Chandini  
Wijewardhana,  
Etampitiya Estate, Etampitiya.

Budagoda Arachchige Dona Manjula Kanthimani  
Wijewardhana,  
St. Jame’s Estate, Hali Ela.

**SUBSTITUTED - PLAINTIFFS - APPELLANTS**

VS

1. Budagoda Arachchige Don Cyril Wijewardhana,  
No.7, Bandarawela Road, Hali Ela,

2. Budagoda Arachchige Don Alfred Wijewardhana,  
No. 98/6, Ketawala Road, Hali Ela.
3. Themmadura Lalani Shanthi De Silva,  
Bandarawela Road, Hali Ela,
4. Thilini Sachira Wijewardhana,  
Bandarawela Road, Hali Ela,

**DEFENDANTS – RESPONDENTS**

6. (*sic*) Budagoda Arachchige Don Sri Lal Wijewardhana,  
No 7, Bandarawela Road, Hali Ela.

**SUBSTITUTED 5<sup>th</sup> – DEFENDANT - RESPONDENT**

**AND NOW BETWEEN**

6. (*sic*) Budagoda Arachchige Don Sri Lal Wijewardhana,  
‘Shamila Stores’, Bandarawela Road, Hali Ela.

**SUBSTITUTED 5<sup>th</sup> – DEFENDANT – RESPONDENT -  
PETITIONER**

vs

- A. Budagoda Arachchige Don Deepthi Chandrawansha  
Wijewardhana, No. 98/6, Lake Road,  
Wickramasinghepura,  
Battaramulla.
- B. Budagoda Arachchige Dona Yamuna Chandini Wijewardhana,  
Etampitiya Estate, Etampitiya. (Deceased)

B/1- Dharamakula Raja Randeniya  
B/2 – Achini Sharmila Randeniya

B/3 – Charit Anjana Randeniya  
Etampitiya Estate, Etampitiya

- C. Budagoda Arachchige Dona Manjula Kanthimani  
Wijewardhana,  
St. Jame’s Estate, Hali Ela.

**SUBSTITUTED RESPONDENTS- PLAINTIFFS –**  
**APPELLANTS - RESPONDENTS**

1. Budagoda Arachchige Don Cyril Wijewardhana,  
No. 7, Bandarawela Road, Hali Ela,
2. Budagoda Arachchige Don Alfred Wijewardhana,  
No. 98/6, Ketawala Road, Hali Ela.
3. Themmadura Lalani Shanthi De Silva,  
Bandarawela Road, Hali Ela,
4. Thilini Sachira Wijewardhana,  
Bandarawela Road, Hali Ela,

**DEFENDANTS -RESPONDENTS-**  
**RESPONDENTS**

**BEFORE**

: A. H. M. D. Nawaz, J.  
Sobhitha Rajakaruna, J &  
M. Sampath K. B. Wijeratne J.

**COUNSEL**

: Uditha Egalahewa, PC with Damitha Karunarathne for  
the Substituted – Defendant – Respondent – Appellant.

Chandrasiri de Silva for the 1<sup>st</sup> Substituted –  
Plaintiff – Appellant – Respondent.

**ARGUED ON**

: 09.05.2025

**DECIDED ON**

: 29.10.2025

**M. Sampath K. B. Wijeratne J.**

The Plaintiff, who is now deceased, instituted the present action to partition the lands called “*Waliliyadda Kumbura*” containing buildings bearing assessment numbers 56 and 57, and “*Waliliyadda*” in an extent of 4 perches and containing buildings bearing assessment numbers 53 and 54, more fully described in the schedule to the plaint as Land 1 and Land 2, respectively. Upon the issuance of a commission, A.A.S. Amarasekara, Licensed Surveyor, carried out a preliminary survey and tendered Plan No. 1523 along with the corresponding report. Thereafter, the 5<sup>th</sup> Defendant moved for a commission to the Surveyor General, who tendered Plan No. B/Court/2006/506 along with his report.

The Plaintiff contended that the two lands were once owned by Budagoda Arachchilage Don Aron Wijewardhana Appuhamy, who transferred the first land described in the schedule to the plaint by Deed No. 33828 dated June 4, 1946, attested by G.B. Samaranayaka, Notary Public, to his children: Don Chandrawansha Wijewardhana, the Plaintiff; Don Siril Wijewardhana the 1<sup>st</sup> Defendant-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup> Defendant); Don Alfred Wijewardhana, the 2<sup>nd</sup> Defendant-Respondent-Respondent (hereinafter referred to as the 2<sup>nd</sup> Defendant); Don Piyadasa alias Premawansha, the 5<sup>th</sup> Defendant; and Don Ariyawansha Wijewardhana. It is stated that the original owner, Don Aron Wijewardhana Appuhamy, died intestate with respect to the second land described in the schedule to the plaint, leaving as his heirs the Plaintiff, 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant, 5<sup>th</sup> Defendant, and Don Ariyawansha Wijewardhana. Subsequently, Don Ariyawansha Wijewardhana died intestate, leaving his widow and his heir namely, Lalani Shanthi De Silva, the 3<sup>rd</sup> Defendant-Respondent-Respondent (hereinafter referred to as the 3<sup>rd</sup> Defendant), and Thilini Sachira Wijewardhana, the 4<sup>th</sup> Defendant-Respondent-Respondent (hereinafter referred to as the 4<sup>th</sup> Defendant).

While the action was pending, the Plaintiff passed away, and the ‘A, B and C Substituted-Plaintiffs-Appellants-Respondents’ were substituted in his place. The 5<sup>th</sup> Defendant also passed away, and the 6<sup>th</sup> Defendant-Respondent-Petitioner, who is the Appellant before

this Court, was also substituted in place of the 5<sup>th</sup> Defendant. (Although substituted in the room of deceased 5<sup>th</sup> Defendant, he is referred to in the caption as the 6<sup>th</sup> Defendant-Respondent-Petitioner.)

The only party who raised a contest was the 5<sup>th</sup> Defendant and he tendered a statement of claim disputing solely the identity of the corpus.

At the trial, the deceased Plaintiff and the Commissioner of Court, A.A.S. Amarasekara, testified. The Plaintiff tendered the extract of the encumbrance sheet where Deed No. 33828 was registered, marked as 'ප්‍ර1' and the extract of the encumbrance sheet where the second land was registered, marked as 'ප්‍ර2'. The deed itself, No. 33828, does not appear to have been formally marked in evidence; however, a copy of the deed is in the record, had been marked as 'ප්‍ර1 (අ)'. The learned District Judge, having observed this defect in the production of the deed, nevertheless considered the deed as it was filed of record. None of the parties invited the learned Judges of the Civil Appellate High Court, or this Court, to reject the deed on the basis that it was not properly marked and produced. Accordingly, I see no reason to disregard Deed No 33828.

At the trial, preliminary Plan No. 1523 together with its corresponding report were marked as 'ප්‍ර3' and 'ප්‍ර3' (අ), respectively. The Plaintiff, during his testimony, at one point sought to mark the plan made by the Surveyor General but immediately withdrew the initiative.

The 1<sup>st</sup> to 4<sup>th</sup> Defendants chose not to lead any evidence. The widow of the original 5<sup>th</sup> Defendant gave evidence at the trial regarding the extract from the assessment register pertaining to buildings Nos. 53, 54, 56, and 57 issued by the Municipal Council, which was produced as document marked 'ප්‍ර1'.

It appears from the record that the extents of the first and second lands described in the schedule to the plaint do not tally with the preliminary plan. The Plaintiff, in his evidence, was unable to identify each land separately with reference to the lots depicted in the preliminary plan. Under cross-examination (page 102/184), he stated that the lands described in the schedule to the plaint are depicted as Lots 1 to 4 in the preliminary plan.

However, he also stated that the buildings bearing assessment numbers 53 and 54 in item No. 2 of the schedule to the plaint correspond only to Lot 1.

Upon examining the preliminary plan, it appears that a strip of land between Lots 3 and 4, bearing assessment No. 15, was not surveyed at the request of the parties. It further appears from the extract of the assessment register marked '5B1' that the building bearing No. 15 was previously numbered as 54 and is situated on the second land described in the schedule to the plaint. Despite these weaknesses in the evidence identifying the corpus, the case proceeded to judgment.

After the closure of the case, the learned District Judge observed that the parties had failed to frame issues. Accordingly, he invited the parties to frame their respective issues. The Plaintiff framed five issues, among which the fourth issue concerned the identification of the corpus. The 1<sup>st</sup> to 4<sup>th</sup> Defendants stated that they would follow the issues framed by the Plaintiff, while the substituted 5<sup>th</sup> Defendant did not suggest any issue. It is a well-settled rule of procedure that, in a partition action, issues are not required to be framed (*John Singho vs Pedris Hamy Et al*, 48 NLR 345), as it is the duty of the Court to ascertain the identity of the corpus and investigate title irrespective of whether the parties have contested the case. (*Sopinona vs Pitipanaarachchi and Two Others*, (2010) 1 Sri L.R 87.

The extract of the assessment register marked '5 B 1' states that the assessment number of building 57 has been renumbered as No. 9, and the assessment number of building 56 has been changed to No. 13. The Commissioner's preliminary plan shows Lot 2 containing the building presently numbered 9, and Lot 3 containing assessment No. 13. Hence, it can be seen that assessment No. 9, which was previously numbered 57, is within Lot 2, and the building bearing No. 13, which was previously numbered 56, is situated in Lot 3. Accordingly, Lot 1, as depicted in the preliminary plan, does not contain any building referred to in either of the schedules to the plaint. Further, as per the preliminary plan, the building bearing No. 15, which was previously No. 54, has not been surveyed or included in the said plan. The building bearing No. 17, which was previously No. 53, is situated in Lot 4.

Hence, it is abundantly clear that the building bearing assessment No. 54 in item No. 2 of the schedule to the plaint had not been surveyed at all, demonstrating that the entirety of land No. 2 in the schedule to the plaint had not been surveyed.

The learned District Judge delivered judgment to partition only Lots 2 and 3 in the preliminary plan, corresponding to the first land described in the schedule to the plaint. As there was no contest regarding the pedigree, which was supported by Deed No. 33828, he allotted shares to the parties in the following proportions: one-fifth each to the Plaintiff, the 1<sup>st</sup>, 2<sup>nd</sup>, and 5<sup>th</sup> Defendants, and one-tenth each to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

Being aggrieved by the said judgment, the Plaintiff appealed to the Civil Appellate High Court of Badulla. The learned Judges of the Civil Appellate High Court varied the judgment, holding that item No. 1 of the schedule to the plaint consists of Lots No. 1 to 3 in the preliminary plan. Thereafter, the 6<sup>th</sup> Defendant moved this Court seeking leave to appeal against the said judgment. This Court, after considering the application, granted leave to appeal on the questions of law stated in paragraph 15 (a) to (d) of the Petition. I will reproduce the questions of law in paragraph 15 verbatim, namely:

- a. Did the Honourable Judges of the said Civil Appellate High Court err in law by holding that Lot 1 in the aforesaid preliminary plan marked P 3 should constitute part of the land sought to be partitioned under item 1 of the Schedule to the Plaint?*
- b. Did the Honourable Judges of the Civil Appellate High Court err in law by holding that the Petitioner had admitted that the Lot 1 in the aforesaid primary plan marked P3 constitutes part of the land sought to be partitioned under item 1 of the Schedule to the Plaint?*
- c. Did the Honourable Judges of the said Civil Appellate High Court erred in law by holding that the learned District Judge had given undue weight and placed undue reliance on certain immaterial facts more particularly on the failure of the Plaintiff*



*to adduce any evidence to prove the old Assessment Nos. of the buildings standing upon Lot 1 in the aforesaid primary plan marked P3?*

- d. *Did the Honourable Judges of the said Civil Appellate High Court err in law by disregarding and misinterpreting the evidence placed before the District Court?*

The argument before us was confined to the identity of the first land described in the schedule to the plaint. It was never contested that the entirety of the second land was not properly surveyed and depicted in the preliminary plan. In fact, it is abundantly clear that the building bearing assessment No. 54, referred to in item No.2 of the schedule to the plaint, was not properly surveyed.

### **The Identity of the Corpus Described as Item No. 1 of the Schedule to the Plaint**

Section 18(1)(iii) of the Partition Law No. 21 of 1977 casts the initial burden of identifying the *corpus* on the Commissioner. Section 18(1) reads as follows:

*18 (1) The surveyor shall duly execute the commission issued to him and, in doing so shall, where any boundary of the land surveyed by him is undefined, demarcate that boundary on the ground by means of such boundary marks as are not easily removed or destroyed and shall, on or before the date fixed for the purpose, make due return thereto and shall transmit to the court-*

*(a) a report, in duplicate, substantially in the form set out in the Second Schedule to this Law, verified by affidavit stating-*

*(i), (ii) (...)*

*(iii) whether or not the land surveyed by him is in his opinion substantially the same as the land sought to be partitioned as described in the schedule to the plaint;*

*(iv) – (viii) (...)*

(b)(i)- (v) (...)

(2) – (4) (...)

If the Commissioner fails to identify the land described in the commission, it is his duty to report to the Court and seek proper directions (*Adikaram vs Mendis*, 2012 BLR Vol. XIX Part II, p. 4, ; *Brampy Appuhamy vs Menis Appuhamy*, 60 NLR 337). It is important to note that the Commissioner should not have excluded the strip of land between Lots 3 and 4 merely because the parties agreed that it did not form part of the corpus; rather, he should have sought instructions from the Court.

I further observe that there is no clear evidence as to the extent of the land described as item No. 1 of the schedule to the plaint. The plaint and the deed describe it as 40 feet in length, with a width of 30 feet in one direction and 15 feet in the other. However, the exact extent of the land within this description was not established by the evidence.

However, with regard to the boundaries of the first land in the schedule to the plaint, it appears that the Eastern and Western boundaries correspond exactly with those shown in the preliminary plan. The Eastern boundary of the first land, namely Badulu Oya (river), is shown in the preliminary plan to the Northeast. The Western boundary is the main road, which is depicted in the preliminary plan accordingly. The Northern boundary of item 1 in the schedule to the plaint is described as a “two-storied building of Don Aron Wijewardhana Appuhamy.” The preliminary plan depicts a building bearing assessment No. 5 to the North; however, there is no evidence as to who owns or owned this building. The Southern boundary of the first land is described in the schedule to the plaint as a road reservation, but no such road reservation is depicted in the preliminary plan.

It has been consistently held by this Court that the identity of the *corpus* in a partition action must be clearly established in a partition action. (*Richard and another vs Seibel Nona and Others*, 2001 2 SLR 1; *Brampy Appuhamy vs Menis Appuhamy*, 60 NLR 337; *Jayasuriya vs Ubaid*, 61 NLR 352; *Sopinona vs Pitipanaarachchi and two others*, (2010) 1 SLR 87).

The Court of Appeal observed in Case No CA/915/99F (C.A Minutes dated 04.08.2014) that the extent, boundaries, and the names of the lands on the boundaries constitute material evidence in identifying the *corpus*. This Court, in *Hapuararchchi and Others vs Podi Nilame and Others* (2021) 1 Sri L.R 134 at p. 147), similarly observed;

*"It is a grave error to conclude in partition actions that the identification of the corpus is not established upon a mere superficial comparison of the boundaries of the land described in the schedule to the plaint, which is a reproduction of the schedules to old deeds, with the existing boundaries as depicted in the Preliminary Plan. Boundaries do not remain unchanged; they change over the years due to various factors, be it natural or man-made. Whether or not the Preliminary Plan represents the land described in the schedule to the plaint shall be determined upon a consideration of the totality of the evidence led in the case and not solely by such a comparison. "*

In the instant case, I am of the view that there was no proper identification of the corpus based either on the boundaries depicted in the plan or on the evidence. I am mindful that the onus of proof in a partition action is no more than a balance of probabilities (*Karunaratne vs Sirimalie*, 53 NLR 444). In *Reginald Fernando vs Pabilinahamy and Others* ((2005) 1 SLR 31 at 36), Shirani Bandaranayake J. observed the common fact that no survey can be conducted secretly.

*"Considering the evidence given by the defendant, it appears that either the defendant was not aware that the land he was in occupation was surveyed until 1987 or that although he was aware that he did not think it is necessary to make inquiries on such surveying. Both these positions appear to question the credibility of the defendant. It is unbelievable to be heard to say that in a village of this country one would not be aware of a survey that was carried out in the absence of the owner or the licensee for a period of 6 years."*

This is especially so in a partition action where the fiscal is required to make public notifications, such as tom-tom beating and the posting of a written notice on the land (Section 15(3) of the Partition Law). However, these public announcements, together with an openly conducted survey, do not permit the Court to blindly accept a preliminary plan, even in the absence of a third party setting up a claim. As Mahinda Samayawardhena J. observed in *Hapuararchchi and Others vs Podi Nilame and Others* (supra), the Court should not mechanically compare the boundaries in the preliminary plan with those in the schedule to the plaint, but should carefully examine the evidence in identifying the corpus.

In the present case, the extent and boundaries of the first land in the schedule to the plaint have not been properly explained by any of the witnesses who testified. Although the Eastern and Western boundaries were clear, the Southern boundary, described as a road reservation, is not depicted in the preliminary plan. No attempt was made in the evidence to explain the absence of such an important feature as the road reservation. In *Gunasinghe vs Podiamma and Others I*, the Court of Appeal considered a case where three boundaries of the *corpus* identically tallied, except for the Eastern boundary, which was indefinite. The Court held that the mere fact that the Eastern boundary was indefinite or undefined does not defeat the identity of the *corpus*<sup>2</sup>.

In the case at hand, the Southern boundary according to the schedule to the plaint is a road reservation, the existence of which was not explained. This is not a defect that can be overlooked. In fact, the Southern boundary of Lot 3 appears to be the building bearing assessment No. 15, which was previously numbered as 54. It cannot reasonably be assumed that the building bearing No. 54 was constructed on the road reservation, as it is said to be located within the second land described in the schedule to the plaint.

---

<sup>1</sup>(2009) 1 Sri LR 174.

<sup>2</sup>At page 178.

Be that as it may, the Northern boundary is described as a two-storied building belonging to Don Aron Wijewardhana Appuhamy. This boundary was never explained in the evidence. If Lot 1 depicted in the preliminary plan falls within the corpus, the Northern boundary of Lot 1 should be a two-storied building owned by Don Aron Wijewardhana Appuhamy. However, there is no evidence to show that the building bearing assessment No. 5 is a two-storied building or that it was owned by Don Aron Wijewardhana Appuhamy. If the first land ordered to be partitioned is confined to Lots 2 and 3, the Northern boundary would have to be Lot 1; yet nowhere in the preliminary plan it is stated that Lot 1 contains a two-storied building. It should also be noted that neither the Commissioner nor the Plaintiff made such a statement in their evidence.

Therefore, the finding of the learned District Judge cannot be substantiated with respect to the Northern and Southern boundaries. Similarly, I find it difficult to uphold the judgment of the learned Judges of the Civil Appellate High Court in the absence of any evidence supporting Lot 1 as the Northern boundary of the corpus.

In light of the above analysis, it appears to me that there was a lack of evidence in properly identifying even the first land described in the schedule to the plaint.

The learned District Judge thereafter referred to the assessment register marked '5&1' and the buildings mentioned by the Commissioner in his plan and report. The learned District Judge placed weight on the identification of the buildings by reference to their assessment numbers.

The learned High Court Judges preferred to treat the Northern boundary of Lot 1 in the preliminary plan as the Northern boundary of the first land in the schedule to the plaint, merely because the 5<sup>th</sup> Defendant failed to frame issues and accepted Lot 1 as part of the *corpus*. However, I observe that the substituted 5<sup>th</sup> Defendant, in evidence, did not admit Lot 1 as part of the *corpus*.

It appears to me that the parties before the District Court has not assisted the Court in adducing sufficient evidence to identify the *corpus*, particularly with respect to the Northern and Southern boundaries. The Northern boundary is especially important in determining whether Lot 1 in the preliminary plan falls within the *corpus*.

I do not find fault with the learned District Judge for relying on the assessment register with reference to the assessment numbers of the buildings. It appears to me that the said document carries a significant evidentiary value. It is abundantly clear that the first land in the schedule to the plaint should contain Lots 2 and 3 as depicted in the preliminary plan. However, the assessment register itself does not provide evidence as to where the Northern boundary lies.

Therefore, I answer the questions of law framed before this Court as follows:

- (a) **Yes.**
- (b) **Yes.**
- (c) **Yes.**
- (d) **Yes.**

I set aside the judgments of the learned District Judge and the learned Judges of the Civil Appellate High Court. I remit the case back to the District Court to call for further evidence regarding the Northern and Southern boundaries of the land described in **item No. 1** of the schedule to the plaint. If necessary, the learned District Judge may issue a fresh commission to identify the said boundaries and obtain an explanation regarding the extent of the entire land.

Furthermore, I dismiss the action with regard to the **item No. 2** of the schedule to the plaint based on the reasons already laid down above and direct the learned District Judge to order the District Land Registrar to cancel the *lis pendens* registered in respect of the said land.

The parties shall bear the costs of the appeal in the Civil Appellate High Court and of this Court, without prejudice to the Plaintiff's right to claim *pro rata* costs in the District Court.

**JUDGE OF THE SUPREME COURT**

**A. H. M. D. Nawaz, J.**

I Agree.

**JUDGE OF THE SUPREME COURT**

**Sobhitha Rajakaruna, J.**

I Agree.

**JUDGE OF THE SUPREME COURT**